

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-13-56-A

Date: 1 February 2019

Original: English

IN THE APPEALS CHAMBER

Before:

Judge Prisca Matimba Nyambe, Presiding
Judge Aminatta Lois Runeni N'gum
Judge Gberdao Gustave Kam
Judge Seymour Panton
Judge Elizabeth Ibanda-Nahamya

Registrar:

Mr. Olufemi Elias

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**NOTICE OF FILING OF PUBLIC REDACTED VERSION OF
PROSECUTION RESPONSE BRIEF**

The Office of the Prosecutor:

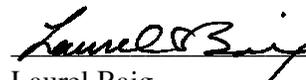
Laurel Baig
Barbara Goy

Counsel for Ratko Mladić:

Branko Lukić
Dragan Ivetić

1. The Prosecution hereby files a public redacted version of its Response Brief.¹

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Laurel Baig
Senior Appeals Counsel

Dated this 1st day of February 2019
At The Hague, The Netherlands

¹ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Prosecution Response Brief, 14 November 2018.

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The Office of the Prosecutor:

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I. RATKO MLADIĆ'S APPEAL LACKS MERIT

1. The Chamber properly convicted Ratko Mladić, Commander of the VRS Main Staff, of genocide, crimes against humanity—including extermination and persecution—and war crimes. He played an instrumental role in four joint criminal enterprises that resulted in the death, destruction and degradation of thousands of men, women and children in Bosnia and Herzegovina. His trial was fair, the evidence against him powerful and compelling, and the result just. For the terror he inflicted on the civilian population of Sarajevo, for the violence he unleashed on non-Serbs living in the Municipalities, for the genocide he committed on the Bosnian Muslims in Srebrenica, for the affront on the international community he committed by taking its representatives hostage, a life sentence was the only adequate punishment.

2. As the Prosecution demonstrates below, Mladić's failures to meet his burden of showing any error of law or fact are manifest. Mladić disagrees with many of the factual and legal conclusions made by the Chamber, which heard and assessed all of the documentary evidence and witness testimony. Without showing how any of these conclusions were incorrect or unreasonable, he asks the Appeals Chamber to substitute his preferred interpretation of the evidence—which he routinely grounds in misrepresentations—for that of the Chamber.

3. Mladić's arguments are riddled with a myriad of other flaws. For instance, he asks the Appeals Chamber to overturn well-established law without showing clear and cogent reasons, ignores relevant evidence and findings, misconstrues the law and misrepresents the Judgement.

4. Mladić's appeal should be dismissed, his remedies rejected, his convictions affirmed and his life sentence upheld.

II. GROUND 1: MLADIĆ WAS PROPERLY CONVICTED FOR UNSCHEDULED INCIDENTS

5. Mladić was informed of the charges against him. Mladić's contention that the Prosecution's case could not include "unnamed unscheduled incidents" ("Challenged Incidents") is based on his incorrect reading of a single decision. These Challenged Incidents were sufficiently pleaded in the Indictment, which was not defective. In any event, Mladić was able to defend himself against the persecution, murder, terror and unlawful attack charges (Counts 3, 5, 9 and 10)¹ because any alleged vagueness in the Indictment was cured by additional notice or was ultimately harmless. Ground 1 should be dismissed.

A. The Indictment is not defective

6. The Indictment properly informed Mladić of the persecution, murder, terror and unlawful attack charges against him by pleading the required material facts related to the Challenged Incidents with sufficient specificity.² All of the Challenged Incidents fall within the charges defined by the Indictment. The Appeals Chamber has repeatedly recognised that in a case of this nature and scale the Prosecution is not required to list each and every individual criminal incident in the Indictment, nor is there any requirement to provide such detail in schedules.³

7. Although additional particulars of certain incidents are listed in non-exhaustive schedules attached to the Indictment, the Indictment on its face contradicts the argument that the charges against Mladić are limited to scheduled incidents. As the Chamber recognised, the Indictment's "incorporating language" expressly indicates that the Schedules are non-exhaustive.⁴ For example, the Indictment states that

¹ *Contra* Mladić-AB, para.50. *Also* Mladić-AB, paras.41-42, 59-60.

² *See* Judgement, para.5270 (Indictment details sufficient material facts, such as references to victims, dates and locations for each incident whether enumerated by schedule or not). *Also* Decision on Motion Objecting to Indictment, paras.8-10, 13 (murder and persecution charges); Decision on Motion Alleging Indictment Defects (murder and terror charges); Decision on Motion for Reconsideration. Mladić did not specifically challenge the Indictment with regard to unlawful attack, but its charging is identical to terror because the charges are based on the same material facts.

³ *See* *Kvočka* AJ, para.30; *Naletilić* AJ, para.24; *Galić* Decision on Leave to Appeal, paras.15-16. *E.g.* *Kvočka* AJ, paras.434-441; *Kupreškić* AJ, para.90; *Galić* AJ, para.223 *affirming* *Galić* TJ, paras.186-188. *Also* *Perišić* Rule 73*bis* Decision, para.17. The Chamber correctly recognised that schedules were not required. *See* Judgement, para.5269; Decision on Motion Objecting to Indictment, paras.8, 10.

⁴ *See* Judgement, para.5270 *citing* Indictment, paras.39, 46, 59(j), 62, 81.

Schedules F and G set out “illustrative examples” of sniping and shelling incidents⁵ and that the killings with which Mladić was charged “includ[e]” those listed in Schedules A, B and E. For Counts 7 and 8 and some underlying acts of persecution the Indictment does not include any schedules.⁶

8. Mladić’s claim that he lacked notice hinges on an untenable interpretation of the Rule 73bis(D) Decision, which he uses to argue that the Prosecution’s case is limited to Scheduled Incidents and those unscheduled incidents ‘named’ in the Prosecution’s 65ter summaries.⁷ His interpretation of this Decision cannot be squared with its plain wording or with the record. The record demonstrates Mladić’s understanding that he could be convicted in relation to unscheduled incidents.

9. The Rule 73bis(D) Decision cannot be stretched to achieve the result Mladić seeks. Nowhere in this Decision does the Chamber address unscheduled incidents. The Decision is concerned only with removing certain *Scheduled* Incidents (“Stricken-out Incidents”).⁸ Nor has Mladić shown that the 65ter filing notification—to be provided if the Prosecution wanted to bring evidence of Stricken-out Incidents for purposes other than proving the incident—should be expanded to unscheduled incidents.⁹ The phrase in the Decision, “fixes the number of crime sites or incidents”—on which Mladić relies¹⁰—must be read in this context.

10. Mladić’s misreading of the Rule 73bis(D) Decision to exclude unscheduled incidents is further contradicted by the record. Any purported belief that the Rule 73bis(D) Decision’s phrasing might have eliminated unscheduled incidents from the Prosecution’s case altogether or created restrictive pleading rules would have been quickly corrected prior to the start of trial by, for example, the Chamber’s decisions accepting adjudicated facts in relation to unscheduled incidents not specifically

⁵ Indictment, para.81.

⁶ E.g. Indictment, paras.59(f) (forcible transfer or deportation), (h) (forced labour), (i) (appropriation or plunder), (j) (wanton destruction of private property), (k) (restrictive and discriminatory measures).

⁷ Mladić-AB, paras.43, 46-47, 49.

⁸ Rule 73bis(D) Decision, paras.11-12. See Judgement, para.5267; T.44384 cited at Judgement, para.5265. *Contra* Mladić-AB, paras.47, 49 citing Rule 73bis(D) Decision; Mladić-FTB, para.20(b)-(c). None of the Challenged Incidents are Stricken-out Incidents. Compare Mladić-AB, paras.48, 53-58 and chart below with Indictment (including strikethrough text for removed Scheduled Incidents).

⁹ This was an obligation that the Prosecution took upon itself. Rule 73bis(D) Decision, paras.4-6, 15 (accepting the Prosecution’s position to require notice of evidence concerning Stricken-out Incidents be provided in “65ter filings”). See Rule 65ter(E) (65ter filings are the Prosecution’s Pre-Trial Brief, 65ter Witness List and Exhibit List).

¹⁰ See Mladić-AB, para.46 citing Rule 73bis(D) Decision, para.14.

pleaded in the 65^{ter} filings.¹¹ Moreover, the Chamber repeatedly affirmed that the Indictment covered both scheduled and unscheduled incidents,¹² a view that “remain[ed] unchanged” throughout the trial.¹³ In 2011—well before trial began—the Chamber confirmed that the Second Indictment encompassed unscheduled incidents, finding that the Indictment was detailed enough to “sufficiently put [Mladić] on notice of the charges against him”, including for charges for which no schedules were included.¹⁴ Mladić did not seek certification to appeal this decision. Nor did he bring any pre-trial preliminary motions challenging the operative Fourth Amended Indictment. To the contrary, he conducted a defence that reflected an understanding that unscheduled incidents formed part of the charges against him.¹⁵

11. Only in 2016, six weeks before closing arguments, did Mladić challenge the Fourth Amended Indictment for the first time, submitting that the Indictment was limited to Scheduled Incidents, presenting a variety of arguments that the charges were improperly pleaded and asserting that it was “the right time to resolve” these issues.¹⁶ The Chamber rejected the motion, submitted “almost five years after the filing of the Indictment”, as untimely.¹⁷ It noted that Mladić’s arguments related exclusively to the “language of the Indictment” rather than to an alleged defect that had just become apparent.¹⁸ Seeking reconsideration, Mladić claimed that the Rule 73bis(D) Decision “limited” the Indictment to the 106 scheduled incidents.¹⁹ He explained his alleged strategy to not object to evidence that he considered beyond the Indictment’s scope by claiming it was not his “job” to prevent the Prosecution from “wasting its time.”²⁰ In denying reconsideration, the Chamber rejected his misreading of the Rule 73bis(D) Decision and reaffirmed that unscheduled incidents were within

¹¹ *E.g.* Third Adjudicated Facts Decision, para.39 (accepting, *inter alia*, AF2586, 2588-2594, relevant to unscheduled Sniping Incident (g) (Kobilja Glava, 25 June 1993); AF2869, 2871-2872, relevant to unscheduled Shelling Incident (n) (Beljašnička Street, 23 July 1995)). *Further, below* Challenged Incident Chart (detailing Mladić’s recognition that such facts were relevant to his liability).

¹² Judgement, paras.5267-5270; Decision on Motion for Reconsideration, para.11 (noting that, in addition to Scheduled Incidents, “other incidents within the scope of the Indictment [...] remain[] part of the Indictment as charged”). *Also* Decision on Motion Objecting to Indictment, paras.9-10.

¹³ Judgement, paras.5265, 5270.

¹⁴ Decision on Motion Objecting to Indictment, paras.7-10.

¹⁵ *Below* paras.12-13, 18-19.

¹⁶ Motion Alleging Defects in the Form of the Indictment, paras.1, 7.

¹⁷ Decision on Motion Alleging Indictment Defects, paras.10-12. *Also* Decision on Motion for Reconsideration, para.12.

¹⁸ Decision on Motion Alleging Indictment Defects, paras.11-12.

¹⁹ Motion for Reconsideration, paras.3(a), 9.

²⁰ Motion for Reconsideration, para.3(a).

the Indictment's scope.²¹ Mladić shows no error in this decision or in the Chamber's observations concerning his similar Final Trial Brief arguments.²²

12. In any event, Mladić cannot pretend to be surprised that his convictions included unscheduled incidents. In addition to the Indictment's inclusive language, the fact that there are only schedules for some types of incidents,²³ and the Chamber's consistent view on the Indictment's scope, Mladić himself also repeatedly demonstrated that he was well aware that the Indictment was not limited to Scheduled Incidents and that he could be convicted for unscheduled incidents. Contrary to his claim that he strategically did not object to evidence beyond the Indictment's scope, the record shows that he *did* object on this basis, prompting further confirmation from the Chamber that unscheduled incidents were *within* the scope of the Indictment. For example:²⁴

- [REDACTED]²⁵ [REDACTED].²⁶ Mioković's statement was admitted pursuant to Rule 92ter, and Mladić cross-examined him extensively on the Livanjska Street incident, thus confirming Mladić knew that he needed to defend against this allegation.²⁷
- Mladić objected to admission of Exhibits P4600 (65ter 10083) and P1113 because they were relevant to unscheduled incidents and thus outside the scope of the Indictment.²⁸ The Chamber noted that these documents were relevant to the campaign of sniping and shelling and reconfirmed that the Indictment specifies that the Scheduled Incidents are "‘illustrative examples’ of the acts [...] underlying [terror and unlawful attack] charges."²⁹

²¹ Decision on Motion for Reconsideration, para.11.

²² See Judgement, paras.5265-5270. See Mladić-FTB, paras.11-23.

²³ As discussed above, the charges necessarily encompassed unscheduled incidents because a number of crimes were pleaded without schedules. If Mladić could only be convicted for Scheduled Incidents, these Indictment provisions would be meaningless. *Above* fn.6; Decision on Motion Objecting to Indictment, para.10.

²⁴ Mladić also objected to other evidence he considered to be outside the Indictment's scope. *E.g.* T.20316, 20323, 20330, 20080, 20744, 23731, 24062; Additional Submission on M.Bell Evidence, para.10.

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ D.Mioković:T.6000-6019.

²⁸ Response to Sarajevo Bar Table Motion, paras.11-13 (relevant to a sniping incident of 10 December 1994 and a shelling incident of 22 December 1994, respectively).

²⁹ Decision on Sarajevo Bar Table Motion, para.10.

13. Additionally, when faced with Rule 92*bis* and 92*ter* motions seeking to admit witness evidence relevant to unscheduled incidents, Mladić objected on unrelated grounds, signalling his acceptance that the unscheduled incidents were part of the case against him.³⁰ He also cross-examined Prosecution witnesses about unscheduled incidents³¹ and brought his own witnesses to address such incidents³²—further demonstrating his awareness that unscheduled incidents formed part of the case.³³ Finally, Mladić argued the contrary position at length in his Final Trial Brief³⁴ and closing arguments,³⁵ as well as his belated indictment challenge,³⁶ further confirming his awareness that he could be convicted for unscheduled incidents.³⁷

B. Mladić had additional notice of Challenged Incidents³⁸

14. Although the Indictment adequately informed Mladić of the case against him in relation to the Challenged Incidents, he was also provided with “timely, clear and consistent information detailing the factual basis underpinning the charges” in relation to the Challenged Incidents.³⁹ This would have cured any alleged defect.

15. Mladić acknowledges that if the Prosecution “identified” an unscheduled incident in its “65*ter* List”, he received “adequate notice that the incident formed part of the Prosecution’s case.”⁴⁰ Since Mladić received notice of many Challenged Incidents in exactly this manner, these incidents are not ‘unnamed’—even by

³⁰ *E.g.* [REDACTED]; [REDACTED]. For further examples, see footnotes to chart below, “Other Notice” column.

³¹ *E.g.* P.van der Weijden:T.6536-6545; P.Brennskag:T.9080; [REDACTED]. *Below* para.11.

³² *E.g.* Z.Subotić:T.39532-39533, 39546-39550.

³³ *Contra* Mladić-AB, paras.43, 50.

³⁴ Mladić-FTB, paras.11-23.

³⁵ *See* T.44638. *Also* T.44640-44643.

³⁶ *Above* para.11.

³⁷ *Contra* Mladić-AB, paras.43, 50.

³⁸ The Challenged Incidents are listed in Mladić’s Appeal Brief at paragraphs 48 and 53-58. Paragraph 48 is missing two incidents listed in paragraph 53 (murder shelling incidents (n) and (o)). To distinguish between Mladić’s lists (with overlapping lettering) of unscheduled Sarajevo sniping and shelling incidents, the Prosecution has referred to them as “murder sniping/shelling incidents” (for those incidents listed under the below chart heading *Sarajevo Incidents: Murder, Terror and Unlawful Attack*) and “terror sniping/shelling incidents” (for those incidents listed under the below chart heading *Sarajevo Incidents: Terror and Unlawful Attack*).

³⁹ *Kupreškić* AJ, para.114. *See Prlić* AJ, para.96; *Kvočka* AJ, para.34. *Also* Mladić-AB, para.44. The Prosecution notes that for Terror Shelling Incidents (e) (Butmir Bridge, Igman Road, 6-7 September 1994) and (j) (Marice Uherke Street, Sokolovići, 19 July 1995) and Unlawful Detention Incident (i)(iv) (Rogatica Military Reception Centre, from 28 July 1995), there was no additional notice beyond the material facts pleaded in the Indictment.

⁴⁰ Mladić-AB, paras.47, 49. The Prosecution understands this to mean the Prosecution 65*ter* Witness List but notes that “65*ter* filings” include its Pre-Trial Brief. *Above* para.9.

Mladić’s erroneous standards—and should not have been included in Mladić’s challenge. Notably, some of the same incidents he touts in his Appeal Brief as examples of those for which he received “correct” notice,⁴¹ he later attacks as being “unnamed unscheduled incidents”.⁴² The Challenged Incidents of which Mladić was notified according to his allegedly “correct approach” are:⁴³

- Srebrenica Incident (u) (opportunistic killings at Kravica Supermarket, 13-14 July 1995);
- Srebrenica Incident (v) (murders at Tisova Kosa Nezuk, 18 July 1995);
- Srebrenica Incident (w) (murders of Milići patients taken from Standard Barracks, 23 July 1995);
- Murder Sniping Incident (e) (Sedrenik, 31 March 1993);
- Murder Sniping Incident (g) (Ivana Krndelja Street, 26 September 1993);
- Murder Sniping Incident (h) (27 Ubala Juli Street, 11 January 1994);
- Murder Shelling Incident (k) (Geteova Street, 28 June 1995);
- Terror Sniping Incident (k) (Briješko Brdo Street, 9 November 1993);
- Terror Sniping Incident (o) (Sedrenik, 10 December 1994);
- Terror Shelling Incident (d) (14 May 1992);
- Cruel and Inhumane Treatment Incident (j)(ii) (Vlasenica Secondary School, 31 May-8 June 1992);
- Unlawful Detention Incident (e)(iii) (Kalinovik Police Station, at least 18 September 1992-21 March 1993); and
- Appropriation or Plunder Incident (e)(i) (Prijedor Municipality, mid-1992).

16. Additionally, Mladić agrees that the expert report of van der Weijden was an appropriate means of providing notice that the Prosecution intended to rely on

⁴¹ Mladić-AB, para.47 and fn.58 *relying on* Prosecution 65^{ter} Witness List:[REDACTED]; P.van der Weijden:Exh.P1130, pp.69-82/e-court pp.70-83 (confidential) (identifying, *inter alia*, Murder Sniping Incident (i) (Vojničko Polje, 24 October 1994), Terror Sniping Incident (n) (sniping of Sanela Dedović, 22 November 1994) and Terror Sniping Incident (o) (Sedrenik, 10 December 1994)).

⁴² See Mladić-AB, paras.48, 53, 55, 57 (challenging sniping incidents (h), (i), (n) and (o)).

⁴³ For citations to Prosecution 65^{ter} Witness List, see chart below, “65^{ter} Filing” column. See Mladić-AB, para.47.

unscheduled incidents.⁴⁴ Therefore, even by his own standard he had sufficient notice of the following incidents:⁴⁵

- Murder Sniping Incident (i) (Vojničko Polje, 24 October 1994);
- Terror Sniping Incident (n) (sniping of Sanela Dedović, 22 November 1994);
and
- Terror Sniping Incident (o) (Sedrenik, 10 December 1994).

17. Moreover, 65*ter* summaries are not, as Mladić suggests, the *only* accepted way of curing vagueness in an indictment.⁴⁶ As discussed above, the Rule 73*bis*(D) Decision on which Mladić relies does not address unscheduled incidents or how notice of these incidents should be provided.⁴⁷ That decision merely reflects the Prosecution’s commitment to notify Mladić if it planned to use evidence related to a Stricken-out Incident.⁴⁸

18. To cure a defective indictment, notice must meet the “timely, clear and consistent” standard.⁴⁹ In addition to 65*ter* summaries, other pleadings—such as pre-trial briefs and opening statements, alone or in combination with witness statements—may cure a defective indictment.⁵⁰ In this case, Mladić also received pre-trial notice⁵¹ of Challenged Incidents through the Prosecution’s Adjudicated Facts Motion. In that pleading, filed five months before the start of trial, the Prosecution submitted adjudicated facts relevant to specific unscheduled incidents in Sarajevo indicating that the Prosecution intended to use them to prove the campaign of shelling

⁴⁴ See Mladić-AB, para.47 and fn.58 citing, *inter alia*, P.van der Weijden:Exh.P1130 (endorsing the Prosecution’s identification and explanation of “the unscheduled incidents that it intended to present”, as in the cited examples, as “the correct approach to providing notice of an unscheduled incident”). For citations to van der Weijden’s expert report, see chart below, “Other Notice” column.

⁴⁵ For citations to van der Weijden’s expert report, see chart below.

⁴⁶ *Contra* Mladić-AB, paras.47, 49.

⁴⁷ *Contra* Mladić-AB, para.49. *Above* para.9. The Prosecution addressed this incorrect assertion at trial. See Judgement, para.5265 citing T.44384.

⁴⁸ *Above* para.9 and fn.9.

⁴⁹ Mladić-AB, para.44 citing Kupreškić AJ, para.114. See Prlić AJ, para.96; Kvočka AJ, para.34.

⁵⁰ *E.g.* Naletilić AJ, paras.34, 45-48, 64, 93-94 (witness summaries); Ntakirutimana AJ, para.57 (Pre-Trial Brief); Blaškić AJ, para.242; Kordić AJ, para.169 (Opening Statements); Ntakirutimana AJ, para.48; Kamuhanda AJ, para.25; Gacumbitsi AJ, para.58 (witness statement together with the Pre-Trial Brief); Naletilić AJ, paras.78, 83-84; Kvočka AJ, paras.43-54 (Pre-Trial Brief in combination with other consistent information).

⁵¹ Jurisprudence demonstrates that pre-trial filings and disclosures defining the contours of the case can contribute to notice. *E.g.* Nyiramasuhuko AJ, para.1180 (motion to vary witness list and accompanying witness statement provided “clear notice” of allegation, although not timely).

and sniping.⁵² Each of the unscheduled incidents was ‘named’ by identifying a specific date and location, and each directly linked to the relevant Indictment counts and paragraphs.⁵³ Mladić’s responses to adjudicated facts concerning the Challenged Incidents—for example, objecting to proposed facts as relevant to his criminal liability, going to his personal acts or conduct, or noting that he would lead evidence in rebuttal⁵⁴—proves that he understood those Challenged Incidents to form part of the case against him.⁵⁵ Moreover, his responses concerning the Challenged Incidents can be contrasted with his objections concerning other adjudicated facts on the basis that they were outside the Indictment’s scope.⁵⁶ The Chamber took notice of adjudicated facts concerning Challenged Incidents before the start of trial, giving Mladić sufficient notice to prepare his defence.⁵⁷

19. Finally, Mladić presented specific defences to many of the Challenged Incidents, showing that he was informed of the Prosecution’s case against him.⁵⁸ These defences demonstrate that, contrary to his claims, he was aware that he had to address these incidents.⁵⁹

20. As demonstrated in the chart below, with three exceptions,⁶⁰ Mladić received clear, timely and consistent additional notice of the Challenged Incidents and/or presented a defence that demonstrated his awareness that the Challenged Incidents formed part of the case against him.

⁵² Adjudicated Facts Motion, paras.20, 22-23 and Annex C, pp.220-283.

⁵³ Adjudicated Facts Motion, paras.14, 20-23, Annex C, pp.3, 220-283.

⁵⁴ *E.g.* Adjudicated Facts Response, Annex C, AF2613, 2622 (relevant to Murder Sniping Incident (I) (Kranjčevića Street, 27 June 1993)). See chart below, “Other Notice” column.

⁵⁵ *Contra* Mladić-AB, para.50.

⁵⁶ *E.g.* Adjudicated Facts Response, Annex A, AF292, 298, 500 (objecting that the facts are “not relevant to the matters in the indictment or these proceedings”).

⁵⁷ Third Adjudicated Facts Decision, para.27 (13 April 2012). *E.g.* *Karadžić* Reconsideration Adjudicated Facts Decision, para.22.

⁵⁸ An accused’s submissions or actions at trial can be evidence of notice. *E.g.* *Kvočka* AJ, paras.53-54, *Niyitegeka* AJ, para.207 (presented arguments in final trial brief); *Nyiramasuhuko* AJ, para.1183 (submitted on charge in closing argument); *Kamuhanda* AJ, paras.27-28 (called witnesses, made arguments in pre-trial brief); *Kordić* AJ, para.148 (called witnesses and presented evidence); *Nyiramasuhuko* AJ, para.1110; *Kordić* AJ, paras.223-224 (cross-examined witnesses); *Bizimungu* AJ, para.51 (cross-examined witness and made submissions); *Nzabonimana* AJ, para.36 (cross-examined witnesses and presented own witnesses).

⁵⁹ *Contra* Mladić-AB, para.50.

⁶⁰ *Above* fn.39.

Challenged Incident	Indictment Reference	65ter Filings: Witness Summaries and Pre-Trial Brief ⁶²	Other Notice	Mladić Defence
*indicates Mladić concedes appropriate notice was provided ⁶¹				
Srebrenica Incidents: Murder and Persecution				
Srebrenica Incident (u) (opportunistic killings at Kravica Supermarket, 13-14 July 1995)*	paras.57, 59(a), ⁶³ 65	X ⁶⁴	X ⁶⁵	X ⁶⁶
Srebrenica Incident (v) (murders at Tisova Kosa Nezuk, 18 July 1995)*	paras.57, 59(a), ⁶⁷ 65	X ⁶⁸	X ⁶⁹	
Srebrenica Incident (w) (murder of Milići patients taken from Standard Barracks, 23 July 1995)*	paras.57, 59(a), ⁷⁰ 65	X ⁷¹	X ⁷²	X ⁷³

⁶¹ Above paras.15-16.

⁶² Above fn.9.

⁶³ Also Prosecution-PTB, para.282 (additional notice that murder incidents were also charged as persecution).

⁶⁴ [REDACTED]. Also Prosecution-PTB, para.220.

⁶⁵ [REDACTED]; [REDACTED].

⁶⁶ Mladić-FTB, paras.3109, 3112 (claiming revenge, not religion, as motive); [REDACTED].

⁶⁷ Also Prosecution-PTB, para.282 (additional notice that murder incidents were also charged as persecution).

⁶⁸ Prosecution 65ter Witness List:[REDACTED]; Prosecution-PTB, para.269 and fn.666 (noting “executions [...] on a smaller scale”, including of “four unarmed Muslim men near Nezuk on 18 July”; linking to RM301’s testimony).

⁶⁹ [REDACTED]; [REDACTED].

⁷⁰ Also Prosecution-PTB, para.282 (additional notice that murder incidents were also charged as persecution).

⁷¹ Prosecution 65ter Witness List:[REDACTED]; Prosecution-PTB, para.271, fn.669 (“On 23 July, Popović took ten wounded prisoners [...] held in the Zvornik Brigade Headquarters; the prisoners were subsequently executed”; some prisoners were from Milići Hospital).

⁷² [REDACTED]; [REDACTED].

⁷³ Mladić-FTB, paras.3217-3220; [REDACTED].

Challenged Incident	Indictment Reference	65 ^{ter} Filings: Witness Summaries and Pre-Trial Brief ⁶²	Other Notice	Mladić Defence
*indicates Mladić concedes appropriate notice was provided ⁶¹				
Sarajevo Incidents: Murder, Terror and Unlawful Attack				
Sniping Incident (e) (Sedrenik, 31 March 1993)*	paras.64, 76, 78-81	X ⁷⁴	X ⁷⁵	
Sniping Incident (f) (Kranjčevica Street, 27 June 1993)	paras.64, 76, 78-81		X ⁷⁶	
Sniping Incident (g) (Ivana Krndelja Street, 26 September 1993)*	paras.64, 76, 78-81	X ⁷⁷	X ⁷⁸	
Sniping Incident (h) (27 Ubala Juli Street, 11 January 1994)*	paras.64, 76, 78-81	X ⁷⁹	X ⁸⁰	
Sniping Incident (i) (Vojničko Polje, 24 October 1994)*	paras.64, 76, 78-81		X ⁸¹	X ⁸²
Shelling Incident (i) (Geteova	paras.64, 76, 78-81	X ⁸³	X ⁸⁴	X ⁸⁵

⁷⁴ Prosecution 65^{ter} Witness List:[REDACTED]. [REDACTED] prior transcripts and testimony were disclosed on 26 April 2012.

The Chamber mistakenly refers to the victim as a “she” in legal findings. *Compare* Judgement, p.1611 (legal finding) with paras.1978-1980 (factual findings identifying Džemo Parla as male).

⁷⁵ 17th 92^{bis} Motion, para.25 (15 February 2013) and [REDACTED]; Response to 17th 92^{bis} Motion, para.16 (objecting and asking to cross-examine RM153).

⁷⁶ Adjudicated Facts Motion, Annex C, AF2606-2628 (identifying 22 facts relevant to “Sniping Incident, 27 June 1993, in Centar”; identifying victim and noting her death); Adjudicated Facts Response, Annex C, AF2606-2628 (objecting to all 22 facts as relevant to criminal liability and to 16 as facts that should “be led in evidence as [Mladić] will rebut/explain the same.”).

⁷⁷ Prosecution 65^{ter} Witness List:[REDACTED].

⁷⁸ [REDACTED]; [REDACTED].

⁷⁹ Prosecution 65^{ter} Witness List:[REDACTED].

⁸⁰ [REDACTED]; [REDACTED]; Adjudicated Facts Motion, Annex C, AF2694-2712 (identifying 19 facts relevant to “Sniping Incident, 11 January 1994 in Hrasno”; identifying victim, exact location and approximate time of incident and noting fatality); Adjudicated Facts Response, Annex C, AF2694-2712 (objecting to all 19 facts as relevant to criminal liability and as facts that should be “led at trial” for conformation purposes).

⁸¹ P.van der Weijden:Exh.P1130, pp.68-73/e-court pp.69-72 (confidential) (identifies date, location, victim, calls incident “unscheduled”) filed with Notice of Disclosure of Expert Reports of van der Weijden and Higgs, Annex A (confidential) (19 November 2012); Objection and Motion to Bar Relative to van der Weijden and Higgs, paras.21-22 at p.7 (objecting to admission, including because it was “inappropriate” for the report to analyse unscheduled incidents). Mladić concedes that van der Weijden’s expert report was a proper source of notice of unscheduled incidents. *Above* para.16.

Adjudicated Facts Motion, Annex C, AF2741-2757 (identifying 17 facts relevant to “Sniping Incident, 24 October 1994, at Vojničko Polje”; identifying victim and exact location and noting that victim died); Adjudicated Facts Response, Annex C, AF2741-2757 (objecting to 16 facts as relevant to criminal liability and to 16 as facts that should “be led at trial” for confrontation purposes).

⁸² Mladić-FTB, paras.2234-2239; M.Poparić/Z.Subotić:Exh.D1330, pp.251-255 (confidential) (defence experts countering Prosecution’s case on incident).

⁸³ Prosecution 65^{ter} Witness List:[REDACTED]. Brennskag’s amalgamated ICTY witness statement was disclosed on 11 November 2011.

⁸⁴ 92^{ter} Motion:Brennskag, para.9 (naming MAB incident “on 22 June 1995 in Alipašino Polje” as among those about which witness would provide evidence; 24 January 2013) and Annex B (P.Brennskag:Exh.P992, paras.39-48 (amalgamated statement; UNMO investigator providing date, location, and that one very young girl died and details of investigation)); Response to 92^{ter} Motion:Brennskag, paras.10-11 (objecting, including to certain paragraphs concerning this incident, as “expert”-like testimony).

Challenged Incident	Indictment Reference	65 ^{ter} Filings: Witness Summaries and Pre-Trial Brief ⁶²	Other Notice	Mladić Defence
*indicates Mladić concedes appropriate notice was provided ⁶¹				
Street, 22 June 1995)				
Shelling Incident (j) (Dženetića Čikma Street, Stari Grad, 25 June 1995)	paras.64, 76, 78-81	X ⁸⁶	X ⁸⁷	X ⁸⁸
Shelling Incident (k) (Geteova Street, 28 June 1995)*	paras.64, 76, 78-81	X ⁸⁹	X ⁹⁰	X ⁹¹
Shelling Incident (m) (Skenderija Street <i>et al.</i> , 1 July 1995)	paras.64, 76, 78-81	X ⁹²	X ⁹³	
Shelling Incident (n) (Beljašnička Street, Sokolovići, 23 July 1995)	paras.64, 76, 78-81		X ⁹⁴	X ⁹⁵
Shelling Incident (o) (Zmaja	paras.64, 76, 78-81		X ⁹⁶	X ⁹⁷

⁸⁵ Exh.D240, p.27 (counter evidence on origin of shell); P.Brennskaag:T.9080 (Mladić admitting document for purpose of questioning origin of shell).

⁸⁶ Prosecution 65^{ter} Witness List:[REDACTED]. Đozo's amalgamated ICTY witness statement was disclosed on 11 November 2011.

⁸⁷ 92^{ter} Motion:Đozo, Annex B (19 October 2012) (N.Đozo:Exh.P544, paras.24-26 (police investigator providing details of an incident in the months before the Markale market shelling "around Dženetića Čikma Street", where two or three children "fell victim")); Response to 92^{ter} Motion:Đozo, para.6 (objecting, including to certain paragraphs concerning this incident, as "expert"-like testimony). *Also* 92^{ter} Motion:Đozo, Annex A (referring to Exh.P550 (65^{ter} 19774, including exact date, number of fatalities and location)).

⁸⁸ N.Đozo:T.5575-5579, 5581-5583 (cross-examination of witness on incident, including date and recollection).

⁸⁹ Prosecution 65^{ter} Witness List:[REDACTED].

⁹⁰ [REDACTED]; [REDACTED]; Adjudicated Facts Motion, Annex C, AF2847-2852 (identifying six facts relevant to "Shelling Incident, 28 June 1995, at Novi Grad"; identifying number of victims and fatalities and exact location and noting other damage); Adjudicated Facts Response, Annex C, AF2847-2852 (objecting to all six facts as relevant to criminal liability and as facts that should be "led at trial" for confrontation purposes).

⁹¹ Mladić-FTB, paras.2357-2360; Z.Subotić:Exh.D2114, pp.163-172, 229-230 (expert report rebutting Prosecution case, later pages misidentify incident as G.9). *Also* Z.Subotić:T.39532-39533 (expert testimony on incident).

⁹² Prosecution 65^{ter} Witness List:[REDACTED]. Đozo's amalgamated ICTY witness statement was disclosed on 11 November 2011.

⁹³ 92^{ter} Motion:Đozo (19 October 2012), Annex B (N.Đozo:Exh.P544, paras.27-35 (police investigator providing approximate date, locations of shell impacts, information on victims, including fatalities)); Response to 92^{ter} Motion:Đozo (objecting, including to certain paragraphs concerning this incident, as "expert"-like testimony). *Also* 92^{ter} Motion:Đozo, Annex A (referring to Exh.P552 (65^{ter} 19724, a report on the 1 July 1995 incident)).

⁹⁴ Adjudicated Facts Motion, Annex C, AF2867-2872 (identifying six facts relevant to "Shelling Incident, 23 July 1995, in Sokolovići"; identifying exact location, number of victims and fatalities and approximate time of incident); Adjudicated Facts Response, Annex C, AF2867-2872 (objecting to all six facts as relevant to criminal liability and as facts that should be "led at trial" for confrontation purposes).

⁹⁵ Mladić-FTB, paras.2364-2368.

⁹⁶ Adjudicated Facts Motion, Annex C, AF2873-2882 (identifying 10 facts relevant to "Shelling Incident, 22 August 1995, in Novo Sarajevo"; identifying exact location and surrounding impact and number of victims and fatalities); Adjudicated Facts Response, Annex C, AF2873-2882 (objecting to all 10 facts as relevant to criminal liability and as facts that should be "led at trial" for confrontation purposes).

⁹⁷ Mladić-FTB, paras.2364-2368.

Challenged Incident	Indictment Reference	65ter Filings: Witness Summaries and Pre-Trial Brief ⁶²	Other Notice	Mladić Defence
*indicates Mladić concedes appropriate notice was provided ⁶¹				
od Bosne Street, 22 August 1995)				
Sarajevo Incidents: Terror and Unlawful Attack				
Sniping Incident (g) (Kobilja Glava, 25 June 1993)	paras.76, 78-81		X ⁹⁸	
Sniping Incident (h) (Sedrenik, 24 July 1993)	paras.76, 78-81		X ⁹⁹	
Sniping Incident (i) (Stara Cesta, 5 August 1993)	paras.76, 78-81		X ¹⁰⁰	
Sniping Incident (j) (Braće Ribara Street, 2 November 1993)	paras.76, 78-81		X ¹⁰¹	
Sniping Incident (k) (Briješko Brdo Street, 9 November 1993)*	paras.76, 78-81	X ¹⁰²	X ¹⁰³	
Sniping Incident (n) (sniping	paras.76, 78-81		X ¹⁰⁴	X ¹⁰⁵

⁹⁸ Adjudicated Facts Motion, Annex C, AF2585-2605 (identifying 21 facts relevant to “Sniping Incident, 25 June 1993”; identifying location, approximate time of incident and victim by pseudonym); Adjudicated Facts Response, Annex C, AF2585-2605 (objecting to all 21 facts as relevant to criminal liability and as facts that should “be led in evidence as [Mladić] will rebut/explain the same.”). See Decision on Motion for Access to Completed Cases, para.13(vi) (access to *Galić*, allowing full identification of victim).

⁹⁹ Adjudicated Facts Motion, Annex C, AF2629-2645 (identifying 17 facts relevant to “Sniping Incident, 24 July 1993, in Sedrenik”; identifying victim and approximate time of incident); Adjudicated Facts Response, Annex C, AF2629-2645 (objecting to all 17 facts as relevant to criminal liability and to 14 as facts that should “be led in evidence as [Mladić] will rebut/explain the same.”).

¹⁰⁰ Adjudicated Facts Motion, Annex C, AF2646-2662 (identifying 17 facts relevant to “Sniping Incident, 5 August 1993, in Kobilja Glava”; identifying victim and exact location); Adjudicated Facts Response, Annex C, AF2646-2662 (objecting to all 17 facts as relevant to criminal liability and to 15 as facts that should “be led in evidence as [Mladić] will rebut/explain the same”).

¹⁰¹ Adjudicated Facts Motion, Annex C, AF2663-2680 (identifying 18 facts relevant to “Sniping Incident, 2 November 1993, in Hrasno”; identifying victim, exact location and approximate time of incident); Adjudicated Facts Response, Annex C, AF2663-2680 (objecting to all 18 facts as relevant to criminal liability and to 12 as facts that should “be led in evidence as [Mladić] will rebut/explain the same” or “be led at trial” for confrontation purposes).

¹⁰² Prosecution 65ter Witness List:[REDACTED].

¹⁰³ 6th 92bis Motion (27 September 2012), Annex B, pp.148-149, 176-179, 182, 193 (R.Menzilović:Exh.P1921, pp.5-6 (providing victim name, location of incident, approximate date and time and additional information); R.Menzilović:Exh.P1922, pp.12-15, 18, 29(T.6991-6995, 6998, 7059) (providing victim name, location of incident, approximate date and time)); Response to 6th 92bis Motion (objecting and asking to cross-examine Menzilović); Adjudicated Facts Motion, Annex C, AF2681-2693 (identifying 13 facts relevant to “Sniping Incident, 9 November 1993, in Briješko Brdo”; identifying victim, exact location and approximate time of incident); Adjudicated Facts Response, Annex C, AF2681-2693 (objecting to all 13 facts as relevant to criminal liability and as facts that should be “led at trial” for confrontation purposes).

¹⁰⁴ P.van der Weijden:Exh.P1130, pp.68, 74-78/e-court pp.69, 73-77 (confidential) (identifies date, location, victim, calls incident “unscheduled”) filed with Notice of Disclosure of Expert Reports of van der Weijden and Higgs, Annex A (confidential) (19 November 2012); Objection and Motion to Bar Relative to van der Weijden and Higgs, paras.21-22 at p.7 (objecting to admission, including because it was “inappropriate” for the report to analyse unscheduled incidents). Mladić concedes that van der Weijden’s expert report was a proper source of notice of unscheduled incidents. *Above* para.16.

Adjudicated Facts Motion, Annex C, AF2789-2804 (identifying 16 facts relevant to “Sniping Incident, 22 November 1994, in Sedrenik”; identifying victim, exact location and approximate time of incident); Adjudicated Facts Response, Annex C, AF2789-2804 (objecting to all 16 facts as relevant to criminal liability and to 11 as facts that should be “led at trial” for confrontation purposes).

Challenged Incident	Indictment Reference	65 ^{ter} Filings: Witness Summaries and Pre-Trial Brief ⁶²	Other Notice	Mladić Defence
*indicates Mladić concedes appropriate notice was provided ⁶¹				
of Sanela Dedović, 22 November 1994)*				
Sniping Incident (o) (Sedrenik, 10 December 1994)*	paras.76, 78-81	X ¹⁰⁶	X ¹⁰⁷	X ¹⁰⁸
Shelling Incident (d) (14 May 1992)*	paras.76, 78-81	X ¹⁰⁹	X ¹¹⁰	
Shelling Incident (e) (Butmir Bridge, Igman Road, 6-7 September 1994) ¹¹¹	paras.76, 78-81			
Shelling Incident (f) (Grbavica tram, 21 November 1994)	paras.76, 78-81		X ¹¹²	
Shelling Incident (g) (Čobanija Street, 16 June 1995)	paras.76, 78-81		X ¹¹³	X ¹¹⁴
Shelling Incident (i) (House	paras.76, 78-81	X ¹¹⁵	X ¹¹⁶	

¹⁰⁵ Mladić-FTB, paras.2240-2245; M.Poparić/Z.Subotić:Exh.D1330, pp.255-259 (confidential) (defence expert countering Prosecution's case on incident).

¹⁰⁶ Prosecution 65^{ter} Witness List:[REDACTED].

¹⁰⁷ P.van der Weijden:Exh.P1130, pp.68, 79-83/e-court pp.69, 78-82 (confidential) (identifies date, location, victim, calls incident "unscheduled") filed with Notice of Disclosure of Expert Reports of van der Weijden and Higgs, Annex A (confidential) (19 November 2012); Objection and Motion to Bar Relative to van der Weijden and Higgs, paras.21-22 at p.7 (objecting to admission, including because it was "inappropriate" for the report to analyse unscheduled incidents). Mladić concedes that van der Weijden's expert report was a proper source of notice of unscheduled incidents. *Above* para.16.

Adjudicated Facts Motion, Annex C, AF2805-2822 (identifying 18 facts relevant to "Sniping Incident, 10 December 1994, in Sedrenik"; identifying victim, exact location and approximate time of incident); Adjudicated Facts Response, Annex C, AF2805-2822 (objecting to all 18 facts as relevant to criminal liability and to 15 as facts that should be "led at trial" for confrontation purposes).

¹⁰⁸ Mladić-FTB, paras.2246-2263; M.Poparić/Z.Subotić:Exh.D1330, pp.259-265 (confidential) (defence expert countering Prosecution's case on incident).

¹⁰⁹ Prosecution 65^{ter} Witness List:[REDACTED]. *Also* Prosecution-PTB, para.188 ("Around mid-May 1992, BSF intensified the bombardment" of Sarajevo, for example, launching "5,000 to 10,000 shells [...] in a single bombardment in May 1992", referring to Wilson's evidence). Wilson's amalgamated ICTY witness statement was disclosed on 11 November 2011.

¹¹⁰ 92^{ter} Motion:RM177, para.6 (11 May 2012) and Annex B (J.Wilson:Exh.P320, paras.41-46 (amalgamated statement; detailing massive bombardment on 14 May 1992)).

¹¹¹ *Above* fn.39.

¹¹² Adjudicated Facts Motion, Annex C, AF2775-2788 (identifying 14 facts relevant to "Shelling and Sniping Incident, 21 November 1994, in Centar"; identifying victims, perpetrators, exact location and time of incident); Adjudicated Facts Response, Annex C, AF2775-2788 (objecting to all 14 facts as relevant to criminal liability and to 11 as facts that should be "led at trial" for confrontation purposes).

¹¹³ Adjudicated Facts Motion, Annex C, AF2829-2833 (identifying five facts relevant to "Sniping Incident, 16 June 1995, in Centar"; identifying exact location, number of victims, and time of incident); Adjudicated Facts Response, Annex C, AF2829-2833 (objecting to five facts as relevant to criminal liability and as facts that should "be led at trial" for confrontation purposes).

¹¹⁴ Mladić-FTB, paras.2350-2353; Z.Subotić:Exh.D2114, pp.192-200 (expert report rebutting Prosecution case). *Also* Z.Subotić:T.39546-39550, 39814-39815 (expert testimony on incident).

¹¹⁵ Prosecution 65^{ter} Witness List:[REDACTED].

¹¹⁶ 92^{ter} Motion:Brennskag, para.9 (naming MAB incident " on 1 July 1995"; 24 January 2013) and Annex B (P.Brennskag:Exh.P992, paras.49-51 (amalgamated statement; UNMO investigator providing date, location and additional details about incident, noting no one was killed)); Response to 92^{ter}

Challenged Incident	Indictment Reference	65ter Filings: Witness Summaries and Pre-Trial Brief ⁶²	Other Notice	Mladić Defence
*indicates Mladić concedes appropriate notice was provided ⁶¹				
east of PTT Building, 1 July 1995)				
Shelling Incident (j) (Marice Uherke Street, Sokolovići, 19 July 1995) ¹¹⁷	paras.76, 78-81			
Municipalities Incidents: Persecution				
Cruel and Inhumane Treatment Incident (d)(ii) (Ilidža Police Station, 21 July 1992)	No conviction for this incident ¹¹⁸			
Cruel and Inhumane Treatment Incident (i)(iii) (Rogatica police station, 2 September 1992)	paras.47-53, 59(b) ¹¹⁹	X ¹²⁰	X ¹²¹	
Cruel and Inhumane Treatment Incident (j)(ii) (Vlasenica Secondary School, 31 May-8 June 1992)*	paras.47-53, 59(b) ¹²²	X ¹²³	X ¹²⁴	
Unlawful Detention Incident (e)(iii) (Kalinovik Police Station, at least 18 September 1992-21 March 1993)*	paras.47-53, 59(g) ¹²⁵	X ¹²⁶	X ¹²⁷	
Unlawful Detention Incident (i)(iv) (Rogatica Military Reception Centre, from 28 July 1995) ¹²⁸	paras.47-53, 59(g) ¹²⁹ & Schedule C.16.3 ¹³⁰			X ¹³¹

Motion:Brennskag, paras.10-11 (objecting, including to certain paragraphs concerning this incident, as “expert”-like testimony).

¹¹⁷ Above fn.39.

¹¹⁸ Mladić-AB, paras.48, 58. Mladić is not convicted of this incident. *Compare* Judgement, para.3287(d)(ii) with paras.3300, 3312. Therefore his argument has no impact.

¹¹⁹ Also Decision on Motion Objecting to Indictment, para.10.

¹²⁰ Prosecution 65ter Witness List:[REDACTED]. Hurko’s amalgamated ICTY witness statement was disclosed on 26 April 2012.

¹²¹ 92ter Motion:RM039 (9 May 2012), Annex B (Š.Hurko:Exh.P164, paras.28-30 (amalgamated statement with section titled “Beating and interrogation of detainees at the Rogatica police station”; noting father’s beating “at the Rogatica Police Station”, where witness found his father, surrounded by police and “covered in blood” on approximately 2 September 1992)); Response to 92ter Motion:RM039 (objecting on other grounds).

¹²² Also Decision on Motion Objecting to Indictment, para.10.

¹²³ Prosecution 65ter Witness List:[REDACTED].

¹²⁴ 18th 92bis Motion (21 February 2013), [REDACTED]; Response to 18th 92bis Motion (objecting to portions of Ferhatbegović’s testimony as hearsay and to both witnesses’ testimony as “expert”-like). Also [REDACTED]; [REDACTED].

¹²⁵ Also Decision on Motion Objecting to Indictment, para.10.

¹²⁶ Prosecution 65ter Witness List:[REDACTED]. [REDACTED] relevant witness statement was disclosed on 11 November 2011.

¹²⁷ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

¹²⁸ Above fn.39.

¹²⁹ Also Decision on Motion Objecting to Indictment, para.10.

¹³⁰ Schedule C.16.3 limits charging related to this facility to “[a]t least between August 1992 and October 1994.” Rogatica Military Reception Centre is Rasadnik Camp. See N.Andrić:T.26393.

¹³¹ Mladić-FTB, paras.517, 1441, 1462.

Challenged Incident	Indictment Reference	65ter Filings: Witness Summaries and Pre-Trial Brief ⁶²	Other Notice	Mladić Defence
*indicates Mladić concedes appropriate notice was provided ⁶¹				
Appropriation or Plunder Incident (e)(i) (Prijedor Municipality, mid-1992)*	paras.47-53, 59(i) ¹³²	X ¹³³	X ¹³⁴	
Appropriation or Plunder Incident (f)(ii) (Detainees at Rasadnik Camp, 15 August 1992)	paras.47-53, 59(i) ¹³⁵	X ¹³⁶	X ¹³⁷	
Wanton Destruction Incident (b)(v) (Ključ Catholic church and Atik mosque in Ključ Town, 1992)	Schedule D.7 fully covers this incident ¹³⁸			
Wanton Destruction Incident (g)(i)(a) (Sanski Most: houses and four Muslim sacred sites in Vrhpolje and Hrustovo)	paras.47-53, 59(j) ¹³⁹ & Schedule D.13 (partially covers) ¹⁴⁰	X ¹⁴¹	X ¹⁴²	
Wanton Destruction Incident (g)(i)(c) (Sanski Most: three Muslim sacred sites and one	paras.47-53, 59(j) ¹⁴³ & Schedule D.13 (partially covers) ¹⁴⁴	X ¹⁴⁵	X ¹⁴⁶	

¹³² It should be noted that there are no Scheduled Incidents for the crime of appropriation or plunder. *Above* fn.6. *Also* Decision on Motion Objecting to Indictment, para.10 (contextual paragraphs make this crime appropriately charged).

¹³³ Prosecution 65ter Witness List:[REDACTED]; Prosecution-PTB, paras.150-151 (sometime after 30 April 1992, Serb forces, including the VRS “plundered” in Prijedor).

¹³⁴ [REDACTED]; [REDACTED]; Adjudicated Facts Motion, Annex A, AF1084, 1092, 1094, 1096, 1098 (“[t]hroughout Prijedor [...] property of Muslims and Croats, worth billions of dinar, was taken”; specifically noting looting in Kozarac, Briševo, Čarakovo and Rizvanovići); Adjudicated Facts Response, Annex A, AF1084, 1092, 1094, 1096, 1098 (objecting to these facts as relevant to criminal liability and as a facts that should be “led at trial” for confrontation purposes).

¹³⁵ There are no Scheduled Incidents for the crime of appropriation or plunder. *Above* fn.6. *Also* Decision on Motion Objecting to Indictment, para.10 (contextual paragraphs make this crime appropriately charged).

¹³⁶ Prosecution 65ter Witness List:[REDACTED].

¹³⁷ 14th 92bis Motion, para.17 (stating that amalgamated statement is summarised in 65ter filing; 7 February 2013) and [REDACTED].

¹³⁸ Compare Mladić-AB, paras.48, 58 with Indictment, para.59(j), Schedule D.7 (Ključ: “Town mosque”, “Town Catholic church”). “Atik mosque” is the name of the Ključ Town mosque. Compare Judgement, paras.841 (relying on AF760) and 851 with Adjudicated Facts Motion, Annex A, AF760 (referring to *Krajišnik* Trial Judgement finding regarding Atik mosque in reference to charge relating to “Mosque in the town of Ključ”).

¹³⁹ There are no Scheduled Incidents for the crime of wanton destruction of private property. *Above* fn.6. Decision on Motion Objecting to Indictment, para.10.

¹⁴⁰ See Indictment, Schedule D.13 (covering old and new mosques at Hrustovo-Kukavice; Vrhopolje mosque).

¹⁴¹ Prosecution 65ter Witness List:[REDACTED].

¹⁴² *Kerani mosque*: Along with the disclosure of Riedlmayer’s expert report, the Prosecution disclosed his associated work product, which provides notice of this mosque. See Exh.P2511, entry 112 referenced in Notice of Disclosure of Expert Report of Riedlmayer, Annex B (ERN:D000-3736) (25 April 2013). Mladić concedes that expert reports provide appropriate notice. *Above* para.16. This would include the expert’s supporting work product disclosed with his report.

Homes: [REDACTED]; [REDACTED]; Adjudicated Facts Motion, Annex A, AF1143-1144 (describing takeover of Muslim villages in May 1992, including Hrustovo and Vrhopolje, and noting that shelling “caused severe damage”); Adjudicated Facts Response, Annex A, AF1143-1144 (objecting to these facts as relevant to criminal liability and as a facts that should be “led at trial” for confrontation purposes).

Challenged Incident	Indictment Reference	65ter Filings: Witness Summaries and Pre-Trial Brief ⁶²	Other Notice	Mladić Defence
*indicates Mladić concedes appropriate notice was provided ⁶¹				
Muslim cultural monument in Lukavice, Okreč and Čirkići)				
Wanton Destruction Incident (g)(iv) (Sanski Most: Čapalj and Tomina mosques)	Schedule D.13 fully covers this incident ¹⁴⁷			
Wanton Destruction Incident (h) (Sokolac: destruction of houses and five sacred sites, July-September 1992)	paras.47-53, 59(j) ¹⁴⁸ & Schedule D.14 (partially covers) ¹⁴⁹	X ¹⁵⁰	X ¹⁵¹	X ¹⁵²

C. Mladić's defence was not prejudiced

21. Mladić bears the burden of demonstrating prejudice,¹⁵³ as he appears to concede.¹⁵⁴ Despite repeated affirmations that unscheduled incidents formed part of the case against him,¹⁵⁵ Mladić failed to bring a timely challenge to the Indictment. Instead, Mladić admitted at trial that he did not “systematically” challenge the

¹⁴³ Also Decision on Motion Objecting to Indictment, para.10.

¹⁴⁴ See Indictment, Schedule D.13 (covering Lukavice mosque).

¹⁴⁵ Prosecution 65ter Witness List:[REDACTED].

¹⁴⁶ *Okreč and Čirkići mosques*: Along with the disclosure of Riedlmayer's expert report, the Prosecution disclosed his associated work product, which provides notice of these mosques. See Exh.P2511, entries 89-90 referenced in Notice of Disclosure of Expert Report of Riedlmayer, Annex B (ERN:D000-3736) (25 April 2013).

¹⁴⁷ Compare Mladić-AB, paras.48, 58 with Indictment, para.59(j), Scheduled D.13 (Sanski Most: “Tomina mosque”, “Čaplje mosque”). “Čaplje mosque” and “Čapalj mosque” are the same mosque. Compare Judgement, paras.1655, 1666 (reviewing evidence and making findings on Čaplje mosque) with para.3406(g)(iv) (referring to findings on Čapalj mosque).

¹⁴⁸ There are no Scheduled Incidents for the crime of wanton destruction of private property. *Above* fn.6. Also Decision on Motion Objecting to Indictment, para.10.

¹⁴⁹ See Indictment, D.14 (covering five mosques). The “five sacred sites” in Sokolac are the five mosques listed in Schedule D.14. Compare Indictment, Schedule D.14 (Kruševci, Knežina, Kaljina, Novoseoci and Koštica mosques) with Judgement, paras.1746 (listing the same mosques, with one spelling difference (Košutica)), 3406(h) (referring to this finding).

¹⁵⁰ Prosecution 65ter Witness List:[REDACTED].

¹⁵¹ Adjudicated Facts Motion, Annex A, AF1239 (describing, *inter alia*, destruction of named Muslim villages in Sokolac); Adjudicated Facts Response, Annex A, AF1239 (objecting to this fact as relevant to criminal liability and as a fact that should be “led at trial” for confrontation purposes).

¹⁵² Mladić-FTB, para.1489; M.Selmanović:T.6834-6835 (cross-examining witness on her home's condition).

¹⁵³ *Karadžić* Indictment Decision, paras.18-19 (if indictment/notice challenges are not timely “the burden will shift to the Accused, who will have to show that his ability to defend himself has been materially impaired due to those alleged defects”). See *Niyitegeka* AJ, paras.199-200; *Bagosora* Notice AD, para.46; *Ndindiliyimana* AJ, para.196. Even if the Appeals Chamber finds that this burden is on the Prosecution, for the same reasons the Prosecution has shown that Mladić's defence was not materially impaired.

¹⁵⁴ Mladić-AB, paras.43, 45.

¹⁵⁵ *Above* paras.9-12.

admission of evidence he believed to be outside the scope of the Indictment because it was not his “role to encourage the Prosecution to sharpen its case and use its time effectively”.¹⁵⁶ In such circumstances, the Chamber affirmed that it considered his belated challenge untimely.¹⁵⁷

22. In light of the clear notice that Mladić received of the charges against him¹⁵⁸ as well as the defences he presented,¹⁵⁹ Mladić’s defence was not materially impaired and he suffered no prejudice.¹⁶⁰

23. Through a combination of the incident-specific¹⁶¹ and more general defences, Mladić fully defended himself against all the Challenged Incidents, rendering any alleged defect in the Indictment “harmless”.¹⁶² For example:

- With regard to his Sarajevo-based charges, he argued there was no campaign of shelling and sniping targeting the civilian population.¹⁶³ The Prosecution’s terror and unlawful attack charges cover the entire campaign, encompassing scheduled and unscheduled incidents.¹⁶⁴ Therefore, Mladić’s argument that the SRK acted lawfully “at all times”¹⁶⁵ necessarily covers all Challenged Incidents.
- Mladić’s overall defence regarding the killings of Bosnian Muslim men and boys in Srebrenica was that he did not intend these crimes.¹⁶⁶ He argued that it was impossible to ascertain how many victims were actually legitimate combat casualties¹⁶⁷ and that there is no evidence of him ordering killings.¹⁶⁸ These arguments cover all Srebrenica killing incidents, whether scheduled or unscheduled.

¹⁵⁶ Motion for Reconsideration, para.9.

¹⁵⁷ Decision on Motion for Reconsideration, paras.8-9 *referring to* Decision on Motion Alleging Indictment Defects, para.10. *See* Judgement, paras.5266, 5268.

¹⁵⁸ *Above* paras.6-17, chart, “65^{ter} Filings” and “Other Notice” columns.

¹⁵⁹ *Above* para.19, chart, “Mladić Defence” column.

¹⁶⁰ *E.g. Prlić AJ*, para.30.

¹⁶¹ *Above* chart, “Mladić Defence” column.

¹⁶² *See Prlić AJ*, para.30.

¹⁶³ *See* Mladić-FTB, paras.1745-1799.

¹⁶⁴ *See* Indictment, paras.75-81 (“[s]pecific instances of the sniping and shelling attacks form[ed] part of the campaign”; Schedules F and G include “illustrative examples”); *above* paras.6-12.

¹⁶⁵ Mladić-FTB, para.1745.

¹⁶⁶ Mladić-FTB, paras.2461, 2818-2847, 2852-2885.

¹⁶⁷ Mladić-FTB, paras.2678-2781.

24. Even if any of the Challenged Incidents were overturned, Mladić would remain convicted of persecution, murder, terror and unlawful attack (Counts 3, 5, 9 and 10).¹⁶⁹ The Challenged Incidents constitute a fraction of the incidents underlying each of these Counts.¹⁷⁰ Given the number, scope and gravity of the crimes for which Mladić is convicted, any reversals of the Challenged Incidents would have no impact on Mladić's life sentence.¹⁷¹

¹⁶⁸ Mladić-FTB, paras.2956-2960. *Also* Mladić-FTB, para.2974 (arguing some killings were opportunistic or crimes of revenge committed by locals).

¹⁶⁹ *Contra* Mladić-AB, paras.42, 60. *E.g.* Prlić AJ, para.426; Gacumbitsi AJ, paras.59-61; Martić AJ, paras.213-214.

¹⁷⁰ *See* Judgement, paras.3051, 3065, 3189-3190, 3206, 3210, 3212, 3267-3431.

¹⁷¹ *E.g.* Tolimir AJ, para.648. *Below* Ground 9.

III. GROUND 2: MLADIĆ SHOWS NO ERROR IN THE CHAMBER’S APPROACH TO ADJUDICATED FACTS

25. Well-settled ICTY and ICTR Appeals Chamber jurisprudence has established and reaffirmed that chambers have discretion to take judicial notice of adjudicated facts related to acts, conduct and mental state of persons other than the accused. Mladić fails to show cogent reasons to depart from this jurisprudence. He also fails to show that the Chamber abused its discretion when it took notice of specific adjudicated facts. Mladić similarly demonstrates no error in the standard the Chamber applied to his rebuttal evidence. Moreover, Mladić fails to show any impact his alleged errors would have on the verdict. Ground 2 should be dismissed.

A. Mladić shows no cogent reasons to reverse well-established jurisprudence on adjudicated facts nor any abuse of discretion (2.A.1)

26. The law is settled that a Chamber may take judicial notice of adjudicated facts, other than those relating to the “narrow category” of the acts and conduct and mental state of the accused.¹⁷² When exercising its discretion, the Chamber must act consistently with the accused’s rights and the interests of justice in the specific circumstances of the case.¹⁷³ Mladić’s attempt to restrict the Chamber’s discretion by excluding a further category of adjudicated facts—relating to the acts and conduct of “proximate subordinates”—should be rejected.¹⁷⁴ Mladić fails to demonstrate “clear and compelling” cogent reasons in the interests of justice to depart from Appeals Chamber jurisprudence.¹⁷⁵

27. Contrary to Mladić’s submission, the *Galić 92bis* Appeal Decision did not preclude the introduction of Rule 92bis evidence concerning the acts and conduct of subordinates or even “immediately proximate subordinates”.¹⁷⁶ Rather, it only precluded the admission of Rule 92bis evidence going to the acts and conduct or

¹⁷² *Karemera* Judicial Notice AD, paras.50-51; Adjudicated Facts AD, para.85. *Also Karemera* Judicial Notice AD, paras.41, 52-53; *Popović* AJ, para.620.

¹⁷³ *Karemera* Judicial Notice AD, para.52. *Also Adjudicated Facts* AD, para.81.

¹⁷⁴ *Contra Mladić-AB*, heading Ground 2.A.1 and para.62. *Also Mladić-AB*, paras.69, 76, 79-80, 84, 93-94.

¹⁷⁵ *See Aleksovski* AJ, paras.107-109; *Đorđević* AJ, para.24. *Contra Mladić-AB*, paras.68-69, 76-87, 93-95.

¹⁷⁶ *Contra Mladić-AB*, para.74. *Also Mladić-AB*, paras.72-73.

mental state of the *accused*.¹⁷⁷ It confirmed that trial chambers have discretion to admit Rule 92*bis* evidence concerning the acts and conduct of others, including “others for which the accused is charged in the indictment with responsibility.”¹⁷⁸ Likewise, this decision never recognised an “inherent unfairness” in admitting evidence relating to immediately proximate subordinates.¹⁷⁹ The *Galić* Appeals Chamber left this question to the discretion of the trial chamber, which “*may* decide” against admitting evidence of immediately proximate subordinates’ conduct under Rule 92*bis*, depending on the circumstances.¹⁸⁰ In “the special and sensitive situation” of superior responsibility¹⁸¹ over the acts and conduct of immediately proximate subordinates, the *Galić* Appeals Chamber explained that fairness “*may well*” preclude admission of Rule 92*bis* evidence addressing the conduct of such subordinates.¹⁸²

28. In the *Karemera* Judicial Notice Appeal Decision, the Appeals Chamber followed the approach taken in the *Galić* 92*bis* Appeal Decision in holding that judicial notice could be taken of adjudicated facts, with the exception of those concerning the acts and conduct or mental state of the accused.¹⁸³ The Appeals Chamber also confirmed that a chamber has discretion to take judicial notice of *all* other adjudicated facts provided this is consistent with the accused’s rights in the circumstances of the case.¹⁸⁴ The Appeals Chamber specifically included “facts related to the conduct of physical perpetrators of a crime for which the accused is being held criminally responsible through some other mode of liability.”¹⁸⁵ This broad discretion—circumscribed not by category but instead by a case-specific attention to fairness—is consistent with the approach set out in the *Galić* 92*bis* Appeal Decision.¹⁸⁶

¹⁷⁷ *Galić* 92*bis* AD, paras.9-11.

¹⁷⁸ *Galić* 92*bis* AD, para.10.

¹⁷⁹ *Contra* Mladić-AB, para.75.

¹⁸⁰ *Galić* 92*bis* AD, para.13 (emphasis added). *Also* Mladić-AB, para.71 where Mladić acknowledges that his argument relates to the exercise of the Chamber’s discretion.

¹⁸¹ *Galić* 92*bis* AD, para.14.

¹⁸² *Galić* 92*bis* AD, para.15.

¹⁸³ *See Karemera* Judicial Notice AD, paras.50-51.

¹⁸⁴ *Karemera* Judicial Notice AD, paras.51-52. The examples Mladić provides as allegedly supporting “lack of uniformity” in practice merely confirm the exercise of that discretion. *See* decisions *cited at* Mladić-AB, fns.97-98. *Contra* Mladić-AB, paras.69, 86. *Also* Karadžić AF Reconsideration Decision, para.19.

¹⁸⁵ *Karemera* Judicial Notice AD, para.52.

¹⁸⁶ *Contra* Mladić-AB, paras.64, 69, 76, 79-80, 85.

29. Contrary to Mladić’s argument,¹⁸⁷ the Appeals Chamber in *D.Milošević* also distinguished between facts relating to the conduct of the accused, which are excluded from the adjudicated facts regime, and facts relating to crime base, for which judicial notice lies within the Chamber’s discretion. The Decision did not address proximate subordinates.¹⁸⁸

30. In any event, contrary to Mladić’s claim, the entirety of “Serb forces”, “Sarajevo forces” and “Srebrenica forces”, do not constitute Mladić’s “proximate subordinates” in the sense of the *Galić 92bis* Appeal Decision.¹⁸⁹ It is evident from the language of that Decision that the Appeals Chamber did not express caution with regard to the application of Rule 92bis to the conduct of *any* subordinate (“crime base evidence”), and not even any “proximate subordinate”, but rather only to those “immediately proximate” to the accused.¹⁹⁰

31. Mladić fails to demonstrate that the Chamber abused its discretion in taking notice of specific adjudicated facts.¹⁹¹ He raised similar arguments at trial,¹⁹² which were rejected, including by the Appeals Chamber,¹⁹³ but fails to articulate any error warranting appellate intervention.¹⁹⁴ Mladić even fails to identify which adjudicated facts the Chamber allegedly improperly took judicial notice of and which findings supposedly rely on adjudicated facts relating to conduct of his immediately proximate subordinates.¹⁹⁵

¹⁸⁷ Mladić-AB, paras.82-83.

¹⁸⁸ See *D.Milošević* Adjudicated Facts AD, para.16.

¹⁸⁹ See Mladić-AB, para.89. Also Mladić-AB, para.177.

¹⁹⁰ *Galić 92bis* AD, paras.9-10, 13-16.

¹⁹¹ *Contra* Mladić-AB, paras.71, 79-80, 91-94.

¹⁹² *E.g.* Adjudicated Facts Response, para.16, codes C3 and C6. Also Adjudicated Facts Appeal, para.26.

¹⁹³ See First Adjudicated Facts Decision, para.45; Adjudicated Facts AD, paras.82-86. Also Mladić-AB, para.90.

¹⁹⁴ *E.g.* *Nyiramasuhuko* AJ, paras.126-129.

¹⁹⁵ *Contra* Mladić-AB, para.91, fns.131-132. Also Mladić-AB, paras.158-160, 174-179. Below para.47.

B. Mladić shows no error in the Chamber’s approach to rebuttal evidence

(2.A.2)

1. Mladić fails to show that the Chamber erroneously created an “additional requirement” to rebut adjudicated facts

32. Well-established Appeals Chamber jurisprudence sets out a two-step approach to the rebuttal of adjudicated facts: the countervailing evidence needs to (i) clearly contradict the adjudicated fact; and (ii) be reliable and credible.¹⁹⁶ By requiring the evidence to be “unambiguous in its meaning”¹⁹⁷ the Chamber did not add an “additional requirement”.¹⁹⁸ Rather, it provided an explanation as to when evidence could be considered to have clearly contradicted the adjudicated fact.

33. The Chamber’s explanation of clearly contradictory evidence is in line with other trial chambers’ approaches determining that adjudicated facts are not rebutted by evidence that is equivocal, inconclusive, not outright contradictory or merely stating that the adjudicated facts are not correct.¹⁹⁹ Consistent with this case law, the Chamber considered that evidence suggesting mere possibilities of alternative scenarios did not meet the required threshold.²⁰⁰

34. Contrary to Mladić’s argument, the Chamber did not require him to disprove the adjudicated fact “beyond reasonable doubt”.²⁰¹ Rather, the Chamber accepted that a contradiction can be shown by mere *presentation* of evidence on a concrete alternative scenario—in contrast to a speculative, hypothetical possibility of one or more alternative scenarios.²⁰²

35. That the Chamber did not require Mladić to prove a specific alternative scenario beyond reasonable doubt is manifest throughout the Judgement. For instance, regarding Incident F.11, where the Chamber was faced with various pieces of evidence indicating four different locations from which the shots were fired, it found

¹⁹⁶ *Karemera* Judicial Notice AD, para.42. Also *D.Milošević* Adjudicated Facts AD, para.17; *Karemera* Adjudicated Facts Decision, para.14; *Perišić* TJ, para.64; *Karadžić* Fourth AF Decision, paras.15, 19. See Judgement, paras.5273-5274.

¹⁹⁷ Judgement, para.5273.

¹⁹⁸ *Contra* Mladić-AB, para.102.

¹⁹⁹ E.g. *Stanišić & Župljanin* 2010 Adjudicated Facts Decision, para.16; *Stanišić & Župljanin* TJ, Vol.I, para.380; *Stanišić & Simatović* TJ, paras.146, 282; *Karadžić* TJ, paras.630, fn.2020, 865, fn.2834.

²⁰⁰ See Judgement, para.5273. *Contra* Mladić-AB, para.101.

²⁰¹ *Contra* Mladić-AB, para.102. Also Mladić-AB, paras.96, 110.

that this evidence contradicted the adjudicated facts on the origin of fire, although the evidence pointed to different concrete scenarios.²⁰³

2. Mladić fails to show that the Chamber applied an improper standard to rebuttal evidence

36. Mladić shows no error in the standard the Chamber applied in determining whether the adjudicated facts were rebutted.²⁰⁴ He simply lists incidents purportedly affected by the alleged error, without explaining how any piece of rebuttal evidence was allegedly subjected to a heightened standard and without making any attempt to show that, absent this supposed error, the Chamber would have reached a different conclusion.²⁰⁵ In addition, contrary to Mladić’s suggestion, it was open to the Chamber to “rel[y] on [...] unrebutted adjudicated fact[s] to establish that the crimes were committed by [Mladić’s] proximate subordinates”.²⁰⁶ However, in none of the findings Mladić cites did the Chamber find that the physical perpetrators were senior VRS officials who could be considered “proximate” to Mladić.²⁰⁷

37. In any event, in relation to many of the listed adjudicated facts, no rebuttal evidence was presented to which the Chamber could have applied an erroneous standard.²⁰⁸ Similarly, in other instances, Mladić seems to be pointing to his trial arguments challenging the sufficiency and credibility of aspects of Prosecution evidence—aspects upon which the Chamber did not rely—rather than presenting

²⁰² Judgement, para.5273. *Also e.g.* Expert Reports Decision, para.10. *Contra* Mladić-AB, para.102.

²⁰³ *See* Judgement, para.1949. In the same vein, the fact that the Chamber found some evidence sufficiently reliable and credible to rebut an adjudicated fact, but ultimately did not rely on that rebuttal evidence and chose to rely on *other* evidence to enter its finding, shows that the Chamber did not require the rebuttal evidence to prove the alternative scenario beyond reasonable doubt. *E.g.* Judgement, paras.361-374, 823, 829, 832, 2179-2183.

²⁰⁴ *Contra* Mladić-AB, paras.96, 100, 104-108, 112. *Also* Mladić-AB, para.504. The Prosecution considers Mladić’s challenge limited to the adjudicated facts listed in fns.154-174, 177-182. To the extent Mladić intended to challenge the incidents listed in paras.107-108 as a whole, he fails to specify the other adjudicated facts affected and his challenge should be summarily dismissed. *E.g.* *Prlić* AJ, para.25(1), (9); *Halilović* AJ, para.126; *Nyiramasuhuko* AJ, fn.6821.

²⁰⁵ Mladić-AB, paras.107-108. *Also* Mladić-AB, paras.109, 112-113.

²⁰⁶ *Contra* Mladić-AB, para.107. *Above* paras.26, 28.

²⁰⁷ *See* Mladić-AB, paras.107-108, fns.175, 183 *citing* Judgement, paras.820, 1062, 1086, 1091, 1742, 352, 2676, 2732, 2791, 2862, 2917, 1953, 1959, 1964, 1969, 1974, 2041, 2050, 2057, 2003, 2201, 1922, 1937, 1943, 2007, 2011, 2112. *Above* para.30.

²⁰⁸ *See* Incidents A.3.3, A.6.4, A.6.7, A.8.1, E.1.1, E.5.1, E.7.2, E.10.1 *cited at* Mladić-AB, para.107.

evidence that contradicted the adjudicated facts. The Chamber reasonably relied on adjudicated facts that stood unrebutted.²⁰⁹

38. In relation to the remaining adjudicated facts, Mladić fails to show that the Chamber applied an erroneously high standard when finding the adjudicated facts not rebutted.²¹⁰ Regarding Incidents B.1.1 and E.15.1 and the 24 October 1994 Sniping Incident, the Chamber properly found that the evidence Mladić presented did not clearly contradict the adjudicated fact in question since the evidence: was insufficiently specific;²¹¹ did not necessarily mean that the perpetrators were not present at the crime site;²¹² or only indicated a mere likelihood that trees could have blocked the line of sight.²¹³

39. Concerning Incidents F.1, F.9, F.11, F.12, F.13, F.15, F.16 and the 10 December 1994 Sniping Incident, the Chamber acknowledged that there was evidence clearly contradicting the adjudicated facts in question, but concluded that the evidence was not sufficiently reliable and credible to rebut them.²¹⁴ Mladić fails to show error in this approach.²¹⁵ The Chamber was entitled to reject evidence that was internally contradictory;²¹⁶ outside a witness's scope of expertise;²¹⁷ based on flawed methodology;²¹⁸ speculative;²¹⁹ or that consisted of unsupported assumptions.²²⁰ This

²⁰⁹ See Judgement, paras.2676, fn.11416 (*cited at* Mladić-AB, fn.160) (E.1.1), 2791 (*cited at* Mladić-AB, fn.162) (E.7.2), 2858 (*cited at* Mladić-AB, fn.163) (E.10.1), 1935 (*cited at* Mladić-AB, fn.178) (F.5), 1958 (*cited at* Mladić-AB, fn.166) (F.12), 1963 (*cited at* Mladić-AB, fn.167) (F.13), 2040 (*cited at* Mladić-AB, fn.170) (G.4), 2049 (*cited at* Mladić-AB, fn.171) (G.6), 2056 (*cited at* Mladić-AB, fn.172) (G.7), 2111 (*cited at* Mladić-AB, fn.180), fn.9082 (G.13), 2002 (*cited at* Mladić-AB, fn.173) (24 October 1994 Sniping Incident), 2007 (*cited at* Mladić-AB, fn.181) (22 November 1994 Sniping Incident), 2010 (*cited at* Mladić-AB, fn.182) (10 December 1994 Sniping Incident).

²¹⁰ *Contra* Mladić-AB, para.107.

²¹¹ See Judgement, para.351 (B.1.1).

²¹² See Judgement, para.2916 (E.15.1).

²¹³ See Judgement, para.2002 (24 October 1994 Sniping Incident). In any event, because Poparić's evidence suffers from a systematic flawed methodology and relies on unsupported assumptions, it would not have been sufficiently reliable and credible to rebut the adjudicated facts. There can therefore be no impact. *E.g.* Judgement, paras.1920, 1929, 1934, 1942, 1952, 1957, 1963, 1968, 1973, 2010.

²¹⁴ See Judgement, paras.1919-1920, 1942, 1949-1952, 1957, 1963, 1968, 1973, 2010.

²¹⁵ *Contra* Mladić-AB, paras.107-108, fns.165-169, 177, 179, 182.

²¹⁶ Judgement, para.1919 (F.1).

²¹⁷ Judgement, paras.1920 (F.1), 1957 (F.12), 1963 (F.13), 2010 (10 December 1994 Sniping Incident).

²¹⁸ Judgement, paras.1920 (F.1), 1951-1952 (F.11), 1963 (F.13), 1968 (F.15), 1973 (F.16).

²¹⁹ Judgement, paras.1942 (F.9), 1952 (F.11).

²²⁰ Judgement, paras.1920 (F.1), 1950 (F.11), 1952 (F.11), 1957 (F.12), 1968 (F.15).

approach to the ‘sufficiently reliable and credible’ threshold is consistent with that of other trial chambers.²²¹

40. Finally, Mladić shows no error in the Chamber’s findings—in Incident G.13, the 22 November 1994 Sniping Incident, or the 1 July 1995 Shelling Incident—that the rebuttal of (parts of) some adjudicated facts had no impact.²²² In these incidents, the Chamber only relied on unrebutted parts of adjudicated facts or on other unrebutted adjudicated facts.²²³

41. To the extent Mladić claims—sometimes incorrectly²²⁴—that the Chamber relied exclusively on adjudicated facts for some findings without any supporting Prosecution evidence, this demonstrates no error.²²⁵

42. The Prosecution addresses Mladić’s Grounds 2.B, 2.C and 2.D in response to the relevant grounds where Mladić sets forth his substantive arguments.²²⁶

²²¹ For instance, trial chambers have found evidence not sufficiently reliable or credible to rebut adjudicated facts because of lack of awareness or knowledge of events (*e.g. Stanišić & Župljanin* 2010 Adjudicated Facts Decision, para.15); multiple contradictions and evasiveness (*e.g. Karadžić* TJ, fns.2096, 2338, 2793, 2834, 2836, 3029); speculative evidence (*e.g. Karadžić* TJ, para.922, fn.3061); evidence outside the witness’s scope of expertise (*e.g. Karadžić* TJ, para.3806); flawed methodology (*e.g. Karadžić* TJ, para.3820); or interest in distancing oneself from events (*e.g. Karadžić* TJ, para.2731, fn.9069).

²²² *Contra* Mladić-AB, paras.107-108, fns.174, 180-181.

²²³ *See* Judgement, paras.2111 (G.13) (relying on the unrebutted part of AF2555 on the perpetrators’ affiliation), 2007 (22 November 1994 Sniping Incident) (relying on unrebutted AF2803 solely and not on AF2802), 2201, fn.9369 (1 July 1995 Shelling Incident) (finding that evidence contradicting the part of AF2855 on the number of bombs fired was “a marginal detail not requiring resolution”).

²²⁴ *E.g.* Judgement, paras.1087, 1091, 1100, 1112, 1121, 1142, 1964. *Contra* Mladić-AB, fn.187.

²²⁵ *See* Judgement, para.2211. *Contra* Mladić-AB, para.110. *Below* paras.202-203.

²²⁶ *See* Mladić-AB, paras.115-151. *Below* paras.46-52 (Response to Sub-ground 3.A.2), 53-96 (Response to Sub-grounds 3.A.3, 3.B.3-3.B.5), 104-124 (Response to Sub-grounds 3.B.7-3.B.8), 162-164 (Response to Sub-ground 4.A.4.5), 169-174 (Response to Sub-ground 4.A.5), 198-205 (Response to Sub-ground 4.B.3.2), 212-216 (Response to Sub-ground 4.B.3.4), 220-280 (Response to Sub-grounds 5.A, 5.B and 5.D), 287-294 (Response to Sub-ground 5.I), 298-306 (Response to Sub-grounds 6.A and 6.B), 308-318 (Response to Sub-grounds 6.C.3 and 6.C.4), 319-323 (Response to Ground 7).

IV. GROUND 3: MLADIĆ IS RESPONSIBLE FOR CRIMES COMMITTED PURSUANT TO THE OVERARCHING JCE

43. Mladić shows no error in the Chamber's assessment of his responsibility for crimes in the Municipalities. The Chamber conducted a detailed, thorough review of the evidence of the underlying crimes, the existence of the common purpose, and Mladić's participation and *mens rea* and reached reasoned conclusions.

44. Rarely does Mladić venture into the territory of a valid appeal argument. Virtually all of his arguments fall within one or more established summary dismissal grounds. The most common of these are: misrepresentations of the Judgement or the evidence; disregard for relevant findings; irrelevant arguments; mere repetition of failed trial arguments without explaining how the Chamber supposedly erred; and mere assertions that the Chamber failed to assign sufficient weight to pieces of evidence, or failed to interpret the evidence in a particular manner.²²⁷ His flawed arguments fail to show any error in the Chamber's reasoning.

45. Ground 3 should be dismissed.²²⁸

A. The Chamber properly assessed Municipalities adjudicated facts (3.A.2)

46. In challenging the Chamber's use of adjudicated facts and Rule 92*bis* evidence to establish the crime base of the Overarching JCE, Mladić complains of legal errors that are not errors and points to purported examples of these errors that demonstrate no error.²²⁹ He further fails to demonstrate any impact on his conviction of the alleged errors, as taken at their highest they would undermine a tiny fraction of the crime base.²³⁰

47. As a preliminary matter, contrary to Mladić's claim,²³¹ it is within a chamber's discretion to take judicial notice of adjudicated facts that relate to the acts and conduct

²²⁷ See Prlić AJ, para.25(1), (2), (3), (4), (7), (10).

²²⁸ While Mladić groups his Ground 3 arguments into two parts—A and B—the Prosecution has organised its Ground 3 response into four parts, corresponding to Mladić's four main Ground 3 topics: (i) Sub-ground 3.A.2 (adjudicated facts); (ii) Sub-ground 3.A.3 (JCE membership); (iii) Sub-grounds 3.B.3 – 3.B.5 (JCE contribution); and (iv) Sub-grounds 3.B.6 – 3.B.8 (*mens rea*). The Prosecution has referenced the precise sub-grounds it is addressing throughout its response arguments.

²²⁹ *Contra* Mladić-AB, paras.158-160. *Also contra* Mladić-AB, paras.118, 148, 890-891, 898, 900.

²³⁰ *Contra* Mladić-AB, paras.175, 180-183.

²³¹ Mladić-AB, paras.158-159.

of an accused's subordinates, immediately "proximate" or otherwise.²³² Regardless, Mladić fails to identify a single adjudicated fact purportedly concerning the acts and conduct of a proximate subordinate. And none of the adjudicated facts for any of the 20 incidents about which Mladić complains²³³ describe acts and conduct of any VRS official who could be considered "proximate" to Mladić.

48. Similarly, it is well-established that adjudicated facts require no corroboration.²³⁴ A chamber may premise crime-base incident findings on adjudicated facts alone, and it may certainly do so in combination with Rule 92bis evidence. Mladić cites no authority for his contentions otherwise.²³⁵ In any event, for 18 of the challenged incidents the entirety of Mladić's argument consists of a solitary conclusory sentence that fails to identify a single purported error.²³⁶ In relation to these 18 incidents, this ground of appeal should be summarily dismissed.²³⁷

1. Mladić shows no error in the Chamber's analysis of Incident B.16.2

49. In Incident B.16.2, the Chamber properly relied on three adjudicated facts,²³⁸ including AF1267: "[o]n the night of 30 September 1992, three MUP officers arrived at the Sušica camp with a bus, removed all 140 to 150 inmates in four loads, and killed them." While the Chamber could have relied on AF1267 alone to establish the incident,²³⁹ it also relied on additional evidence from RM066's written statement and

²³² Above paras.26-29. Also *Karemera* Judicial Notice AD, para.52; *D.Milošević* Adjudicated Facts AD, para.16; *Popović* AJ, paras.620, 622. The Appeals Chamber already rejected a similar argument by Mladić at trial. Adjudicated Facts AD, paras.81-86.

²³³ See Mladić-AB, paras.160, 163, 171 referring to Incidents A.4.4 (AF803, 806-807), A.6.4 (AF897), A.6.6 (AF905-910), A.6.7 (AF915-918), A.7.2 (AF1171, 1177), A.7.4 (AF1181, 1183), A.7.5 (AF1184-1187), B.1.1 (AF481-482), B.1.2 (AF483-486), B.10.1 (AF1225-1228), B.10.2 (AF1229), B.13.3 (AF1023-1024, 1055-1058), B.13.4 (AF1020, 1026), B.16.2 (AF1266-1268), C.6.1 (AF564-566, 623-643, 645-647, 649-652, 654, 657-662, 664-677, 679-680, 682) and Chapters 4.2.4 (AF519-520), 4.3.6 (AF570-573), 4.5.5 (AF678), 4.5.6 (AF735-738), 4.8.7 (AF1219-1220, 1222-1224, 1232), all of which are referred to as "incidents" for purposes of this Sub-ground 3.A.2.

²³⁴ Below para.203. *S.Milošević* AF AD, p.4; *Tolimir* AJ, para.25. Further Mladić-AB, para.499. See also examples of trial chambers relying exclusively on adjudicated facts to establish crime-base incidents: *Stanišić & Župljanin* TJ, Vol.I, paras.554 (including fn.1258), 663-664, 689-690; *Krajišnik* TJ, paras.632-636, 638, 479 (convictions overturned on other grounds); *Perišić* TJ, paras.468-472, 477 (convictions overturned on other grounds). *Contra* Mladić-AB, paras.159, 180-181.

²³⁵ Mladić-AB, paras.159, 180-181.

²³⁶ See Mladić-AB, para.160 regarding Incidents A.4.4, A.6.4, A.6.6, A.6.7, A.7.2, A.7.4, A.7.5, B.1.1, B.1.2, B.10.1, B.13.3, B.13.4, C.6.1 and Chapters 4.2.4, 4.3.6, 4.5.5, 4.5.6, 4.8.7. Mladić also challenges Incidents A.6.4, A.6.6, A.6.7 and B.1.1 in Ground 2 (Mladić-AB, para.107).

²³⁷ See *Prlić* AJ, para.25(9).

²³⁸ Judgement, paras.1771-1773. *Contra* Mladić-AB, paras.163-169.

²³⁹ Above para.48. As such, Mladić's complaint at Mladić-AB, paras.164-165 that the evidence of RM066 and Tabeau "was insufficient to establish that MUP officers caused the deaths of those

live testimony that the three MUP officers were from SJB Vlasenica, arrived at Sušica camp with an order from SJB Vlasenica Chief Mane Đurić to remove all detainees, and then loaded the detainees onto buses and took them away.²⁴⁰

50. Mladić's claim that he was "prevented" from challenging this adjudicated fact is false.²⁴¹ Nothing "prevented" him from bringing countervailing evidence, as he acknowledges he was entitled to do.²⁴² His claim that he could not challenge this adjudicated fact by cross-examination is not credible.²⁴³ [REDACTED].²⁴⁴ [REDACTED],²⁴⁵ [REDACTED].²⁴⁶ Contrary to Mladić's claim,²⁴⁷ the Chamber could have reasonably concluded the MUP officers killed the men based on RM066's evidence alone. Moreover, Mladić's complaint about the "impermissibly high standard imposed to rebut adjudicated facts"²⁴⁸ is not just wrong²⁴⁹ but irrelevant, as he never tried to rebut AF1267.

2. Mladić shows no error in the Chamber's analysis of Incident B.10.2

51. Regarding Incident B.10.2, the Chamber reasonably found that VRS military police killed 47 Bosnian Muslim detainees on 14 June 1992.²⁵⁰ In reaching this conclusion, the Chamber relied *inter alia* on AF1229,²⁵¹ Rule 92bis witness Jahić, the

individuals" is irrelevant, as no additional evidence was required unless and until the adjudicated fact was found to be rebutted. In any event, this assertion is also incorrect. *Below* para.50.

²⁴⁰ Compare Judgement, para.1773 with AF1267 and Judgement, para.1772 (citing RM066:Exh.P182, paras.126, 128, 132-136 (confidential); RM066:T.2430-2431, 2456, 2528-2529 (confidential)).

²⁴¹ *Contra* Mladić-AB, paras.166-168. At Mladić-AB, fns.253-254, Mladić misunderstands the meaning of the Chamber finding that the relevant adjudicated facts were not rebutted. An adjudicated fact can be rebutted by introducing reliable and credible evidence that contradicts it. Where the evidence is *either* not contradictory *or* not sufficiently reliable and credible, the adjudicated fact is not rebutted. *Above* paras.32-33. Here the Chamber found the adjudicated facts not rebutted because the evidence did not contradict them. Judgement, paras.1771-1773.

²⁴² Mladić-AB, para.166.

²⁴³ Mladić-AB, para.167.

²⁴⁴ RM066:T.2528-2529 (confidential) *relied on at* Judgement, fn.7434. *Also* [REDACTED].

²⁴⁵ [REDACTED].

²⁴⁶ [REDACTED].

²⁴⁷ Mladić-AB, paras.164-165.

²⁴⁸ Mladić-AB, para.167.

²⁴⁹ *Above* paras.32-34. *Contra* Mladić-AB, para.899.

²⁵⁰ Judgement, para.974.

²⁵¹ AF1229: "On 14 June 1992, a Serb man called Žuti, and some other guards took about 52 detainees from the Rajlovac barracks by bus to Sokolina, near Srednje, in Ilijaš municipality. There the guards and the driver got off the bus and attacked it with grenades and automatic weapons. A total of 47 detainees were killed during this incident."

witness statement and live testimony of Rule 92ter witness RM145, and forensic evidence from the exhumation of 38 victims from a mass grave.²⁵²

52. Mladić shows no error in the Chamber’s analysis. His argument hinges on the faulty premise that crime base findings cannot rest exclusively on adjudicated facts or adjudicated facts plus Rule 92bis evidence.²⁵³ In any event, Mladić falsely asserts that he “could not cross-examine the evidence supporting the adjudicated fact because it was all admitted pursuant to Rule 92bis”.²⁵⁴ [REDACTED] was a Rule 92ter witness who provided a detailed, first-hand account of the incident,²⁵⁵ whom Mladić *did* cross-examine about exactly these events.²⁵⁶ Moreover, Mladić’s complaint about the “impermissibly high standard imposed to rebut adjudicated facts” is not only wrong²⁵⁷ but irrelevant, as he does not point to any rebuttal evidence he elicited or tendered to which the Chamber could have applied an erroneous standard.

B. Mladić was a member of the Overarching JCE (3.A.3)

53. Mladić shows no error in the Chamber’s conclusion that he was a member of the JCE.²⁵⁸ Rarely in his argument does Mladić even identify, let alone engage with, an allegedly erroneous finding. Instead, he largely repeats arguments considered and rejected at trial, while ignoring the Chamber’s reasoning and findings. In so doing, he misrepresents the Judgement and the evidence at virtually every turn, seeks to improperly interpret individual pieces of evidence in isolation from the totality of the record and makes irrelevant arguments. These deficient challenges merit summary dismissal.²⁵⁹

²⁵² Compare Judgement, para.974 with AF1229 and Judgement, paras.970-973.

²⁵³ Mladić-AB, paras.173-175, 178-179.

²⁵⁴ Mladić-AB, para.172. In any event, the low-level perpetrators at issue were plainly not Mladić’s “immediately proximate subordinates”. *Contra* Mladić-AB, paras.174-178. Moreover, Mladić fails to identify a single example of the Chamber “relying solely on untested written testimonies to establish conduct of the proximate subordinates of the Appellant and to make findings which a trier of fact must reach beyond reasonable doubt.” *Contra* Mladić-AB, para.178.

²⁵⁵ [REDACTED].

²⁵⁶ RM145:T.3080-3090.

²⁵⁷ *Above* paras.32-34. *Contra* Mladić-AB, para.899.

²⁵⁸ Judgement, paras.4610-4612, 4688. *Contra* Mladić-AB, para.186. *Also contra* Mladić-AB, paras.136, 892-893.

²⁵⁹ *Prlić* AJ, para.25(1), (3), (4), (7).

1. Mladić did not act to protect non-Serbs (3.A.3.3.1)

54. Mladić repeats his rejected trial argument²⁶⁰ that he “issued orders to his subordinates to protect the civilian population”,²⁶¹ while failing to show how the Chamber’s contrary findings based on the totality of the evidence²⁶² are unreasonable. His mere assertions that the Chamber failed to give sufficient weight to pieces of supposedly “exculpatory evidence”²⁶³ warrant summary dismissal.²⁶⁴

55. Moreover, the Chamber expressly considered all of the evidence Mladić relies on,²⁶⁵ save for two exhibits, the substance of which was nevertheless addressed in the Chamber’s analysis,²⁶⁶ and reached reasoned conclusions with which Mladić does not engage.

²⁶⁰ Mladić-AB, paras.198-201.

²⁶¹ Judgement, para.4515. *Also* Judgement, paras.4517-4520, 4524, 4526.

²⁶² Judgement, paras.4545-4546, 4687.

²⁶³ Mladić-AB, paras.197-198, 201.

²⁶⁴ *Prlić* AJ, para.25(10).

²⁶⁵ (1) *Compare evidence cited at Mladić-AB, para.198, fns.280-281 with:*

- Judgement, para.746 *citing* S.Mijanović:Exh.D799, para.6. Relevant conclusions (consistent with cited evidence) at Judgement, paras.748-749 (finding insufficient evidence of forcible transfer in Ilidža save for a single family), 3122(d), 3144, 3183.
- Judgement, para.952 *citing* E.Pašić:T.555-556. Relevant conclusions at Judgement, paras.960, 3122(g), 3147, 3183, 3470-3473.
- Judgement, paras.1007-1008, 1014 *citing* Exh.P3972. Relevant conclusions at Judgement, paras.1016, 3122(i), 3149, 3183.
- Judgement, para.1555 *citing* M.Ujić:Exh.D691, para.35. Relevant conclusions at Judgement, paras.1580-1585, 3122(k), 3151-3152, 3183.
- Judgement, para.1619 *citing* B.Basara:Exh.D1031, para.48. Relevant conclusion at Judgement, paras.1624-1625.
- Judgement, para.1753 *citing* S.Gagula:Exh.P2525, p.5. Relevant conclusions at Judgement, paras.1754, 1756, 3122(m), 3138, 3153, 3183.

(2) *Compare evidence cited at Mladić-AB, para.199, fns.284-286 with:*

- Judgement, paras.1716, 1720 *citing* V.Nikolić:Exh.D892, para.12; V.Nikolić:T.31279-31280. Relevant conclusions at Judgement, para.1720.
- Judgement, para.3853 *citing* Exh.D1503. Relevant conclusions at Judgement, para.3855. *Also below* para.59.

(3) *Compare evidence cited at Mladić-AB, para.200, fns.287-291 with:*

- Judgement, paras.955 (*citing* Exh.P854, p.5; RM009:Exh.P843, para.61 (confidential)), 958 (*citing* RM802:Exh.P439, para.64 (confidential)). Relevant conclusions at Judgement, paras.960, 3122(g), 3147, 3183.
- Judgement, para.1560 *citing* S.Veselinović:Exh.D770. Relevant conclusions at Judgement, paras.1580-1585, 3122(k), 3151-3152, 3183.

²⁶⁶ *Compare* D.Masal:Exh.D942, para.15 *with* Judgement, paras.1553, 1555. Relevant conclusions at Judgement, paras.1580-1585, 3122(k), 3151-3152, 3183. Exh.P3095 *cited at* Mladić-AB, para.199, is nearly identical in content to Exh.D1503 *discussed above at* fn.265(2).

56. In any event, Mladić misrepresents evidence and ignores relevant findings. For instance, Mladić's supposed "concerted efforts to take care of civilians" cites to a Prosecution witness describing the organised removal of women, children and elderly from Večići, Kotor Varoš²⁶⁷—which the Chamber concluded was forcible transfer²⁶⁸—which in any event makes no reference to Mladić. [REDACTED].²⁶⁹ Likewise, Mladić's alleged efforts to "protect refugees from the conflict"²⁷⁰ rely on two paragraphs of a Defence witness statement which, again, say nothing about Mladić. Instead, they describe Rogatica municipal authorities' efforts to help *Serb* refugees, including by moving them into "abandoned" Muslim homes.²⁷¹

57. Similarly, in asserting that measures were taken to ensure the "proper care" and "security" of non-Serb civilians during the conflict,²⁷² Mladić mischaracterises evidence and ignores relevant findings. He cites:

- The minutes of a June 1992 Pale Municipal Assembly session discussing a decision granting safe passage to all who "wished" to change their residence.²⁷³ Mladić ignores (i) the Chamber's discussion of this decision together with a Defence witness's acknowledgment that in the context of ongoing pressure exerted by Serb authorities on Muslims to leave their homes "some Muslims interpreted the decision as meaning that they had to leave Pale Municipality",²⁷⁴ and (ii) the Chamber's conclusion that this decision was issued in the context in which non-Serb residents of Pale "did not have a genuine choice but to leave".²⁷⁵
- A passage of Prosecution witness Gagula's statement, recounting Serb Sokolac authorities stating that they would protect the Muslims of Knežina from paramilitaries.²⁷⁶ Mladić ignores that (i) Gagula goes on to explain that he considered this statement to be disingenuous at the time and describes how he was then arrested by military police, detained and mistreated in a series of

²⁶⁷ Mladić-AB, para.200 *citing* RM802:Exh.P439, para.64 (confidential).

²⁶⁸ Judgement, paras.958, 960, 3122(g), 3147, 3183.

²⁶⁹ [REDACTED].

²⁷⁰ Mladić-AB, para.200.

²⁷¹ S.Veselinović:Exh.D770, paras.16-17.

²⁷² Mladić-AB, para.198.

²⁷³ Mladić-AB, para.198 *citing* Exh.P3972.

²⁷⁴ Judgement, paras.1007-1008.

²⁷⁵ Judgement, para.3149. *Also* Judgement, para.1016.

detention facilities and ultimately expelled;²⁷⁷ and (ii) the Chamber found that “[t]he Muslim villagers of Knežina began to leave in May and June 1992, and all Muslims left this village in 1992” owing to the perceived “threat of violence” and the “lack of protection from the municipal authorities, including the Crisis Staff and its President”.²⁷⁸

- 6th Krajina Brigade Commander Branko Basara’s claim to have protected Bosnian Muslims in Sanski Most.²⁷⁹ Mladić ignores findings that the 6th Krajina Brigade, under Basara’s command, was responsible for attacking, killing and expelling Muslims from Sanski Most in a campaign that resulted in “very few” Muslims remaining in the Municipality by the summer of 1992.²⁸⁰

58. That a small number of non-Serbs remained in Sanski Most—or any other municipality—does not amount to evidence of Mladić’s claimed “positive attitude and behaviour toward Bosnian-Muslim and Bosnian-Croat civilians”.²⁸¹ In any event, Mladić merely asserts that the Chamber failed to give “sufficient weight” to Vinko Nikolić’s evidence on this point, with no attempt to show how. The Chamber reasonably concluded that Nikolić’s evidence was not “sufficiently reliable” to rebut the adjudicated fact that almost all Muslims had left Sanski Most by the end of 1992 because Nikolić admitted to having no basis for his “free estimate” and was “unable to justify the figure in light of other evidence presented to him indicating that the figure was significantly lower than he claimed”.²⁸²

59. Mladić exaggerates the exculpatory value of two September/October 1995 reports to Radovan Karadžić and the Interior Minister about Arkan’s (Željko Ražnatović’s) men committing crimes against the remaining non-Serbs in Sanski Most.²⁸³ First, Arkan was not found to be a JCE member²⁸⁴ nor were any crimes by

²⁷⁶ Mladić-AB, para.198 *citing* S.Gagula:Exh.P2525, p.5.

²⁷⁷ S.Gagula:Exh.P2525, pp.5-6, 12-14.

²⁷⁸ Judgement, paras.1752-1754, 3153.

²⁷⁹ Judgement, paras.1619, 1692 *cited* at Mladić-AB, fn.280.

²⁸⁰ Judgement, para.3513. *Also* Judgement, paras.1723, 1725, 1733, 3155, 3497-3502.

²⁸¹ Mladić-AB, para.199. *See* Judgement, para.1720.

²⁸² Judgement, para.1720. Mladić incorrectly asserts that the Prosecution acknowledged the presence of over 4,400 “Muslims remaining in Sanski Most.” In fact, the Prosecution referred to a MUP estimate referring to both Muslims and Croats. *See* V.Nikolić:T.31279-38281; Exh.P3853.

²⁸³ Mladić-AB, para.199 *citing* Exhs.P3095, D1503.

²⁸⁴ Judgement, para.4238.

Arkan's men found to be included within the scope of the JCE in this case.²⁸⁵ Second, these alleged “call[s] for affirmative action to be taken”²⁸⁶ regarding Arkan’s men were made at the very end of the conflict after VRS forces had already killed or expelled the vast majority of Sanski Most’s non-Serb population.²⁸⁷ Furthermore, the reports reveal that Mladić was predominantly concerned about abuse of VRS members and looting of army materiel.²⁸⁸ In any event, two weeks after Mladić reported that Arkan’s men had been “arresting and abusing non-Serbs” and “liquidated a certain number of loyal Muslims in Sanski Most”,²⁸⁹ the VRS Main Staff approved the use of Arkan’s men in Prijedor.²⁹⁰

60. The supposed “free” departure of Muslims relies on a witness explaining how non-Serbs left Kotor Varoš because of [REDACTED] fear.²⁹¹ Mladić further ignores the Chamber’s express rejection of this same argument at trial.²⁹² Mladić also fails to explain how a December 1992 report that some Kotor Varoš Muslims were “submitting requests to return to their villages”²⁹³—following a mass forced displacement campaign there²⁹⁴—has any exculpatory value. Regardless, Mladić ignores that even those who submitted such requests never returned due to fear of being killed or because their houses had been torched.²⁹⁵

2. Mladić fails to show any error in the Chamber’s analysis of a handful of notebook entries (3.A.3.3.2)

61. Mladić complains about the weight afforded to notebook entries concerning supposed “constraints experienced [...] when operating in the municipalities”, without specifying what those alleged constraints are, or how they supposedly impacted any findings.²⁹⁶ In any event, the cited entries consist of reports of equipment and troop

²⁸⁵ Judgement, para.4401.

²⁸⁶ Mladić-AB, para.199.

²⁸⁷ *Above* fn.280.

²⁸⁸ Exhs.P3095, D1503.

²⁸⁹ Exh.P3095.

²⁹⁰ Exhs.P364, p.53; P3094; P7367; P7368; R.Theunens:T.20673-20684.

²⁹¹ [REDACTED] Mladić-AB, fn.288.

²⁹² Judgement, para.3147.

²⁹³ Exh.P854, p.5 *cited* at Mladić-AB, fn.287.

²⁹⁴ Judgement, paras.960, 3122(g), 3147, 3183, 3470-3473.

²⁹⁵ Judgement, para.955 *citing* RM009:Exh.P843, para.182 (confidential); RM009:T.7966-7967, 7984-7985, 8030-8031 (confidential).

²⁹⁶ Mladić-AB, para.202.

shortages,²⁹⁷ the presence of paramilitaries,²⁹⁸ and one complaint of ill-discipline among VRS soldiers.²⁹⁹ These entries are consistent with the Judgement, as the Chamber recognised each of these issues in its reasons.³⁰⁰ Mladić fails to acknowledge this, let alone engage with the Chamber’s analysis.

62. Likewise, Mladić fails to show how the four pieces of evidence he cites in support of the purported “protection he intended to provide Bosnian-Muslims and Bosnian-Croats”³⁰¹ could impact the Chamber’s conclusions regarding his JCE contributions. None of the items reflects a sincere effort to protect non-Serbs from the mass, organised violence inflicted on them largely by Mladić’s own forces. They consist of:

- A statement by UN officer General Philippe Morillon seeking the protection of civilians—which Mladić appears to wrongly claim as his own.³⁰²
- Mladić ordering food to be provided to Muslims in Podžeplje village, Han Pijesak (a non-Indictment municipality) on 14 July 1992³⁰³ but saying nothing about protection. In any event, a month later Podžeplje was burned to the ground after VRS Main Staff Officer Petar Salapura threatened to set fire to all the Muslim villages in the area—following which the population fled to Srebrenica.³⁰⁴
- A November 1992 Mladić order, expressly considered by the Chamber (a fact unacknowledged by Mladić),³⁰⁵ which purports to protect the Muslims of two Rogatica villages who had “expressed loyalty”.³⁰⁶ However, this followed the

²⁹⁷ Exh.P353, pp.163, 192, 260.

²⁹⁸ Exhs.P353, pp.163, 260, 299; P356, pp.179-180.

²⁹⁹ Exh.P356, pp.179-180.

³⁰⁰ *E.g.* Judgement, para.4392. *Also* Judgement, paras.4422, 4425, 4522, 4527-4528.

³⁰¹ Mladić-AB, fn.294 *citing* Exhs.P353, p.330; P356, p.218; D1514; D187.

³⁰² Exh.P356, p.218.

³⁰³ Exh.P353, p.330.

³⁰⁴ M.Subašić:Exh.P3306, paras.3, 6-8.

³⁰⁵ Judgement, para.4524.

³⁰⁶ Exh.D1514, p.1.

brutal, organised expulsion of Muslims from the Municipality primarily by VRS forces.³⁰⁷

- A 1994 Mladić order to protect civilians and POWs in Goražde (a non-Indictment municipality) which states that it is a reaction to Muslim efforts “to force the UN Security Council to make resolutions which are unfavourable to the Serbs”.³⁰⁸

63. In any event, the Chamber considered this same argument at trial,³⁰⁹ discussed numerous orders issued by Mladić purporting to protect civilians and POWs,³¹⁰ and found based on its overall assessment of the evidence that they did not reflect a genuine effort to protect non-Serbs from the organised criminality committed largely by Mladić’s own forces and with his knowledge.³¹¹ Rather than engage with this finding, Mladić repeats his failed trial argument.

3. Mladić shows no error in the Chamber’s analysis of his JCE participation (3.A.3.3.3)

64. Mladić demonstrates no flaw in the Chamber’s analysis of his JCE participation. First, Mladić conflates the date the Chamber found the JCE to have come into existence (1991) with the date Mladić was found to be a member (“12 May 1992 at the latest”).³¹² Arguments about his lack of involvement in 1991 are therefore irrelevant.

65. Second, while there is no inconsistency between Mladić’s ability to influence the political leadership and his being ultimately subject to it, all of Mladić’s alleged inconsistent findings,³¹³ actually cite to summaries of evidence, not findings.³¹⁴

³⁰⁷ Judgement, paras.3122(k), 3151-3152, 3183, 3287(i), 3312, 3325(i), 3359, 3360(f), 3380, 3381(b), 3383, 3387, 3388(f), 3405, 3406(f), 3418. *Also* Judgement, paras.1489, 1503-1506, 1527-1529, 1534-1536, 1547, 1580-1581.

³⁰⁸ Exh.D187, p.1.

³⁰⁹ Judgement, para.4515.

³¹⁰ Judgement, paras.4517-4520, 4524, 4526.

³¹¹ Judgement, paras.4545-4546, 4687. *Below* para.114.

³¹² *Compare* Mladić-AB, para.203 *citing* Judgement, para.4232 *with* Judgement, para.4688.

³¹³ Mladić-AB, para.204 (alleging it was inconsistent to (i) find that Mladić could influence the political leadership while referring to evidence of Mladić stating he was subject to the political leadership and (ii) find that “Karadžić could not make any military decision that Mladić did not approve” while quoting Mladić’s statements that he was subject to the political leadership).

³¹⁴ Mladić-AB, fns.301-302, 304-305 *citing* Judgement, paras.4376, 4466, 4472-4474.

4. The Chamber reasonably found Mladić contributed to the common purpose through his command and control of the VRS (3.A.3.3.4)

66. The Prosecution did not argue, nor did the Chamber find, that the VRS was a criminal organisation in itself, but rather that Mladić and other JCE members used VRS members to commit crimes in pursuit of a common criminal purpose.³¹⁵

67. It is well established that a JCE contribution need not in and of itself constitute a crime.³¹⁶ And Mladić concedes that carrying out “one’s ‘routine duties’ will not exculpate” an accused who participates in criminal activity.³¹⁷ The Chamber was entitled to conclude that Mladić—knowing of the widespread crimes committed by his subordinates—carried out his command, control and organisational authority over the VRS in a manner that contributed to the common purpose.³¹⁸

C. Mladić significantly contributed to the JCE (3.B.3 – 3.B.5)

68. The Chamber concluded that, from his position as commander of the VRS Main Staff, Mladić’s JCE contributions were not just significant, they were “instrumental to the commission of the crimes”.³¹⁹ This conclusion was grounded in clear and compelling evidence showing Mladić harnessing his power and authority to guide the implementation of the common purpose. The Chamber highlighted in particular, the importance of Mladić’s role in organising, establishing and commanding and controlling the VRS and his close involvement in VRS actions, given that “many of the principal perpetrators of crimes were VRS members.”³²⁰

69. Mladić’s arguments fail to show any error in the Chamber’s carefully reasoned and well-supported conclusions.³²¹ His three arguments—concerning his authority over MUP forces, a shortage of professional subordinates and the failure to take appropriate steps to investigate and punish VRS crimes—suffer from an array of fundamental deficiencies. For instance, he misrepresents the Judgement and evidence,

³¹⁵ *Generally* Judgement, paras.4224-4225, 4239.

³¹⁶ *Popović* AJ, fn.3995 (citing *Krajišnik* AJ, paras.215, 695, and *Vasiljević* AJ, para.100). Also *Kvočka* AJ, para.99; *Babić* SAJ, para.38; *Ntakirutimana* AJ, para.466; *Krnjelac* AJ, paras.31, 81; *Tadić* AJ, para.227(iii).

³¹⁷ *Mladić-AB*, para.206 citing, *inter alia*, *Stanišić & Župljanin* AJ, para.154.

³¹⁸ Judgement, paras.4610-4612, 4685.

³¹⁹ Judgement, para.4612.

³²⁰ Judgement, para.4612.

³²¹ *Contra* *Mladić-AB*, paras.211-212. Also *contra* *Mladić-AB*, paras.136, 892-893.

ignores pertinent findings, rests on irrelevant claims and seeks to reinterpret the evidence without demonstrating error in the Chamber's assessment.³²²

1. Mladić contributed to furthering the common purpose through his command and control of MUP forces at Manjača camp (3.B.3)

70. Mladić's arguments regarding his command and control of MUP forces³²³ in relation to the Overarching JCE are grounded in his fundamental misreading of the Judgement.

71. In its conclusions on Mladić's Overarching JCE contribution of commanding and controlling Serb Forces subordinated to the VRS, the Chamber's finding in relation to MUP forces is expressly limited to Mladić's contribution of commanding and controlling the MUP forces under the command of the VRS 1KK at Manjača camp.³²⁴ Mladić thus misreads the Judgement in claiming the Chamber made (i) a sweeping finding of contribution through command and control of MUP forces,³²⁵ and (ii) a correspondingly sweeping finding of contribution through failing to prevent and punish MUP crimes.³²⁶

72. Mladić complains that the Chamber accorded insufficient weight to his preferred evidence, but none of the four pieces of evidence he cites (i) concerns Mladić's command and control over the MUP forces operating as guards at Manjača camp, or (ii) suggests that MUP forces could not be, or were not at times, resubordinated to the VRS.³²⁷ As such, his evidence is irrelevant to the Chamber's

³²² See *Prlić* AJ, para.25(1), (3), (10).

³²³ *Contra* Mladić-AB, paras.218-221.

³²⁴ Judgement, para.4404. The Chamber's subsequent Chapter 9.3.10 contribution findings that Mladić failed to prevent and punish subordinates for crimes are necessarily limited to those forces over which he had command and control, and thus these findings in relation to MUP crimes are limited to MUP forces at Manjača camp. See Judgement, paras.4544, 4546. While MUP forces committed many other crimes, they did so while cooperating or coordinating with the VRS rather than while re-subordinated. E.g. Judgement, paras.3819, 4610.

³²⁵ Mladić-AB, paras.219, 221.

³²⁶ Mladić-AB, paras.219, 221. Mladić's contribution of ordering the VRS to cooperate with MUP forces is a distinct contribution unrelated to his command and control over MUP forces, and is thus unaffected by Mladić's command and control arguments. *Contra* Mladić-AB, para.219 citing Judgement, para.4611. Also Judgement, para.4414.

³²⁷ Mladić-AB, para.221 citing R.Theunens:T.20615-20616; V.Kevac:T.30537-30545; T.Kovač:T.41921 (confidential); Exh.P5248, p.2. This evidence shows only that MUP and VRS forces sometimes operated in coordination, which is consistent with the Chamber's findings. E.g. Judgement, para.3819.

finding that Mladić had command and control authority over Manjača MUP forces.³²⁸ Moreover, the Chamber’s finding on Mladić’s command and control over MUP forces at Manjača was based not just on adjudicated facts,³²⁹ but also on witness and documentary evidence demonstrating that MUP forces at Manjača camp were subordinated to the VRS 1KK,³³⁰ which was subordinated to Mladić.³³¹ The Chamber expressly considered and rejected Mladić’s trial arguments to the contrary.³³²

73. In any event, Mladić fails to show any impact of his arguments on the Chamber’s ultimate conclusion that he significantly contributed to furthering the common purpose. At most the challenged findings comprise a tiny fraction of just two of his many contributions.³³³ Moreover, these arguments have no bearing on Mladić’s liability for crimes committed by any MUP forces who were not resubordinated to the VRS. Mladić is liable for their crimes because they were subordinated to Mladić’s co-JCE members—thus making these MUP forces’ crimes attributable to Mladić.³³⁴

2. Mladić exercised effective command and control over VRS units (3.B.4)

74. The Chamber reasonably found that as Commander of the VRS Main Staff, Mladić “possessed a very high level of command and control”³³⁵ over VRS units and exercised that command and control in a manner that contributed to the common purpose.³³⁶ It grounded its command and control conclusion on findings on the functioning VRS command structures and Mladić’s exercise of command and control

³²⁸ Judgement, para.4404. Similarly, this evidence does not contradict any of the adjudicated facts about which Mladić complains (at Mladić-AB, fn.324) the Chamber relied on. In any event, the Chamber relied on these adjudicated facts in its findings at Judgement, paras.3794, 3824 on “The role of the MUP” in the Overarching JCE, not its findings on Mladić’s command and control over MUP forces. *Contra* Mladić-AB, paras.218, 221.

³²⁹ *Contra* Mladić-AB, paras.218, 221.

³³⁰ *E.g.* Judgement, paras.384 (*citing* RM051:Exhs.P214, pp.12-15, 72(T.5265-5268, 5365) (confidential); P3268, p.1), 454-455, 4400 (*cross-referencing* Judgement, paras.4001-4002 *citing* Exhs.P2879; P201), 4404.

³³¹ Judgement, paras.454, 4404.

³³² Judgement, para.455. The MUP comprised regional CSBs and municipal SJBs and thus the Chamber’s reference to “SJB members” refers to MUP forces. *See* Judgement, paras.338-339, 341.

³³³ *Compare* Judgement, paras.4611-4612 (summarising Mladić’s contributions to the Overarching JCE and finding them to be significant) *with* Judgement, paras.4401-4405 (summarising Mladić’s contribution of command and control over forces subordinated to the VRS, with MUP forces referenced only at para.4404) *and* paras.4544-4547 (summarising Mladić’s contribution of failing to prevent and punish crimes, with no specific mention of MUP crimes).

³³⁴ *See* Judgement, paras.3561, 4227, 4238-4239, 4610.

³³⁵ Judgement, para.4391.

³³⁶ Judgement, paras.4383-4394, 4611(ii), 4612.

over those structures.³³⁷ Those findings were in turn grounded in a detailed analysis of voluminous evidence showing command and control.³³⁸ This included evidence from Mladić’s own subordinates and Defence witnesses affirming, for instance, that Mladić’s orders and directives to the corps were implemented down the chain of command³³⁹ and that “orders from Mladić, whether written or oral, were strictly adhered to and carried out.”³⁴⁰

75. In reaching its conclusion on Mladić’s command and control, the Chamber expressly considered evidence of instances of VRS indiscipline—and the actions Mladić and his subordinates took in response³⁴¹—and ultimately found that “occasional indiscipline in the VRS did not undermine Mladić’s overall ability to exercise command and control over his subordinates.”³⁴² Mladić fails to show no reasonable chamber could have reached this conclusion.³⁴³

76. Mladić focuses on arguing that there was a “lack of professional subordinates” in the VRS.³⁴⁴ However, even assuming this were true, it does not necessarily equate to a lack of command and control. Mladić’s attempt to link his professional subordinates arguments with command and control rests almost entirely on generic and unsubstantiated claims. For instance, he asserts that a lack of professional subordinates “significantly affected” his command and control³⁴⁵ and had “wider repercussions” that the Chamber “failed to adequately consider”.³⁴⁶ But he never identifies what these supposed repercussions were or the purported effect on his command and control. Likewise, he cites no support for his blanket claim that

³³⁷ Judgement, paras.4383 (incorporating Chapter 3.1.2 findings on VRS functioning), 4384-4394. *Also e.g.* Judgement, paras.152, 164, 186, 213, 237, 239.

³³⁸ *E.g.* Judgement, paras.4293-4394.

³³⁹ Judgement, paras.4312, 4319.

³⁴⁰ Judgement, para.4377. The Chamber’s cite at fn.15683 should be to T.34402-34403.

³⁴¹ *E.g.* Judgement, paras.151, 4293(vii) (fn.15467 *citing* Mladić-FTB, para.662), 4304, 4313, 4329, 4345, 4347, 4367, 4369, 4392. *Also* Judgement, para.4383, in which the Chamber recalls its Chapter 3.1.2 findings, which were based on *inter alia* consideration of Defence arguments and evidence of indiscipline and lack of professional subordinates. *E.g.* Judgement, paras.108 (fn.360 *citing* Mladić-FTB, para.654), 144, 151-152, 164, 186-187 (fn.668 *citing* Mladić-FTB, para.653), 196, 210 (fn.805 *citing* Mladić-FTB, para.653), 221 (fn.807 *citing* Mladić-FTB, para.654), 230, 233, 237, 239. For SRK and Drina Corps command and control, *see also* Judgement, paras.4789, 4793, 4893, Chapter 9.7.2 (*particularly* para.5047). *Contra* Mladić-AB, paras.227, 231.

³⁴² Judgement, para.4392.

³⁴³ *Contra* Mladić-AB, para.236.

³⁴⁴ *Contra* Mladić-AB, paras.227, 231-233.

³⁴⁵ Mladić-AB, para.227.

³⁴⁶ Mladić-AB, para.231.

“[i]nadequately trained subordinates meant there was organizational disunity”,³⁴⁷ nor does he explain why this allegedly undermined command and control. In assessing command and control, the Chamber properly focused on evidence of actual indiscipline, misconduct, disobedience or disloyalty, assessed whether it showed Mladić lacked command and control, and concluded it did not.³⁴⁸

77. In the same vein, Mladić’s claim that a lack of professional subordinates “affected combat operations and outcomes”,³⁴⁹ even if accepted, does not show a lack of command and control. In any event, of the documents Mladić cites, several acknowledge shortcomings but ultimately *affirm* effective command and control.³⁵⁰ Further, Mladić ignores that all his cited evidence was either expressly discussed by the Chamber in assessing command and control³⁵¹ or is duplicative of other evidence discussed by the Chamber,³⁵² and he makes no attempt to demonstrate how the Chamber supposedly acted unreasonably in evaluating this evidence. Moreover, Mladić’s assertion that he and other VRS personnel “visited commands and units as a strategy to deal with the lack of professional subordinates who would normally carry

³⁴⁷ *Contra* Mladić-AB, para.231. To the extent Mladić is relying on Exh.P5241, p.5 (cited in support of the following sentence and for this same claim in Mladić-FTB, fn.1295), the Chamber found this report largely irrelevant due to its March 1993 date, but in any event it concerns a single brigade within a single corps. Judgement, para.210. *Also* Judgement, para.4313.

³⁴⁸ *Above* para.75.

³⁴⁹ Mladić-AB, para.231.

³⁵⁰ Mladić-AB, fn.340 *citing* Exhs.D566 (confirming “successful command and control” at p.1); P338 (confirming effective command and control at pp.7-13); D939 (confirming effective command and control at pp.2, 4).

³⁵¹ *Compare* Mladić-AB, fn.340 *with* Judgement, paras.196 (*citing* Exh.D939/Duplicate-Exh.P1508), 210 (*citing* Exh.P5421), 230 (*citing* R.Maksimović:Exh.D686), 233 (*citing* M.Šehovac:Exh.D559; Exh.D566), 237 (*referring to* Exh.D566, evidence of R.Maksimović (Exh.D686), evidence of M.Šehovac (Exh.D559)), 4313 (*citing* Exh.P5241), 4322 (*citing* Exh.P338), 4377 (*cross-referencing* Chapter 9.5.3 discussion of RM511’s evidence at Judgement, para.4783, including fn.16880 *citing* RM511:T.5032-5033). Much of the evidence Mladić cites was discussed in Chapter 3.1.2 regarding VRS command and control, which served as predicate findings for the Chamber’s Chapter 9.3.3 assessment of Mladić’s command and control over the VRS. *See* Judgement, para.4383 incorporating Chapter 3.1.2 findings. For SRK and Drina Corps command and control, *see also* Judgement, paras.239, 4789 (incorporating Chapter 3.1.2 findings), 4793, 4836 (incorporating Chapter 3.1.2 findings), 4893, 5047 (incorporating Chapter 9.3.3 findings), 5093 (incorporating Chapter 3.1.2 findings).

³⁵² While Exhs.P346, P356 and M.Kovač:T.41371-41372 are not cited in the Judgement, their substance falls squarely within the Chamber’s reasoning. *Compare* Exhs.P356, p.180 *and* P346, pp.140-141 *with* Judgement, paras.237, 4367; *compare* M.Kovač:T.41371-41372 (providing opinion on Exh.P338, pp.76-80 [English], in particular 1KK and Drina Corps) *with* Judgement, paras.151, 4313, 4322 (considering Exh.P338), 4347. *Generally* Judgement, paras.4391-4392.

out such tasks”³⁵³ *confirms* Mladić asserting command and control over subordinate units.³⁵⁴

78. Similarly, that Mladić met with VJ representatives to acquire more trained personnel does not show that he lacked command and control.³⁵⁵ While Mladić complains³⁵⁶ that the Chamber failed to reference—in its Chapter 9.3.3 VRS command and control findings³⁵⁷—a generic comment he made about worsening discipline,³⁵⁸ this does not demonstrate a lack of command and control and in any event is duplicative of discipline complaints the Chamber expressly discussed and reasonably found not to undermine command and control.³⁵⁹

3. Mladić failed to take appropriate or further steps to investigate or punish perpetrators of crimes (3.B.5)

79. The Chamber reviewed in detail the evidence regarding the military court system, Mladić’s authority over, and conduct in relation to, the investigation and punishment of crimes, Mladić’s knowledge of crimes in the Municipalities, his duty to ensure the investigation and punishment of subordinated forces and his efforts to conceal crimes in the Municipalities.³⁶⁰ The Chamber properly considered the totality of the evidence—including that Mladić took some measures to investigate and punish crimes—and reasonably concluded that the measures were inappropriate.³⁶¹

80. Mladić has not demonstrated that no reasonable trier of fact could have come to this conclusion. Mladić’s arguments (i) misrepresent the Judgement and the evidence or ignore relevant findings,³⁶² (ii) are irrelevant,³⁶³ and (iii) consist of mere assertions

³⁵³ Mladić-AB, para.232.

³⁵⁴ Judgement, paras.4311-4321, 4386. In any event, the exhibits he cites do not support his claim that these inspections were carried out due to a lack of professional subordinates. *Contra* Mladić-AB, fn.341 *citing* Exhs.P3029, p.563-564; P347, p.56.

³⁵⁵ *Contra* Mladić-AB, para.233.

³⁵⁶ Mladić-AB, para.234.

³⁵⁷ As Mladić acknowledges (Mladić-AB, fns.345-346), the Chamber did consider this complaint in Chapter 9.3.6 at para.4425.

³⁵⁸ Judgement, para.4425 *citing* Exh.P358, p.242. Mladić’s comments on the purported dismantling of the MUP (Mladić-AB, para.234) are irrelevant to his command and control over the VRS. Mladić fails to substantiate his claim that he referred to discipline problems numerous other times in his military notebook (*contra* Mladić-AB, para.234), as he instead cites at fn.347 to Exh.P4583, a 15 April 1995 Bosnian Serb Assembly speech, and Judgement, para.4440.

³⁵⁹ *Above* fns.341-342.

³⁶⁰ Judgement, paras.4544-4546 *relying on* Judgement, paras.4514-4543, Chapters 9.2.11-9.2.12, 9.3.3-9.3.4, 9.3.9, 9.3.13.

³⁶¹ Judgement, paras.4545-4546.

³⁶² *Below* paras.83-89, 92, 94-95.

that the Chamber failed to give sufficient weight to evidence or interpret evidence in a particular manner.³⁶⁴ Such arguments warrant summary dismissal.³⁶⁵ Mladić also repeatedly incorporates by reference his Final Trial Brief arguments,³⁶⁶ which is both contrary to “well-established practice”³⁶⁷ and unfairly results in an artificially-lowered word count. These incorporated-by-reference arguments should be disregarded.³⁶⁸

81. In any event, Mladić has not demonstrated that, even if he succeeds in undermining the single contribution of failing to take appropriate measures to investigate or punish crimes, his other JCE contributions did not amount to a significant contribution to the common purpose.

(a) It is immaterial that Mladić may not have been informed of some criminal incidents (3.B.5.3.1.1)

82. Mladić does not challenge the Chamber’s finding that he knew that the crimes of persecution, murder, extermination, deportation and forcible transfer were committed against Bosnian Muslims and Bosnian Croats in the Municipalities.³⁶⁹ Instead, Mladić points to a handful of criminal incidents and contends that the Chamber erred by failing to give “sufficient weight to evidence that [Mladić] could not have known certain crimes had been committed.”³⁷⁰ This argument is irrelevant, as the Chamber never found that Mladić was informed of every criminal incident in the Municipalities.

83. In any event, two of Mladić’s supposed examples of his lack of knowledge demonstrate the opposite. His assertion that the reports he received “from Manjača did not provide any information about the commission of crimes by the VRS”³⁷¹ is contradicted by his own reliance, two pages later, on a IKK report to the Main Staff³⁷² recording ICRC “accusations” about the treatment of Manjača prisoners,

³⁶³ Below paras.82, 86, 93.

³⁶⁴ Below para.91.

³⁶⁵ Prlić AJ, para.25(1), (3), (10).

³⁶⁶ Mladić-AB, fns.360-361, 365-366, 375-376, 392, 401.

³⁶⁷ S&S Decision on Hadžić Access, para.8; Karadžić Count 11 AD, para.13.

³⁶⁸ S&S Decision on Hadžić Access, para.8; Karadžić Count 11 AD, para.13.

³⁶⁹ Judgement, para.4685. Also Judgement, para.4546.

³⁷⁰ Mladić-AB, para.246. Also paras.247-248.

³⁷¹ Mladić-AB, para.246.

³⁷² Mladić-AB, para.253, fn.379 citing Exh.P230 (wrongly identified as D230).

including insufficient food, severe illness and observations of “fresh traces of blood”.³⁷³ Likewise, Mladić claims that the 1KK’s 5 November 1992 report to the Main Staff falsely reporting the murder of approximately 150 unarmed men at Grabovica School (Incident A.4.4) as combat deaths demonstrates that he could not have known about this crime.³⁷⁴ He ignores the 1KK’s report to the Main Staff from the previous day describing these same events as a “brutal massacre of the captured members of the Green Berets”.³⁷⁵

(b) Mladić failed to take appropriate measures (3.B.5.3.1.2)

84. That Mladić took some steps towards investigating some crimes³⁷⁶ was accepted by the Chamber.³⁷⁷ However, the Chamber reasonably found those steps inappropriate when assessed in light of the totality of the evidence.³⁷⁸ Regardless, none of Mladić’s five claimed “illustrative examples” of Mladić “ordering incidents to be investigated and the suspects prosecuted”³⁷⁹ supports this claim.

85. Only two of his examples even purport to concern Mladić’s own acts and conduct, but neither shows Mladić ordering investigations or prosecutions:

- Evidence incorporated from Mladić’s Final Trial Brief does not show Mladić “launch[ing] an investigation” into Major Velimir Dunjić or support the claim that anyone “suspected to have engaged in criminal activity was arrested and prosecuted”.³⁸⁰ In any event, the complaints regarding Dunjić did not concern the commission of crimes against non-Serbs, but rather Dunjić asserting unauthorised command over paramilitaries and arresting the commands of two VRS brigades in December 1992.³⁸¹
- Mladić’s order to improve conditions in Manjača and terminate physical abuse following ICRC allegations—which was considered by the Chamber³⁸²—

³⁷³ See Exh.P230.

³⁷⁴ Mladić-AB, para.248 citing Judgement, para.4040. Mladić incorrectly describes this report as dated 4 November. See Exh.P442.

³⁷⁵ Exh.P441 discussed at Judgement, para.4038, relied on at Judgement, para.4040.

³⁷⁶ Mladić-AB, paras.249-253.

³⁷⁷ Judgement, para.4545.

³⁷⁸ Judgement, paras.4545-4546.

³⁷⁹ Mladić-AB, para.249.

³⁸⁰ See Mladić-AB, para.251 citing Mladić-FTB, para.1305.

³⁸¹ Exh.P6705, pp.2-3.

³⁸² Mladić-AB, para.253, fn.380 citing Exh.P2881 cited at Judgement, para.395.

tellingly says nothing about ordering investigations or prosecutions. Mladić then misrepresents the Judgement, which does not support his claim that he “took affirmative action to punish the VRS perpetrators” of Manjača crimes.³⁸³

86. The other three examples do not even claim to involve Mladić and are thus irrelevant to his argument. In any event:

- That four soldiers were arrested after Ranko Brajić found out about a mass killing³⁸⁴ was accepted by the Chamber;³⁸⁵
- Basara’s alleged saving of lives by transferring detainees to the Sanski Most police station on one occasion³⁸⁶ is rendered virtually meaningless in light of findings that, under Basara’s command, the 6th Krajina Brigade targeted Sanski Most non-Serbs with a widespread campaign of killing, destruction and forced displacement;³⁸⁷ and
- Evidence of General Stanislav Galić ordering the arrest of VRS soldiers who had killed detainees³⁸⁸ does not demonstrate genuine punishment efforts given findings that the perpetrators were subsequently released with the consent of VRS Main Staff officers.³⁸⁹

(c) The Chamber provided a reasoned opinion (3.B.5.3.1.3)

87. Mladić incorrectly asserts that, in reaching its Chapter 9.3.10 conclusions (Mladić’s JCE contribution of failing to investigate/punish crimes), the Chamber ignored its own findings in Chapter 9.3.10, and instead relied “on the evidence presented in section 9.2.12” (investigation and prosecution of crimes).³⁹⁰ This misrepresents the Judgement: the Chamber’s Chapter 9.3.10 conclusions³⁹¹ are expressly grounded in “the evidence reviewed in *this chapter*” as well as “findings in

³⁸³ See Mladić-AB, para.253 *misrepresenting* Judgement, paras.366-367.

³⁸⁴ Mladić-AB, para.250.

³⁸⁵ See Judgement, paras.1614, 1616, 4180-4181.

³⁸⁶ See Mladić-AB, para.252.

³⁸⁷ See Judgement, paras.3497-3502, 3513.

³⁸⁸ Mladić-AB, para.252, fn.378 *citing* Mladić-FTB, para.1273.

³⁸⁹ Judgement, para.4143.

³⁹⁰ Mladić-AB, paras.257, 259.

³⁹¹ Judgement, paras.4545-4546.

chapter 9.2.12”.³⁹² Similarly, the ultimate findings on Mladić’s JCE contributions are expressly based on the findings “in chapters 9.3.2-9.3.12” of the Judgement.³⁹³

88. Moreover, Mladić does not explain how the Chamber allegedly failed to provide a reasoned opinion or afforded insufficient weight to supposed “exculpatory evidence in section 9.3.10”.³⁹⁴ The factors he points to³⁹⁵ were expressly considered by the Chamber, including in its Chapter 9.3.10 conclusions.³⁹⁶ Furthermore, contrary to Mladić’s claim, the Chamber did not find that on “several occasions” Mladić ordered investigations in relation to “war crimes or crimes against humanity”.³⁹⁷ Rather, the Chamber found that “on several occasions, Mladić ordered investigations, and called for the punishment of members of the VRS [...] for breaches of military discipline”, but that he only took “some measures” in relation to investigations of alleged war crimes or crimes against humanity.³⁹⁸

(d) The Chamber properly found that Mladić failed to take appropriate measures to investigate/punish crimes (3.B.5.3.2)

89. The finding that Mladić failed to take appropriate steps to investigate and punish crimes was not based on “an absence of evidence”.³⁹⁹ Rather, it was based on evidence showing Mladić’s knowledge of widespread crimes against non-Serbs and his duty and authority to order investigations; evidence of some measures Mladić took in relation to investigating war crimes and crimes against humanity, but which did not amount to any substantial or meaningful investigations; evidence showing Mladić deliberately misleading the international community and attempting to conceal crimes; and evidence demonstrating the failure of the military and civilian justice systems to investigate, prosecute or arrest perpetrators of crimes against non-Serbs.⁴⁰⁰

³⁹² Judgement, para.4545 (emphasis added).

³⁹³ Judgement, para.4611.

³⁹⁴ Mladić-AB, para.254.

³⁹⁵ Mladić-AB, para.256.

³⁹⁶ Judgement, para.4545.

³⁹⁷ *Contra* Mladić-AB, para.256, fn.385 *citing* Judgement, para.4545.

³⁹⁸ Judgement, para.4545.

³⁹⁹ *Contra* Mladić-AB, para.258 *citing* Judgement, paras.4545-4546, 4611.

⁴⁰⁰ Judgement, paras.4544-4546.

90. Mladić does not identify the “essential element of the crime” for which evidence was supposedly lacking.⁴⁰¹ In any event, this argument is based on Mladić’s mischaracterisations regarding the Chamber’s finding.

(e) The military justice system was functioning (3.B.5.3.3)

91. The Chamber considered⁴⁰² and reasonably rejected⁴⁰³ Mladić’s repeated-from-trial claim that the conflict situation significantly impeded the functioning of the military justice system.⁴⁰⁴ Mladić does not explain how the Chamber supposedly “failed to appreciate” any evidence or arguments, nor does he point to any significant “limitations” the Chamber allegedly ought to have “given weight to”.⁴⁰⁵

92. Furthermore, Mladić wrongly asserts that the Chamber found “that the [military justice] system suffered from institutional issues that inhibited its functioning”.⁴⁰⁶ The Chamber instead found that “the military courts were fully operational by the early autumn of 1992”, that “proceedings before the military courts continued throughout the war” but that “[t]he military courts focused on crimes committed against the VRS”.⁴⁰⁷

93. Mladić’s invocation of different cases involving different accused, different evidentiary records and different modes of liability⁴⁰⁸ is irrelevant.

(f) Mladić failed to take steps within his power to punish crimes (3.B.5.3.4)

94. Mladić’s effort to distance himself from the military justice system rests on misrepresentations of the Judgement and evidence.⁴⁰⁹ The Chamber did not find that when crimes were reported “it was often the prosecutor or military court that decided not to prosecute certain crimes”.⁴¹⁰ Rather, the Chamber found that “in many instances, decisions to release suspects were made after VRS officers [...] exerted

⁴⁰¹ Mladić-AB, para.258.

⁴⁰² Compare Judgement, para.4094, fn.15023 citing Mladić-FTB, paras.731-733 with Mladić-AB, fn.392 citing Mladić-FTB, paras.732-733.

⁴⁰³ Judgement, paras.4111-4114.

⁴⁰⁴ Contra Mladić-AB, paras.261, 263. Also contra Mladić-AB, paras.119, 890-891.

⁴⁰⁵ Mladić-AB, paras.261-262.

⁴⁰⁶ Mladić-AB, para.262, fn.395 citing Judgement, para.4106 (a summary of Lukić’s evidence, not a finding).

⁴⁰⁷ Judgement, paras.4111-4114.

⁴⁰⁸ Mladić-AB, fns.392, 399-400.

⁴⁰⁹ Mladić-AB, para.264.

pressure on the military courts to drop cases or release perpetrators of crimes”.⁴¹¹ Likewise, the Chamber did not “simply juxtapose the Appellant with the structure of the military justice system”.⁴¹² Rather, the Chamber examined evidence of Mladić’s acts and conduct and his authority—including in relation to the VRS and the military justice system—and reasonably concluded that Mladić did not take appropriate steps to investigate or punish perpetrators for war crimes and crimes against humanity.⁴¹³

95. Similarly, Mladić’s claim—[REDACTED]—that he “maintained an attitude that the military justice system needed to remain impartial and independent from the military”⁴¹⁴ is not supported by his citations and does not engage with relevant findings. Mladić (i) cites the Chamber recounting provisions of the RS Constitution⁴¹⁵ while ignoring its findings about what actually happened;⁴¹⁶ and (ii) invokes evidence from his Final Trial Brief that does not support his sweeping proposition⁴¹⁷ and likewise ignores relevant findings.⁴¹⁸

(g) Mladić demonstrates no impact on his conviction

96. Mladić’s failure to take appropriate or further steps to investigate and punish perpetrators of war crimes and crimes against humanity was one of numerous JCE contributions,⁴¹⁹ which cumulatively were found to be not just significant, but “instrumental”.⁴²⁰ Mladić has failed to show that—even if he were to succeed in undermining this single contribution—his other contributions did not amount to a significant contribution to the common purpose.⁴²¹

⁴¹⁰ *Contra* Mladić-AB, para.264, fn.402 *citing* Judgement, paras.4128, 4134, 4143, 4189, 4195.

⁴¹¹ Judgement, para.4196. Mladić does not challenge this finding.

⁴¹² *Contra* Mladić-AB, para.264.

⁴¹³ Judgement, paras.4544-4546.

⁴¹⁴ Mladić-AB, fn.401 *citing* Judgement, para.4096; Mladić-FTB, para.734 (confidential).

⁴¹⁵ Judgement, para.4096.

⁴¹⁶ *See* Judgement, paras.4143, 4189, 4196.

⁴¹⁷ Mladić-FTB, para.734 (confidential) *citing* [REDACTED]; [REDACTED]. *See* Judgement, para.4530 *referencing* evidence from RM513 (T.9261-9263) (confidential) [REDACTED].

⁴¹⁸ *Above* fn.416.

⁴¹⁹ *Contra* Mladić-AB, para.266.

⁴²⁰ Judgement, paras.4611-4612. *Contra* Mladić-AB, para.241.

⁴²¹ *Contra* Mladić-AB, para.267.

D. Mladić possessed the requisite JCE *mens rea* (3.B.6 – 3.B.8)

97. The evidence of Mladić’s *mens rea* was overwhelming, and the Chamber rightly concluded that he shared the common purpose and intended the underlying crimes. This evidence included Mladić’s expressions of commitment to an ethnically homogenous Serb Republic; his statements indicating he intended to disobey the laws of war in Croatia and, later, to repeat the destruction in BiH; his fomenting of fear and hatred towards Muslims and Croats and repeated use of derogatory terms such as ‘Turks’, ‘*balijas*’ and ‘*Ustašas*’; and—from the pinnacle of the VRS hierarchy—his longstanding, continuing contributions to the common purpose with knowledge of the crimes committed in its pursuit.⁴²²

98. Mladić brings three challenges to this conclusion, none of which demonstrates any error. Mladić’s first two arguments—3.B.6 and 3.B.7—allege errors in the Chamber’s methodology, which he fails to show. Instead, he misconstrues the law, misrepresents the Judgement and disregards relevant findings. Mladić’s third argument, 3.B.8, concerning the Chamber’s assessment of two Bosnian Serb Assembly sessions, is equally deficient. He asks the Appeals Chamber to accept his interpretation of this evidence over that of the Chamber, without demonstrating any unreasonableness in the Chamber’s approach. In any event, he rests his arguments on fragments of the record which he both mischaracterises and seeks to interpret in isolation.

99. Mladić’s flawed arguments only highlight the Chamber’s careful, thorough assessment of the voluminous evidence demonstrating Mladić’s JCE *mens rea*.

1. The Chamber properly assessed Mladić’s JCE *mens rea* (3.B.6)

100. Mladić identifies no error in the Chamber’s approach to assessing his *mens rea* for JCE liability. His complaints of “defects” in the Chamber’s analysis reflect a fundamental misunderstanding of both the Judgement and the law.⁴²³

101. Mladić first complains that the Chamber made “inferences of the Appellant’s *mens rea* in its *actus reus* analysis”.⁴²⁴ However, he is unable to point to a single

⁴²² Judgement, paras.4685-4686.

⁴²³ *Contra* Mladić-AB, para.270. *Also contra* Mladić-AB, para.895.

⁴²⁴ Mladić-AB, paras.281-285, 895.

instance of this actually occurring. Mladić focuses his challenge⁴²⁵ on the Chamber’s findings in Chapter 9.3.7 (“Participating in the development of Bosnian-Serb governmental policies”) that he contributed to furthering the common purpose by *inter alia*:

- “express[ing] his commitment to the strategic objectives” and “strongly oppos[ing] the Vance-Owen plan”;⁴²⁶
- “actively participat[ing] in Assembly sessions during which policy issues were discussed, such as the definition of the six strategic objectives, peace negotiations, and territorial concessions”; and
- “address[ing] these issues in detail with the purpose of influencing the Bosnian-Serb political leadership in its decision-making.”⁴²⁷

None of these are findings on Mladić’s JCE *mens rea*. Mladić’s other purported examples of this “defect” consist merely of underlying evidentiary summaries the Chamber relied on in the *actus reus* component of the Judgement.⁴²⁸ Again, none of these are findings on Mladić’s *mens rea*.⁴²⁹ Mladić’s proposed distinction between “two-dimensional” *actus reus* elements and “three-dimensional” *mens rea* elements is nowhere to be found in the *Milutinović* Trial Judgement he relies on,⁴³⁰ or any other Tribunal jurisprudence.

⁴²⁵ Mladić-AB, para.284.

⁴²⁶ Judgement, para.4477. Mladić incorrectly asserts that the Chamber relied on the underlying evidence to “show his knowledge of the six strategic objectives” (Mladić-AB, para.284), although this would not in any event constitute a *mens rea* finding.

⁴²⁷ Judgement, para.4478. *Also* Judgement, paras.4611-4612.

⁴²⁸ *E.g.* Mladić-AB, paras.282-283 *citing* Judgement, paras.4459-4460, 4471-4473. At Mladić-AB, para.285 Mladić also cites Judgement, paras.4465, 4468, 4486 as examples of the first purported “defect”, but they appear to be examples of the second purported “defect”. In any event, they do not contain any findings on Mladić’s JCE *mens rea*, and his mere assertion that an error he failed to establish in the first place is repeated in these paragraphs is insufficient to meet his burden. While Mladić also points to Judgement, paras.4627, 4629 and 4686 as further examples of the first purported “defect”, these paragraphs actually show the Chamber summarising evidence and making *mens rea* findings in the *mens rea* component of the Judgement, not the *actus reus* component.

⁴²⁹ *Contra* Mladić-AB, para.281.

⁴³⁰ *Contra* Mladić-AB, paras.276-277 *citing* *Milutinović* TJ (*referred to as Šainović* TJ), Vol.III, paras.142, 275-276. Additionally, although irrelevant to this ground, Mladić’s incorrect explanation of JCE liability comes from a 2006 article describing inapplicable/outdated jurisprudence. *Contra* Mladić-AB, para.272, fns.410-411 *citing* Sliedregt Article, pp.185 (discussing the *mens rea* required for post-WWII English common design liability, not JCE liability), 200 (discussing an interpretation of JCE liability expressly overturned by the 2007 *Brdanin* AJ, para.419).

102. Mladić’s second complaint is that the Chamber used “findings of the Appellant’s *mens rea* [...] to substantiate its *actus reus* findings”.⁴³¹ He again fails to point to a single example of the Chamber doing so. Rather, his examples simply show the Chamber cross-referencing—in the “JCE contribution” Chapter of the Judgement—to underlying evidence summaries and factual findings in the *mens rea* Chapter.⁴³² As Mladić acknowledges,⁴³³ there is nothing improper about a chamber relying on the same underlying evidence or factual findings to draw conclusions on both JCE contributions and shared intent. Mladić relies on the *Stanišić & Simatović* Appeal Judgement,⁴³⁴ but in that case the Appeals Chamber held only that a chamber should—as the Chamber did here⁴³⁵—determine the existence and scope of a common purpose, and whether an accused’s acts contributed to that purpose, before determining whether an accused shared the intent to further that purpose.⁴³⁶ Nowhere did it preclude a chamber from cross-referencing underlying factual findings (including those that draw inferences from the evidence) or evidentiary summaries across different chapters of a judgement or find that this constitutes a premature inference of *mens rea*.⁴³⁷

103. In any event, Mladić has failed⁴³⁸ to identify which pieces of evidence were supposedly “indelibly tainted” by these alleged premature *mens rea* inferences or explain how this would undermine the Chamber’s ultimate conclusion that Mladić possessed the requisite *mens rea* for JCE liability.

⁴³¹ Mladić-AB, para.286. *Also* Mladić-AB, paras.287-290, 895.

⁴³² *E.g.* Mladić-AB, para.287 *citing* Judgement, para.4465 (*cross-referencing* para.4628); Mladić-AB, para.288 *citing* Judgement, paras.4486 (*cross-referencing* paras.4648-4649), 4628; Mladić-AB, para.289 *citing* Judgement, para.4298 (*cross-referencing* para.4631), Chapter 9.3.3; Mladić-AB, para.290 *citing* Judgement, para.4546 (*cross-referencing* para.4685). While Mladić also points—at Mladić-AB, fn.432—to Judgement, para.4386, this is simply an *actus reus* factual finding on Mladić’s command and control of the VRS.

⁴³³ Mladić-AB, para.288.

⁴³⁴ Mladić-AB, para.286 *citing* *Stanišić & Simatović* AJ, paras.82, 87.

⁴³⁵ Judgement, paras.4232, 4238, 4241, 4612, 4615, 4688 (explicitly stating the proper order of analysis, and first determining the existence of the common purpose, then whether Mladić significantly contributed to furthering it, and then whether Mladić shared the intent to achieve it through the commission of crimes).

⁴³⁶ *Stanišić & Simatović* AJ, paras.82, 87.

⁴³⁷ *Contra* Mladić-AB, para.288.

⁴³⁸ *Contra* Mladić-AB, para.291.

2. Mladić shows no error in the Chamber’s assessment of direct or circumstantial evidence of *mens rea* (3.B.7)

104. Mladić’s complaints about the Chamber’s assessment of direct and circumstantial evidence in its *mens rea* analysis are grounded in misconceptions.⁴³⁹ In seeking to contrast supposedly weaker circumstantial evidence the Chamber relied on to find Mladić’s *mens rea* with the supposedly stronger direct evidence that he claims negates it, Mladić:

- wrongly implies that direct evidence has inherently greater value than circumstantial evidence;
- repeatedly mis-labels evidence as either direct or circumstantial;
- only addresses a tiny fraction of the record while ignoring the vast majority of evidence underlying the Chamber’s *mens rea* assessment; and
- makes misleading claims about that fraction.

(a) Mladić’s “illustrative examples” show no error in the Chamber’s *mens rea* assessment

105. The first part of Mladić’s argument consists of supposed “illustrative examples”⁴⁴⁰ of the Chamber relying on circumstantial evidence to find Mladić’s *mens rea*. Mladić apparently seeks to show that these pieces of evidence are weaker than the purportedly direct evidence he relies on in the second part of his argument. However, this compare-and-contrast exercise is riddled with flaws.

106. First, underlying Mladić’s arguments is the implied—and incorrect—claim that direct evidence is inherently more probative than circumstantial evidence.⁴⁴¹ This is contradicted by Tribunal jurisprudence.⁴⁴²

⁴³⁹ *Contra* Mladić-AB, para.294. *Also contra* Mladić-AB, paras.136, 892-893.

⁴⁴⁰ Mladić-AB, para.303.

⁴⁴¹ *Also* Mladić-AB, para.31 (incorrectly contending circumstantial evidence carries inherently less weight than direct evidence).

⁴⁴² *Delić* Evidence Decision, para.34 *citing* *Kupreškić* AJ, para.303; *Brdanin* TJ, para.35; *Orić* TJ, para.21.

107. In any event, Mladić misrepresents the Judgement and the evidence. For instance, the Chamber did not rely on Mladić’s 1991 statements reflecting his intention to disobey the laws of war in Croatia “to infer [Mladić’s] intention to repeat similar destruction in the conflict in Bosnia.”⁴⁴³ Rather, the Chamber relied on such statements “*and his later references to repeating the destruction inflicted during this conflict*”, together with other factors, to infer Mladić’s *mens rea*.⁴⁴⁴ Mladić’s assertion that the Chamber relied on his 1991 statements to find the Overarching JCE commenced in 1991⁴⁴⁵ is irrelevant to Mladić’s *mens rea*. It also appears to be grounded in Mladić’s misconception that he was found to have participated in the JCE from 1991 based on these 1991 statements⁴⁴⁶ or that these 1991 Mladić statements were used to determine the commencement date of the JCE.⁴⁴⁷

108. Mladić then incorrectly claims that evidence of his attendance at two meetings demonstrates his mere “tacit agreement based solely on his physical presence.”⁴⁴⁸ The evidence of both meetings reflects Mladić’s *explicit* agreement with the common purpose:

- First, at a 10 or 11 May 1992 meeting, Mladić was among those who “applauded” following a report of the violent ethnic cleansing of Muslims from Glogova.⁴⁴⁹
- Second, at a meeting with a UN official, Mladić was among those who “agree[d] with Karadžić’s” statement that “the Muslims will be transferred out of Serb territory because we can’t live together.”⁴⁵⁰

⁴⁴³ Mladić-AB, para.304 *citing* Judgement, para.4686.

⁴⁴⁴ Judgement, para.4686 (emphasis added).

⁴⁴⁵ Mladić-AB, para.304.

⁴⁴⁶ *Compare* Judgement, para.4232 (finding that the JCE existed “from 1991 until 30 November 1995”) *with* Judgement, para.4688 (finding that Mladić possessed shared JCE intent by 12 May 1992 at the latest).

⁴⁴⁷ The Chamber only relied on Mladić’s 1991 statements in the Judgement Chapter assessing Mladić’s *mens rea*.

⁴⁴⁸ Mladić-AB, para.307.

⁴⁴⁹ M.Deronjić:Exh.P3566, para.106 *cited at* Judgement, para.3663 *relied on at* Judgement, para.4621. *See* Mladić-AB, para.305.

⁴⁵⁰ H.Abdel-Razek:Exh.P293, para.33 *cited at* Judgement, para.3725 *relied on at* Judgement, para.4626. *See* Mladić-AB, para.306. Mladić’s assertions that this evidence is “uncorroborated” and represents an “astounding admission” articulate no error. To the extent he is complaining about reliability, he fails to even argue—let alone show—that the Chamber acted unreasonably in accepting this evidence. And at trial the Defence did not challenge this evidence in cross-examination. *See* H.Abdel-Razek:T.3619-3674.

Mladić also wrongly labels this evidence circumstantial.⁴⁵¹ Both meetings reveal Mladić expressing his agreement with the pursuit of the common purpose—direct evidence of his JCE *mens rea*. Labels aside, Mladić’s conduct at these meetings squarely supports his *mens rea*.

109. Furthermore, the few strands of evidence Mladić challenges merely skim the surface of the vast array of evidence the Chamber relied on in determining Mladić’s *mens rea*. For instance, the two meetings Mladić complains about are among several “expressions of [Mladić’s] commitment to an ethnically homogenous Bosnian Serb Republic.”⁴⁵² Moreover, a key component of the Chamber’s *mens rea* analysis is its finding that, from his position of VRS Main Staff Commander, Mladić significantly contributed to the common purpose with the awareness that the crimes of persecution, murder, extermination, deportation and forcible transfer were being committed in its pursuit.⁴⁵³ This is a powerful circumstantial indicator of *mens rea*—one that can, on its own, demonstrate JCE intent.⁴⁵⁴ Mladić does not explain why this finding—and the voluminous underlying evidence—should supposedly be discounted because it is circumstantial. Nor does he explain why the Chamber’s *mens rea* conclusion supposedly should not stand even if his challenges to a tiny fraction of the underlying evidence were to succeed.

(b) Mladić shows no disregard of evidence

110. The second part of Mladić’s argument is his claim that the Chamber “disregarded” direct evidence of his *mens rea*.⁴⁵⁵ Here he misrepresents the law and the Judgement, artificially inflates the probative value of the evidence he claims was disregarded and ignores relevant findings.

111. Mladić misrepresents the applicable legal standard by twice wrongly asserting that a chamber’s disregard for evidence “is shown” when clearly relevant evidence is not addressed by the Chamber’s reasoning—including in what he represents to be a *verbatim* quote from the *Kvočka* Appeal Judgement.⁴⁵⁶ In fact, the *Kvočka* Appeals

⁴⁵¹ Mladić-AB, para.303.

⁴⁵² Judgement, para.4686(iv). *E.g.* Judgement, paras.4620, 4624-4625, 4629, 4675. *Also e.g.* Judgement, para.4475.

⁴⁵³ Judgement, para.4685.

⁴⁵⁴ *Krajišnik* AJ, para.697; *Đorđević* AJ, para.512; *Stanišić & Župljanin* AJ, para.393.

⁴⁵⁵ Mladić-AB, para.308.

⁴⁵⁶ Mladić-AB, para.302 *purportedly citing* *Kvočka* AJ, para.23. *Also* Mladić-AB, fn.435.

Chamber held that “[t]here *may be* an indication of disregard when evidence which is clearly relevant to the findings is not addressed by the Trial Chamber’s reasoning.”⁴⁵⁷ Mladić then repeatedly claims that the Chamber “disregarded” pieces of evidence that the Chamber expressly discussed, while making no attempt to explain how this could possibly be the case.⁴⁵⁸

112. Mladić goes on to make misleading arguments about the nature of that evidence and the Judgement. For instance, he complains more weight should have been accorded to evidence purportedly demonstrating his intolerance towards crimes by “rebel [...] military formations”.⁴⁵⁹ Mladić asserts that this evidence is in “direct contrast” to findings that he and other JCE members “intended for crimes to be committed in furthering the OJCE by these same paramilitaries.”⁴⁶⁰ This ignores that JCE members were not found to have intended crimes by “rebel” formations. Rather, the Chamber found that: (i) Mladić ordered paramilitary groups to be disarmed and placed under unified VRS command;⁴⁶¹ and (ii) the *only* paramilitary crimes within the scope of the JCE—and thus intended by JCE members—were those committed by eight paramilitary units found to be “subordinated to the VRS or MUP” at the time.⁴⁶² Therefore, Mladić’s attitude towards “rebel” formations is of little or no relevance to his *mens rea*.

113. In any event, Mladić improperly seeks to interpret his preferred evidence in isolation from the rest of the record. For example, the Chamber discussed Mladić’s 28 July 1992 order that paramilitary groups be subordinated to the VRS with the exception of those “who carried out misdeed, robberies or other crimes.”⁴⁶³ However, the Chamber also considered other evidence, ignored by Mladić, demonstrating Mladić’s and the VRS leadership’s tolerance of paramilitary crimes, such as:

- when Mladić issued that 28 July subordination order, the VRS Main Staff was reporting to him that paramilitary groups were filled with criminals and

⁴⁵⁷ *Kvočka* AJ, para.23 (emphasis added).

⁴⁵⁸ Compare Mladić-AB, para.308 with Mladić-AB, paras.309-312 (relying overwhelmingly on evidence addressed by the Chamber).

⁴⁵⁹ Mladić-AB, para.309.

⁴⁶⁰ Mladić-AB, para.309. *Also* para.310.

⁴⁶¹ Judgement, para.3855.

⁴⁶² Judgement, paras.4239-4240. *Also* Judgement, paras.3856-3916.

⁴⁶³ Judgement, para.3840 *citing* Exh.P5112—*both cited at* Mladić-AB, fn.451.

convicts, displayed hatred of non-Serbs and constituted “the genocidal element among the Serbian people”;⁴⁶⁴ and

- the decision to subordinate paramilitaries “legitimised and enabled their continued criminal activities.”⁴⁶⁵

The Chamber reached reasoned conclusions based on all the evidence.⁴⁶⁶ Mladić simply cherry-picks his preferred evidence and ignores the rest.

114. In relation to Mladić’s Geneva Convention orders, Mladić’s arguments misrepresent the Judgement and amount to mere disagreement with the Chamber’s interpretation of the evidence.⁴⁶⁷ First, Mladić simply asserts these orders were “genuine warnings”, despite the Chamber’s finding that they “were not indicative of his true state of mind.”⁴⁶⁸ Mladić then misrepresents the Judgement by claiming that the Chamber “omitted to provide any reasoning as to why this direct evidence” did not support an alternative *mens rea* inference.⁴⁶⁹ In fact, the Chamber reasoned that Mladić’s Geneva Convention orders and statements indicating a desire for peace—which “sometimes provid[ed] misinformation”⁴⁷⁰—were not genuine because they were:

- “inconsistent with the Accused’s other conduct”⁴⁷¹—for instance, his significant contribution to the common purpose with knowledge of the crimes;⁴⁷²
- “directly contradicted by his other contemporaneous statements”;⁴⁷³ and
- inconsistent with “what happened on the ground”,⁴⁷⁴ namely the wholesale disregard for the Geneva Conventions through a prolonged, systematic

⁴⁶⁴ Judgement, para.3839.

⁴⁶⁵ Judgement, para.3842.

⁴⁶⁶ Judgement, para.3855.

⁴⁶⁷ See *Prlić AJ*, para.25(1), (10).

⁴⁶⁸ Judgement, para.4687. See Judgement, paras.4517-4520, 4524, 4526, 4545.

⁴⁶⁹ Mladić-AB, para.311.

⁴⁷⁰ Judgement, para.4687.

⁴⁷¹ Judgement, para.4687.

⁴⁷² Judgement, para.4685.

⁴⁷³ Judgement, para.4687. See Judgement, para.4686.

⁴⁷⁴ Judgement, para.4687.

campaign of crimes committed by Mladić's subordinates and other state organs.⁴⁷⁵

115. Likewise, Mladić's assertion that the Chamber "only made findings on [Mladić's orders to observe ceasefires] in relation to [Mladić's] *actus reus*,"⁴⁷⁶ is plainly contradicted by the Chamber's express discussion of such ceasefire orders in assessing Mladić's *mens rea*.⁴⁷⁷ In any event, Mladić does not explain how these orders concerning combat activities undermine the Chamber's findings on his *mens rea*—let alone constitute a "direct evidentiary representation" of it.⁴⁷⁸ Much of the common purpose was pursued through crimes perpetrated independently of combat activities. Mladić points to no orders that concern times or places that would have prevented VRS attacks on towns and villages in the Municipalities carried out in pursuit of the common purpose.⁴⁷⁹

3. The Chamber properly relied on Mladić's Assembly speeches (3.B.8)

116. Mladić's claim that the Chamber improperly relied on his 16th and 24th Assembly session speeches is misconceived.⁴⁸⁰ In arguing that there exists another reasonable inference inconsistent with the Chamber's *mens rea* conclusion, Mladić points to fragments of the transcripts of these two Assembly sessions and seeks to interpret them in isolation from the totality of the record. That a few fragments of evidence may, in isolation, point in a different direction from a conclusion drawn by the Chamber based on its holistic assessment of thousands of pieces of evidence does not equate to reasonable doubt—but this erroneous premise permeates Mladić's arguments under B.8.⁴⁸¹

117. In any event, Mladić makes misleading and unsubstantiated assertions⁴⁸² about the evidence and fails to show the Chamber's evidentiary interpretations are

⁴⁷⁵ *E.g.* Judgement, paras.4224-4225, 4227, 4229-4232.

⁴⁷⁶ Mladić-AB, para.312.

⁴⁷⁷ Judgement, paras.4677, 4680, 4687.

⁴⁷⁸ Mladić-AB, para.312.

⁴⁷⁹ Moreover, the crimes in the Municipalities were overwhelmingly committed in 1992. Mladić points to no ceasefire order prior to 1993. *Compare* Judgement, Chapter 4 *with* Judgement, paras.4325-4328 *and* Mladić-AB, fn.463.

⁴⁸⁰ *Contra* Mladić-AB, para.317. *Also contra* Mladić-AB, paras.136, 892-893.

⁴⁸¹ Mladić-AB, paras.325-330.

⁴⁸² Mladić-AB, para.321.

unreasonable. The Chamber considered Mladić's claim⁴⁸³—that he sought only legitimate military successes rather than permanent removal of Muslims and Croats⁴⁸⁴—and reasonably rejected it based on an overwhelming body of contrary evidence.

118. Moreover, Mladić makes no attempt to meet his burden of showing how his alleged errors invalidate the Chamber's *mens rea* conclusion—which is grounded in hundreds of underlying findings and rests on a vast body of evidence. Mladić merely asserts that the “consequence” of his proposed re-interpretation of two items of evidence is the “invalidat[ion]” of the Chamber's *mens rea* conclusion.⁴⁸⁵ This does not meet his burden of demonstrating impact.

(a) The Chamber properly relied on Mladić's 16th Assembly session statements

119. The Chamber conducted a detailed assessment of the speeches of Mladić and others at the 16th Bosnian Serb Assembly session and reasonably concluded—based on the plain words of multiple speakers—that at this session, the Assembly adopted the objective of separating people along ethnic lines and that Mladić and others made statements expressing this understanding of this objective.⁴⁸⁶ Mladić does not explain how the Chamber supposedly erred in weighing this evidence, or how this aspect of the Judgement is supposedly not reasoned.⁴⁸⁷ Instead, he points to fragments of his speech at this session and asks the Appeals Chamber to accept his interpretation over the Chamber's and to misapply the reasonable doubt standard to individual pieces of evidence rather than the totality.⁴⁸⁸ This does not meet his burden on appeal.

120. Moreover, Mladić shows no “confus[ion]” on the part of the Chamber concerning his references to the “trenches” in this speech.⁴⁸⁹ He points to a passage where he emphasised the importance of Serbs being in “the trenches”,⁴⁹⁰ while the

⁴⁸³ Mladić-AB, para.321.

⁴⁸⁴ Judgement, para.4613 *citing* Mladić-FTB, para.115.

⁴⁸⁵ Mladić-AB, para.333.

⁴⁸⁶ *E.g.* Judgement, paras.3694-3708, 4222, 4460-4461, 4477, 4625.

⁴⁸⁷ Mladić-AB, para.321.

⁴⁸⁸ Mladić-AB, paras.325-327.

⁴⁸⁹ *Contra* Mladić-AB, paras.322-323.

⁴⁹⁰ Mladić-AB, para.322 *citing* Exh.P431, p.33.

Chamber relied on a different passage where Mladić advocated “eliminat[ing]” their enemies before they got into “trenches”.⁴⁹¹

121. Similarly, Mladić fails to specify any purported warning to the deputies not to interpret the six strategic goals as calls for “unlawful violence”.⁴⁹² In any event, the Chamber concluded—based on the totality of the record—that Mladić expressed his commitment to the six strategic objectives and shared the permanent removal objective.⁴⁹³ Mladić does not undermine these conclusions by pointing to a few fragments of that record and seeking to interpret them in isolation.

(b) The other exhibits Mladić relies on do not assist him

122. The evidence Mladić relies on to support his supposed alternative inference to the Chamber’s *mens rea* conclusion was either expressly considered by the Chamber,⁴⁹⁴ or falls squarely within its reasons.⁴⁹⁵ Mladić does not acknowledge this—let alone engage with the Chamber’s reasoning. This flawed methodology is likewise incapable of establishing error. In any event, he cites material of little or no relevance. For instance, Mladić fails to explain how his 1994 order for “full combat readiness”⁴⁹⁶ in the face of NATO attacks against Serb positions could have any relevance to his *mens rea*. Similarly, Mladić relies on a 13 July 1992 order⁴⁹⁷ which concerns Sarajevo and which in any event the Chamber found did not “assist in determining the true state of mind of the Bosnian-Serb leadership” as Mladić’s “motivation for the order[] did not lie with the well-being of the civilian population but with insubordination or wasting of ammunition.”⁴⁹⁸

⁴⁹¹ Judgement, paras.4460 (citing Exh.P431, p.33), 4625.

⁴⁹² Mladić-AB, para.326, fn.477 citing Exh.P431, pp.34-35.

⁴⁹³ Judgement, paras.4685-4686.

⁴⁹⁴ Compare Mladić-AB, paras.325-326, fns.476, 479 with Judgement, paras.4524 (citing Exh.D1514), 4731 (citing S.Tuševljak:Exh.D540, para.28—mistakenly referenced as Exh.D539, para.28), 1574 (citing Exh.P3483), 4328 (citing Exh.P5040—substantially identical to Exh.D962), 4327 (citing Exh.D1982), 4558 (citing Exh.P587), 4904 (citing Exh.D66/Duplicate-Exh.P5031).

⁴⁹⁵ Compare Exh.D187 cited at Mladić-AB, fn.476 with Judgement, paras.4518, 4520, 4523-4525; compare Exh.P794 cited at Mladić-AB, fn.476 with Judgement, paras.4573, 2467, 2472; compare Exh.P358, p.91 cited at Mladić-AB, fn.476 with Judgement, paras.4519-4520.

⁴⁹⁶ Mladić-AB, fn.479 citing Exh.P587.

⁴⁹⁷ Mladić-AB, fn.479 citing Exh.D66/Duplicate-Exh.P5031.

⁴⁹⁸ Judgement, para.4737.

(c) The Chamber properly relied on Mladić’s 24th Assembly session statements

123. Mladić does not even engage with the Chamber’s reasoning, let alone explain how two excerpts from his 24th Bosnian Serb Assembly speech would supposedly change its conclusion regarding his *mens rea*. In particular, Mladić fails to explain how his supposed “attempts to calm” Assembly members or “defend[] UNPROFOR personnel”⁴⁹⁹ at the 24th Session—stripped of their context—have any bearing on the Chamber’s *mens rea* conclusions.

124. Mladić likewise shows no error in the Chamber’s reliance on a Bosnian Serb Assembly conclusion that “Muslims should be taken out of ‘Serbism’ forever, and that the Muslims, as a nation, were a ‘sect’ of Turkish provenance; a communist, artificial creation which the Serbs did not accept.”⁵⁰⁰ He argues that these were merely “the quotes of others”,⁵⁰¹ while ignoring the Chamber’s reliance on the fact that this was a “unanimous conclusion” adopted at a session “attended by the VRS Main Staff, including Mladić”.⁵⁰²

V. GROUND 4: MLADIĆ IS RESPONSIBLE FOR THE CRIMES IN SARAJEVO

125. Mladić’s convictions for murder, unlawful attacks and terror as part of the campaign of sniping and shelling against the civilian population in Sarajevo are sound.

126. For almost four years, under Mladić’s command and control and with his direct involvement, the SRK engaged in almost daily sniping and shelling of the civilian population that killed many hundreds of civilians, injured thousands and destroyed or damaged homes.⁵⁰³ The inhabitants of Sarajevo lived in constant fear that they or their loved ones would be hit by shell or sniper fire, causing them significant stress and trauma.⁵⁰⁴ This trauma added to the strain resulting from already very difficult living

⁴⁹⁹ Mladić-AB, para.328, fn.481 *citing* Exh.P6921, p.12.

⁵⁰⁰ Judgement, para.4627 *citing* Exh.P6921, pp.1-3, 96-97.

⁵⁰¹ Mladić-AB, para.329 *citing* Judgement, para.4627.

⁵⁰² Judgement, para.4627.

⁵⁰³ Judgement, paras.1888-1889, 3195. *Below* paras.127, 150.

⁵⁰⁴ Judgement, para.1889.

conditions in Sarajevo, where inhabitants lacked basic necessities such as food, water, gas and electricity.⁵⁰⁵

127. Mladić shared the common criminal purpose with other JCE members to spread terror among the civilian population in Sarajevo through a campaign of sniping and shelling.⁵⁰⁶ He was among the members of the Bosnian Serb leadership who outlined their brutal policy for Sarajevo in the 16th Bosnian Serb Assembly session on 12 May 1992—the day Mladić took up his post as VRS commander.⁵⁰⁷ About two days later heavy shelling started, and on 28-29 May 1992 Mladić personally directed a wholesale attack on the entire city,⁵⁰⁸ selecting targets and directing fire away from predominantly Serb-populated areas.⁵⁰⁹ Mladić was thus instrumental to the campaign beyond his general command over the SRK and participation in policy decisions. He also procured modified air bombs—highly inaccurate weapons that could only be aimed at a general area.⁵¹⁰ These weapons were clearly unsuited for use in urban Sarajevo. That Mladić nevertheless approved their use on numerous occasions⁵¹¹ is a clear indication of his intent to spread terror among the civilian population.

128. Mladić attempts to challenge the ICTY's jurisdiction for terror but fails to show cogent reasons to depart from settled law.⁵¹² The rest of his challenges are permeated by his erroneous claim that Sarajevo as a whole was a legitimate military target.⁵¹³ Mladić develops his crime base challenges only in relation to a few specific incidents. His mere allegations that his arguments equally apply to others should be summarily dismissed.⁵¹⁴

129. Mladić's challenges to individual aspects of the Chamber's evidentiary analysis in isolation fail to show that the Chamber's conclusions on his crimes and responsibility were unreasonable.⁵¹⁵ Mladić does not engage with the Chamber's overall assessment of the evidence and overlooks relevant Chamber findings and

⁵⁰⁵ Judgement, para.1890.

⁵⁰⁶ Judgement, para.4921.

⁵⁰⁷ Judgement, paras.276, 4740, 5047.

⁵⁰⁸ Judgement, para.4902.

⁵⁰⁹ Judgement, para.4921.

⁵¹⁰ Judgement, para.1913.

⁵¹¹ Judgement, paras.4893, 4792.

⁵¹² Sub-grounds 4.A.1 and 4.A.2.

⁵¹³ Sub-grounds 4.A.3; 4.A.4.4; 4.A.4.5; 4.A.5; 4.B.3.1.2; 4.B.3.1.4.

⁵¹⁴ Sub-ground 4.B.3.2. *Also* 4.B.3.3.

⁵¹⁵ Sub-ground 4.A.4.

reasoning.⁵¹⁶ His argument that the Chamber erred in its reliance on adjudicated facts shows a fundamental misunderstanding of the adjudicated facts regime.⁵¹⁷

130. Mladić fails to show error in his convictions for murder, unlawful attacks and terror in Sarajevo as a member of a JCE. Ground 4 should be dismissed.

A. The ICTY had jurisdiction over terror (4.A.1 and 4.A.2)⁵¹⁸

131. The ICTY had jurisdiction over the crime of terror because it formed part of customary international law at the relevant time, was sufficiently specific and was foreseeable to Mladić.

1. Terror is a crime under customary international law (4.A.1)

132. Mladić fails to demonstrate cogent reasons to depart from established ICTY Appeals Chamber jurisprudence that terror constituted a crime under customary international law during the Indictment period.⁵¹⁹ Following careful analysis, the *Galić* Appeals Chamber confirmed the criminalisation of terror under customary international law,⁵²⁰ and ICTY trial chambers have consistently exercised jurisdiction over the crime.⁵²¹ Due to the normative continuity between the ICTY and the Mechanism, the Mechanism's Appeals Chamber is mandated to interpret the ICTY's jurisdiction consistently with the jurisprudence and practice of the ICTY Appeals Chamber.⁵²²

133. In challenging that terror was criminalised under customary international law, Mladić does not demonstrate cogent reasons to depart from this well-reasoned jurisprudence. A variety of sources support the customary international law status of the crime of terror in both international and non-international armed conflicts.

⁵¹⁶ Sub-grounds 4.A.5; 4.B.3.3; 4.B.3.4.

⁵¹⁷ Sub-ground 4.B.3.2.

⁵¹⁸ Mladić's arguments under Sub-grounds 4.A.1 and 4.A.2 fall outside his notice of appeal and can be dismissed on this basis alone. See *Krajišnik* AJ, para.394. Compare Mladić-NOA, Ground 4 with Sub-grounds 4.A.1 and 4.A.2.

⁵¹⁹ *Contra* Mladić-AB, para.336. See *Đorđević* AJ, para.24 (citing *Krajišnik* AJ, para.655; *Galić* AJ, para.117).

⁵²⁰ *Galić* AJ, paras.91-98. Also *Galić* TJ, paras.113-132; *D.Milošević* AJ, para.30.

⁵²¹ E.g. *Karadžić* TJ, paras.458-466; *Prlić* TJ, Vol.I, paras.194-196; *D.Milošević* TJ, paras.874-875. Also *Prlić* AJ, paras.562-565; *D.Milošević* AJ, para.30.

⁵²² *Lukić* Appeals Judges Assignment Order, p.1 quoting *Munyarugarama* Referral AD; *Ngirabatware* AJ, para.6.

134. At the time of Mladić’s crimes, terror was criminalised in numerous states situated on four continents—Europe, Africa, Asia and North America—including the former Yugoslavia.⁵²³ A variety of other states continued the trend of criminalisation following their pre-1992 ratification of API and APII.⁵²⁴

135. As regards international armed conflicts, the ratification of API by 108 countries in 1992⁵²⁵ further demonstrates the customary international law status of the crime of terror. Article 85 of API sets out the obligation of states to punish individuals who commit enumerated “grave breaches”,⁵²⁶ including “making the civilian population or individual civilians the object of attack.”⁵²⁷ Terror as set out in Article 51(2) of API is a specific form of such attack and amounts to a grave breach, at least when causing death or serious injury to body or health.⁵²⁸

136. Concerning non-international armed conflicts, the ICTR Statute, which came into force in the midst of the Indictment period,⁵²⁹ reflects customary international

⁵²³ See *Galić* AJ, paras.94-97. *Contra* Mladić-AB, paras.342, 344-346. In addition to the six states listed by Mladić, the *Galić* Appeals Chamber correctly identified the criminalisation of terror in Ireland, Bangladesh and in the former Yugoslavia.

Other states, not identified in *Galić* also criminalised the crime of terror at the relevant time:

- China (Law on the Trial of War Criminals, Art.III (“planned slaughter, murder or other terrorist action” listed as a war crime));
- United States (US Naval Handbook, para.6.2.5); and
- Denmark criminalised terror before 1992 (Military Criminal Code, Art.25(1) (“Any person who uses war instruments or procedures the application of which violates an international agreement entered into by Denmark or the general rules of international law, shall be liable [and penalised]”). Denmark signed the Additional Protocols in 1977 and ratified them in 1982. See ICRC, IHL databases, Treaties, States Parties and Commentaries, Denmark, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=DK&nv=4 (last accessed 22 October 2018).

⁵²⁴ See *Galić* AJ, fn.297.

⁵²⁵ Additionally API was signed but not ratified by 15 more countries. ICRC 1991 Annual Report, pp.130-134. Yugoslavia signed and ratified API in 1979. API and APII Ratification by Yugoslavia.

⁵²⁶ API, Art.85(5).

⁵²⁷ API, Art.85(3)(a).

⁵²⁸ See *Galić* AJ, para.87 (“Articles 51(2) of Additional Protocol I and 13(2) of Additional Protocol II [...] do not contain new principles but rather codify in a unified manner the prohibition of attacks on the civilian population”). *Compare* API, Art.51(2) (“The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”) *with* API, Art.85(3)(a) (“making the civilian population or individual civilians the object of attack” shall be regarded as a grave breach “when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health”).

⁵²⁹ ICTR Statute.

law at the relevant time.⁵³⁰ It established jurisdiction over “[a]cts of terrorism” as a “serious violation” of APII.⁵³¹

2. The crime of terror was sufficiently defined and foreseeable to Mladić (4.A.2)

137. In arguing that the crime of terror was insufficiently defined and thus violated the principle of *nullum crimen sine lege*,⁵³² Mladić overlooks that the *nullum crimen* principle does not demand that customary international law crimes be measured by the standards of specificity required for statutory provisions.⁵³³ Mladić takes issue in particular with the *D.Milošević* Appeals Chamber’s clarification of the result requirement for the crime of terror.⁵³⁴ However, the *nullum crimen* principle does not prevent a court from interpreting and clarifying the elements of a particular crime.⁵³⁵ The crime of terror was sufficiently defined since the *actus reus* limits it to specific conduct, coupled with a matching *mens rea* element and the additional specific intent to spread terror—the latter being the core of the crime of terror.⁵³⁶

138. Mladić fails to show that the Appeals Chamber in *D.Milošević* inappropriately limited the ICTY’s jurisdiction to crimes which had grave consequences for the victims, in line with the *Tadić* conditions.⁵³⁷ Because the grave consequences

⁵³⁰ *Nicaragua Case*, para.183 citing *Continental Shelf (Libyan Arab Jamahiriya/ Malta)*, I.C.J. Reports 1985, pp. 29-30, para. 27; *North Sea Continental Shelf Case* para.73. The *Akayesu* Trial Chamber determined that Article 4 of APII—which contains a prohibition on “acts of terrorism” committed against those not taking a direct part in hostilities—is part of customary international law, in part because Article 4’s protections “supplement Common Article 3”. *Akayesu* TJ, para.610. See APII, Art.4(2)(d). The ICTY Appeals Chamber has determined that serious violations of Common Article 3 are criminalised, including for non-international armed conflict. *Tadić* Jurisdiction AD, para.134. Also *Akayesu* TJ, para.608.

⁵³¹ ICTR Statute, Art.4.

In 1996 the ILC also expressly designated serious acts of terrorism committed during non-international armed conflict as war crimes. ILC Draft Code (48th Session, 1996), Art.20(f)(iv). Although this report post-dates the Indictment period, the ILC necessarily would have been examining state practice prior to the date of its report in drafting. While the ILC’s work does not constitute state practice, it “reflects legal considerations largely shared by the international community” and can be a “subsidiary means” of identifying rules of law. *Vasiljević* TJ, para.200.

⁵³² Mladić-AB, paras.354-370.

⁵³³ *Ojdanić* JCE Decision, paras.38-39 quoting Trial of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No.10, Vol.III (“Justice case”), pp.974-975. Also *Galić* AJ, Separate Opinion of Judge Shahabuddeen, paras.3-4.

⁵³⁴ Mladić-AB, para.361 taking issue with *D.Milošević* AJ, para.33.

⁵³⁵ *Ojdanić* JCE Decision, para.38.

⁵³⁶ *D.Milošević* AJ, paras.31-33. Also *Galić* AJ, para.102 (“the primary concern [...] is that those acts or threats be committed with the specific intent to spread terror among the civilian population”). *Contra* Mladić-AB, paras.363-364 quoting *D.Milošević* AJ, Dissenting Opinion of Judge Liu Daqun, para.17.

⁵³⁷ *D.Milošević* AJ, para.33 (“Causing death or serious injury to body or health [...] is not an element of the offence *per se*. What is required [...] for the offence to fall under the jurisdiction of this

requirement is jurisdictional, the definition of terror does not “create two distinct sets of victims”.⁵³⁸ The victim group of the crime remains “the civilian population or individual civilians not taking direct part in hostilities”, but the Tribunal can only exercise jurisdiction over crimes where victims suffered grave consequences resulting from the acts or threats of violence.⁵³⁹

139. The crime of terror was also foreseeable to Mladić.⁵⁴⁰ The *Galić* Appeals Chamber recognised the law of the former Yugoslavia—which criminalised terror in its criminal and military law—as relevant to foreseeability and accessibility of the law to SRK Commander Stanislav Galić.⁵⁴¹ The law was likewise foreseeable and accessible to Mladić⁵⁴² as a career military officer and Commander of the VRS Main Staff, and Galić’s superior.⁵⁴³

B. Sarajevo as a whole was not a legitimate military target (4.A.3)

140. Mladić’s argument that terror was not the primary purpose of the JCE members, including Mladić, is based on the erroneous claim that Sarajevo as a whole was a legitimate military target which could therefore be attacked by any means.⁵⁴⁴ This fundamentally misunderstands the principle of distinction.

141. The presence of legitimate military targets within Sarajevo was undisputed.⁵⁴⁵ But this does not turn Sarajevo *in its entirety* into “a valid military objective”,⁵⁴⁶ and

Tribunal, is that the victims suffered grave consequences”) *citing Tadić* Jurisdiction AD, para.94. *Also* ICTY Statute, Art.3; *Karadžić* TJ, para.461. In light of this jurisdictional requirement, there is a clear minimum threshold for prosecution before the ICTY. *Contra* Mladić-AB, para.364.

⁵³⁸ *Contra* Mladić-AB, para.366.

⁵³⁹ *D.Milošević* AJ, paras.31-35.

⁵⁴⁰ *Contra* Mladić-AB, paras.359, 367.

⁵⁴¹ *Galić* AJ, para.96. *See* Yugoslavia 1976 Criminal Code, adopted 28 September 1976, Art.142 (“War crime against the civilian population: Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to [...] application of measures of intimidation and terror [...] or who commits [this act], shall be punished by imprisonment for not less than five years or by the death penalty.”); Yugoslavia 1988 Military Manual, pp.14 (the state has an obligation to define “serious violations of the laws and customs of war” as criminal offences), 18 (under the heading “War crimes and other serious violations of the laws of war”, including the crime “attack on civilians”), 29 (referring to prohibition on “attacking civilians for the purpose of terrorising them”) *both cited in Galić* AJ, para.96, fns.303-304.

⁵⁴² *See Galić* AJ, para.96; *Ojdanić* JCE Decision, para.40. *Contra* Mladić-AB, para.359.

⁵⁴³ *See* Judgement, paras.239, 276.

⁵⁴⁴ *Contra* Mladić-AB, para.373-374.

⁵⁴⁵ *See* T.44861 *cited at* Mladić-AB, para.382. *Also* T.44767-44768; Judgement, para.4693.

⁵⁴⁶ Mladić-AB, para.385.

the Chamber was correct in not treating it as such.⁵⁴⁷ ICTY jurisprudence has confirmed that an entire city—or even zones within a city—cannot be deemed a legitimate military objective.⁵⁴⁸ Even when there are legitimate military targets within a city, a distinction must be made “between the civilian population and combatants, or between civilian and military objectives” on a case-by-case basis.⁵⁴⁹ The prohibition of attacks against civilians is absolute,⁵⁵⁰ regardless of “the military advantage offered by holding Sarajevo”.⁵⁵¹

142. The Chamber rightly rejected Mladić’s argument about Sarajevo as a “defended city” as “unmeritorious”,⁵⁵² pointing out that he was not charged under Article 3(c) (attacking an undefended town).⁵⁵³ In relation to the sniping and shelling campaign, the Indictment clearly charges Mladić with terror, unlawful attacks on civilians⁵⁵⁴ and murder.⁵⁵⁵ These crimes are distinct from the crime of attack of undefended towns.⁵⁵⁶ Regarding the crimes with which Mladić *was* charged, the relevant question is not whether Sarajevo was defended, but whether the acts were directed against legitimate military targets or against civilians not taking direct part in hostilities and/or the civilian population.⁵⁵⁷ The Chamber was mindful of this distinction and provided reasons for its conclusions that the sniping and shelling incidents underlying Mladić’s terror, unlawful attacks and murder convictions were directed against civilians or the civilian population and, thus, were unlawful.⁵⁵⁸

143. The manner in which the sniping and shelling campaign was carried out also shows that the primary purpose was to spread terror among Sarajevo’s civilian population.⁵⁵⁹ SRK members targeted civilians⁵⁶⁰ as they carried out “daily

⁵⁴⁷ Judgement, paras.4740, 3201. *Also* Judgement, paras.3193-3194, 3196-3200. *See* Judgement, para.4693; T.44767-44768.

⁵⁴⁸ *D.Milošević* AJ, para.54.

⁵⁴⁹ *D.Milošević* AJ, para.54.

⁵⁵⁰ *Galić* AJ, para.130 (*citing Blaškić* AJ, para.109; *Kordić* AJ, para.54). *Also D.Milošević* AJ, para.53 *citing Galić* AJ, para.190.

⁵⁵¹ *Contra* Mladić-AB, para.388.

⁵⁵² Judgement, para.4733.

⁵⁵³ *See* ICTY Statute, Art.3(c).

⁵⁵⁴ Indictment, Counts 9-10. *Also* Indictment, paras.75-81; Judgement, para.4733.

⁵⁵⁵ Indictment, para.64 (charging murder for “acts of murder that formed part of the objective to spread terror among the civilian population of Sarajevo [...]”).

⁵⁵⁶ *Contra* Mladić-AB, para.378: the Indictment’s reference to Article 3 “should be understood to *include* a reference to Art.3(c)” (emphasis in original). *See* Judgement, para.4733.

⁵⁵⁷ *See* Judgement, paras.3186, 3208.

⁵⁵⁸ Judgement, paras.3189-3206, 3210-3212.

⁵⁵⁹ Judgement, para.3201. *Also* Judgement, paras.1888-1890, 1913. *Below* para.172.

⁵⁶⁰ Judgement, para.3196.

activities”⁵⁶¹ in civilian locations including: homes; buses and trams; parks; cemeteries; hospitals, clinics and ambulances; schools; and at food, water and fuel sources.⁵⁶² The victims were mostly not in the vicinity of military targets or personnel.⁵⁶³

C. Mladić and other JCE members shared a common criminal purpose of spreading terror in Sarajevo (4.A.4)

144. The Chamber was reasonable to conclude that: (i) a JCE existed with the primary purpose of spreading terror among the civilian population in Sarajevo through a campaign of sniping and shelling,⁵⁶⁴ and that (ii) Mladić shared this intent, including the intent to perpetrate murder, terror and unlawful attacks.⁵⁶⁵ In reaching these two conclusions, the Chamber relied on many of the same underlying and interrelated factual findings—which were amply supported by the evidence—and considered Mladić’s orders purporting to protect the civilian population. The Bosnian Serb leadership, including Mladić, outlined their brutal strategy for Sarajevo on 12 May 1992 at the 16th Assembly Session.⁵⁶⁶ Immediately following this Assembly Session and for almost four years, the SRK—under Mladić’s command and control and with his direct involvement⁵⁶⁷—implemented this policy by carrying out a sniping and shelling campaign to spread terror among Sarajevo’s civilian population.⁵⁶⁸

145. Mladić challenges individual aspects of the Chamber’s analysis in isolation, but fails to show that the Chamber’s conclusions were unreasonable.

⁵⁶¹ Judgement, para.3201.

⁵⁶² Judgement, paras.1888-1890 *relying on* paras.1858, 1862-1863, 1872, 1867, 1876, 1883, 1885. *Contra* Mladić-AB, paras.383-384.

⁵⁶³ Judgement, para.3199. *E.g.* Judgement, paras.1922, 1937, 1959, 1974, 1984, 1988, 1994, 1996, 2011, 2013, 2097, 3197-3198.

⁵⁶⁴ Judgement, para.4740.

⁵⁶⁵ Judgement, para.4921.

⁵⁶⁶ Judgement, paras.4740, 4897.

⁵⁶⁷ Judgement, paras.4789-4792. *Also* Judgement, paras.239, 265, 276. *Above* para.127.

⁵⁶⁸ Judgement, para.4740.

1. The Chamber reasonably interpreted Mladić's 16th Assembly Session statements (4.A.4.4)

146. The Chamber concluded that at the 16th Assembly Session Mladić and other Bosnian Serb leaders outlined their policy for Sarajevo.⁵⁶⁹ The Chamber reasonably interpreted Mladić's statements at the 16th Assembly Session as supporting the common criminal purpose and that Mladić shared it.⁵⁷⁰ Mladić's challenge to the Chamber's interpretation is based on two misconceptions: (i) that the Chamber should have assessed his statements in isolation; and (ii) that the beyond reasonable doubt standard applies to fragments of the evidence. In any event, the reasonableness of the Chamber's conclusion on the common criminal purpose and Mladić's shared intent do not hinge on the interpretation of Mladić's 16th Assembly Session statements.

(a) The Chamber appropriately interpreted Mladić's contemporaneous statements in context

147. The Chamber appropriately interpreted Mladić's contemporaneous statements in context, which included subsequent events.⁵⁷¹ It therefore reasonably interpreted Mladić's 16th Assembly Session statements in light of the campaign of sniping and shelling against the civilian population of Sarajevo that followed those statements.

148. When Mladić addressed the 16th Assembly Session on 12 May 1992 he announced: "One cannot take Sarajevo by spitting at it from a mortar or a howitzer."⁵⁷² He announced that "[if] we want to make the Muslims surrender, 300 guns must be densely planted around Sarajevo".⁵⁷³

149. Mladić was appointed VRS Main Staff Commander the same day, and the campaign of sniping and shelling intensified almost immediately.⁵⁷⁴ The SRK commenced heavy shelling on or about 14 May 1992 which wounded civilians and destroyed homes and mosques.⁵⁷⁵ Two weeks later, Mladić personally directed a

⁵⁶⁹ Judgement, paras.4740, 4897.

⁵⁷⁰ *Contra* Mladić-AB, para.398. *Also* Mladić-AB, paras.409, 413.

⁵⁷¹ *See* Karemera AJ, para.409. *Also* Nahimana AJ, para.701.

⁵⁷² Judgement, para.4816 *quoting* Exh.P431, p.35.

⁵⁷³ Judgement, para.4816 *quoting* Exh.P431, p.36.

⁵⁷⁴ Judgement, paras.276, 4917, 4798.

⁵⁷⁵ Judgement, paras.4917, 1888, 1871, 2154, 2155, 4699. *Also* [REDACTED].

massive, city-wide bombardment on 28 and 29 May.⁵⁷⁶ In spite of objections and intervention from JNA and other officials, he selected civilian targets and directed fire away from predominantly Serb-populated areas.⁵⁷⁷

150. Under Mladić's command and control and with his direct involvement,⁵⁷⁸ the sniping and shelling campaign continued almost unabated for nearly four years.⁵⁷⁹ The SRK targeted civilians, including children, while carrying out daily activities—walking, playing, shopping at markets, queuing for water and food and travelling in trams.⁵⁸⁰ Civilians were targeted even though there were no military activities or objectives close by.⁵⁸¹

⁵⁷⁶ Judgement, paras.2022, 4921. *Below* para.177.

⁵⁷⁷ Judgement, paras.2022, 4755-4756, 4898, 4903, 4921. *Also* Judgement, para.2020 *citing* Exh.P329, paras.5-6, J.Wilson:T.3971-3973; [REDACTED]. *Below* paras.190-191.

⁵⁷⁸ *See* Judgement, paras.4921, 4789-4793, 4893. *Also* Judgement, paras.239, 265, 276. *Above* para.127.

⁵⁷⁹ Judgement, para.4740.

⁵⁸⁰ Judgement, paras.3201, 1922 (F.1: three-and-a half year old girl shot on her porch; no armed personnel in the vicinity), 1925 (F.3: woman shot collecting water), 1930 (F.4: mother and eight-year old daughter shot when getting school books; no ongoing military activity at the time, no soldiers, uniformed personnel or any military equipment in the immediate vicinity), 1937 (F.5: woman in civilian clothes shot between her house and a well, while carrying water buckets; no soldiers nor military vehicles present in the immediate vicinity), 1943 (F.9: 16-year-old girl shot on her way home), 1953 (F.11: woman shot in a tram during a cease-fire; no military vehicles or equipment, apart from UNPROFOR, near the location of the incident), 1959 (F.12: woman and seven-year-old son shot walking on the street; no military personnel or equipment present in the immediate vicinity); 1964 (F.13: two women shot in a tram during a cease-fire), 1969 (F.15: two civilian men shot in a tram; no ABiH presence at the time and place of the incident), 1974 (F.16: 14-year-old boy shot on the street; no barracks, trenches, or other military installations near-by), 1980 (two civilians killed while retrieving water), 1982 (one man dressed in civilian clothes shot while picking lettuce), 1984 (woman in civilian clothes shot while walking on the street; no uniformed soldier or other military activity); 1986 (woman in civilian clothes shot while on her way home from collecting firewood), 1988 (three young females in civilian clothes shot while walking on the street), 1992 (woman shot on residential street with no military activity), 1994 (employee of Public Utilities Company shot collecting rubbish on the street), 1996 (woman shot returning from a well, no military positions or armed individuals nearby), 1998 (woman killed in apartment; no soldiers or combat nearby), 2000 (woman shot on road), 2003 (14-year-old boy killed), 2011 (woman shot while fetching wood in her backyard), 2013 (woman killed in her apartment), 2022 (G.1: Rounds of all calibers impacted throughout the city with a concentration on the old town; RM115 injured by shrapnel at hospital; no armed ABiH soldiers or security guards inside the hospital, no military related facilities in the hospital's vicinity); 16-year old girl injured in her home, no military facilities in the vicinity), 2041 (G.4: two mortar shells fired at make-shift football pitch in parking lot, killing and injuring civilians, including children; around 40-60 off-duty and unarmed ABiH soldiers present; nuclear shelter 100m from parking lot and trench nearby, but shells fired in quick succession, landing at almost the same spot), 2050 (G.6: three mortars hit area where children were playing, killing six children under 12 and severely wounding six other civilians; hit during lull in hostilities and with no activities of a military nature or soldiers in the neighbourhood), 2057 (G.7: civilians wounded and killed by mortar shells in residential neighbourhood while queuing for humanitarian aid; no ongoing military activities in the area), 2097 (G.8: mortar shell killed 68 people and wounded more than 140—almost all civilians, including women, children and elderly—at Markale Market; no ABiH presence in the vicinity), 2106 (G.10: MAB exploded in densely populated civilian area, killing one and injuring a number of other civilians), 2112 (G.13: MAB destroyed the top floor of an apartment building, injuring at least 16 civilians), 2119 (G.15: MAB exploded in residential area, injuring seven people), 2150 (G.18: 43 people died, 88 were wounded, great majority of whom were

151. From 1994 onwards, the SRK launched modified air bombs on the city. These were highly inaccurate weapons that could only be directed at general areas.⁵⁸² Mladić oversaw their development and personally approved the use of every single one of them.⁵⁸³ He also ordered utility cuts, forcing inhabitants outside into the danger of sniping and shelling⁵⁸⁴—as he had foreshadowed at the 16th Assembly Session:

[W]hen we start fighting over Sarajevo, we must not say before the international public [...] we are going to shut down your water and power supply [...] We are not going to say that we are going to destroy the power supply pylons or turn off the water supply, no, because that would get America out of its seat, but [...] one day there is no water at all in Sarajevo. What is it, we do not know, damage, we should fix it, no, we will fix it, slowly [...].⁵⁸⁵

Throughout the campaign, Mladić promoted and rewarded those involved in implementing the campaign⁵⁸⁶ and failed to prevent crimes or to punish perpetrators.⁵⁸⁷

152. The immediate increase in shelling after Mladić's statements at the 16th Assembly Session and the continuation of the campaign for almost four years under his control alone show the reasonableness of the Chamber's interpretation of Mladić's Assembly speech. Mladić's emphasis at the 16th Assembly Session that the strategy should not be revealed to the international community further supports the criminal

civilian including children, due to mortar shell exploding on Markale Market; no military facilities close to the market), 2155 (heavy shelling of residential areas, wounding three people), 2173 (shell killed ten and wounded at least 100 civilians, including two minors, some waiting in bread queue; area was not used for military purposes), 2177 (civilians fired at when crossing a bridge and walking on the street), 2183 (shells killed at least four civilians and seriously injured at least six), 2186 (rocket injured civilian driver of a tram in Grbavica), 2189 (MAB explosion injured at least three civilians), 2191 (MAB killed two, including one almost-two-year-old girl, and injured four others; no military targets in vicinity), 2193 (shell killed three and gravely injured two children), 2197 (MAB exploded on a residential apartment building, killing and injuring seven civilians), 2201 (MAB injured 13 civilians), 2203 (MAB landed in a residential garden; no military targets in the vicinity), 2206 (mortar shells landing in Stari Grad killed four people and injured 17 others), 2208 (shell landing in the yard of a family house injured three people), 2212 (MAB killed two civilians and injured 11 others), 2215 (MAB killed a civilian and injured another person).

⁵⁸¹ Judgement, para.3201. *Above* fn.580.

⁵⁸² Judgement, paras.1913, 3201.

⁵⁸³ Judgement, para.4792.

⁵⁸⁴ Judgement, paras.4916, 4921 *citing* Exh.P7406, p.1. *Also* Judgement, paras.1890, 4889.

⁵⁸⁵ Judgement, para.4817 *citing* Exh.P431, p.38.

⁵⁸⁶ *See* Judgement, paras.4264 (*citing* Exh.P5002), 4278 (*citing* Exh.P5023, p.3). *See* Exhs.P4571; P4987, pp.1, 5; Judgement, para.4740; Exh.P3689, p.8.

⁵⁸⁷ *See* Judgement, paras.4833-4839.

nature of the plan that Mladić shared, as it indicates his awareness of the illegal nature of the plan.⁵⁸⁸

153. The ICTY Appeals Chamber's approach in *Gotovina* does not undermine the reasonableness of this Trial Chamber's conclusion.⁵⁸⁹ The *Gotovina* Appeals Chamber did not take issue with the assessment of what was said at the Brioni meeting in context, namely the subsequent events.⁵⁹⁰ Rather, it disagreed with the Trial Chamber whether this context included unlawful artillery attacks.⁵⁹¹ Having overturned the Trial Chamber's finding on the unlawfulness of the artillery attacks, the Appeals Chamber considered that what was said at the Brioni meeting—without subsequent unlawful attacks—was insufficient to demonstrate the existence of a JCE.⁵⁹²

154. Here, Mladić fails to show error in the Chamber's conclusion that unlawful attacks and terror followed his speech.⁵⁹³ The Chamber thus properly took these ensuing criminal events into account in interpreting Mladić's 16th Assembly Session statements.

(b) The beyond reasonable doubt standard does not apply to fragments of evidence

155. In his attempt to challenge the Chamber's conclusion by pointing to another possible interpretation of his 16th Assembly Session statements, Mladić misapplies the beyond reasonable doubt standard to a fragment of the evidence.⁵⁹⁴ The question is not whether—considered in isolation—Mladić's comments at the 16th Assembly Session could support another inference.⁵⁹⁵ Rather, it is whether the Chamber's conclusion on the common purpose and Mladić's shared intent are reasonable in light of the totality of the record.

156. In any event, Mladić's claim that his statements could refer to lawful combat operations is based on the erroneous premise that Sarajevo as a whole was a military

⁵⁸⁸ Judgement, para.4897.

⁵⁸⁹ *Contra* Mladić-AB, paras.413-416.

⁵⁹⁰ *Gotovina* AJ, para.81.

⁵⁹¹ *Gotovina* AJ, paras.25, 64-67, 82-83.

⁵⁹² *Gotovina* AJ, paras.93, 96.

⁵⁹³ *Below* Sections V.B., V.D., V.E.1., V.E.3., V.E.4.

⁵⁹⁴ *Mrkšić* AJ, para.217. *Contra* Mladić-AB, para.417.

objective.⁵⁹⁶ The Chamber was right not to take this erroneous argument into account in interpreting Mladić's contemporaneous statements.⁵⁹⁷

(c) The conclusions on the common criminal purpose and Mladić's shared intent do not hinge on his 16th Assembly Session statements

157. In any event, the Chamber's conclusions on the existence of the common criminal purpose as well as Mladić's shared intent do not hinge on his 16th Assembly Session statements.

158. The Chamber based its common criminal purpose conclusions on a wide range of sources: international witnesses, insider witnesses and documentary evidence.⁵⁹⁸ The Chamber also took into account its findings on the general conditions in Sarajevo, on the crimes of murder, unlawful attacks and terror, and on the structure and command and control of the SRK.⁵⁹⁹ These included:

- The living conditions for Sarajevo's inhabitants were extremely difficult as a result of living in constant fear that they or their loved ones would be hit by sniper or artillery fire, and the lack of basic necessities such as food, water, gas and electricity;⁶⁰⁰
- For close to four years, the SRK engaged in almost daily sniping and shelling of the civilian population that killed many hundred civilians, injured thousands and destroyed or damaged homes;⁶⁰¹ and
- Mladić commanded and controlled the SRK, which operated under a functioning chain of command.⁶⁰²

159. The Chamber's conclusion on Mladić's shared intent similarly did not depend on his 16th Assembly Session statements. The Chamber relied in particular on Mladić:

⁵⁹⁵ *Contra* Mladić-AB, para.418.

⁵⁹⁶ *Contra* Mladić-AB, para.419.

⁵⁹⁷ In any event, the Chamber does not have to set out every detail of its reasoning. *See Karera* AJ, para.90; *Kalimanzira* AJ, para.195; *Popović* AJ, para.305.

⁵⁹⁸ Judgement, para.4739.

⁵⁹⁹ Judgement, para.4739.

⁶⁰⁰ Judgement, paras.1889-1890.

⁶⁰¹ Judgement, paras.1888, 3195.

⁶⁰² Judgement, paras.237, 239. *Above* fn.567.

- personally directing Incident G.1, selecting targets and directing fire away from Serb-populated areas;
- formulating and issuing directives and commanding the SRK;
- proposing that Sarajevo be bombarded with explicit disregard for the safety of civilians; and
- ordering the SRK Command to cut utilities supplying Sarajevo, thereby forcing the inhabitants outside, where they would be more exposed to sniping and shelling.⁶⁰³

160. Moreover, in addition to his 16th Assembly Session remarks, Mladić's other contemporaneous statements demonstrated his shared intent. When [REDACTED] questioned Mladić about bombing civilian areas during the 28 May 1992 bombardment, Mladić declared that he “did not care where the bombs landed.”⁶⁰⁴ He ordered the shelling of two neighbourhoods “where there aren’t many Serb inhabitants”, explaining that the goal was to “roll out their minds/as written; drive them crazy/” —*i.e.*, to harass civilians in these neighbourhoods so that they could not rest.⁶⁰⁵ He also repeatedly underscored the importance of Sarajevo’s encirclement and the vulnerable position of its civilian population, calling the city “blocked” and “trapped”⁶⁰⁶ and emphasising his ability to control food supplies.⁶⁰⁷

161. Taken together, these facts amply support the conclusions that a JCE existed and that Mladić shared its intent, including to wilfully make the civilian population or individual civilians not taking direct part in hostilities the object of SRK attacks and to spread terror among the civilian population.

⁶⁰³ Judgement, para.4921.

⁶⁰⁴ Judgement, para.4898 [REDACTED].

⁶⁰⁵ Judgement, para.4700 *citing* Exh.P111, pp.6-7, [REDACTED]. *Also* [REDACTED]. *Below* para.190.

⁶⁰⁶ Judgement, paras.4746 (*citing* Exh.P323, p.2), 4747 (*citing* Exh.P324), 4750 (*citing* Exh.P327, p.2).

⁶⁰⁷ Judgement, para.4899 *citing* Exhs.P4636, pp.1-2, P4637, pp.1-2. *Also* Exh.P2757, pp.12-13.

2. The Chamber appropriately relied on its factual findings on the crimes to conclude the existence of the common purpose and Mladić’s shared intent (4.A.4.5)

162. Mladić asserts that the Chamber erred by relying on evidence which stemmed from crimes not proven beyond reasonable doubt to infer the existence of the common criminal purpose.⁶⁰⁸ Mladić fails to understand that the Chamber was entitled to rely on *any* credible and reliable evidence available on the record—including evidence of crimes—to prove the existence of the common criminal purpose.⁶⁰⁹ Only the crimes for which Mladić is convicted have to be proven beyond reasonable doubt.

163. In any event, he fails to show that the Chamber relied on evidence of crimes not proven beyond reasonable doubt. Mladić’s general challenges to the Chamber’s conclusions on murder, unlawful attacks and terror are again based on his erroneous argument⁶¹⁰ that Sarajevo as a whole was a legitimate military objective.⁶¹¹ Mladić’s only specific argument is in relation to Incident G.1.⁶¹² As set out below, the Chamber’s conclusions regarding Incident G.1 are reasonable.⁶¹³

164. Mladić also shows no error in the Chamber’s reliance on RM511’s evidence, including on Mladić’s conduct and statements prior to Incident G.1, to determine the existence of the common criminal purpose and Mladić’s shared intent, as well as the occurrence of the incident itself.⁶¹⁴

⁶⁰⁸ Mladić-AB, para.422. *Also* Mladić-AB, para.120.

⁶⁰⁹ *E.g.* Đorđević AJ, para.139; Šainović AJ, paras.606, 613, 634.

⁶¹⁰ *Above* Section V.B.

⁶¹¹ Mladić-AB, para.425.

⁶¹² Mladić-AB, para.423.

⁶¹³ *Below* Section V.E.1.

⁶¹⁴ Judgement, paras.4700 (RM511 testified that Mladić ordered the shelling of Velešići and Pofalići, two neighbourhoods in Sarajevo, and that the civilians in these neighbourhoods be harassed throughout the night), 4707, 4748 (RM511 confirmed that Mladić said, if any harm should come to VRS soldiers, then Sarajevo would be gone; and confirmed an intercepted conversation between Mladić and Gutović on 28 March 1995 in which Mladić told Gutović, “[w]henver you see a Turk, take aim at him, and send him off to the al-akhira.”), 4755 (RM511 testified about Mladić’s statements and conduct in the lead-up to and during G.1: Mladić personally visited VRS artillery positions around Sarajevo prior to the 28 May 1992 attack; ordered the shelling of Baršćaršija), 4898 (RM511 testified that at a meeting in May 1992, Mladić proposed that the VRS undertake a massive bombardment of Sarajevo; after having been asked whether civilian areas would be bombed, mentioned he did not care where the bombs landed; indicated that all military targets in the area were part of the plan for combat and that all VRS artillery deployed in the area would be used. Šipčić expressed his disagreement and offered his resignation rather than be involved in executing the plan, and Mladić responded: “Very well. Leave that to me. I’ll do it on my own.”).

3. The Chamber considered and appropriately discounted Mladić's orders prohibiting firing at civilians (4.A.4.6)

165. The Chamber considered Mladić's specific orders prohibiting firing at civilians as well as standing orders not to target civilians or to comply with the Geneva Conventions, and reasonably concluded that these orders did not reflect Mladić's true state of mind.⁶¹⁵

166. The Chamber's conclusion is reasonable because:

- the language of the specific orders shows that Mladić's motivation was not the well-being of the civilian population but preventing insubordination or waste of ammunition;⁶¹⁶
- Mladić's general orders not to target the civilian population were not adhered to; instead, his subordinates continued the criminal campaign largely unabated for almost four years⁶¹⁷ and
- the leadership did not take measures to enforce these orders.⁶¹⁸

167. The Chamber reasonably relied on Mladić's 16th Assembly Session speech for its conclusion that "such orders provided mere lip-service in order to support assertions made to the international community and/or to keep the appearance of a leadership obeying the law."⁶¹⁹ Mladić announced that the Serbian people would have to "read between the lines",⁶²⁰ supporting the conclusion that not everything Mladić said could be taken at face value.

⁶¹⁵ Judgement, paras.4919, 4739. *Contra* Mladić-AB, para.429.

⁶¹⁶ Judgement, para.4737 *citing* Exhs.P812, p.2 ("I forbid firing from large calibre weapons at civilian targets in Sarajevo *without my approval*." (emphasis added), P7552, p.3 ("MLADIĆ has forbidden everything this morning. Nobody must shoot a bullet, otherwise he would execute the one who does that."), D66, p.2 ("I strictly forbid opening fire at the city of Sarajevo. Fired (sic) can be opened only from infantry weapons and in combatants' self-defence. [...] Shooting without an order will be considered a crime and legal measures will be taken against a perpetrator"). *Contra* Mladić-AB, para.436.

⁶¹⁷ Judgement, paras.4919, 4739.

⁶¹⁸ Judgement, paras.4919, 4739.

⁶¹⁹ Judgement, para.4739, fn.13904 *referencing* Exh.P431, p.34.

⁶²⁰ Exh.P431, p.34.

168. Mladić fails to demonstrate the relevance of his issuing multiple orders.⁶²¹ The Chamber’s reasoning did not turn on the number of orders—although the Chamber was clearly aware that Mladić issued multiple such orders.⁶²² The Chamber’s reasons for the conclusion that the orders were mere lip-service—that their language showed Mladić was not concerned with the well-being of the civilian population; that orders were not adhered to; and that Mladić and other members of the leadership did not take measures to enforce them⁶²³—applies with equal force regardless of the number of times Mladić issued such orders. In any event, during almost four years of sniping and shelling, he and his subordinates issued only a few orders not to target the civilian population.⁶²⁴

D. The SRK perpetrators⁶²⁵ of the campaign possessed the specific intent to spread terror (4.A.5)

169. For Mladić to be found liable as a JCE member, the physical perpetrators (SRK members) used as tools by the JCE members⁶²⁶ need not possess the intent for the crimes.⁶²⁷ As such, Mladić wrongly claims that the “consequence” of this alleged error on the intent of the physical perpetrators was a finding of Mladić’s JCE liability.⁶²⁸

170. In any event, the Chamber reasonably concluded that the SRK perpetrators of the sniping and shelling campaign possessed the specific intent to spread terror among Sarajevo’s civilian population.⁶²⁹ The SRK engaged in sniping and shelling attacks that continued nearly unabated for almost four years,⁶³⁰ targeting civilians—including children—when carrying out their daily activities,⁶³¹ despite the absence of military activities or objectives close by,⁶³² and launched highly inaccurate modified air bombs

⁶²¹ Mladić-AB, para.434.

⁶²² Judgement, paras.4739, 4919. *Also* Mladić-AB, para.430.

⁶²³ *Above* para.166.

⁶²⁴ Judgement, paras.4737, 4739-4740.

⁶²⁵ Although heading A.5 refers to “the specific intent of the Appellant”, Mladić’s arguments are directed against the specific intent of the SRK perpetrators. *See* Mladić-AB, paras.450-451, 455. This response similarly focuses on the perpetrators’ intent. As for Mladić’s specific intent *see above* paras.159-160.

⁶²⁶ Judgement, para.4740.

⁶²⁷ *Brdanin* AJ, paras.362, 410-413; *Krajišnik* AJ, para.226; *Karadžić 98bis* AJ, para.79.

⁶²⁸ Mladić-AB, para.457.

⁶²⁹ *Contra* Mladić-AB, para.456. *Also contra* Mladić-AB, para.121.

⁶³⁰ Judgement, paras.3201, 1888.

⁶³¹ Judgement, para.3201. *Above* para.150.

⁶³² Judgement, para.3201. *Above* para.150.

on the city.⁶³³ The SRK members would have been aware that the civilian population was living in extreme fear as nowhere was safe in Sarajevo.⁶³⁴

171. The Chamber applied the correct standard of proof—beyond reasonable doubt—in finding the *mens rea* for unlawful attacks and terror, including the specific intent to spread terror.⁶³⁵ Mladić erroneously assumes evidence used to prove general intent (acting wilfully) is necessarily insufficient to prove specific intent.⁶³⁶ Such a rule does not exist. Rather, it is a factual question whether the evidence at issue is sufficient to prove the required mental element.

172. As Mladić acknowledges,⁶³⁷ for its conclusion that SRK members acted with specific intent to spread terror, the Chamber relied on factors not used for its conclusion that they acted wilfully. Besides the extended period of time over which the sniping and shelling campaign took place and the extreme fear experienced by the civilian population of Sarajevo,⁶³⁸ the Chamber also considered that:

- civilians were targeted while carrying out daily activities or when present at sites known to be civilian;
- civilians were more likely to be targeted when circumstances suggested the shooting or shelling had stopped and it was safe for them to resume their daily activities; and
- the sniping and shelling occurred in conjunction with already challenging living conditions.⁶³⁹

173. Mladić's argument that the Chamber was not entitled to rely on the extended period of time over which the crimes occurred is contrary to common sense and, in any event, rests on his erroneous argument that Sarajevo as a whole was a legitimate military objective.⁶⁴⁰ As set out above, the presence of legitimate military targets within Sarajevo did not allow the SRK to target the entire city for nearly four years.

⁶³³ Judgement, para.3201, 1913.

⁶³⁴ Judgement, paras.3201, 1889.

⁶³⁵ Judgement, paras.3200-3201, 3211, 5250. *Contra* Mladić-AB, para.443.

⁶³⁶ *Contra* Mladić-AB, para.448.

⁶³⁷ Mladić-AB, para.451.

⁶³⁸ Judgement, para.3201.

⁶³⁹ *Compare* Judgement, paras.3196-3200 *with* Judgement, para.3201.

⁶⁴⁰ Mladić-AB, para.452.

Nor could such a prolonged period of sniping and shelling, including by indiscriminate fire, plausibly be explained as an SRK effort to neutralize a military target.⁶⁴¹

174. Finally, extreme fear may be relied on to infer the specific intent to spread terror.⁶⁴² It is evident from the Chamber's findings that Sarajevo's civilian population experienced extreme fear *because of* the SRK's campaign of sniping and shelling.⁶⁴³ This fear affected all inhabitants of Sarajevo, including the victims of the specific incidents.⁶⁴⁴ Limited evidence of isolated incidents of ABiH firing on their own civilians⁶⁴⁵ is insufficient to undermine the conclusion that the SRK's sniping and shelling campaign was the source of the population's extreme fear. Such sporadic events, even if they occurred,⁶⁴⁶ would not have had a meaningful impact in light of the steady, prolonged SRK fire on civilians.

E. The Chamber's findings on the Sarajevo crime base are sound (4.B)

175. Mladić's challenges to the Sarajevo crime base should be dismissed. The Chamber's conclusions on the crime base are reasonable and well-supported by the evidence and/or unrebutted adjudicated facts.

1. The SRK targeted civilians through a massive bombardment of Sarajevo on 28 and 29 May 1992 (Incident G.1) (4.B.3.1)

176. The Chamber's conclusion that Incident G.1 formed part of the crimes of unlawful attacks and terror is reasonable.

⁶⁴¹ Above para.126.

⁶⁴² *D.Milošević* TJ, para.910; *D.Milošević* AJ, paras.116-117; *Galić* AJ, fn.320. Also Judgement, para.3188. *Contra* Mladić-AB, para.453.

⁶⁴³ Judgement, para.1889 (finding "[i]nhabitants of Sarajevo lived in constant fear that they or their loved ones would be hit by sniper or artillery fire."). *Contra* Mladić-AB, para.454.

⁶⁴⁴ Judgement, paras.1889 (finding "between May 1992 and November 1995, *the inhabitants of Sarajevo* were forced to undertake their daily activities, like fetching water and collecting wood, at night or when visibility was reduced, and hid in their apartments or basements during the day" and *[i]nhabitants of Sarajevo* lived in constant fear that they or their loved ones would be hit by sniper or artillery fire.") (emphasis added), 1890 (finding "the living conditions for *the inhabitants of Sarajevo* were extremely difficult as a result of living in constant fear and the lack of basic necessities, such as food, water, gas, and electricity, which forced them to go outside and be exposed to sniping and shelling.") (emphasis added). *E.g.* M.Omerović:Exh.P1931, p.4; S.Sabanić:Exh.P1913, pp.5, 12-13; [REDACTED]; N.Gavranović:Exh.P3102, p.7(T.6718); S.Crnčalo:Exh.P260, paras.87-88; I.Svraka:T.4550-4551. *Contra* Mladić-AB, para.454.

⁶⁴⁵ Below para.216.

⁶⁴⁶ Below para.216.

177. The Chamber found that from around 17:00 on 28 May 1992 until the next morning, the SRK launched a massive bombardment across Sarajevo.⁶⁴⁷ Thousands of artillery rounds of all calibres struck across the city.⁶⁴⁸ Shells hit residential neighbourhoods with particular emphasis on those in the old town (Stari Grad).⁶⁴⁹ Civilians sought shelter in places such as cellars and hospital corridors, where they hid for hours through heavy shelling.⁶⁵⁰ Civilians were injured, and their homes and other civilian buildings were damaged or destroyed.⁶⁵¹

178. Mladić attempts to challenge the SRK's responsibility for individual attacks as well as Mladić's and the SRK members' intent. These challenges are based on an erroneous understanding of the evidentiary basis for the Chamber's conclusions. His alternative interpretations of the evidence misconstrue the law and are unsupported by the record.

(a) The Chamber reasonably found that the SRK was responsible for the attacks (4.B.3.1.2)

179. Mladić fails to show the Chamber was unreasonable in concluding that the SRK fired the shells that injured RM115 and Fadila Tarčin and damaged civilian buildings in the course of the G.1 bombardment.⁶⁵²

180. Contrary to Mladić's contention, the Chamber did not base its conclusion only on Tarčin's and Wilson's evidence.⁶⁵³ Rather, it relied on a wealth of circumstantial evidence⁶⁵⁴ pointing to SRK responsibility for RM115's and Tarčin's injuries.⁶⁵⁵

181. The nature, timing and location of these individual attacks fell squarely within the pattern of SRK shelling during Incident G.1, which struck residential areas across

⁶⁴⁷ Judgement, para.2022.

⁶⁴⁸ Judgement, paras.1871, 2022, 2020, 4700. *Also* Judgement, para.1888.

⁶⁴⁹ Judgement, paras.2022, 2018-2020.

⁶⁵⁰ Judgement, paras.2018-2019.

⁶⁵¹ Judgement, paras.2022, 3191(a). *Also* Exh.P549, p.72 *referenced at* Judgement, fn.8590; Exh.P329, p.1 *referenced at* Judgement, fn.8598.

⁶⁵² Judgement, para.2022. *Contra* Mladić-AB, para.475.

⁶⁵³ Mladić-AB, paras.470-474.

⁶⁵⁴ A chamber is entitled to rely on circumstantial evidence. *Tolimir* AJ, para.11; *Dordević* AJ, para.16; *Šainović* AJ, para.22. *Contra* Mladić-AB, paras.31, 474. The *Orić* Appeal Judgement is inapposite, as the quote on which Mladić relies does not concern circumstantial evidence, but rather the general—undisputed—proposition that proof of a crime alone is insufficient to establish criminal responsibility of the Accused. *Orić* AJ, para.189.

⁶⁵⁵ Judgement, paras.2022, 1871, 2017-2021, 4700. *Also* Judgement, paras.4755-4756, 4791, 4898, 4903.

Sarajevo, including Pofalići, Velešići, Marin Dvor and several Stari Grad neighbourhoods such as Baščaršija.⁶⁵⁶ During this massive bombardment, the shelling on the State Hospital was so heavy and sustained that RM115 could not move for four hours before eventually being wounded around midnight.⁶⁵⁷ Likewise, Tarčin was hit around midnight during shelling of the predominantly Muslim neighbourhood of Širokača, which was so heavy and prolonged that she could not be taken to the hospital for over four hours.⁶⁵⁸

182. The evidence also shows that Mladić personally ordered attacks on or near areas where the two victims were injured, which further confirms the SRK's responsibility for their injuries. He ordered shelling on Marin Dvor,⁶⁵⁹ where the State Hospital was located,⁶⁶⁰ and on nearby Velešići and Pofalići.⁶⁶¹ In fact, the SRK confirmed to Mladić that they had fired towards the hospital.⁶⁶² Further, Mladić personally ordered repeated shelling on the Stari Grad neighbourhood of Baščaršija,⁶⁶³ near Tarčin's home in Širokača.⁶⁶⁴ The SRK also shelled the nearby Stari Grad neighbourhoods of Kamenice, Mahumatovac, Čolina Kapa and Pogledine.⁶⁶⁵ The Chamber's conclusion is further supported by evidence regarding the frequency with which the SRK shelled the State Hospital⁶⁶⁶ and Širokača⁶⁶⁷ throughout the war.

183. Tarčin's hearsay evidence that the shell was fired from Borije⁶⁶⁸—where the SRK held positions and fired on Stari Grad⁶⁶⁹—is but one piece of evidence supporting the Chamber's conclusion that the SRK fired the shell that injured her.⁶⁷⁰

⁶⁵⁶ Judgement, paras.2018-2020, 2022, 4700, 4756, 4831, 4903. *Above* para.177.

⁶⁵⁷ Judgement, paras.2018, 2022.

⁶⁵⁸ Judgement, paras.2019, 2022.

⁶⁵⁹ *See* Exh.P105, p.4.

⁶⁶⁰ Judgement, paras.2018, 2022. *Also* Exh.P1114.

⁶⁶¹ Judgement, paras.4700, 4756, 4903. State Hospital is in the vicinity of Velešići and Pofalići. Judgement, fn.8573.

⁶⁶² Judgement, para.4903 *citing* Exh.P1607 (confidential). State Hospital is the only hospital near the other locations mentioned in Exh.P1607—a museum and Crni Vrh. Judgement, fn.8573 *citing* Exh.D127 and M.Mandilović:T.6662-6666. *See* Exhs.P3, pp.20, 27/e-court pp.24, 32; P1114.

⁶⁶³ Exhs.P105, p.6 and P330, pp.1-2 *referenced at* Judgement, fn.16798. *Also* Exh.P330, pp.3-4.

⁶⁶⁴ *See* Exhs.P423; P1114.

⁶⁶⁵ Judgement, para.2019. *Also* Exhs.P3, pp.69-70/e-court pp.76-77; P1114.

⁶⁶⁶ *E.g.* Judgement, paras.2018, 2022, 4831. *Further* [REDACTED]; B.Nakaš:Exh.P942, p.1; B.Nakaš:T.8608-8610; M.Mandilović:Exh.P679, para.53.

⁶⁶⁷ Judgement, para.2019. *Also* Judgement, paras.1915-1922.

⁶⁶⁸ Judgement, paras.2019, 2022.

⁶⁶⁹ *See* Judgement, paras.2154-2155. *Also* Exhs.P549, pp.71-72; P464, p.2; P4423, p.2.

184. Wilson’s evidence that Mladić accepted responsibility for the bombardment of Sarajevo on 28 and 29 May 1992⁶⁷¹ is strong support for the Chamber’s conclusions, since the two incidents formed part of this very bombardment.⁶⁷²

185. To the extent Mladić is relying on a claim that the ABiH could have fired the shells that caused these injuries—a claim he does not expressly make—that is not a reasonable alternative. The evidence indicated, at most, “minimal” outgoing ABiH fire in comparison to the incoming SRK fire,⁶⁷³ heavy SRK fire on the neighbourhoods in question in accordance with Mladić’s orders⁶⁷⁴ and no ABiH fire on its own territory⁶⁷⁵—which is in any event an implausible and illogical contention in light of the massive ongoing SRK bombardment.

186. Finally, as set out above, the Chamber’s conclusion is not undermined by Mladić’s erroneous argument that the entire city of Sarajevo was a legitimate military target.⁶⁷⁶

(b) The Chamber reasonably interpreted RM511’s evidence (4.B.3.1.3)

187. It is unclear whether Mladić’s challenge to the interpretation of RM511’s evidence in Sub-ground 4.B.3.1.3 is directed at the Chamber’s findings that the SRK wilfully attacked the civilian population with the primary purpose of spreading terror, or at its conclusions regarding Mladić’s intent for unlawful attack and terror.⁶⁷⁷ Neither conclusion hinged on RM511’s evidence that Mladić ordered the shelling of Velešići and Pofalići and that the civilians in these neighbourhoods be harassed throughout the night so that they could not rest.⁶⁷⁸ In any event, the Chamber correctly interpreted RM511’s evidence.

⁶⁷⁰ *Contra* Mladić-AB, para.471.

⁶⁷¹ Judgement, paras.2021-2022, 4831.

⁶⁷² *Above* para.181. *Contra* Mladić-AB, para.473.

⁶⁷³ Judgement, para.2020. *Also* J.Wilson:T.3985-3986.

⁶⁷⁴ *Above* paras.177, 181-182.

⁶⁷⁵ *Below* para.216.

⁶⁷⁶ Mladić-AB, para.473. *Above* Section V.B.

⁶⁷⁷ *Compare* Mladić-AB, Heading B.3.1.3 at p.131 (“The evidence does not demonstrate beyond reasonable doubt that the alleged attacks were wilfully directed at the civilian population”) *with* para.476 (“The Trial Chamber draws upon this evidence to conclude the Appellant wilfully directed acts of violence towards the civilian population, and did so with the primary purpose of spreading terror among the civilian population.”).

⁶⁷⁸ Judgement, para.4700.

188. The Chamber’s conclusion that the SRK wilfully directed the attacks forming part of Incident G.1 at civilians is reasonable,⁶⁷⁹ and is not based solely on RM511’s evidence.⁶⁸⁰ The Chamber considered a number of factors that demonstrated beyond reasonable doubt that Incident G.1 was wilfully directed against civilians.⁶⁸¹ Furthermore, Incident G.1 involved a massive city-wide bombardment⁶⁸² and was thus indiscriminate by nature.⁶⁸³ Similarly, in concluding the SRK intended to spread terror, the Chamber also relied on several other factors including the extended duration of the campaign, the circumstances in which civilians were targeted, and the constant fear experienced by Sarajevo’s population.⁶⁸⁴

189. Mladić also fails to demonstrate that the Chamber’s conclusion on Mladić’s shared intent, including that he acted wilfully and with the intent to spread terror, was unreasonable or turned on the interpretation of one line in RM511’s testimony.⁶⁸⁵ As discussed above, the Chamber relied on a multitude of well-supported findings to reach this reasonable conclusion.⁶⁸⁶

190. In any event, the Chamber correctly interpreted the evidence of RM511 [REDACTED] on Mladić’s order to fire “so that they cannot sleep, that we roll out their minds /as written; drive them crazy/” to refer to the harassment of civilians.⁶⁸⁷ Mladić’s order pertained to artillery fire on Velešići and Pofalići—two

⁶⁷⁹ Judgement, paras.3191(a), 3200. As set out above, the *mens rea* of the SRK perpetrators is not even required for JCE liability through the use of tools. *Above* para.169.

⁶⁸⁰ Although Mladić also makes arguments in relation to Wilson’s evidence, their relevance is unclear, as Wilson did not present evidence on Mladić’s statement. Mladić-AB, para.476.

⁶⁸¹ Judgement, paras.3196, 3199 (relying on the civilian status of the victims, their presence in a residential neighbourhood when targeted and the absence of legitimate military targets in the vicinity). The Chamber was mindful of the fact that the attack must be directed against civilians or civilian objects, rather than “civilian areas”. Judgement, paras.3196, 3211. *Contra* Mladić-AB, para.481. Here:

- RM115 was wounded while staying at State Hospital in the Marin Dvor neighbourhood. A flag with the Red Cross emblem had been placed at the hospital. There were no legitimate military-related facilities in the hospital’s vicinity. Judgement, paras.2022, 2018.
- Tarčin was a 16-year-old girl living in the residential area of Širokača when she was injured by a shell that also damaged several houses. The closest military position was about 1.5 km away. Judgement, paras.2022, 2019.

⁶⁸² *Above* para.177.

⁶⁸³ Judgement, paras.3187, 3209. *Also Galić* AJ, paras.102, 132.

⁶⁸⁴ Judgement, para.3201. *Also above* paras.170, 172-174. *Contra* Mladić-AB, paras.464, 476.

⁶⁸⁵ *Contra* Mladić-AB, paras.480, 485.

⁶⁸⁶ *Above* paras.159-160.

⁶⁸⁷ Judgement, para.4700. *Contra* Mladić-AB, paras.477-483.

residential neighbourhoods where, as he noted, there was not much Serb population.⁶⁸⁸ [REDACTED],⁶⁸⁹ [REDACTED].⁶⁹⁰ [REDACTED].⁶⁹¹

191. The Chamber's interpretation is further supported by Mladić's other actions. In the weeks before Incident G.1, he proposed a massive bombardment of the city using all available SRK artillery.⁶⁹² [REDACTED], Mladić replied: "Very well. Leave that to me. I'll do it on my own."⁶⁹³ During Incident G.1, Mladić issued additional orders to fire on residential neighbourhoods including Baščaršija and again Velešići, and selected specific civilian targets such as a museum and hospital.⁶⁹⁴ Mladić's statement that he did not care where the bombs landed supports rather than undermines the Chamber's interpretation.⁶⁹⁵ Mladić made this statement [REDACTED].⁶⁹⁶

192. Mladić's attempted comparison with a factual finding in a different case dealing with a different accused making a different statement in a different context relating to a different operation is incapable of demonstrating that the Chamber interpreted Mladić's statement unreasonably.⁶⁹⁷ In any event, it is not plausible to interpret Mladić's instruction to fire on neighbourhoods of Sarajevo where there was "not much Serb population" so that people "cannot sleep" and the firing would "drive them crazy" as a reflection of "intent to target military objective in all areas of Sarajevo."⁶⁹⁸

(c) Mladić and the SRK did not direct fire only against legitimate military objectives (4.B.3.1.4)

193. In his attempt to show that he and the SRK only directed fire at legitimate military objectives, Mladić again relies on his erroneous assumption that Sarajevo as a whole was a military objective.⁶⁹⁹ His alternative claim that the massive bombardment

⁶⁸⁸ Judgement, para.4700.

⁶⁸⁹ Compare [REDACTED] with [REDACTED].

⁶⁹⁰ Contra Mladić-AB, para.480.

⁶⁹¹ [REDACTED]. Also [REDACTED].

⁶⁹² Judgement, paras.4898, 4755, 4918.

⁶⁹³ Judgement, paras.4898, 4755. Also Judgement, para.2020.

⁶⁹⁴ Judgement, paras.4756, 4903. Also Exh.P330, pp.1-2 (referenced at Judgement, fn.16798), 4-5.

⁶⁹⁵ Judgement, para.4898. Contra Mladić-AB, paras.479-480.

⁶⁹⁶ [REDACTED]. Also above para.191.

⁶⁹⁷ Contra Mladić-AB, para.482.

⁶⁹⁸ Contra Mladić-AB, para.483.

⁶⁹⁹ Mladić-AB, para.487. Also above Section V.B.

constituting Incident G.1 was directed against “targets of opportunity such as mobile mortar (*sic*)”⁷⁰⁰ ignores the Chamber’s findings and is not supported by the evidence.

194. The existence of mobile mortars in Sarajevo could not possibly account for the all-out bombardment of the entire city. During Incident G.1, artillery fire of all calibres exploded all over the city, sometimes simultaneously in different areas.⁷⁰¹ Much of the shelling occurred at night, when it was virtually impossible to target mobile mortars.⁷⁰² The shelling hit civilian targets and residential areas including State Hospital and Širokača, where the Chamber expressly found no military presence.⁷⁰³ Targeting mobile mortars was also inconsistent with the manner in which Mladić personally planned and directed the attack, including by selecting residential areas to be targeted—while making no mention of any potential mobile target.⁷⁰⁴

195. Mladić refers to no evidence that ABiH mobile mortars were observed during Incident G.1, that he ordered the targeting of mobile mortars or that the bombardment was aimed at mobile mortars. Contrary to Mladić’s claim,⁷⁰⁵ the evidence shows limited ABiH mobile mortar activity—particularly at the start of the conflict.⁷⁰⁶

196. Mladić’s argument that the evidence only establishes that Mladić personally directed attacks against locations that could constitute valid military targets is incorrect.⁷⁰⁷

197. Mladić’s reliance on another case dealing with different facts is incapable of demonstrating error in the Chamber’s finding that *this* prolonged, all-out bombardment of the entire city was directed at civilians.⁷⁰⁸

⁷⁰⁰ Mladić-AB, para.488.

⁷⁰¹ Judgement, paras.2020, 2022, 4700.

⁷⁰² Judgement, paras.2020, 2022. *E.g.* G.Drasković:T.38033-38034 (admitting that it was not possible to accurately target ABiH mobile mortars because “they would usually change their positions quickly” and that it was impossible to know “whether they are still there or whether they had moved”).

⁷⁰³ Judgement, paras.2022, 3191(a), 3194, 3199-3200, 3211. *Also* Judgement, paras.2018-2020.

⁷⁰⁴ *Above* paras.182, 190-191.

⁷⁰⁵ Mladić-AB, para.489.

⁷⁰⁶ Much of Mladić’s supporting evidence is remote in time from Incident G.1. *Compare* Mladić-AB, fn.610 *with* J.Segers:T.43747 (confirming he was in Sarajevo only as of October 1992). *Further* R.Mole:Exh.P421, para.4; J.Jordan:Exh.P126, para.4; Exhs.D1798; D1565, p.2; [REDACTED]; Exh.D116, p.2; [REDACTED]. Some evidence does not refer to mobile mortars. *See* J.Ivanović:Exh.D1289, p.1; Exhs.D1798; D1565, p.2; RM120:T.7687; [REDACTED].

⁷⁰⁷ *Above* paras.182, 190-191. *Contra* Mladić-AB, paras.491-492. The Chamber was not required to corroborate Wilson’s hearsay evidence that Mladić directed fire at the children’s embassy. *See* *Nyiramasuhuko* AJ, para.944; *Stanišić & Župljanin* AJ, para.463; *D.Milošević* AJ, para.215; *Popović* AJ, para.1009.

2. The Chamber properly relied on adjudicated facts in relation to Sarajevo (4.B.3.2)

198. Mladić fails to show error in the Chamber's approach to adjudicated facts in Sarajevo. The Chamber applied the correct standard to rebuttal evidence.⁷⁰⁹ The Chamber was entitled to rely on adjudicated facts to establish the crime base, and Mladić fails to show that his rights to defend himself were impaired.

199. Mladić develops his arguments only for two incidents, F.11 and G.8.⁷¹⁰ His mere assertion that the errors also apply to a string of other incidents⁷¹¹ should be summarily dismissed.⁷¹² If the Appeals Chamber is nevertheless minded to entertain Mladić's challenges to these other incidents, the Prosecution refers to Annex A which demonstrates that the Chamber considered Defence and Prosecution evidence that could possibly rebut the adjudicated facts and gave reasons why the evidence did not meet the standard for rebuttal evidence.⁷¹³ Mladić fails to address or demonstrate any error in these reasons.

(a) The Chamber reasonably relied on AF2303 in relation to Incident F.11 (4.B.3.2.3)

200. Regarding Incident F.11, the Chamber applied the correct standard for rebuttal evidence and properly found AF2303 establishing the origin of fire for F.11 was not rebutted.⁷¹⁴

201. The Chamber found AF2303 was not rebutted because the contrary evidence was not sufficiently reliable.⁷¹⁵ Mladić correctly notes that the Chamber found certain evidence contradicted AF2303 on the origin of fire.⁷¹⁶ However, this alone is not

⁷⁰⁸ See *Gotovina* AJ, para.63. *E.g. above* fn.702. *Contra* Mladić-AB, paras.490, 493.

⁷⁰⁹ *Above* Section III.B. *Contra* Mladić-AB, para.504. It was further within the Chamber's discretion to take judicial notice of adjudicated facts relating to the acts and conducts of proximate subordinates. *Above* paras.26-29. *Contra* Mladić-AB, para.507. In any event, in none of the challenged incidents did the Chamber find that the physical perpetrators were senior VRS officials that could be considered "proximate" to Mladić.

⁷¹⁰ Mladić-AB, paras.503, 513, 521.

⁷¹¹ Mladić-AB, para.526.

⁷¹² *E.g. Prlić* AJ, para.25(9); *Halilović* AJ, para.126.

⁷¹³ See Annex A.

⁷¹⁴ *Contra* Mladić-AB, paras.503-505.

⁷¹⁵ Judgement, paras.1949-1952. *Also above* para.39. See Annex A.

⁷¹⁶ Mladić-AB, para.503 *citing e.g.* Judgement, para.1949.

sufficient to rebut the adjudicated fact.⁷¹⁷ Rather, the contrary evidence also has to be reliable and credible.⁷¹⁸

(b) Mladić fails to show the Chamber’s approach to adjudicated facts in relation to Incident G.8 violated his fair trial rights (4.B.3.2.4)

202. To the extent Mladić implies that the adjudicated fact regime is inapplicable to crime base incidents because they are “indispensable to a conviction”,⁷¹⁹ his argument should be dismissed. There is no rule that facts indispensable for conviction cannot be based on adjudicated facts, provided those facts do not relate to the acts, conduct or mental state of the accused,⁷²⁰ a limitation with which the Chamber complied.⁷²¹ The Appeals Chamber has acknowledged the possibility of taking judicial notice of the existence of crimes as such.⁷²²

203. Mladić’s argument that the Chamber’s reliance on adjudicated facts in place of insufficient Prosecution evidence amounts to “impermissible entry into the arena of the parties”⁷²³ and “sav[ing] the Prosecution’s case”⁷²⁴ misunderstands the law on adjudicated facts and demonstrates no error. As long as the adjudicated fact is not rebutted, there is no need for corroborating Prosecution evidence.⁷²⁵ Such an approach would defeat the purpose of the adjudicated fact regime, the very aim of which is “to free the Prosecution of the burden of proof on specific points” unless and until they are rebutted.⁷²⁶ The Chamber here even limited the Prosecution’s ability to bring evidence duplicative of adjudicated facts.⁷²⁷ Consistent with this approach, when it relied on unrebutted adjudicated facts, the Chamber made no findings as to the

⁷¹⁷ *Contra* Mladić-AB, para.505.

⁷¹⁸ *Above* Section III.B. *Also* Mladić-AB, para.103.

⁷¹⁹ Mladić-AB, para.510. *Also* Mladić-AB, para.122.

⁷²⁰ Mladić’s argument that adjudicated facts cannot be used to establish acts of “approximate subordinates” (Mladić-AB, para.507) is addressed above. *Above* Section III.A.

⁷²¹ *E.g.* First Adjudicated Facts Decision, paras.8(vi), 45-46; Second Adjudicated Facts Decision, para.34; Third Adjudicated Facts Decision, para.35.

⁷²² *D.Milošević* Adjudicated Facts AD, para.16; *Karemera* Judicial Notice AD, para.52.

⁷²³ Mladić-AB, para.520. *Also* Mladić-AB, paras.122, 523.

⁷²⁴ Mladić-AB, para.522. *Also* Mladić-AB, para.523.

⁷²⁵ *E.g.* *S.Milošević* AF AD, p.4; *Tolimir* AJ, para.25. *Further* Mladić-AB, para.499. *See also* examples of trial chambers relying exclusively on adjudicated facts to establish crime-base incidents: *Stanišić & Župljanin* TJ, Vol.I, paras.554 (including fn.1258), 663-664, 689-690; *Krajišnik* TJ, paras.632-636, 638, 479 (convictions overturned on other grounds); *Perišić* TJ, paras.468-472, 477 (convictions overturned on other grounds).

⁷²⁶ *Prlić* Adjudicated Facts Decision, para.20 *citing* *Karemera* Judicial Notice AD, para.42. *Also* *Karadžić* Scheduled Incidents Decision, para.11; Adjudicated Facts Rebuttal Decision, paras.11, 13, 17.

strength of supporting Prosecution evidence.⁷²⁸ In relation to Incident G.8, the Chamber's assessment of UNPROFOR and Bosnian MUP investigative reports was therefore limited to determining whether this evidence rebutted the adjudicated facts on origin of fire.⁷²⁹ The Chamber neither assessed the weight of the individual reports nor entered findings on the strength of the totality of Prosecution evidence for this incident.

204. Mladić also fails to show that by relying on adjudicated facts in relation to Incident G.8 the Chamber impaired his ability to defend himself.⁷³⁰ Contrary to his argument, he was able to challenge the adjudicated facts in the way the Chamber outlined at trial,⁷³¹ for example through cross-examination of Prosecution witnesses or by leading reliable and credible evidence contradicting the adjudicated facts.⁷³² Over 13 paragraphs the Chamber assessed whether Defence or Prosecution evidence rebutted any adjudicated facts in relation to G.8.⁷³³ While it found evidence from certain Defence witnesses contradicted some adjudicated facts, it found this evidence not sufficiently reliable to rebut any adjudicated fact.⁷³⁴

205. Mladić in particular challenges the Chamber's assessment in paragraph 2084,⁷³⁵ in which it found Prosecution evidence did not rebut AF2519 and AF2525 on the origin of fire because it did not contradict the adjudicated facts.⁷³⁶ He fails to explain how his challenges to Prosecution evidence that neither directly contradicts nor directly supports these adjudicated facts could possibly rebut the adjudicated facts.⁷³⁷ Nor does he explain why the Chamber supposedly had to notify him that challenging this Prosecution evidence would be insufficient to rebut the adjudicated facts.⁷³⁸ He also does not show that he was prevented from using cross-examination to extract

⁷²⁷ E.g. T.205, 528-529. Also Fifth Sarajevo 92bis Decision, para.11. Further Judgement, para.2211.

⁷²⁸ E.g. Judgement, para.5276. *Contra* Mladić-AB, paras.522, 508.

⁷²⁹ Judgement, para.2084 *referenced at* Mladić-AB, paras.513, 521.

⁷³⁰ *Contra* Mladić-AB, paras.512, 515, 519.

⁷³¹ Adjudicated Facts Rebuttal Decision, paras.19-20.

⁷³² E.g. Adjudicated Facts AD, para.24; *Karemera* Judicial Notice AD, para.42; *Krajišnik* Adjudicated Facts Decision, paras.16-17; *Karadžić* Time Allocation AD, paras.18-19. Also Judgement, para.5272. *Above* Section III.B.

⁷³³ Judgement, paras.2084-2096.

⁷³⁴ Judgement, paras.2085, 2087-2095.

⁷³⁵ Mladić-AB, para.513.

⁷³⁶ Judgement, para.2084.

⁷³⁷ *Compare* Judgement, paras.2062-2063 (*citing* AF2519, AF2525) *with* Judgement, paras.2068 (*citing* Exh.P868, pp.44, 48) *and* 2069 (*citing* Exh.D1242, paras.26-27). *Contra* Mladić-AB, para.516.

⁷³⁸ *Contra* Mladić-AB, paras.517, 519.

evidence that contradicted the adjudicated facts themselves or from presenting evidence to the contrary.⁷³⁹

3. The Chamber properly concluded that the SRK perpetrators of Incidents G.6 and G.7 had the intent to commit murder, unlawful attacks and terror (4.B.3.3)

206. As set out above, the SRK perpetrators' intent is not required for Mladić's JCE liability.⁷⁴⁰ In any event, contrary to Mladić's claim,⁷⁴¹ the Chamber's conclusion on the SRK perpetrators' intent for Incidents G.6 and G.7 with regard to murder, terror and unlawful attacks is reasoned and reasonable.

207. Mladić incorrectly asserts that the Chamber failed to find that the SRK perpetrators of Incidents G.6 and G.7 had the required intent.⁷⁴² He overlooks the Chamber's conclusion on terror that the perpetrators of the "above listed sniping and shelling incidents", which include Incidents G.6 and G.7, "wilfully made civilians not taking direct part in hostilities the object of their sniping and shelling".⁷⁴³ The Chamber expressly incorporated this conclusion into its findings on the perpetrators' intent for murder⁷⁴⁴ and unlawful attacks.⁷⁴⁵

208. The Chamber provided a reasoned opinion in relation to Incidents G.6 and G.7.⁷⁴⁶ The Chamber considered "a number of factors in determining whether civilians or the civilian population were targeted."⁷⁴⁷ These include that the victims were civilians; that they were in residential areas when targeted; and that there were either "no military targets in the vicinity" or "no evidence showing that the victims were near legitimate military targets."⁷⁴⁸

209. The Chamber's conclusion that the SRK members wilfully made civilians the object of attack in relation to Incident G.6 is reasonable.⁷⁴⁹ Contrary to Mladić's

⁷³⁹ Above para.204. *Contra* Mladić-AB, paras.515, 517, 519.

⁷⁴⁰ Above para.169.

⁷⁴¹ Mladić-AB, para.538.

⁷⁴² *Contra* Mladić-AB, paras.528, 532. Mladić's arguments only relate to the general intent of the perpetrators. He makes no argument about terror's specific intent element. *See* Mladić-AB, para.530.

⁷⁴³ Judgement, para.3200. *Also* Judgement, paras.3189-3190 referring to para.3051 at p.1611.

⁷⁴⁴ Judgement, para.3057.

⁷⁴⁵ Judgement, para.3211.

⁷⁴⁶ *Contra* Mladić-AB, paras.535, 538.

⁷⁴⁷ Judgement, para.3196.

⁷⁴⁸ Judgement, para.3199 (last two sentences).

⁷⁴⁹ *Compare* Judgement, para.2050 with paras.3199-3200. *Also* Judgement, paras.2044-2047. *Contra* Mladić-AB, paras.535, 538.

suggestion, the Chamber did not rely solely on AF2434.⁷⁵⁰ Rather, it considered multiple factual findings, which were each supported by numerous pieces of evidence.⁷⁵¹ The Chamber concluded that on 22 January 1994, three mortar shells:

- hit the residential neighbourhood of Alipašino Polje, in particular in an area where children were playing in the snow;⁷⁵²
- killed and wounded individuals who were clearly civilians, killing six children and wounding five children and one other civilian;⁷⁵³
- were fired into a location where there were no military targets, no on-going military activity and no visible military personnel;⁷⁵⁴ and
- were fired “during a lull in hostilities.”⁷⁵⁵

210. Furthermore, Mladić did not present any evidence to counter AF2434, nor did he argue with regard to this incident that the SRK was targeting “legitimate military objective[s]”.⁷⁵⁶

211. Mladić’s unsupported assertion that the Chamber “similarly” erred regarding Incident G.7⁷⁵⁷ should be summarily dismissed.⁷⁵⁸ Regardless, the Chamber’s conclusion that the SRK perpetrators wilfully made civilians the object of this attack is reasonable.⁷⁵⁹ The Chamber’s conclusions on the residential location,⁷⁶⁰ the civilian status of the 26 victims (including three children),⁷⁶¹ the purely civilian activity in

⁷⁵⁰ *Contra* Mladić-AB, para.536.

⁷⁵¹ *Generally* Judgement, paras.2042-2050. *Contra* Mladić-AB, para.536.

⁷⁵² Judgement, paras.2050, 2043 *citing* AF2426.

⁷⁵³ Judgement, paras.2050, 2043 *citing* AF2426; M.Kapetanović:Exh.P415, paras.5, 7; M.Kapetanović:T.4267, 4273, 4286-4287, Exh.P420, p.2; [REDACTED]; [REDACTED].

⁷⁵⁴ Judgement, paras.2050, 2043-2044 *citing* AF2434, 2427, 2428, [REDACTED], M.Sladoje:T.21064, 21067, 21069, 21084-21085 (testifying that there was a police station but no military target on “Gete Street”; clarifying that “Gete Street” referred to Geteova Street) *referring to* Exhs.D454, P6507. *Also* Exh.P1090. *But see* M.Kapetanović:Exh.P415, para.9.

⁷⁵⁵ Judgement, paras.2050, 2043 *citing* AF2427-2428.

⁷⁵⁶ *See* Mladić-AB, para.533. Mladić’s defence focused on origin or fire, not intent. *See* Judgement, paras.2044-2049; Mladić-FTB, paras.1958-1973.

⁷⁵⁷ Mladić-AB, para.539.

⁷⁵⁸ *See Prlić* AJ, para.25(9).

⁷⁵⁹ *Compare* Judgement, para.2057 *with* paras.3199-3200.

⁷⁶⁰ Judgement, paras.2057, 2052 *citing* AF2436.

⁷⁶¹ Judgement, paras.2057, 2052 *citing* AF2436.

which the victims were engaged (queuing for humanitarian aid),⁷⁶² and the absence of any military activity or targets in the area are well supported by the evidence.⁷⁶³ Mladić does not point to any evidence supporting the presence of legitimate military targets.

4. The Chamber reasonably found the SRK responsible for fire originating from SRK-held territory (4.B.3.4)

212. The Chamber was reasonable in concluding the SRK was responsible for sniping and shelling incidents where the fire originated from SRK-held territory,⁷⁶⁴ as this was the only reasonable inference.⁷⁶⁵

213. Mladić claims the Chamber did not address the possibility that the fire came from the ABiH. He refers to evidence “indicating the propensity for the ABiH to target civilians and civilian objects within BiH territory”.⁷⁶⁶

214. Contrary to Mladić’s argument, the Chamber *did* address the possibility that the ABiH fired from SRK-held territory.⁷⁶⁷ In its discussion of Incident F.5—the only incident developed in this Sub-ground—the Chamber explicitly dismissed Mladić’s argument that ABiH forces sneaked into SRK territory to fire at their own population. The Chamber found that the hearsay evidence relied upon by the Defence was “very vague and insufficiently probative to affect the Trial Chamber’s finding” that fire originating from SRK-held territory came from the SRK.⁷⁶⁸ Mladić does not challenge

⁷⁶² Judgement, para.2057. Also Judgement, para.2052 *citing* AF2436, M.Rose:Exh.P736, para.35, E.Hafižović:Exh.P2455, para.6, E.Hafižović:Exh.P2456, p.4(T.7762), [REDACTED], AF2477.

⁷⁶³ Judgement, paras.2057, 2052 *citing* M.Rose:Exh.P736, para.35, E.Hafižović:Exh.P2455, para.6, E.Hafižović:Exh.P2456, p.4 (T.7762), AF2477.

⁷⁶⁴ Judgement, paras.1937, 1982, 1984, 1986, 1988, 1994, 1996, 1998, 2177. *Contra* Mladić-AB, paras.542-553. Also *contra* Mladić-AB, para.137. For Incidents F.9, 31 March 1993, 26 September 1993, and G.18, the Chamber did not attribute responsibility based on fire originating from SRK-held territory, but rather specifically from SRK positions (F.9: Judgement, para.1943 *relying on* Judgement, para.1940. 31 March 1993: Judgement, para.1980 *relying on* Judgement, para.1978. 26 September 1993: Judgement, para.1992 *relying on* Judgement, para.1991) or SRK members (G.18: Judgement, para.2150 *relying on* Judgement, para.2149). Incident F.2 was dropped. Indictment, Schedule F.

⁷⁶⁵ These inferences are made in the context of detailed evidence on the circumstances of the incidents, rather than mere “first impression[s] based on an incomplete story”. *Haradinaj* TJ, para.161 *referenced at* Mladić-AB, para.551. A chamber is entitled to rely on circumstantial evidence. *Above* fn.654. *Contra* Mladić-AB, paras.547, 550.

⁷⁶⁶ Mladić-AB, para.548.

⁷⁶⁷ *Contra* Mladić-AB, para.552.

⁷⁶⁸ Judgement, fn.8220.

this reasoning. The Chamber appropriately relied on this reasoning for other incidents where it concluded that fire originated from SRK-held territory.⁷⁶⁹

215. If Mladić is referring to ABiH firing *from ABiH-held territory* making it appear as if the fire had come from Serb-held territory, such a theory cannot undermine the Chamber's reasoning. The Chamber found that the fire came from *SRK-held territory* and Mladić has not challenged these findings.⁷⁷⁰

216. In any event, the evidence shows that ABiH firing on its own civilians, if it occurred at all,⁷⁷¹ was very limited.⁷⁷² The two exhibits Mladić cites do not demonstrate otherwise,⁷⁷³ and do not concern the incidents he challenges.⁷⁷⁴ Mladić thus fails to show that the Chamber's conclusion was unreasonable.

⁷⁶⁹ *E.g.* Judgement, fns.8411, 8428, 8438, 8452, 8472, 8483, 8500, 9313.

⁷⁷⁰ Judgement, paras.1937, 1982, 1984, 1986, 1988, 1994, 1996, 1998, 2177.

⁷⁷¹ Many witnesses testified they were not aware of such incidents: *e.g.* M.Bell:Exh.P832, para.117; J.Bowen:T.18041-18042, 18121-18122; A.VanLynden:Exh.P66, para.164. Others had only heard rumours: *e.g.* A.Banbury:Exh.P874, para.203; R.Mole:Exh.P421, paras.120-121; C.Nicolai:T.10669-10670; M.Rose:Exh.P736, paras.213-215; F.Thomas:T.5216-5217; P.Tucker:Exh.P317, para.304; [REDACTED].

⁷⁷² D.Harland:T.901 *referenced at* Judgement, para.1874. *Also* D.Harland:Exh.P1, paras.296-297; D.Fraser:T.5877-5881.

⁷⁷³ Garaplija's testimony pertains to ABiH fire on a French soldier and women assumed to be Serb. E.Garaplija:T.33909 *referenced at* Mladić-AB, fn.645. Exhibit D1425 is a newspaper article in which unnamed UN officials state that ABiH attacks on their own people "though bloody, were a tiny minority among regular city bombardments by Serbian forces." Exh.D1425, pp.1-2 *referenced at* Mladić-AB, fn.645. The Chamber found the officials' conclusions "to be based on speculation and too unsupported to be reliable." Judgement, para.2165. *Also compare* Exh.D1425 *with* Judgement, paras.2156-2173.

⁷⁷⁴ *Contra* Mladić-AB, para.553.

VI. GROUND 5: MLADIĆ IS RESPONSIBLE FOR THE CRIMES COMMITTED PURSUANT TO THE SREBRENICA JCE

217. Mladić shows no error in the Chamber's assessment of his responsibility for crimes in Srebrenica. Based on a thorough review of the evidence, the Chamber reasonably concluded that Mladić played an instrumental role in the JCE with the common purpose of eliminating the Bosnian Muslim population by killing the men and boys of Srebrenica and forcibly removing the women, young children, and some elderly men from Srebrenica. This JCE existed from the days immediately preceding 11 July 1995 until at least October 1995. The JCE involved the commission of forcible transfer and persecution, and by the early morning of 12 July 1995 before the first crime was committed, murder, extermination, and genocide. Between 12 July and mid-August 1995, forces under Mladić's command and control, in an organised and systematic manner, detained and executed thousands of Bosnian Muslim men and boys and transferred about 25,000 Bosnian Muslim women, children and elderly out of Srebrenica. The JCE continued throughout September and October 1995 when Mladić's forces attempted to conceal their crimes by reburying their victims' bodies in remote secondary graves.

218. Mladić seeks to undermine these well-supported findings with a litany of misconceived arguments, most of which are so deficient that they warrant summary dismissal. At their highest, the overwhelming majority of Mladić's arguments amount to a disagreement with the Chamber's assessment of the evidence, complaining that Defence evidence was not given sufficient weight or proffering unreasonable alternative interpretations based on isolated pieces of evidence. His piecemeal approach fails to show that no reasonable trier of fact could have reached the Chamber's conclusions. Moreover, in a number of instances he misstates the record or asks the Appeals Chamber to overturn non-existent findings.

219. Ground 5 should be dismissed.

A. The Chamber reasonably found Mladić to be a member of the Srebrenica JCE (5.A)

220. The Chamber found that Mladić was a member of a single Srebrenica JCE with the common purpose of eliminating the Bosnian Muslims of Srebrenica by forcibly

transferring the women, young children, and some elderly and killing the men and boys.⁷⁷⁵

1. The Chamber reasonably found Mladić was a member of the Srebrenica JCE which included forcible transfer (5.A.2)

221. Mladić's mere disagreement⁷⁷⁶ with the Chamber's evidentiary assessment fails to demonstrate any error in the Chamber's conclusion that he was a member of the Srebrenica JCE, which included the forcible transfer of the Bosnian Muslims from Srebrenica.⁷⁷⁷

222. The Chamber considered and reasonably rejected Mladić's claim that the civilian population was "evacuated" for "humanitarian reasons".⁷⁷⁸ It determined that the evidence did not support the conclusion that there were "any imperative military reasons" for the displacement; that the transfer was "not carried out for the security of the persons involved";⁷⁷⁹ and that no steps were taken to secure the return of those displaced.⁷⁸⁰ It also properly explained that neither an agreement between leaders or representatives nor the involvement of a neutral organisation such as the UN necessarily renders displacement voluntary.⁷⁸¹

223. Mladić's preferred interpretation of the evidence is not a reasonable one. His argument that the Chamber failed to give sufficient weight to his alleged "coordination" with the UN to "evacuate" civilians from Srebrenica,⁷⁸² ignores the RS political and military leadership's long-standing campaign to cleanse Eastern Bosnia of its Muslim population.⁷⁸³ It is contradicted by evidence considered by the Chamber establishing that the population was not humanely removed but was rather driven out by coercive conditions created by Mladić's forces,⁷⁸⁴ including: the 10th Sabotage Detachment⁷⁸⁵ ordering the remaining inhabitants of Srebrenica Town to leave;⁷⁸⁶ the

⁷⁷⁵ *Contra* Mladić-AB, heading VI.A, paras.586, 654, 138. Judgement, para.5096.

⁷⁷⁶ *Prlić* AJ, para.25(10); *Brdanin* AJ, para.24.

⁷⁷⁷ Judgement, paras.5096-5098. *Contra* Mladić-AB, paras.575, 577, 581.

⁷⁷⁸ Judgement, paras.2964, 3164. Mladić-AB, para.578.

⁷⁷⁹ Judgement, paras.3120, 3164. *Contra* Mladić-AB, para.578.

⁷⁸⁰ Judgement, paras.3120, 3164.

⁷⁸¹ Judgement, para.3159.

⁷⁸² Mladić-AB, para.578.

⁷⁸³ Judgement, paras.2359-2362, 2383.

⁷⁸⁴ Judgement, paras.2449-2454, 2938, 3159.

⁷⁸⁵ Judgement, para.245.

⁷⁸⁶ Judgement, para.2445.

firing of shells at the UNPROFOR Bravo compound in Srebrenica;⁷⁸⁷ the firing of mortars along the road taken by refugees fleeing to Potočari;⁷⁸⁸ the shelling and destruction of houses and mosques;⁷⁸⁹ VRS soldiers with dogs throwing hand grenades into homes in Potočari, forcing inhabitants to flee;⁷⁹⁰ the dire living conditions, including violence and killings in Potočari;⁷⁹¹ and the abuse employed to separate families and force women, children and elderly onto buses for transfer to Bosnian Muslim-held territory.⁷⁹²

224. The Chamber did not “accept[.]” that Mladić had given civilians a choice to stay or leave;⁷⁹³ rather it found that those words were not genuine.⁷⁹⁴ The Chamber reasonably concluded that this statement was just another example of Mladić deliberately misleading representatives of the international community, the public and the media.⁷⁹⁵ Mladić’s claimed other reasonable inference of legitimacy⁷⁹⁶ is disproven by his conduct and his forces’ actions,⁷⁹⁷ for example:

- the mobilisation of buses on Mladić’s order on the evening of 11 July, before the third Hotel Fontana meeting⁷⁹⁸ on 12 July where he stated the population could stay if it wished to;⁷⁹⁹
- Vujadin Popović’s (Assistant Commander for Security, Drina Corps) instructions to Momir Nikolić (Chief of Security and Intelligence, Bratunac Brigade) on the morning of 12 July, before the third Hotel Fontana meeting, that all the women and children would be removed;⁸⁰⁰

⁷⁸⁷ Judgement, paras.2445-2446.

⁷⁸⁸ Judgement, para.2446.

⁷⁸⁹ Judgement, para.2448.

⁷⁹⁰ Judgement, para.2448.

⁷⁹¹ Judgement, paras.2453-2454, 4981, 5110.

⁷⁹² Judgement, paras.2557-2558, 2886, 2894.

⁷⁹³ *Contra* Mladić-AB, para.579.

⁷⁹⁴ Judgement, para.5082.

⁷⁹⁵ *Contra* Mladić-AB, para.579. Judgement, paras.5082-5083, 4965.

⁷⁹⁶ Mladić-AB, paras.578-580.

⁷⁹⁷ Judgement, para.2556.

⁷⁹⁸ On 11 and 12 July 1995, three meetings were held at the Hotel Fontana in Bratunac, two on the evening of 11 July and the third on the morning of 12 July. The third meeting was attended by Mladić, other VRS officers, Serb civilian representatives, DutchBat members, and Bosnian Muslims who were acting as ‘representatives’ of the civilian population in Potočari. *See* Judgement, paras.2476-2478.

⁷⁹⁹ Judgement, paras.2481, 2560, 4999, 5097.

⁸⁰⁰ Judgement, para.4978.

- Mladić’s 12 July intercepted communication that the Bosnian Muslims should be “evacuated” including those who do not want to leave;⁸⁰¹
- Mladić’s response to DutchBat’s Koster—who protested Mladić’s wish to “evacuate” the ‘refugees’—that Mladić “could not give a shit about the UN and that he would do as he wanted” and that if Koster opposed him, he would “be in trouble”.⁸⁰²

2. The Chamber reasonably found that Mladić was a member of the Srebrenica JCE which included killing the Bosnian Muslim males (5.A.3)

225. Mladić shows no error with the Chamber’s conclusion that he was a member of a JCE to eliminate the Bosnian Muslims in Srebrenica which, in addition to forcible transfer and persecution, “by the early morning of 12 July 1995” included genocide, extermination and murder.⁸⁰³

(a) The Chamber never found that the plan to murder was formed at a specific meeting

226. The Prosecution never alleged, and the Chamber never found, that the decision to kill the men and boys was taken during a specific meeting on the night of 11-12 July.⁸⁰⁴ Mladić’s challenge to this non-existent finding should be summarily dismissed.⁸⁰⁵

227. The Prosecution argued that the plan “must have been discussed and decided upon sometime between the evening of 11 July [...] and 10:00 hours on 12 July”, between the second and third Hotel Fontana meetings.⁸⁰⁶ By summarising the parties’ arguments, the Chamber was not “rely[ing] on the Prosecution’s closing arguments as evidence”.⁸⁰⁷ Furthermore, the Chamber did not rely on Momir “Nikolić’s inference” of a meeting during which the plan to kill was devised⁸⁰⁸—as Nikolić never made such an inference. Instead, the Chamber relied on Nikolić’s evidence of his discussion

⁸⁰¹ Judgement, paras.5004, 5128.

⁸⁰² Judgement, para.5118.

⁸⁰³ Judgement, paras.5096-5098. *Contra* Mladić-AB, paras.585, 598.

⁸⁰⁴ *Contra* Mladić-AB, paras.585-586.

⁸⁰⁵ *Prlić* AJ, para.25(1), (3).

⁸⁰⁶ Prosecution-FTB, para.1175.

⁸⁰⁷ *Contra* Mladić-AB, para.586.

⁸⁰⁸ *Contra* Mladić-AB, para.589.

with Popović and Svetozar Kosorić (Chief of Intelligence, Drina Corps) who informed him that the men and boys should be killed.⁸⁰⁹

228. The Chamber's conclusion that by the morning of 12 July the JCE encompassed the crimes of murder, extermination and genocide was based on a wealth of evidence and findings, including:

- Mladić and other VRS officers attended one or both of the Hotel Fontana meetings on the evening of 11 July.⁸¹⁰ At the second Hotel Fontana meeting, with knowledge of the situation in Potočari,⁸¹¹ Mladić threatened the Bosnian Muslim 'representative' Mandžić that "his people were to either live or vanish".⁸¹²
- Popović told Nikolić that all the able-bodied men should be killed during a discussion before the third Hotel Fontana meeting on 12 July.⁸¹³
- Mladić announced at the third Hotel Fontana meeting that men aged 16-60 in Potočari were to be separated and (purportedly) screened for war crimes;⁸¹⁴ the men were subsequently systematically separated, including boys as young as 12 years old and men over 60 years old, who "were too young or too old to reasonably be screened".⁸¹⁵
- On 11 or 12 July Zdravko Tolimir, VRS Main Staff Assistant Commander for Intelligence and Security, originally ordered that Batković camp be prepared for a large number of detainees following the fall of Srebrenica, and shortly thereafter conveyed that plan had been given up.⁸¹⁶
- Mladić's forces⁸¹⁷ captured several thousand Bosnian Muslim men from the fleeing column in the days following the Hotel Fontana meetings.⁸¹⁸

⁸⁰⁹ Judgement, para.4938 *citing* M.Nikolić:T.11820; Exh.D301, para.4.

⁸¹⁰ Judgement, paras.2476-2477.

⁸¹¹ Judgement, para.5110. During the second Hotel Fontana meeting, Mladić was informed about the extremely poor humanitarian situation in Potočari where 25,000 or 30,000 people had gathered.

⁸¹² Judgement, paras.2476-2477, 4977.

⁸¹³ Judgement, paras.4956, 4978, 4987.

⁸¹⁴ Judgement, para.2478.

⁸¹⁵ Judgement, paras.2563, 4981.

⁸¹⁶ Judgement, paras.4956, 4977, 4987.

⁸¹⁷ Judgement, para.5098.

- Mladić's forces stripped the detained men of their personal belongings including their identity documents, some of which were destroyed,⁸¹⁹ deprived them of adequate food, water and medical treatment, and subjected them to violence.⁸²⁰
- Mladić issued an order on 13 July to ban giving information about POWs and "evacuated civilians" and prohibit access to the Srebrenica area by local and foreign journalists.⁸²¹
- Mladić's forces, following a pattern and in an organised and systematic manner,⁸²² executed thousands of Bosnian Muslim men from Potočari and the column between 12 July and mid-August 1995.⁸²³
- Mladić's forces reburied murdered victims from primary mass graves to remote secondary graves in an effort to hide them.⁸²⁴

229. The Chamber specifically considered the Defence argument that "there is no evidence of a meeting where crimes were discussed."⁸²⁵ Mladić fails to demonstrate how this argument was given "insufficient weight",⁸²⁶ given that no finding rests on the existence of any such meeting and that the alleged non-existence of such a meeting does not undermine the Chamber's conclusion that the JCE included crimes of genocide, murder and extermination by the morning of 12 July. For similar reasons, evidence of witnesses who were not aware of any such meeting, or gave evidence of other meetings,⁸²⁷ does not show error in the Chamber's actual findings, particularly in relation to those witnesses who were found to be unreliable.⁸²⁸

⁸¹⁸ Judgement, paras.4983-4984.

⁸¹⁹ Judgement, paras.2566, 2653.

⁸²⁰ Judgement, paras.2450, 2453-2454.

⁸²¹ Judgement, para.4982.

⁸²² Judgement, paras.3045, 3547.

⁸²³ Judgement, para.4984.

⁸²⁴ Judgement, para.4986.

⁸²⁵ Judgement, para.4972.

⁸²⁶ Mladić-AB, para.587.

⁸²⁷ Mladić-AB, fn.703, para.595. *Regarding* Mladić-AB, para.595 *see below* para.274.

⁸²⁸ Judgement, para.4953. *Contra* Mladić-AB, paras.594-595.

(b) The Chamber properly assessed Nikolić's and Bursik's evidence

230. Mladić's challenges to Nikolić's credibility should be dismissed. Exercising its discretion,⁸²⁹ the Chamber addressed Nikolić's credibility at length and reasonably found him to be "generally credible and internally consistent".⁸³⁰ Mladić fails to show any error and instead merely repeats many of his trial arguments.⁸³¹ It was within the Chamber's discretion⁸³² to decline to rely on a part of Nikolić's testimony while still crediting Nikolić's evidence in relation to other matters.⁸³³

231. Mladić's complaints about the Chamber's reliance on his own Exhibit D1228—Bursik's report of interviews with Momir Nikolić—fail.⁸³⁴ Nikolić testified *viva voce*.⁸³⁵ The Prosecution questioned him on one aspect of this report,⁸³⁶ but did not seek to admit it into evidence. Mladić did not tender Bursik's report through Nikolić, although it was open to him to do so. Instead, Mladić chose to call Bursik as his own witness⁸³⁷ and tendered Exhibit D1228 through him, in its entirety and without limitation.⁸³⁸ With no objections from the Prosecution, the Chamber admitted Exhibit D1228 without conditions.⁸³⁹ In such circumstances, the report was properly admitted under Rule 89(C) rather than under Rule 92*bis*, *ter* or *quater*.⁸⁴⁰

232. In his Final Trial Brief⁸⁴¹ and closing arguments,⁸⁴² Mladić relied on Exhibit D1228 for the truth of its contents. He continues to do so in his Appeal Brief.⁸⁴³ Having asked the Chamber to admit this exhibit, and relying on it himself for the

⁸²⁹ Šainović AJ, paras.437, 464, 1296; Lukić AJ, para.296.

⁸³⁰ Judgement, para.5304.

⁸³¹ Compare Mladić-AB, paras.587-594 with Mladić-FTB, paras.2536, 2538.

⁸³² Judgement, para.5280 citing Kupreškić AJ, para.333; Blagojević AJ, para.82.

⁸³³ Contra Mladić-AB, para.589.

⁸³⁴ Contra Mladić-AB, paras.588-592.

⁸³⁵ M.Nikolić:T.11767-11844, 11934-12014, 12074-12109, 12111-12169.

⁸³⁶ M.Nikolić:T.12159-12160.

⁸³⁷ B.Bursik:T.38859-38915.

⁸³⁸ B.Bursik:T.38904-38905.

⁸³⁹ B.Bursik:T.38905.

⁸⁴⁰ Contra Mladić-AB, para.590. See *S.Milošević* Admissibility AD, para.18: "there is nothing in the *Galić* Decision which prevents a written statement given by prospective witnesses to OTP investigators or others for the purposes of legal proceedings being received in evidence notwithstanding its non-compliance with Rule 92*bis* – (i) where there has been no objection taken to it".

⁸⁴¹ Mladić-FTB, para.2887 (Mladić relied on Exhibit D1228 to argue that the Prosecution failed to prove that Mladić agreed to a plan to kill at a meeting at Hotel Fontana on 11 July 1995).

⁸⁴² T.44798 (Mladić relied on Exhibit D1228 as evidence that Nikolić never received a direct order from anyone, including Mladić, to commit killings in Srebrenica).

⁸⁴³ Mladić-AB, para.632, fn.772.

“truth of the matters asserted therein”, Mladić can show no error in the Chamber’s exercise of its discretion to admit and rely on it for that same purpose.⁸⁴⁴

233. Furthermore, the Chamber was careful to assess Exhibit D1228 in light of Bursik’s testimony, including that Nikolić “did not tell everything in its entirety”,⁸⁴⁵ and in light of Nikolić’s own evidence.⁸⁴⁶ Contrary to Mladić’s claim,⁸⁴⁷ the Chamber did consider the fact that Bursik’s interview with Nikolić was not recorded when assessing Exhibit D1228.⁸⁴⁸ Notwithstanding Bursik’s views,⁸⁴⁹ Rules 43 and 63 do not apply to plea discussions⁸⁵⁰ and therefore cannot “call[] into question the reliability of [the] information”.⁸⁵¹

234. In any event, Mladić fails to refer to any factual finding based on Exhibit D1228. From his citation to Judgement paragraph 4956,⁸⁵² he appears to dispute the Chamber’s finding regarding Nikolić’s discussion with Radoslav Janković.⁸⁵³ Mladić cannot show any impact because the Chamber’s findings on the JCE’s existence were supported by overwhelming evidence of which this formed only a tiny fraction.⁸⁵⁴

(c) Mladić’s additional arguments also fail

235. Finally, Mladić’s claims that the Chamber placed undue weight on his position and role in the military and gave insufficient weight to a lack of direct orders⁸⁵⁵ are unsupported. Mladić merely disagrees with the Chamber’s conclusion without even attempting to show error. The totality of the evidence establishing his contributions and intent⁸⁵⁶ proves that Mladić was a member of the JCE, which by 12 July included killing.⁸⁵⁷

⁸⁴⁴ *Contra* Mladić-AB, paras.588, 590, 592.

⁸⁴⁵ Judgement, para.5304.

⁸⁴⁶ Judgement, paras.4953, 5127. *See* Lukić AJ, para.296.

⁸⁴⁷ Mladić-AB, para.591.

⁸⁴⁸ Judgement, paras.2612, 5121.

⁸⁴⁹ *See* Bursik:T.38878.

⁸⁵⁰ *See* Blagojević Decision, p.6.

⁸⁵¹ *Contra* Mladić-AB, para.591.

⁸⁵² Mladić-AB, fn.689.

⁸⁵³ *See* Judgement, para.4939.

⁸⁵⁴ *See* Judgement, para.4987.

⁸⁵⁵ Mladić-AB, para.596. *Below* paras.236-271, 273-274.

⁸⁵⁶ Judgement, paras.5096-5098, 5128-5131.

⁸⁵⁷ *Contra* Mladić-AB, para.598.

B. Mladić significantly contributed to the JCE (5.B)

1. Mladić exercised command and control over Bosnian Serb Forces throughout the implementation of the common purpose (5.B.2.2.1)

236. In concluding that Mladić significantly contributed to the Srebrenica JCE,⁸⁵⁸ the Chamber reasonably found that Mladić exercised command and control during the entire Srebrenica operation, including between 14-16 July 1995 when Mladić was in Belgrade.⁸⁵⁹ Its conclusion was based on extensive, mutually corroborating evidence establishing that Mladić: maintained contact with the VRS Main Staff; issued orders to VRS units which were followed; took measures to ensure his orders were implemented; and had regular communications with his Chief of Staff General Milovanović.⁸⁶⁰ Not only does Mladić ignore relevant evidence considered by the Chamber, his arguments concerning specific exhibits do not withstand scrutiny.

237. Mladić fails to show error with the Chamber's finding that written orders he issued on 14 and 15 July⁸⁶¹ were attributable to him.⁸⁶² The Chamber considered the orders in their context and found Mladić issued them and that they, along with other evidence, demonstrated his exercise of command from Belgrade.⁸⁶³ The Chamber described those bearing Mladić's type-signed name followed by the abbreviation "s.r."⁸⁶⁴ as orders he signed (Exhibits P2123-P2125)⁸⁶⁵ and those bearing his type-signed name as being from Mladić (Exhibit P2122),⁸⁶⁶ ultimately concluding that both were attributable to him. Stevanović's testimony,⁸⁶⁷ which comprises only one piece of the evidentiary record considered by the Chamber, does not undercut the Chamber's finding that orders bearing Mladić's name—with or without "s.r."—are attributable to him. Moreover, Mladić fails to show any error in the Chamber's

⁸⁵⁸ *Contra* Mladić-AB, para.138.

⁸⁵⁹ Judgement, paras.5053, 5098. *Contra* Mladić-AB, paras.608-609, 615.

⁸⁶⁰ Judgement, para.5053.

⁸⁶¹ Including Exhs.P2122-P2125.

⁸⁶² *Contra* Mladić-AB, para.611.

⁸⁶³ Judgement, para.5053.

⁸⁶⁴ S.Andrić:T.34887; T.Stevanović:T.35249. *Also* Exhs.P2123-2125.

⁸⁶⁵ Judgement, paras.5022, 5024-5025.

⁸⁶⁶ Judgement, para.5024. *Also* S.Kralj.T:27419-27421 *commenting on* Exh.D726, 14 May 1993 order (02/2-420), type-signed Mladić, stating that "if a document is signed by General Mladić, the soldiers of the units would take that as the gospel. This was carried out to the letter, and there was no question about that."

⁸⁶⁷ Mladić-AB, para.612.

reliance on orders numerically designated “04/” or “06/”,⁸⁶⁸ especially since the Defence tendered documents it attributed to Mladić bearing the designation “06/” and other numerical designations.⁸⁶⁹

238. Mladić’s attempt to explain away written orders he issued by arguing that they relate to the “day-to-day operation of the army”⁸⁷⁰ supports rather than undermines the Chamber’s conclusion that he exercised command whilst in Belgrade. His assertion that the orders do not relate to “military operations, Srebrenica or the Krivaja-95 operation” and were not addressed to any units in Srebrenica⁸⁷¹ is false. Three of the four orders discussed by the Chamber relate to the Srebrenica operations and are addressed to the Drina Corps:⁸⁷²

- Mladić issued Exhibit P2123—a 14 July 1995 order to the Drina Corps allowing a DutchBat group to leave Bratunac—following a 14 July meeting with Slobodan Milošević and international representatives in Serbia. They discussed Srebrenica, including access to POWs, entry of humanitarian aid convoys, the detained Bosnian Muslim men’s fate, and the continued detention of DutchBat soldiers.⁸⁷³ Mladić notes of the meeting: “To free 48 or 86 Dutch soldiers who are with us.”⁸⁷⁴
- Exhibit P2124, a 14 July 1995 order from Mladić, instructs the Drina Corps to allow BiH UNPROFOR Commander General Smith to travel from Sarajevo to Belgrade on 15 July. On 15 July, Mladić met with Smith and other international representatives in Belgrade.⁸⁷⁵ Subsequently, Mladić and Smith discussed the recovery of DutchBat members and access to the “POWs” unaccounted for in

⁸⁶⁸ Mladić-AB, para.611.

⁸⁶⁹ *E.g.* Documents from Mladić bearing document numbers starting with the prefix “06/” include: Exhs.D140; D1471; D1501; D1616; D1665; D1753; D2167. Document numbers starting with the prefix “01/” include: Exhs.D1118; D961 *relied on in* Mladić-FTB, paras.4, 727, 795, 1590. Document numbers starting with the prefix “02/” include: Exh.D99 *relied on in* Mladić-FTB, paras.745, 806; Exh.D726 *relied on in* Mladić-FTB, paras.1741, 1817; Exh.D1499 *relied on in* Mladić-FTB, paras.142, 795, 1578, 2371, 2400, 2417-2418, 2435, 2455. Document numbers starting with the prefix “03/” include: Exh.D1667 *relied on in* Mladić-FTB, paras.745, 749; Exhs.D725, D187 *relied on in* Mladić-FTB, paras.427, 781, 801, 1590; Exh.D962. Document numbers starting with the prefix “07/” include: Exh.D1503 *relied on in* Mladić-FTB, paras.752, 760, 3288.

⁸⁷⁰ Mladić-AB, para.611.

⁸⁷¹ Mladić-AB, para.611.

⁸⁷² Exhs.P2122-2124. While Exh.P2125 does not relate to Srebrenica, the order evidences Mladić’s continued command on 15 July.

⁸⁷³ Judgement, para.5016.

⁸⁷⁴ Judgement, para.5016.

⁸⁷⁵ Judgement, para.5017.

the Srebrenica area.⁸⁷⁶ Smith confronted Mladić with rumours about atrocities in Srebrenica.⁸⁷⁷

- Exhibit P2122, a 14 July 1995 instruction from Mladić to the Drina Corps about the limited operation of the VRS Main Staff’s communication centre during the Srebrenica operation—clearly critical to ensuring the operation proceeded unabated.

239. Mladić’s undeveloped argument that the Chamber failed to give “sufficient weight” to evidence purportedly establishing that VRS Main Staff Chief of Staff and Deputy Commander Manojlo Milovanović replaced him while he was in Belgrade in July 1995⁸⁷⁸ should be summarily dismissed. Mladić simply repeats his trial argument claiming communications problems⁸⁷⁹ that was properly dismissed by the Chamber.⁸⁸⁰

240. The Chamber reasonably concluded that Mladić’s 14-16 July 1995 intercepted communications demonstrate that he was continuing to exercise command and control from Belgrade.⁸⁸¹ Exhibits P1298 and [REDACTED] are intercepted conversations involving Mladić discussing his departure for Belgrade⁸⁸² and his schedule on the night of 16 July.⁸⁸³ The absence of orders therein does not undermine the Chamber’s finding.⁸⁸⁴ Mladić’s preference for a different interpretation of Exhibits P1655 and P1657 fails to show error. Rather, the intercepts show that Mladić was briefed by and issued instructions to his command staff regarding operations in the Zvornik area:

- In Exhibit P1655, Mladić was informed that Zvornik Brigade Commander Vinko Pandurević opened a passage through VRS lines for some Muslim men in the column to escape to Bosnian Muslim-held territory⁸⁸⁵ and instructed his

⁸⁷⁶ R.Smith:Exh.P785, paras.157-158; R.Smith:T.7339-7340, 7343.

⁸⁷⁷ Judgement, para.5017.

⁸⁷⁸ Mladić-AB, para.613.

⁸⁷⁹ Mladić-FTB, paras.670, 3299. Through their military expert, the Defence argued at trial that Mladić appointed Milan Gvero to “stand in” for him during his absence. M.Kovac:T.41393-41394. *Prlić* AJ, para.25(7).

⁸⁸⁰ Judgement, para.5046.

⁸⁸¹ Judgement, paras.5046, 5049, 5053, 5022-5032. *Contra* Mladić-AB, para.614.

⁸⁸² Judgement, para.5015.

⁸⁸³ Judgement, para.5027.

⁸⁸⁴ *Contra* Mladić-AB, para.614(a), (c).

⁸⁸⁵ Judgement, para.5028 *citing* Exh.P1655 (confidential).

subordinates to arrange for Popović or Drago Nikolić (Assistant Commander for Security, Zvornik Brigade) to go to Pandurević.⁸⁸⁶

- In Exhibit P1657, Mladić was also briefed by Milovanović who informed Mladić that everything was going as it should and whom Mladić instructed to [REDACTED]⁸⁸⁷

The totality of the evidence—showing Mladić’s familiarity with on-going operations and his issuance of related orders⁸⁸⁸—supports the Chamber’s finding that Mladić exercised command and control while in Belgrade.⁸⁸⁹

2. Mladić exercised command and control over MUP units (5.B.2.2.2)

241. Mladić fails to show any error with the Chamber’s conclusion that from 11 until at least 17 July 1995, MUP units under Ljubiša Borovčanin’s command deployed in the area of Srebrenica⁸⁹⁰ were under VRS command.⁸⁹¹ The Chamber’s finding that Borovčanin received his directives from the VRS was based on a thorough analysis of the record, including: the involvement of MUP forces in the Srebrenica events pursuant to an order from the VRS Supreme Commander that they support the VRS on-going attack on the Srebrenica enclave;⁸⁹² the reporting of MUP activities to the VRS’ Bratunac Brigade; and direct orders Borovčanin and his forces received from Mladić and other VRS officers.⁸⁹³ For example:

- Upon his arrival in the Srebrenica area, Borovčanin, who had been directed to report to then Drina Corps Chief of Staff Radislav Krstić,⁸⁹⁴ met Mladić, who ordered Borovčanin to launch an attack on Potočari on the morning of 12 July.⁸⁹⁵

⁸⁸⁶ Exh.P1339 (confidential); Judgement, paras.5030, 5049.

⁸⁸⁷ Exh.P1657 (confidential); Judgement, paras.5032, 5113, fn.17688.

⁸⁸⁸ See 16 July video of Mladić speaking on the telephone from the VMA in Belgrade asking about “Vinko’s” activities and issuing an order to shoot down NATO planes in the Žepa area: Exh.P1147, V000-9267, 00:50’36-00:51’39, tp.94-95; R.Butler:T.16424; Agreed Fact 16. *Also* Exh.P2128, p.1 *See* [REDACTED]; [REDACTED]. *Also* Exhs.P2129; [REDACTED]; [REDACTED].

⁸⁸⁹ Judgement, para.5053. *Contra* Mladić-AB, B.2.2.1.1-B.2.2.1.2.

⁸⁹⁰ Deputy Commander of the RS MUP Special Police Brigade.

⁸⁹¹ Judgement, para.4957. *Also* Judgement, paras.4984, 4989.

⁸⁹² Judgement, paras.2443, 5059.

⁸⁹³ Judgement, para.4957.

⁸⁹⁴ Judgement, para.5059.

⁸⁹⁵ Exh.P724, pp.2-3; Judgement, paras.5059, 5066.

- On 12 July, Mladić ordered Borovčanin to deploy half his forces along the Kravica-Konjević Polje road to block the Muslim column.⁸⁹⁶
- The Chamber also found that on 12 July, Mladić ordered that part of Borovčanin's unit provide security for the transport of civilians from Potočari, and another part to go to Zvornik.⁸⁹⁷

Mladić's attempt to undermine the Chamber's conclusion by claiming that it placed insufficient weight on certain pieces of evidence should be summarily dismissed.⁸⁹⁸

242. The Chamber properly and clearly distinguished cooperation and coordination from re-subordination.⁸⁹⁹ Regarding the Trnovo killings,⁹⁰⁰ it found that there was "insufficient evidence of resubordination" of the Skorpions unit to the VRS;⁹⁰¹ finding instead that the Skorpions "worked in coordination with VRS units".⁹⁰² The Chamber's proper understanding and application of re-subordination is also evident in the Overarching JCE, where the Chamber found that re-subordinated MUP units remained "under the command of MUP officials" and "were assigned [tasks] by the VRS and that MUP units followed orders issued by the VRS in that respect."⁹⁰³ Mladić simply disagrees with the Chamber's conclusion and its rejection of his trial argument.⁹⁰⁴

243. In any event, the evidence Mladić cites either supports the Chamber's conclusion or is irrelevant.⁹⁰⁵ Theunens' evidence,⁹⁰⁶ to which Mladić cites,⁹⁰⁷ does not help him. Theunens' definition of re-subordination—that the commander of a MUP unit re-subordinated to the VRS receives operational orders from the VRS command and not from his MUP commander⁹⁰⁸—is entirely consistent with the

⁸⁹⁶ Judgement, para.2642; Exh.P724, p.3. *Also* Exh.P2117.

⁸⁹⁷ Judgement, para.5067.

⁸⁹⁸ *Prlić* AJ, para.25(10).

⁸⁹⁹ *Contra* Mladić-AB, para.617.

⁹⁰⁰ Incident E.13.1.

⁹⁰¹ Judgement, para.4989.

⁹⁰² Judgement, paras.2882, 3863, 4989.

⁹⁰³ Judgement, para.3826. *Also* Judgement, para.3794.

⁹⁰⁴ Judgement, para.4957.

⁹⁰⁵ Mladić cites Exh.P5248, a 31 March 1994 order of Milovanović. Mladić-AB, para.617, fn.732. This order from a different time period which does not concern re-subordination or coordinated actions is unhelpful.

⁹⁰⁶ Mladić relied on Theunens at trial for the same argument. *See* Mladić-FTB, para.540.

⁹⁰⁷ Mladić-AB, para.617.

⁹⁰⁸ R.Theunens:T.20620-20621.

Chamber's analysis.⁹⁰⁹ Similarly, neither Kevac's⁹¹⁰ nor Kovac's⁹¹¹ definitions of re-subordination and coordination undercuts the Chamber's finding.⁹¹²

244. Contrary to Mladić's claim,⁹¹³ Nikolić's evidence⁹¹⁴ also supports the Chamber's finding. Nikolić testified that all the MUP forces engaged in the Srebrenica area were under Borovčanin's command⁹¹⁵ and that Borovčanin "received his orders from the officer in charge and that was General Mladić",⁹¹⁶ as reported by Borovčanin in his report on the MUP's engagement in the Srebrenica area.⁹¹⁷ Mladić selectively highlights portions of Nikolić's evidence, disregards Nikolić's on-point evidence and ignores other evidence establishing that Borovčanin and his units were re-subordinated to the VRS and Mladić.⁹¹⁸ Also, irrespective of the task Mladić assigned as recorded in Vasić's 13 July report,⁹¹⁹ Mladić's arguments cannot obscure the Chamber's finding that he tasked MUP units on the morning of 13 July.⁹²⁰ Mladić's claim that the Chamber "placed undue weight" on the term "killing" in Vasić's 13 July report⁹²¹ fails to show any error.

245. That an order Mladić issued on 13 July was not addressed to the MUP⁹²² is not inconsistent with the Chamber's finding that MUP units were re-subordinated to the VRS. Mladić fails to show that the Chamber's re-subordination finding turns on Mladić directly addressing every order to the MUP. He also fails to address orders he issued directly to MUP Commander Borovčanin and his units.⁹²³ The decision to

⁹⁰⁹ Judgement, para.3826.

⁹¹⁰ Mladić relied on this evidence at trial to support the same argument. *See* Mladić-FTB, para.540. V.Kevac:T.30510, 30545.

⁹¹¹ [REDACTED].

⁹¹² *Contra* Mladić-AB, para.617, fn.732.

⁹¹³ Mladić-AB, para.617.

⁹¹⁴ Mladić relied on Nikolić's evidence at trial to support the same argument. *See* Mladić-FTB, para.539.

⁹¹⁵ M.Nikolić:T.12094.

⁹¹⁶ M.Nikolić:T.12164-12166.

⁹¹⁷ Exh.P724, pp.2-3.

⁹¹⁸ *Above* para.241.

⁹¹⁹ Mladić-AB, para.618 *citing* Butler's testimony discussing Vasić's 13 July report, Exh.P2118.

⁹²⁰ Judgement, para.5068.

⁹²¹ Mladić-AB, para.618.

⁹²² Mladić-AB, para.617 *citing* Exh.P1559.

⁹²³ *Above* para.241.

move some freed-up VRS forces to Žepa⁹²⁴ says nothing about the relationship between the MUP and VRS forces that remained in the Srebrenica area.⁹²⁵

3. Mladić significantly contributed to the Srebrenica JCE by issuing orders (5.B.2.2.3)

246. Mladić fails to show error with the Chamber's conclusion that he significantly contributed to the common purpose by issuing orders concerning the Srebrenica operation to VRS and MUP forces.⁹²⁶ First, Mladić ignores that his contributions to the common purpose need not be *per se* criminal.⁹²⁷ Second, Mladić impermissibly seeks to substitute his own interpretation of orders, repeating unsuccessful trial arguments about Directive 4,⁹²⁸ Krivaja-95,⁹²⁹ and Directive 7.⁹³⁰

247. The Chamber reasonably concluded that Mladić's orders concerning the Srebrenica operation contributed to achieving the common purpose.⁹³¹ Mladić fails to demonstrate the Chamber acted unreasonably in considering Mladić's orders, including:

- on 11 July, to Borovčanin to take Potočari,⁹³² taking control of the Muslim population who had sought refuge there;
- on the evening of 11 July, to mobilise buses for the expulsion of the women, children and elderly men;⁹³³
- by 12 July, to transport the women, children and elderly out of Potočari;⁹³⁴
- from 12 July, to separate men from the women, children and elderly in Potočari;⁹³⁵ men who were then detained and summarily executed;

⁹²⁴ Judgement, para.2579; Exh.D290.

⁹²⁵ *Contra* Mladić-AB, para.617. *See* Judgement, para.4983.

⁹²⁶ *Contra* Mladić-AB, para.620. Judgement, paras.5097-5098.

⁹²⁷ *Popović* AJ, para.1615.

⁹²⁸ Mladić-FTB, paras.2852-2856, 3004-3022.

⁹²⁹ Mladić-FTB, paras.2872-2874, 2879-2882; T.44629-44630.

⁹³⁰ Mladić-FTB, paras.572, 802; T.20889-20890.

⁹³¹ Judgement, para.5097.

⁹³² Judgement, para.5066.

⁹³³ Judgement, para.5052.

⁹³⁴ Judgement, para.5052.

⁹³⁵ Judgement, paras.5052, 5130. *Also* Judgement, paras.5059, 2478, 2500, 2563, 5110.

- on 12 July, to the Drina Corps and MUP units to block the fleeing column of Muslim men around Konjević Polje,⁹³⁶ leading to the capture of thousands of men and boys who were subsequently executed;⁹³⁷
- on 13 July, to stop the registration of prisoners detained at Nova Kasaba football field;⁹³⁸
- on 13 July, to secure the transfer of prisoners from Nova Kasaba to Vuk Karadžić Elementary School in Bratunac,⁹³⁹ where his forces killed more than 50 Bosnian Muslim men, and transported the remaining prisoners to Zvornik for execution;⁹⁴⁰
- on 13 July, prohibiting the provision of information about POWs and ‘evacuated civilians’ to the media and prohibiting uninvited journalists from accessing the Srebrenica area, to maintain the secrecy of Srebrenica operations;⁹⁴¹
- to sell the staged footage of food and water distribution to civilians in Potočari to foreign agencies to mislead the international community;⁹⁴²
- to transfer the detained men from Bratunac to the Zvornik area where they were summarily executed;⁹⁴³
- before 15 July, to Furtula to provide Beara with troops to carry out his work in the Srebrenica area;⁹⁴⁴
- to conduct a sweep operation on 17 July to capture and destroy lagging Muslim groups in the Milići-Bratunac area, leading to the murder of around 150 Bosnian Muslim men in the Cerska Valley;⁹⁴⁵

⁹³⁶ Judgement, paras.2641-2642.

⁹³⁷ Judgement, paras.2653, 2655.

⁹³⁸ Judgement, paras.5011, 2607.

⁹³⁹ Judgement, para.5052.

⁹⁴⁰ Judgement, paras.2917, 2655.

⁹⁴¹ Judgement, paras.4965, 5072, 5081.

⁹⁴² Judgement, para.5083.

⁹⁴³ Judgement, paras.2566, 2735, 2775, 2768, 2793, 4940.

⁹⁴⁴ Judgement, paras.4945, 5001-5002, 5049, 4988, 2698, 2912, 2735, 2812, 4940, 3004, [REDACTED].

- on 14 September 1995, authorising the distribution of fuel for a large scale reburial operation to cover-up the crimes;⁹⁴⁶ and
- to execute the 10 prisoners held at the Standard Barracks on or about 23 July, passed on by Popović to Dragan Nikolić.⁹⁴⁷

248. The Chamber properly considered the content and context of Directive 4.⁹⁴⁸ Contrary to Mladić's suggestion, Directive 4 does not mandate adherence to the Geneva Conventions.⁹⁴⁹ Through Directive 4, Mladić issued a patently illegal order tasking the Drina Corps with forcing the ABiH *and* "the Muslim population" to leave the Birač (an area that includes Srebrenica), Žepa and Goražde areas.⁹⁵⁰ Implementing Directive 4, (then) Drina Corps Commander Milenko Živanović ordered Drina Corps units to "inflict the highest possible losses on the enemy, forcing the Bosnian-Muslim population to abandon the areas of Cerska, Žepa, Srebrenica, and Goražde",⁹⁵¹ confirming that Directive 4's objective was to forcibly expel the civilian population from the area. Their subsequent expulsion further confirms Directive 4's illegality.⁹⁵²

249. Mladić fails to show that his referenced pre-1995 orders—assessed by the Chamber as not indicative of his true state of mind⁹⁵³—undercut the Chamber's finding that Mladić's 11 July to 11 October 1995 orders concerning the Srebrenica operation furthered the Srebrenica JCE's common purpose.⁹⁵⁴

250. Mladić also fails to demonstrate the Chamber erred by not crediting Krivaja-95's⁹⁵⁵ language (also in Vidoje Blagojević's 5 July implementation order⁹⁵⁶) calling for adherence to the Geneva Conventions.⁹⁵⁷ The language to which Mladić points cannot, and does not, negate Krivaja-95's illegal objective to forcibly drive out

⁹⁴⁵ Judgement, paras.2658, 2641, 2644, 2684, 5033; Exh.P1579.

⁹⁴⁶ Judgement, paras.3002, 4986.

⁹⁴⁷ Judgement, para.5039.

⁹⁴⁸ Judgement, paras.2320-2329, 2358-2360, 4974.

⁹⁴⁹ Mladić-AB, para.620.

⁹⁵⁰ Exh.P1968, p.5; Judgement, para.2359.

⁹⁵¹ Judgement, para.2359; Exh.P2095, p.1.

⁹⁵² Judgement, paras.2359-2361, 4389. *Also* R.Butler:T.16135-16136, 16144-16145.

⁹⁵³ Judgement, para.4687. *Also* Judgement, paras.4917-4919.

⁹⁵⁴ Judgement, para.5097. *Contra* Mladić-AB, para.620.

⁹⁵⁵ Exh.D302.

⁹⁵⁶ Exh.D303, p.5; Judgement, para.2362.

⁹⁵⁷ *Contra* Mladić-AB, para.620, fn.746.

the population.⁹⁵⁸ Krivaja-95 included the objective to reduce the Srebrenica enclave to its urban area to thereby create conditions in which it would be impossible for the Muslim population to sustain itself, and thus require the population's departure from the area.⁹⁵⁹ The stated intention was to "create conditions for the elimination of the enclaves."⁹⁶⁰ The Chamber found that the VRS "intended to make the enclave disappear, to empty it and to make it Serb territory".⁹⁶¹ Rather than act in accordance with the Geneva Conventions, the Chamber found actions taken pursuant to these orders paved the way for the realisation of the common purpose.⁹⁶²

251. The Chamber carefully analysed Directive 7's content and context.⁹⁶³ While the Chamber does not refer to Krivaja-95 to conclude that Directive 7/1 did not rescind Directive 7,⁹⁶⁴ Krivaja-95 supports that conclusion.⁹⁶⁵ In his subsequent confusing and undeveloped argument, Mladić misleadingly relies on Butler's statement "that the VRS had the military legitimate right to attack the 28th Division",⁹⁶⁶ disregarding Butler's evidence that Krivaja-95 also tasked "the elimination of the enclave, not simply the elimination of the military threat of the 28th Division."⁹⁶⁷ In addition, Mladić ignores Butler's assessment that Krivaja-95—which references *both* Directives 7 and 7/1—shows that Directive 7/1 did not supersede but rather supplemented Directive 7 with additional technical information.⁹⁶⁸ Thus, Butler's evidence confirms the Krivaja-95 operation sought the enclave's elimination in line with Directive 7.

252. The Chamber reasonably concluded that Mladić's 13 July order⁹⁶⁹—issued when thousands of Bosnian Muslim men were in VRS custody⁹⁷⁰—limiting access to local and foreign journalists into the Srebrenica area, and banning the provision of information on POWs, evacuated civilians, and escapees, was a measure to keep the

⁹⁵⁸ *Below* para.279.

⁹⁵⁹ Judgement, paras.2362, 3315; Exhs.P1465, p.3; D302, p.2.

⁹⁶⁰ Judgement, para.2362.

⁹⁶¹ Judgement, para.2362.

⁹⁶² Judgement, paras.2362, 2444-2448.

⁹⁶³ *See* Judgement, paras.2364-2387.

⁹⁶⁴ *Contra* Mladić-AB, para.621.

⁹⁶⁵ Exh.P1465, p.3. In addition to expressly referring to Directive 7, Krivaja-95 repeats language from Directive 7, that the Drina Corps should "create conditions for the elimination of the enclaves."

⁹⁶⁶ Mladić-AB, para.621 *citing* R.Butler:T.16498-16499.

⁹⁶⁷ R.Butler:T.16194-16195.

⁹⁶⁸ R.Butler:T.16158-16159, 16192.

⁹⁶⁹ Exhs.P1559, p.2; P2120, p.1.

⁹⁷⁰ Judgement, paras.4982, 5081.

international community from learning what was happening in Srebrenica.⁹⁷¹ Mladić claims more weight should have been given to “similar orders” before and after July 1995.⁹⁷² However, none of the orders he lists are comparable to his 13 July order issued in the midst of a mass murder operation.⁹⁷³ Mladić fails to show the Chamber’s finding was one no reasonable finder of fact could have reached given Mladić’s other acts and statements,⁹⁷⁴ and particularly in light of Mladić’s subsequent efforts to mislead the international community about the crimes,⁹⁷⁵ and his order approving the distribution of fuel for the massive reburial operation.⁹⁷⁶

4. The intercept evidence is authentic and reliable (5.B.2.2.4)

253. Mladić fails to show that the Chamber’s extensive assessment of the reliability and authenticity of the intercepts was unreasonable in light of the totality of the evidence.⁹⁷⁷ The Chamber cautiously assessed the intercepts “in the context of the entire trial record” and concluded that they are “genuine contemporaneous reports of intercepted VRS communications.”⁹⁷⁸ In arguing that the Chamber disregarded certain pieces of evidence and failed to ascribe sufficient weight to others, Mladić merely disagrees with the Chamber’s assessment.

254. In concluding that the intercepts, and in particular communications intercepted while Mladić was in Belgrade, were not “forgeries”⁹⁷⁹ or “manipulated,”⁹⁸⁰ the Chamber considered the totality of the evidence, including the evidence of RM316

⁹⁷¹ Judgement, para.5081. *Contra* Mladić-AB, para.622.

⁹⁷² Mladić-AB, para.622.

⁹⁷³ Exhs.P4332, P4383, P5161, P5173, P6549, P6641 include general instructions to keep military operations confidential. Exhs.P5068, P5069 are irrelevant as they relate to reporting within the chain of command. Exh.P5224 includes Mladić’s 13 April 1994 order to isolate and restrict the movement of, *inter alia*, UNPROFOR, UNMOs and foreign journalists which the Chamber found was issued in retaliation for NATO providing air support to UN safe areas. Judgement, para.4604. In relation to Exh.P6646, a 19 November 1994 order from the VRS Main Staff’s Sector for Moral Guidance, Religious and Legal Affairs, the Chamber found it to be one measure taken by that sector implementing Mladić’s order “to conceal the real intent of the VRS forces and to gain support for their actions.” Judgement, paras.4488, 4497-4500.

⁹⁷⁴ Judgement, paras.5097-5098.

⁹⁷⁵ Judgement, paras.5075, 5084.

⁹⁷⁶ Judgement, paras.5042, 5049-5050.

⁹⁷⁷ Judgement, paras.5305-5308. *Contra* Mladić-AB, para.624.

⁹⁷⁸ Judgement, para.5307.

⁹⁷⁹ Judgement, paras.5046, 5307.

⁹⁸⁰ Judgement, para.5307. Regarding intercepted communications between 14-17 July 1995, the Chamber noted at Judgement, para.5046 that it had not received any evidence indicating the intercepted communications were forgeries and after specifically addressing the evidence of witnesses Velo Pajić and RM316, dismissed the “Defence’s argument that Mladić was not sufficiently identified in the intercepted conversation and lacked communication while he was in Belgrade.”

and Velo Pajić⁹⁸¹ and specifically referred to Mladić’s trial arguments concerning RM316’s training.⁹⁸² The evidence to which Mladić cites⁹⁸³ allegedly establishing the “partisan” nature of RM316’s testimony, has nothing to do with RM316’s work, his unit, the Srebrenica-related intercepts, or generally any electronic surveillance from Tuzla.⁹⁸⁴

255. Mladić’s mere assertion that the Chamber failed to ascribe sufficient weight to certain evidence—which he argues undermines the authenticity and reliability of the intercepts⁹⁸⁵—should be summarily dismissed.⁹⁸⁶ The Chamber’s assessment was based on an evaluation of the totality of the evidence. Mladić does not show any error let alone demonstrate how any greater weight attributed to the listed evidence would result in a different conclusion. Moreover, Mladić simply repeats arguments from trial which the Chamber referenced in its consideration of the authenticity and reliability of the intercepts.⁹⁸⁷

256. Mladić also mischaracterises the underlying evidence when arguing that the Chamber did not adequately address inconsistencies.⁹⁸⁸ Mladić’s claim that Exhibits P1320, P1321 and P2126 are inconsistent with P1332 is not borne out by the evidence.⁹⁸⁹ First, Exhibit P1332 is [REDACTED], unrelated to Exhibits P1320, P1321 and P2126.⁹⁹⁰ Second, the contents of inter-related intercepts, Exhibits P1320,

⁹⁸¹ Judgement, para.5046.

⁹⁸² Mladić-FTB, para.2620 cited in Judgement, para.5305, fn.18087. *Contra* Mladić-AB, para.625.

⁹⁸³ See Mladić-AB, fn.756 specifically [REDACTED]; [REDACTED]; N.Vlaski:Exh.D735, para.23; E.Garaplija:T.33909; E.Garaplija:Exh.D980, pp.3-12; Exh.D1425, pp.1-2.

⁹⁸⁴ *Contra* Mladić-AB, para.625.

⁹⁸⁵ Mladić-AB, para.626.

⁹⁸⁶ See *Prlić* AJ, para.25(7), (10).

⁹⁸⁷ *Generally* Judgement, paras.5305-5308. *E.g.* regarding RM275’s employment status see Judgement, fn.18089 citing T.44611 and Mladić-FTB, para.2618; regarding the chain of custody see Judgement, fn.18089 citing Mladić-FTB, paras.2595-2596 relying on the same evidence, see Mladić-AB, fn.759, and T.44611; regarding radio-relay routes see Judgement, fn.18087 citing Mladić-FTB, paras.2649-2650, 2652-2653 relying on the evidence cited in Mladić-AB, fn.760. Regarding Butler’s evidence, *e.g.* Judgement, fn.18088 citing Mladić-FTB, para.2588. In considering Mladić’s argument, the Chamber would have been aware of other parts of Butler’s testimony addressing intercepts. In any event, while Butler expressed initial skepticism about the authenticity of the intercepts he testified: “ultimately I came to find it valuable because we were able to corroborate much of the information that was contained in those intercepts”, R.Butler:T.16116-16117. Butler reiterated his “strong conclusion that the body of intercepts that I’ve used is authentic and purports to be exactly what it is”. R.Butler:T.16706.

⁹⁸⁸ Mladić-AB, para.627.

⁹⁸⁹ Mladić-AB, fn.763.

⁹⁹⁰ [REDACTED].

P1321, P2126 and P1322, are consistent.⁹⁹¹ These intercepted communications capture Ljubiša Beara (VRS Main Staff Chief of Security Administration) during the murder operation on the morning of 15 July following up on Mladić's order that Furtula provide Beara with troops as a solution for the "3,500 'parcels'" Beara still has "to distribute".⁹⁹² At this time, prisoners held in Ročević and Kula Schools and at the Pilica Cultural Centre had not yet been executed.⁹⁹³ Contrary to Mladić's claim of an unresolved inconsistency,⁹⁹⁴ Beara, who had been expecting Lukić's intervention platoon, told Drina Corps Commander Krstić he needed 15-30 men, including Lukić's subordinate Indić, to assist him in his work.

257. Two related conversations were intercepted:

- Exhibits P1320⁹⁹⁵/P1321⁹⁹⁶ are [REDACTED] intercepted communication between Beara and Živanović. Beara complained to Živanović that "Furtula" did not send "Lukić's intervention platoon."⁹⁹⁷ Živanović, who was no longer Drina Corps commander, referred Beara to Krstić.
- Exhibits P2126⁹⁹⁸/P1322⁹⁹⁹ capture Beara's subsequent conversation with Krstić.¹⁰⁰⁰ Beara told Krstić that Furtula did not carry out Mladić's¹⁰⁰¹ order and that Beara needed "15-30 men and Boban Indić" to resolve the situation.¹⁰⁰²

The Prosecution's military expert Butler gave evidence that "Furtula" is a reference to Major Radomir Furtula, commander of the 5th Podrinje Light Infantry Brigade;

⁹⁹¹ Mladić does not refer to Exhibit P1322, but it is the only other intercept directly related to Exhibits P1320, P1321 and P2126.

⁹⁹² Exh.P2126 (confidential).

⁹⁹³ Judgement, Chapters 7.9-7.10.

⁹⁹⁴ Mladić-AB, para.627.

⁹⁹⁵ ABiH report including the intercepted communication between Beara and Živanović on 15 July at 09:54 hours.

⁹⁹⁶ ABiH handwritten version of intercepted communication between Beara and Živanović at 09:54 hours.

⁹⁹⁷ Exhs.P1320, p.1 (confidential); P1321 (confidential). Judgement, para.5001.

⁹⁹⁸ ABiH report including the intercepted communication between Beara and Krstić at 10:00 hours.

⁹⁹⁹ ABiH handwritten version of intercepted communication between Beara and Krstić at 09:55 hours.

¹⁰⁰⁰ This conversation was recorded by two separate intercept operators. One intercept operator heard Beara and Krstić introduce themselves to each other: Exh.P1322. A second missed the beginning but heard the rest of the conversation more clearly: Exh.P2126 (confidential).

¹⁰⁰¹ Judgement, para.5049.

¹⁰⁰² Judgement, paras.4945, 5002.

“Lukić” is Milan Lukić, one of Furtula’s platoon or company commanders;¹⁰⁰³ and Boban Indić was a subordinate of Milan Lukić.¹⁰⁰⁴

258. Similarly, Mladić’s claim that the Chamber failed to resolve an inconsistency between Exhibits P1645 and P1657¹⁰⁰⁵ is baseless. First, Exhibit P1645 is not an intercepted communication.¹⁰⁰⁶ Second, the only other interception of Mladić’s communication with Kostić on 16 July 1995 at 22:50 (Exhibit P1657)¹⁰⁰⁷ is [REDACTED]. Neither Exhibit P1657 nor [REDACTED] refers to Krstić or Mladić going to Žepa as Mladić claims.¹⁰⁰⁸

5. Mladić failed to take adequate steps to investigate and punish perpetrators
(5.B.2.2.5)

259. The Chamber concluded that Mladić significantly contributed to the Srebrenica JCE,¹⁰⁰⁹ by failing to take adequate steps to investigate crimes and/or punish VRS members and other Serb forces under his effective control who committed the Srebrenica crimes.¹⁰¹⁰ It found that Mladić was aware of the crimes and rather than investigate and/or punish the perpetrators, he deliberately lied to conceal the crimes.¹⁰¹¹ Mladić’s arguments that the Chamber “disregarded” and improperly weighed probative evidence¹⁰¹² to erroneously arrive at this conclusion should be dismissed.

(a) Mladić had knowledge of the crimes (5.B.2.2.5.1)

260. The Chamber found, *inter alia*, that Mladić was in command and control of all VRS and MUP units who carried out the Srebrenica crimes,¹⁰¹³ and was involved in critical aspects of the common purpose through his issuance of orders—including his

¹⁰⁰³ R.Butler:T.16357; Exh.P2203, p.95, fn.543.

¹⁰⁰⁴ R.Butler:T.16362-16363. A 13 July intercepted conversation reveals that a bus carrying men from Višegrad commanded by Boban Indić had broken down *en route*. Exhs.P1285-P2186; [REDACTED]; P2203, p.95, fn.543.

¹⁰⁰⁵ Mladić-AB, para.627, fn.763.

¹⁰⁰⁶ Exh.P1645; [REDACTED].

¹⁰⁰⁷ See Judgement, paras.5032, 5114; Mladić-AB, fn.763.

¹⁰⁰⁸ These intercepts are consistent. [REDACTED]. Exh.P1657, p.2 (confidential) includes Mladić’s final remarks: [REDACTED]. *Contra* Mladić-AB, fn.763. *Also* Judgement, para.5114.

¹⁰⁰⁹ *Contra* Mladić-AB, paras.640-641. Judgement, paras.5094, 4987.

¹⁰¹⁰ Judgement, paras.5097-5098 (finding failure to investigate and/or punish a contribution). *Compare with* Mladić-AB, para.631 contesting failure to prevent.

¹⁰¹¹ Judgement, paras.5093-5094.

¹⁰¹² Mladić-AB, paras.630, 639.

14 September 1995 order for fuel¹⁰¹⁴—to subordinates implementing the JCE’s common purpose.¹⁰¹⁵ In light of this, and coupled with his presence monitoring operations in the Srebrenica area on key dates in close proximity with the victims¹⁰¹⁶—with the benefit of fully functioning communication and reporting chains¹⁰¹⁷—the Chamber reasonably found that Mladić, along with other VRS officers, was aware of the crimes.¹⁰¹⁸

261. Mladić fails to explain how the Chamber “placed undue emphasis” on Bojanović’s evidence—that the crimes would have been reported up the chain of command in a daily combat report¹⁰¹⁹—when the Chamber expressly stated that it did not rely on this aspect of his evidence.¹⁰²⁰

262. Mladić also fails to show how the absence of explicit mention of crimes in the Zvornik Brigade’s 14 July daily combat report undercuts the Chamber’s finding that VRS officers, including Mladić, were aware of the killings.¹⁰²¹ The Chamber’s assessment of the report was entirely reasonable in light of [REDACTED].¹⁰²² On this occasion, [REDACTED]¹⁰²³ [REDACTED].¹⁰²⁴

263. Momir Nikolić’s evidence confirms Mladić’s active participation in and knowledge of the murder operation.¹⁰²⁵ First, Mladić misrepresents Nikolić’s evidence. In Exhibit D1228—to which Mladić cites—Nikolić is reported to have said that he did not mention the plan to kill the Bosnian Muslim men in a report he prepared after his discussion with Popović and Kosorić on 12 July 1995, but makes no

¹⁰¹³ Judgement, paras.4989, 5092, 5096, 5098.

¹⁰¹⁴ Exh.P1500. Judgement, paras.3002, 5042, 5050, 2992; Exh.P2123. *Contra* Mladić-AB, para.633.

Also above para.237.

¹⁰¹⁵ *Above* para.247.

¹⁰¹⁶ Judgement, paras.5052, 5069, 5080.

¹⁰¹⁷ Judgement, paras.213, 5093, 5053.

¹⁰¹⁸ Judgement, paras.5093, 213.

¹⁰¹⁹ Mladić-AB, para.632.

¹⁰²⁰ Judgement, fn.12063.

¹⁰²¹ Exh.P3572; Judgement, paras.4961, 5093. *Contra* Mladić-AB, para.632.

¹⁰²² [REDACTED].

¹⁰²³ Judgement, para.4988.

¹⁰²⁴ [REDACTED]. In relation to Momir Nikolić telling Investigator Bruce Bursik that he never mentioned the killings in his written reports, but only in his verbal reports, the Chamber found that this “indicates that written reports may not contain the whole truth”. Judgement, paras.4954, 4939.

¹⁰²⁵ *Contra* Mladić-AB, para.632.

mention of whether or not he saw a written report about the killings.¹⁰²⁶ In any event, as early as 12 July, Nikolić discussed the murder operation with his commander Blagojević, contrary to Mladić's claim that he concealed the killings from his commanders.¹⁰²⁷ Second, in addition to reporting that wounded Muslim prisoners had been evacuated from the Bratunac Health Centre, the 18 July report included a request for instructions regarding the treatment of local staff of international organisations, noting that Karadžić had ordered their release.¹⁰²⁸ Rather than evidence of Nikolić's concealment of crimes,¹⁰²⁹ Nikolić's testimony¹⁰³⁰ is proof that Nikolić and Radoslav Janković (desk officer in the VRS Main Staff Sector for Intelligence and Security Affairs) sought direction from their superiors on the murder operation's implementation. Similarly, Mladić's claim that security officers, including Nikolić, misled superiors about the reburial operation¹⁰³¹ is directly contradicted by Nikolić's and [REDACTED] evidence that:

- The reburial operation, dubbed "asanacija", was implemented on orders from the VRS Main Staff.¹⁰³²
- Nikolić reported to his commander about the operation on a daily basis.¹⁰³³
- What was intended to be a covert operation was known to "everyone" within days of its commencement given the number of parties involved in the large-scale operation.¹⁰³⁴
- [REDACTED] Pandurević knew that Popović and security organs were tasked with reburying murdered prisoners in advance of the reburials.¹⁰³⁵

¹⁰²⁶ Judgement, para.4939; Exh.D1228, pp.2-4. Nikolić also provides evidence that incriminating Bratunac Brigade documents were destroyed. Exh.D301, p.7.

¹⁰²⁷ Judgement, paras.4956, 4978; Exh.D301, p.3; M.Nikolić:T.12105-12106, 11778. *Also* M.Nikolić:T.11961-11962, 11966, 11969: Nikolić explains that after his commander, Blagojević, received an order from the Main Staff to conduct a reburial operation, Nikolić informed Blagojević at a meeting on 16 October 1995 that he was working on the reburial operation, which was being conducted under the name "asanacija"; Exh.D301, p.7; Judgement, para.3004. *Contra* Mladić-AB, para.632.

¹⁰²⁸ Exh.P1515; Judgement, para.2545.

¹⁰²⁹ *Contra* Mladić-AB, para.632.

¹⁰³⁰ M.Nikolić:T.11970-11972.

¹⁰³¹ *Contra* Mladić-AB, para.632. *Compare* Mladić-AB, para.632 *with* Mladić-FTB, paras.3296, 3298.

¹⁰³² Exhs.D301, p.7; D300, p.4; M.Nikolić:T.11966; Judgement, paras.2997, 3004.

¹⁰³³ Judgement, paras.2995, 3004. Based on the underlying evidence it is clear the Chamber meant Blagojević was Nikolić's commander and not Popović, who was his professional superior. M.Nikolić:T.11965; Exh.D300, p.4.

¹⁰³⁴ M.Nikolić:T.11964-11965; Judgement, para.2995.

264. The Chamber dismissed as unsubstantiated Mladić's claim that the military police misled him.¹⁰³⁶ Disagreeing with the Chamber's finding, Mladić posits that the Zvornik Brigade MP Company attendance roster was altered in an attempt to conceal *from Mladić* the presence of military police at execution sites.¹⁰³⁷ No credible evidence supports Mladić's speculative and implausible argument that superior officers authorising the engagement of the MPs would have been involved in a conspiracy to conceal the crimes from Mladić.

(b) Mladić took no steps to investigate and punish perpetrators (5.B.2.2.5.2-5.B.2.2.5.3)

265. The Chamber properly relied on Prosecution witness Drinić's Rule 92*bis* evidence to find that there were no investigations or prosecutions of the Srebrenica killings.¹⁰³⁸ Drinić's evidence was not, as Mladić claims, the "sole and decisive" evidence supporting this finding.¹⁰³⁹ The Chamber also considered [REDACTED] evidence. [REDACTED]¹⁰⁴⁰ [REDACTED].¹⁰⁴¹ Mladić had every opportunity to cross-examine [REDACTED] on his overlapping evidence [REDACTED].¹⁰⁴²

266. Mladić's attempt to challenge the Chamber's reliance on Drinić's evidence is also inconsistent with his conduct at trial. Contrary to Mladić's assertion,¹⁰⁴³ he did not seek to recall Drinić, whose statement was admitted pursuant to Rule 92*bis*, to cross-examine him on the basis of this evidence. Rather, it was Mladić who sought to re-introduce Drinić pursuant to Rule 92*ter*,¹⁰⁴⁴ and proposed a statement that confirmed the evidence that Mladić now challenges, namely, that "the military prosecutor's offices did not receive criminal reports for crimes that bore the hallmarks

¹⁰³⁵ Judgement, paras.3005, [REDACTED]; [REDACTED]; [REDACTED].

¹⁰³⁶ Judgement, para.5091.

¹⁰³⁷ Compare Mladić-AB, paras.631-632 with Judgement, para.4966.

¹⁰³⁸ Judgement, paras.4968, 4985, 5093. Below para.291.

¹⁰³⁹ Mladić-AB, para.634.

¹⁰⁴⁰ [REDACTED]; [REDACTED]. Also [REDACTED].

¹⁰⁴¹ [REDACTED].

¹⁰⁴² [REDACTED].

¹⁰⁴³ Mladić-AB, para.634.

¹⁰⁴⁴ Drinić Defence Motion. The motion was denied, see T.25771.

of war crimes committed by members of the VRS [...] and no such investigation was conducted”.¹⁰⁴⁵

267. Contrary to Mladić’s claim, Theunens’ evidence supports the Chamber’s conclusion that Mladić failed to “take adequate steps to investigate and/or punish crimes committed in Srebrenica by [...] other Serb forces under his effective control, including the MUP”.¹⁰⁴⁶ Mladić merely disagrees with the Chamber’s finding and misconstrues Theunens’ evidence to argue that the Chamber “disregarded” or “overlooked” evidence that Mladić was unable to investigate MUP crimes.¹⁰⁴⁷ Theunens testified that the duty to investigate alleged crimes committed by re-subordinated MUP units fell with the VRS commander responsible for the area where the MUP units operated.¹⁰⁴⁸ He added that even in circumstances in which MUP units were no longer re-subordinated to the VRS, the VRS commander remained responsible for investigating crimes in his zone of responsibility.¹⁰⁴⁹ The Chamber expressly dismissed Mladić’s trial argument, which he now repeats, that in light of the parallel reporting and investigation processes Mladić was unable to punish MUP perpetrators¹⁰⁵⁰—finding that “merely reporting the crimes to the MUP Commander would not satisfy the Accused’s duties as commander” where the “MUP units were subordinated to the VRS during the Srebrenica operation.”¹⁰⁵¹

268. The Chamber found that Mladić “possess[ed] the authority to order investigations within the military justice system.”¹⁰⁵² Mladić’s general arguments that the Chamber “failed to consider the deficiencies in the institutional infrastructure, as well as conflicts with the civilian leadership - including MUP and Karadžić”¹⁰⁵³ were explicitly considered and rejected.¹⁰⁵⁴

269. Similarly, the 1996 formation of a joint VRS-MUP investigation commission to purportedly investigate crimes committed in Srebrenica does not undermine the

¹⁰⁴⁵ Drinić Defence Motion, Annex A, para.13.

¹⁰⁴⁶ Judgement, para.5092.

¹⁰⁴⁷ Mladić-AB, para.635.

¹⁰⁴⁸ R.Theunens:T.20622-20623.

¹⁰⁴⁹ R.Theunens:T.20624-20625.

¹⁰⁵⁰ Judgement, para.5086 *citing* Mladić-FTB, paras.3273-3292. *Also* T.44711.

¹⁰⁵¹ Judgement, para.5091.

¹⁰⁵² Judgement, paras.5091, 4545.

¹⁰⁵³ Mladić-AB, para.636.

¹⁰⁵⁴ Judgement, para.4515. *Above* paras.91-95. *Contra* Mladić-AB, para.638.

Chamber's conclusion.¹⁰⁵⁵ Staffing the commission in part with individuals involved in the Srebrenica crimes¹⁰⁵⁶ ensured that no real investigation would follow. Drinić, who attended a meeting on the commission noted that [REDACTED]¹⁰⁵⁷ Drinić's subsequent request that Tolimir and Beara obtain and provide the military prosecutor with accurate information for further action¹⁰⁵⁸ was not answered.¹⁰⁵⁹

270. In light of Mladić's acts and statements deliberately misleading international, the media and the public about the crimes¹⁰⁶⁰—which the Chamber found was indicative of his overall stance towards investigating the Srebrenica crimes¹⁰⁶¹—Mladić fails to show that no reasonable trier of fact could have concluded that Mladić failed to order any investigation. Mladić's reliance on the *Bemba* Appeal Judgement, addressing measures that had been taken,¹⁰⁶² is inapposite to these circumstances where no measures were taken.

271. Additionally, Exhibits D1503 and P3095¹⁰⁶³—1995 dispatches from Mladić to Karadžić complaining about Arkan's Tigers in the 1KK's and 2KK's zones of responsibility—do not undermine the Chamber's finding that Mladić failed to order the investigation and prosecution of Srebrenica crimes because they do not relate to Srebrenica crimes.¹⁰⁶⁴ The Chamber considered these dispatches in the context of the Overarching JCE.¹⁰⁶⁵

C. Mladić shared the intent to achieve the common purpose of the Srebrenica JCE (5.D)

272. The Chamber reasonably found that Mladić shared the intent to further the common purpose of the Srebrenica JCE.¹⁰⁶⁶ Mladić fails to identify any relevant

¹⁰⁵⁵ *Contra* Mladić-AB, para.637.

¹⁰⁵⁶ Including Dragomir Vasić, CSB Zvornik Chief and Milorad Trbić of the Zvornik Brigade, both of whom were deeply involved in the Srebrenica events. *See* Judgement, paras.3005, 5067-5068, 2645.

¹⁰⁵⁷ [REDACTED].

¹⁰⁵⁸ P.Drinić:Exh.P3351, pp.29-31(T.10882-10884); [REDACTED].

¹⁰⁵⁹ P.Drinić:Exh.P3351, pp.30-31(T.10883-10884).

¹⁰⁶⁰ Judgement, paras.5080-5084.

¹⁰⁶¹ Judgement, para.5094.

¹⁰⁶² *Bemba* AJ, para.180.

¹⁰⁶³ Mladić-AB, fns.785-786.

¹⁰⁶⁴ *Contra* Mladić-AB, para.637.

¹⁰⁶⁵ Judgement, paras.3853, 4516. *Contra* Mladić-AB, fns.785-786. *Also* Judgement, paras.4545-4546.

¹⁰⁶⁶ Judgement, para.5131. *Contra* Mladić-AB, para.138.

evidence the Chamber “disregarded”.¹⁰⁶⁷ His remaining challenges to the Chamber’s conclusions regarding his shared intent consist of mere disagreements with the Chamber’s weighing of the evidence, without showing error. The totality of the evidence disproves Mladić’s unreasonable alternative versions of events.

1. Mladić’s statements and actions demonstrate his shared intent (5.D.2.1)

273. Mladić fails to explain how the Chamber gave insufficient weight to the context in which his statements were made.¹⁰⁶⁸ Mladić’s statements were correctly assessed by the Chamber in their context, including the long-standing plan to remove the Bosnian Muslim population from Eastern Bosnia¹⁰⁶⁹ and the systematic forcible transfer and murder of Srebrenica’s Bosnian Muslim population by his forces.¹⁰⁷⁰

274. Mladić improperly extrapolates the parties’ military experts’ testimony¹⁰⁷¹ about a specific cease-fire order of Mladić’s being “consistent with legitimate military language” to claim that his other statements at the second Hotel Fontana meeting were also legitimate.¹⁰⁷² Mladić fails to explain in what context his statements—that Srebrenica Muslims could “survive...stay or vanish”,¹⁰⁷³ and that Mandžić, a ‘representative’ of the Bosnian Muslim population of Srebrenica, should “[b]ring the people who can secure the surrender of weapons and save your people from destruction”—could be interpreted positively.¹⁰⁷⁴ Nor was his threatening “revenge on the Turks” when he arrived in Srebrenica on 11 July 1995 described by anyone as legitimate military language.¹⁰⁷⁵ He also fails to explain how Franken’s evidence that Mladić’s statements during the first Hotel Fontana meeting were implicit threats was taken out of context,¹⁰⁷⁶ particularly since Mladić was detaining DutchBat soldiers in the next room and threatening to target the UN Compound.¹⁰⁷⁷

¹⁰⁶⁷ Mladić-AB, paras.645, 649.

¹⁰⁶⁸ Mladić-AB, para.652.

¹⁰⁶⁹ Judgement, paras.2358-2362.

¹⁰⁷⁰ *Contra* Mladić-AB, paras.656, 658. Judgement, paras.5096-5098.

¹⁰⁷¹ R.Butler:T.16831; M.Kovač:T.41395-41396.

¹⁰⁷² Mladić-AB, paras.653-655 *referring to* 595.

¹⁰⁷³ Judgement, paras.2467, 2477, 5130. Exh.P1147, p.41.

¹⁰⁷⁴ Judgement, para.5130. Exh.P1147, p.42. *Contra* Mladić-AB, paras.653, 658.

¹⁰⁷⁵ *See* Judgement, para.5106.

¹⁰⁷⁶ Mladić-AB, fn.800, para.658.

¹⁰⁷⁷ Judgement, para.2476.

275. Furthermore, Mladić's subsequent conduct does not refute his statements' plainly nefarious meanings.¹⁰⁷⁸ The Chamber never "accepted" that Mladić gave civilians "a choice to leave or not".¹⁰⁷⁹ On the contrary, it found that civilians had no choice but to leave,¹⁰⁸⁰ and rejected the claim that there was genuine cooperation with the UN, ultimately finding that this was not an IHL-compliant civilian evacuation.¹⁰⁸¹ Mladić's preferred alternative inference¹⁰⁸² ignores findings clearly showing otherwise.¹⁰⁸³

- Members of the civilian population who did not want to leave were forced onto the buses.¹⁰⁸⁴
- Mladić's forces hit, abused and insulted the population as they boarded buses.¹⁰⁸⁵
- DutchBat soldiers succeeded in accompanying only the first convoys and thereafter were stopped by the VRS who stole DutchBat jeeps, arms and equipment, making further escorts impossible.¹⁰⁸⁶
- VRS soldiers separated men from the first convoy and executed some of them.¹⁰⁸⁷
- Mothers were separated from their children.¹⁰⁸⁸
- On 17 July, Radoslav Janković asked Mandžić and Franken to sign a declaration stating that the transportation was carried out in a proper and humanitarian way in accordance with international law. Franken—who testified that he considered the part of the declaration stating that the population could remain in the enclave was nonsense and that the population's only choice was to die slowly or get

¹⁰⁷⁸ *Contra* Mladić-AB, paras.655-656, 658.

¹⁰⁷⁹ *Above* paras.225-235.

¹⁰⁸⁰ Judgement, para.3159.

¹⁰⁸¹ Judgement, para.3159.

¹⁰⁸² Mladić-AB, paras.645, 655-656, fn.802.

¹⁰⁸³ *Above* paras.221-224.

¹⁰⁸⁴ Judgement, para.2557.

¹⁰⁸⁵ Judgement, para.2557.

¹⁰⁸⁶ Judgement, para.2557.

¹⁰⁸⁷ Judgement, paras.2562, 2724-2732.

¹⁰⁸⁸ Judgement, para.2557.

out—signed the document¹⁰⁸⁹ with a reservation limiting the statement to the few convoys escorted by UN forces.¹⁰⁹⁰

276. Likewise, the Chamber found Mladić’s statements¹⁰⁹¹ to captured POWs at Nova Kasaba to be “misleading assurances”.¹⁰⁹² Immediately after telling the prisoners they would be exchanged, Mladić ordered MPs to escort them to Bratunac,¹⁰⁹³ where his forces executed some of them and transferred the remaining prisoners to Zvornik for execution.¹⁰⁹⁴ Mladić also fails to show that his promises to grant the ICRC access¹⁰⁹⁵ are different from his other misleading assurances, as he points to no evidence that the ICRC was ever granted access to register the prisoners in Srebrenica, Bratunac and Zvornik.¹⁰⁹⁶ In fact, the evidence shows the ICRC was never granted access to them,¹⁰⁹⁷ consistent with Mladić’s concurrent measures to conceal the on-going murder and burial of thousands of Bosnian Muslim prisoners¹⁰⁹⁸ to whom the ICRC was requesting access.

277. While Mladić claims that the Chamber failed to “consider[] the totality of the evidence”,¹⁰⁹⁹ it is Mladić who ignores—and fails to reconcile his supposed alternative inference with—a multitude of statements and acts relied on by the Chamber to conclude he shared the intent for the Srebrenica JCE, including:

- Mladić’s 1994 statement that the “‘Turks from Srebrenica’” had committed the worst crimes against Serbs, so Serbs had “to ‘stop their savagery by a complex and militarily efficient operation, and to adequately punish them’” for their past and present actions.¹¹⁰⁰

¹⁰⁸⁹ Franken testified that he signed because Radoslav Janković assured him that it would positively influence the evacuation of the wounded from the DucthBat compound and Bratunac. Judgement, para.2548.

¹⁰⁹⁰ Judgement, para.2559.

¹⁰⁹¹ Mladić-AB, para.656.

¹⁰⁹² Judgement, para.5130.

¹⁰⁹³ Judgement, paras.5069, 5109. The Chamber also considered evidence of Mladić stopping the registration of the Nova Kasaba prisoners. Judgement, para.5011.

¹⁰⁹⁴ Judgement, para.2655. *Also* Judgement, Chapters 7.2-7.15.

¹⁰⁹⁵ Mladić-AB, para.656.

¹⁰⁹⁶ Exh.D410, p.2.

¹⁰⁹⁷ *E.g.* R.Smith:Exh.P785, para.166; R.Smith:T.7343-7345.

¹⁰⁹⁸ Judgement, paras.5081, 5128.

¹⁰⁹⁹ Mladić-AB, para.662.

¹¹⁰⁰ Judgement, para.5104.

- Mladić's 15 August 1994 statement to Milan Lešić that if the Dutch had not been there to protect the "Turks", "they would have disappeared" from Eastern Bosnia "long ago."¹¹⁰¹
- Mladić's 12 July 1995 statement to the Bosnian Muslim representatives at the third Hotel Fontana meeting that "you can either survive or disappear".¹¹⁰²
- Mladić's intercepted conversation on 12 July 1995 that "we'll evacuate them all – those who want to and those who don't want to", referring to the Bosnian Muslims in Potočari.¹¹⁰³
- Mladić's orders from 12 July 1995 to separate the Bosnian Muslim men from the women, children and elderly.¹¹⁰⁴

278. Mladić's claim that the Chamber gave insufficient weight to his reliance on the information available to him when talking to the media¹¹⁰⁵ is unsupported and again a mere disagreement with the Chamber's assessment of the evidence. In its determination, the Chamber reasonably took into account the actions Mladić took to mislead and prevent the media and public from knowing what was happening in Srebrenica:¹¹⁰⁶

- Mladić issued an order banning local and foreign journalists from entering Srebrenica and prohibiting the dissemination of information to the media, including on POWs, 'evacuated' civilians and escapees, in order to keep the media and international community from knowing what was happening.¹¹⁰⁷
- Mladić misled representatives of the international community, the public and the media when he stated on 11 and 12 July 1995 that civilians in Potočari were

¹¹⁰¹ Exh.P1147, p.117 *cited at* Judgement, paras.5105, 5128.

¹¹⁰² Judgement, para.5110.

¹¹⁰³ Exh.P1235 (confidential) *cited at* Judgement, para.2480, *recalled at* para.5111.

¹¹⁰⁴ Judgement, para.5130.

¹¹⁰⁵ Mladić-AB, para.657. *Above* paras.260-271.

¹¹⁰⁶ Judgement, para.5128.

¹¹⁰⁷ Exh.P2120 *cited at* Judgement, paras.5081, 5117, 5128.

free to stay or go,¹¹⁰⁸ while privately stating that they should all be evacuated, “including those who did not want to leave.”¹¹⁰⁹

- On 13 August 1995, during an interview with CNN, Mladić stated that the majority of men from Srebrenica had escaped to Muslim territory and denied that executions had taken place, deliberately misleading the media and international community.¹¹¹⁰

Taken together with the Chamber’s findings on Mladić’s position, his involvement in the Hotel Fontana meetings, his presence on the ground, the forcible transfer and murder of Srebrenica’s Bosnian Muslims and the reburial operation carried out by forces under his command and control, Mladić shows no error with the Chamber’s conclusion that these measures evidenced his shared intent.¹¹¹¹

2. Mladić’s orders further demonstrate his shared intent (5.D.2.2)

279. Regarding Krivaja-95’s legitimacy,¹¹¹² Mladić repeats arguments made in a previous sub-ground,¹¹¹³ and again shows no error. Although Krivaja-95 had legitimate purposes,¹¹¹⁴ it also had a criminal objective: to create conditions for the elimination of the enclaves by targeting the civilian population.¹¹¹⁵ Legitimate military objectives do not negate criminal ones.¹¹¹⁶

280. Mladić shows no error with the Chamber’s clear and reasoned finding that his 13 July order—Exhibit P2120¹¹¹⁷—was intended “to keep the media and international community from knowing what was happening in Srebrenica.”¹¹¹⁸ His claim that the press was prohibited access to Srebrenica [REDACTED]¹¹¹⁹ ignores that journalists from the VRS Main Staff were allowed entry;¹¹²⁰ the takeover of Srebrenica and removal of the Bosnian Muslim civilian population was complete before he issued

¹¹⁰⁸ Judgement, para.5117 *referring to* para.5082.

¹¹⁰⁹ Judgement, para.5128.

¹¹¹⁰ Judgement, para.5117 *referring to* para.5084.

¹¹¹¹ Judgement, paras.5128-5131.

¹¹¹² Mladić-AB, paras.659-661.

¹¹¹³ *Above* paras.250-252.

¹¹¹⁴ *See* Prosecution-FTB, para.1118. Mladić-AB, para.659.

¹¹¹⁵ Exh.P1465, paras.2, 4; Judgement, paras.2362, 3315.

¹¹¹⁶ *Popović* AJ, paras.602-606 *referring to* *Popović* TJ, paras.774-775.

¹¹¹⁷ *See* Mladić-AB, para.660 *citing* Judgement, para.5014 *addressing* Exh.P2120.

¹¹¹⁸ Judgement, para.5081.

¹¹¹⁹ Mladić-AB, para.660.

¹¹²⁰ Exh.P2120, para.4.

this order;¹¹²¹ Mladić had previously proposed misleading the international public about the truth;¹¹²² and on 13 July, hundreds of Bosnian Muslim men had been executed with thousands more in VRS custody awaiting transfer to Zvornik for execution.¹¹²³ Contrary to Mladić's claim, language in *other* orders does not make the Chamber's assessment of *this* order unreasonable.¹¹²⁴

D. The Chamber properly evaluated the status of the victims of the Srebrenica killings (5.E)

281. The Chamber reasonably concluded that all the victims of the killings charged in the Srebrenica Scheduled Incidents, and three unscheduled incidents,¹¹²⁵ were not actively participating in hostilities as they were either civilians or *hors de combat*.¹¹²⁶ The Chamber found Mladić responsible for the genocide and extermination¹¹²⁷ of those victims only. The Chamber did not rely on AF1476 to establish the circumstances of their death. Nor did it find that all of the victims were civilians.¹¹²⁸ Mladić's attempt to appeal that non-existent finding should be summarily dismissed.¹¹²⁹

1. The Chamber gave a reasoned opinion regarding the status of victims (5.E.3.1)

282. The Chamber came to a clear and reasoned conclusion that the victims were either civilians or "at least detained at the time of the killing" and therefore *hors de combat*, finding that all of the victims were not actively participating in hostilities.¹¹³⁰ Mladić's claim that this conclusion "removed the possibility of any legitimate combat casualties"¹¹³¹ ignores the Chamber's incident-by-incident analysis of the status of the victims.

¹¹²¹ Judgement, para.5080 referring to Chapter 7.1.3.

¹¹²² Judgement, para.5080 referring to Chapter 9.4.3.

¹¹²³ Judgement, para.5080 referring to Chapter 7. E.g. Judgement, paras.2566, 2676, 2707, 2723, 2917.

¹¹²⁴ *Contra* Mladić-AB, para.661. *Above* para.252.

¹¹²⁵ Judgement, para.3051, Schedule E and other incidents.

¹¹²⁶ Judgement, paras.3062, 3115, 3546.

¹¹²⁷ As well as murder under Counts 5-6: Judgement, paras.3051, Schedule E and other incidents, 3065.

¹¹²⁸ *Contra* Mladić-AB, para.672.

¹¹²⁹ *Prlić* AJ, para.25(1).

¹¹³⁰ *Contra* Mladić-AB, para.672. Judgement, para.3062 recalled in paras.3115, 3546. E.g. Judgement, paras.2766, 2825, 2917.

¹¹³¹ Mladić-AB, para.669.

283. For each incident, the Chamber specified who it considered victims of killings.¹¹³² It considered evidence that some who died in Srebrenica were not victims of executions, but died during combat or for other reasons.¹¹³³ In some cases, this evidence was rejected and/or found to be irrelevant.¹¹³⁴ In cases where the manner of death or victims' status was unclear, they were not counted in the total number of victims of killings.¹¹³⁵ Mladić's argument that the blindfolds found on victims' bodies could have been bandannas worn by fighters¹¹³⁶ was also considered by the Chamber and found to not be a reasonable alternative in light of the "large amount of evidence on the circumstances of the executions".¹¹³⁷

2. The Chamber considered the evidence Mladić presented to rebut AF1476 (5.E.3.2)

284. Mladić fails to show error in the Chamber's approach to AF1476. The Chamber applied the correct standard to rebuttal evidence.¹¹³⁸ The Chamber relied on AF1476 for a general finding of the overall number of victims of Srebrenica crimes.¹¹³⁹ It did not rely on AF1476 for its determination of the number and status of victims for whose killing Mladić was ultimately found responsible.¹¹⁴⁰ Instead, the Chamber conducted a conservative analysis of the evidence linked to each Incident.¹¹⁴¹ Ultimately, the Chamber found that the number of victims of crimes linked to each specific incident charged in the Indictment was consistent with AF1476.¹¹⁴² As shown

¹¹³² *E.g.* Judgement, paras.2676 (15 male detainees killed on the bank of the Jadar River), 2732 (approximately 21 men dressed in civilian clothes, whose hands had been tied, shot and killed near Luke School), 2766 (at least 819 men previously detained at Grbavci School in Orahovac shot and killed), 2790-2791 (at least 401 males, including minors, with their hands tied, shot and killed at Petkovci Dam), 2825 (at least 575 males, detained prior to their killing, shot and killed in Kozluk), 2861 (between 1,000-1,200 male detainees from Kula School executed at Branjevo Military Farm), 2862 (approximately 500 men killed inside Pilica Cultural Centre; some were wearing civilian clothes).

¹¹³³ *Contra* Mladić-AB, para.674(a)-(c).

¹¹³⁴ *E.g.* Judgement, para.2683, fns.11458, 12371, paras.2920-2921.

¹¹³⁵ *E.g.* Judgement, paras.2660, 2706-2727. *Compare* Judgement, fns.11625, 11601-11602, 11622-11623 *with* Mladić-AB, fn.826.

¹¹³⁶ Mladić-AB, para.674(d).

¹¹³⁷ Judgement, para.5309.

¹¹³⁸ *Above* paras.32-37. *Contra* Mladić-AB, para.673.

¹¹³⁹ Judgement, paras.3007, 3042.

¹¹⁴⁰ *See* Judgement, paras.3051, Schedule E and other incidents (a)-(w), 3065. The Chamber's estimate (in the *mens rea* chapter) of "at least 3,720" as the number of Bosnian Muslim males killed in Srebrenica—based on Chapter 8 findings—appears to be an error because, even using the minimum numbers, the Chamber's findings add up to 4,663 victims (excluding Incident E.13.1, Trnovo). *Compare* Judgement, para.5129 *with* paras.3051, Schedule E and other incidents, 3555.

¹¹⁴¹ *See* Judgement, para.3062. *Contra* Mladić-AB, paras.669-670, 672.

¹¹⁴² Judgement, para.3007.

above, the Chamber considered the evidence Mladić purports was ignored.¹¹⁴³ Furthermore, to the extent Mladić argues that the Prosecution did not bring any evidence on the status of the victims,¹¹⁴⁴ this is incorrect.¹¹⁴⁵

3. The Chamber clearly articulated the basis of Mladić's liability

285. Mladić's claim that he is "unable to determine" the extent to which the Chamber relied on AF1476 ignores the Chamber's clear articulation of the basis of his liability.¹¹⁴⁶ Mladić's vague requests for a proper articulation of his liability and a review of the sentence imposed¹¹⁴⁷ should be summarily dismissed.¹¹⁴⁸

286. In its conclusions regarding Mladić's intent for extermination and genocide, the Chamber referred to its factual and legal findings in Chapters 7 and 8, in which it listed the numbers of victims per incident.¹¹⁴⁹ Likewise, when deciding Mladić's sentence, in particular regarding the "gravity of the offences and the totality of culpable conduct",¹¹⁵⁰ the Chamber again referenced its findings on the crimes in Chapters 7 and 8, as well as Mladić's significant contribution to the Srebrenica JCE in Chapter 9.7.¹¹⁵¹ Mladić was found responsible for the deaths of the victims of crimes found to have been perpetrated by VRS and MUP forces under his command and control,¹¹⁵² and not the overall number of Bosnian Muslim men killed in Srebrenica according to the adjudicated fact.

E. Mladić's conviction is not based solely or decisively on untested evidence

(5.I)

287. Mladić's Srebrenica JCE convictions under Counts 2 to 8 rest on numerous sources of evidence and findings set out over two volumes of the Judgement.¹¹⁵³ As part of its analysis, the Chamber was entitled to give weight to Rule 92*bis* and

¹¹⁴³ Above paras.282-283. See Mladić-AB, para.674(a)-(d).

¹¹⁴⁴ Mladić-AB, para.675.

¹¹⁴⁵ See Prosecution-FTB, paras.1600-1602.

¹¹⁴⁶ Mladić-AB, para.676.

¹¹⁴⁷ Mladić-AB, para.677.

¹¹⁴⁸ Prlić AJ, para.25(9).

¹¹⁴⁹ Judgement, paras.5128-5129 referring to 3098-3105.

¹¹⁵⁰ Judgement, Chapter 11.3.1.

¹¹⁵¹ Judgement, para.5191.

¹¹⁵² Judgement, para.5098.

¹¹⁵³ See Judgement, Chapters 7-8, 9.6-9.7.

92*quater* evidence, and adjudicated facts.¹¹⁵⁴ Mladić fails to show that the Chamber erred by giving “undue weight to”¹¹⁵⁵ or “relying on”¹¹⁵⁶ three un-cross-examined witnesses and on adjudicated facts. Moreover, to the extent Mladić claims that any of his convictions are based solely or to a decisive extent on “untested” evidence,¹¹⁵⁷ he is wrong.

1. The Chamber properly relied on 92***bis*** and 92***quater*** witnesses¹¹⁵⁸ (5.I.3.1-5.I.3.2)

288. The Chamber properly considered the evidence of Deronjić, Drinić and Orić.¹¹⁵⁹ Mladić points to only four pieces of their evidence that he claims the Chamber should not have relied on,¹¹⁶⁰ to then request that his entire conviction be overturned.¹¹⁶¹

289. No conviction rests on Deronjić’s evidence alone. In admitting Deronjić’s evidence pursuant to Rule 92*quater*, including his “limited references” relating to acts and conduct of the Accused, the Chamber noted that his evidence was “cumulative to other evidence in this case” and emphasised that “it cannot possibly enter a conviction solely on Deronjić’s evidence without other evidence to corroborate it”.¹¹⁶² Deronjić’s testimony that Beara told him that the orders to kill came from the top¹¹⁶³ was only a tiny fraction of the evidence considered by the Chamber, including tested evidence, in establishing the existence of the Srebrenica JCE and Mladić’s participation in it.¹¹⁶⁴

290. The Chamber reasonably relied on Deronjić’s evidence that the 17 July 1995 declaration he signed concealed the involuntary nature of the transfers.¹¹⁶⁵ His evidence was corroborated by [REDACTED] and Franken, [REDACTED], who explained that the declaration did not reflect reality because no one was given a choice to remain.¹¹⁶⁶ Furthermore, the finding that transfers were involuntary rests on

¹¹⁵⁴ *Contra* Mladić-AB, para.694. *Also* Mladić-AB, para.149.

¹¹⁵⁵ Mladić-AB, para.681.

¹¹⁵⁶ Mladić-AB, para.690.

¹¹⁵⁷ *Popović* AJ, paras.96, 103-104; *Đorđević* AJ, para.807.

¹¹⁵⁸ *See* Judgement, para.5252.

¹¹⁵⁹ *Contra* Mladić-AB, para.690.

¹¹⁶⁰ Mladić-AB, paras.686-688.

¹¹⁶¹ Mladić-AB, para.694.

¹¹⁶² Decision Admitting Deronjić’s Evidence, para.8.

¹¹⁶³ Mladić-AB, para.686.

¹¹⁶⁴ *Above* paras.224, 228, 247, 277.

¹¹⁶⁵ Judgement, para.4967.

¹¹⁶⁶ Judgement, para.2559 based on paras.[REDACTED]-2550, recalled at paras.[REDACTED], 4967, 4981.

far more than the 17 July declaration and Deronjić's evidence about it.¹¹⁶⁷ As discussed above,¹¹⁶⁸ the Chamber had a strong evidentiary basis to conclude that the population "did not have a genuine choice but to leave".¹¹⁶⁹

291. The Chamber also properly relied on Drinić's evidence to find that no investigations were conducted by Bosnian Serb military or civilian organs.¹¹⁷⁰ Drinić's Rule 92*bis* evidence did not relate to the acts or conduct of the Accused and was cumulative to RM513's testimony.¹¹⁷¹ Mladić did not oppose its admission.¹¹⁷² In any event, the Chamber did not rely only on Drinić's evidence to find that no investigations were conducted.¹¹⁷³

292. Likewise, the Chamber did not rely only on Orić's evidence to establish the executions in or around the Vuk Karadžić Elementary School (Incident E.15). Nor was Orić's evidence indispensable for the Chamber's establishment of the existence of the JCE or Mladić's participation in it.¹¹⁷⁴ Mladić cannot now complain that he was unable to challenge Orić's evidence¹¹⁷⁵ as he did not oppose the Prosecution's request to have Orić's evidence admitted pursuant to Rule 92*bis*.¹¹⁷⁶ Mladić also fails to identify an error with the Chamber's reliance on Orić¹¹⁷⁷ in relation to Incident E.15.3. While corroboration was not required, Orić's account of the murder of a Bosnian Muslim man who was taken off a bus parked in front of the Vuk Karadžić school on the night of 13 July was corroborated by adjudicated facts demonstrating a pattern of conduct that the Chamber considered.¹¹⁷⁸

293. The Chamber's approach is consistent with Appeals Chamber jurisprudence confirming that an individual incident can rest solely on the basis of untested

¹¹⁶⁷ *Contra* Mladić-AB, para.686.

¹¹⁶⁸ *Above* para.223.

¹¹⁶⁹ Judgement, para.3159.

¹¹⁷⁰ Judgement, para.4963. *Contra* Mladić-AB, para.687.

¹¹⁷¹ Decision on Prosecution 25th 92*bis* Motion, paras.11, 15.

¹¹⁷² Decision on Prosecution 25th 92*bis* Motion, para.2.

¹¹⁷³ *Contra* Mladić-AB, paras.687, 690. *Above* paras.265-266. The Chamber also took into account documentary evidence regarding the 1996 joint investigative commission as well as Karadžić's April 1996 order for an investigation into the deaths of victims of the armed conflict in and around Srebrenica. Judgement, para.4968. Exhs.[REDACTED]; P3354.

¹¹⁷⁴ *Contra* Mladić-AB, para.688.

¹¹⁷⁵ *See* Mladić-AB, para.688.

¹¹⁷⁶ Orić 92*bis* Decision, para.1 *citing* T.12478, para.9.

¹¹⁷⁷ Judgement, paras.2918-2921.

¹¹⁷⁸ Judgement, para.2918.

evidence,¹¹⁷⁹ but a conviction cannot.¹¹⁸⁰ Mladić’s convictions under Counts 2 to 8 do not rest solely or decisively on Orić’s “untested evidence” as Incident E.15.3¹¹⁸¹ is one of many killings underlying Mladić’s conviction for murder and genocide.¹¹⁸² Those convictions would stand without the finding that E.15.3—or E.15—took place.

2. The Chamber properly relied on AF1612 (5.I.3.3-5.I.3.4)

294. As discussed above, the Chamber properly exercised its discretion in taking judicial notice of adjudicated facts.¹¹⁸³ The Chamber found that 1,000-1,200 men were killed at Branjevo Military Farm based on AF1612.¹¹⁸⁴ Because it found that the Prosecution forensic evidence “does not establish the total number of victims” of this incident, the Chamber properly concluded that the forensic evidence did not rebut AF1612.¹¹⁸⁵ Mladić misinterprets Haglund’s and Janc’s evidence, incorrectly averring that their evidence limits the victims “to 132 bodies at the primary burial site and 43 DNA matches to a secondary site”.¹¹⁸⁶ He fails to identify an error in the Chamber’s finding that Haglund and Janc’s evidence does not contradict the total number of victims established through the adjudicated fact.

¹¹⁷⁹ See *Popović* AJ, paras.103-104.

¹¹⁸⁰ *Popović* AJ, para.96; *Đorđević* AJ, para.807.

¹¹⁸¹ Mladić-AB, fn.835 citing Judgement, para.2921.

¹¹⁸² Judgement, paras.3065, 3555, 5128, 5130. Incident E.15.3 was not found to constitute extermination: Judgement, para.3110.

¹¹⁸³ *Contra* Mladić-AB, para.691. *Above* paras.26-31.

¹¹⁸⁴ Judgement, para.2861. This finding is also supported by Prosecution evidence: D.Erdemović:Exh.P1673, p.849; [REDACTED].

¹¹⁸⁵ Judgement, para.2860. *Contra* Mladić-AB, para.692.

¹¹⁸⁶ Mladić-AB, para.692 referring to Judgement, paras.2846, 2849. *Also* Judgement, para.5300.

VII. GROUND 6: MLADIĆ IS RESPONSIBLE FOR HOSTAGE-TAKING

295. The Chamber reasonably found that Mladić shared the common purpose to take UN personnel hostage in order to prevent NATO from launching further airstrikes on Bosnian Serb military targets and significantly contributed to the common purpose as he was “closely involved [...] throughout every stage of hostage-taking”.¹¹⁸⁷ Mladić ordered VRS units to detain UN personnel and place them at potential NATO airstrikes targets¹¹⁸⁸ and ordered his subordinates to attack UNPROFOR locations if NATO strikes resumed.¹¹⁸⁹ He negotiated and ordered the release of the hostages, conditioning release on cessation of airstrikes,¹¹⁹⁰ and issued threats to kill or to continue to unlawfully detain the hostages and to use them as human shields.¹¹⁹¹

296. In an attempt to challenge these conclusions,¹¹⁹² Mladić ignores well-established jurisprudence, relevant evidence and Chamber findings.

297. Ground 6 should be dismissed.

A. The ICTY has jurisdiction over the crime of hostage-taking in relation to all detainees (6.A and 6.B)

298. The ICTY Appeals Chamber in *Karadžić* has decided this very legal issue: the ICTY has jurisdiction over the crime of hostage-taking in relation to “all detained individuals”.¹¹⁹³ Mladić fails to show cogent reasons to depart from this well-reasoned jurisprudence, and consequently fails to show error in the Chamber’s decision that the status of the UN personnel who were taken hostage did not need to be decided.¹¹⁹⁴

299. Hostage-taking—which is prohibited under Common Article 3—encompasses taking hostage of *any* person taking no active part in the hostilities, including members of armed forces placed *hors de combat*. The entirety of Common Article 3, including hostage-taking of non-civilians, constituted a crime under customary

¹¹⁸⁷ Judgement, paras.5141, 5156, 5163.

¹¹⁸⁸ Judgement, paras.5148, 5152.

¹¹⁸⁹ Judgement, para.5148.

¹¹⁹⁰ Judgement, paras.5154 5156, 5159.

¹¹⁹¹ Judgement, para.5163.

¹¹⁹² See Mladić-AB, paras.695, 741, 751-752, 758.

¹¹⁹³ *Karadžić* Hostage-Taking AD, para.21; *Karadžić* Count 11 AD, paras.6, 28.

international law at the time of Mladić's crimes. The Chamber was therefore entitled to leave open the status of the UN personnel who were taken hostage.¹¹⁹⁵

1. The UN personnel taken as hostages were protected under Common Article 3, regardless of their status (6.B)

300. The UN personnel fell under the prohibition of hostage-taking in Common Article 3, regardless of whether they had combatant status prior to their detention.¹¹⁹⁶

301. The ICTY Appeals Chamber in *Karadžić* was clear: "Common Article 3's prohibition on hostage-taking applies to all detained individuals, irrespective of whether their detention is explicitly sought in order to use them as hostages and irrespective of their prior status as combatants".¹¹⁹⁷ It therefore concluded that UN personnel were entitled to the full protection of Common Article 3 when they fell under the control of the Bosnian Serb forces.¹¹⁹⁸

302. The Appeals Chamber based this on the plain reading of Common Article 3, which applies to all "[p]ersons taking no active part in the hostilities", including members of the armed forces placed *hors de combat* through detention.¹¹⁹⁹ The "prohibition of hostage-taking shares the very same scope of application with the remaining rules enshrined in common Article 3"¹²⁰⁰ and "clearly refers [to] the prohibition on taking hostage of *any* person taking no active part in the hostilities".¹²⁰¹

303. Since the prohibition of hostage-taking under Common Article 3 applies to any person not taking active part in the hostilities, the status of the UN personnel prior to their detention was not "a fact critical for a conviction"¹²⁰² and it was unnecessary for

¹¹⁹⁴ *Contra* Mladić-AB, para.711. *Also contra* Mladić-AB, para.123.

¹¹⁹⁵ *Below* Sub-ground 6.B.

¹¹⁹⁶ *Contra* Mladić-AB, paras.723, 725-730.

¹¹⁹⁷ *Karadžić* Hostage-Taking AD, para.21.

¹¹⁹⁸ *Karadžić* Hostage-Taking AD, paras.15, 21.

¹¹⁹⁹ *Karadžić* Hostage-Taking AD, para.16; *Karadžić* Count 11 AD, para.22. *Also* Common Article 3(1), Geneva Conventions; 2016 Commentary to GCI, para.652 ("The prohibition of hostage-taking in common Article 3 applies to all persons falling within the protective scope of the article."); Commentary to GCIII, p.40 ("Article 3 has an extremely wide field of application, embracing persons who do not take part in hostilities as well as members of the armed forces who have laid down their arms or have been placed *hors de combat*").

¹²⁰⁰ *Karadžić* Count 11 AD, para.26.

¹²⁰¹ *Karadžić* Count 11 AD, para.22. *Also Karadžić* Hostage-Taking AD, paras.8, 21. *Also* Judgement, para.3224. *Contra* Mladić-AB, paras.714-718.

¹²⁰² *Contra* Mladić-AB, para.711. *Also* Mladić-AB, para.724.

the Chamber to determine it.¹²⁰³ To the extent they were in possession of weapons, the UN personnel were disarmed at the time of their arrest and thereby rendered *hors de combat* by their detention.¹²⁰⁴

2. Hostage-taking of any detainee was criminalised under customary international law in 1995 (6.A)

304. The ICTY Appeals Chamber in *Karadžić* also determined that the *crime* of hostage-taking under customary international law could be committed against any person taking no active part in the hostilities.¹²⁰⁵ The *Karadžić* Appeals Chamber's holding is in line with previous Appeals Chamber decisions determining that Common Article 3 in its entirety—including hostage-taking of non-civilians—formed part of customary international law, applicable in both international and non-international armed conflict, at the relevant time and its breaches entailed individual criminal responsibility.¹²⁰⁶ Mladić fails to provide cogent reasons to depart from this well-established case law.¹²⁰⁷

305. Mladić's reliance on the Hague Regulations and the norms applicable during the Nuremberg trials ignores subsequent developments in customary international law.¹²⁰⁸ The ICTY Appeals Chamber both: (i) pointed out that “the acts enumerated in common Article 3 were intended to be criminalised in 1949”;¹²⁰⁹ and (ii) rejected the argument that the exclusion of Common Article 3 from the Geneva Convention grave breaches system implied that violations of Common Article 3 attracted no criminal responsibility because the Geneva Conventions mandate repression of breaches not listed in the grave breaches.¹²¹⁰ The ICTR Statute, which came into force before the crime of hostage-taking in this case was committed, endorsed the developments in customary international law by expressly criminalising and establishing jurisdiction over “[t]aking of hostages” as one of the “serious violations” of Common Article 3 and APII, thus including the criminalisation of hostage-taking of any person not

¹²⁰³ *Karadžić* Hostage-Taking AD, para.21. *Contra* Mladić-AB, para.722. *Also* Mladić-AB, para.731.

¹²⁰⁴ Judgement, para.3224.

¹²⁰⁵ *Karadžić* Count 11 AD, paras.6, 22, 29.

¹²⁰⁶ Judgement, para.3010 *citing* *Tadić* Jurisdiction AD, para.134; *Čelebići* AJ, paras.167, 173-174.

¹²⁰⁷ *Aleksovski* AJ, paras.107-109; *Đorđević* AJ, para.24.

¹²⁰⁸ *Contra* Mladić-AB, paras.704(iii)-(iv).

¹²⁰⁹ *Čelebići* AJ, para.163.

¹²¹⁰ *See* *Čelebići* AJ, paras.165-167 *referring to* GCIV, Art.146. *Also* Commentary to GCIV, p.594. *Contra* Mladić-AB, paras.702, 704(i).

taking active part in hostilities.¹²¹¹ Contrary to Mladić's claim,¹²¹² it is of no significance that Article 3 of the ICTY Statute, which specifies that its "violations shall include, but not be limited to" the enumerated list,¹²¹³ contains no express mention of hostage-taking.¹²¹⁴

306. While the Chamber is under an obligation to establish whether a violation not listed explicitly in Article 3 of the ICTY Statute falls within its jurisdiction, no detailed analysis was required for hostage-taking as a serious violation of Common Article 3 in light of the clear ICTY case law.¹²¹⁵ This is especially so given that Mladić never raised the jurisdictional argument at trial.

B. Mladić significantly contributed to the common purpose of the Hostage-Taking JCE (6.C. 3)

307. Mladić significantly contributed to the common purpose of the Hostage-Taking JCE, which entailed capturing UN personnel throughout BiH and detaining them in strategic military locations to prevent NATO from launching further military airstrikes on Bosnian Serb military targets.¹²¹⁶ The evidence shows that Mladić was "closely involved[...] throughout every stage of hostage-taking" and his contributions "were central to the implementation of the JCE's common objective".¹²¹⁷ He ordered VRS units to detain UN personnel and to place them at potential NATO airstrike targets;¹²¹⁸ he ordered his subordinates to attack UNPROFOR locations if NATO strikes resumed;¹²¹⁹ he negotiated and ordered the release of the hostages, conditioning release on cessation of airstrikes;¹²²⁰ and he issued threats to kill or to continue to detain the hostages.¹²²¹ Given the reasons for the detention as well as the circumstances and the way UN personnel were captured, detained, threatened and

¹²¹¹ ICTR Statute, Art.4. *Also Akayesu* TJ, paras.608, 610, 616. *Contra* Mladić-AB, para.706.

¹²¹² Mladić-AB, para.704(ii).

¹²¹³ ICTY Statute Art.3. *See Tadić* Jurisdiction AD, para.89 (violations of Common Article 3 are included in the ambit of Article 3 of the ICTY Statute). *Also Čelebići* AJ, paras.125, 133-136; *Kunarac* AJ, para.68.

¹²¹⁴ *Contra* Mladić-AB, para.704(ii).

¹²¹⁵ *Contra* Mladić-AB, para.699.

¹²¹⁶ Judgement, para.5156.

¹²¹⁷ Judgement, para.5156.

¹²¹⁸ Judgement, paras.5148, 5152. *Also* Judgement, paras.2219, 2223.

¹²¹⁹ Judgement, para.5148. *Also* Judgement, para.2288.

¹²²⁰ Judgement, para.5156. *Also* Judgement, paras.2219, 2223, 2288, 2296-2297, 5137-5140.

¹²²¹ Judgement, para.5163. *Also* Judgement, paras.2228-2229.

used as human shields, the Chamber was reasonable in concluding that their detention was unlawful.¹²²²

308. None of the allegedly “inconsistent” or “contrary” evidence Mladić cites¹²²³ undermines the Chamber’s findings. Mladić attacks peripheral aspects of his participation in the hostage-taking¹²²⁴ but ignores critical and reliable evidence establishing his close involvement, which was central to the implementation of the common purpose.¹²²⁵

309. The Chamber reasonably attributed Mladić’s 30 May 1995 order to him¹²²⁶ and relied on it to support its finding that he ordered the deployment of captured UN personnel to potential NATO airstrike targets.¹²²⁷ The order contains Mladić’s type-signed signature.¹²²⁸ At trial, Mladić did not object to the order as being signed by him.¹²²⁹ Mladić’s claim, raised for the first time on appeal, that because the order did not contain identification number “01”, it was not issued by him,¹²³⁰ is belied by the fact that at trial Mladić tendered documents as “his” with different identification numbers,¹²³¹ and that in his appeal brief he seems to claim that this order was in fact issued by him.¹²³² Moreover, Mladić fails to explain how a notebook entry of 29 May 1995 that an UNPROFOR representative “urged Mladić to immediately release the

¹²²² Judgement, para.3221. In determining the lawfulness of the detention, the Chamber correctly did not solely look at whether the initial detention was lawful, but took into account the circumstances relating to the manner in which and the reasons why the UN personnel were detained, *see Karadžić Preliminary Motions Decision*, para.65.

While on the facts of this case the detention was clearly unlawful, the Chamber erroneously considered the unlawfulness of the detention as an element of the crime (*see* Judgement, para.3215). The *Blaškić* AJ, para.639, on which the Chamber based this element, does not require that the detention is unlawful. Similarly, the Hostages Convention, the ICRC Commentaries and ICRC Study on Customary IHL as well as other tribunals do not require unlawful detention for the crime of hostage-taking (Hostages Convention, Art.1; 2016 Commentary to GCI, paras.653-654; ICRC Study, Rule 96, p.336; Commentary to APs, para.4537; *Sesay* AJ, para.578; ICC Elements of Crimes, Arts.8(2)(a)(viii), 8(2)(c)(iii)).

The Prosecution did not appeal this error of law, because it does not have an impact on the verdict.

¹²²³ *Contra* Mladić-AB, para.741.

¹²²⁴ *See* Mladić-AB, paras.742, 747-748.

¹²²⁵ Judgement, para.5156. *Also contra* Mladić-AB, para.139.

¹²²⁶ *See* Judgement, paras.5152, 2223 *citing* Exh.P5230.

¹²²⁷ *See* Judgement, paras.2223, 5137, 5141, 5151-5152, 5156.

¹²²⁸ *See* Exh.P5230 *cited at* Judgement, para.2223. *Also* Judgement, paras.5137, 5152.

¹²²⁹ *See* Bar Table Motion, [REDACTED]; Response to Bar Table Motion. Exh.P5230 (65ter 01987) was not among the proposed documents to which Mladić objected. He never challenged this document’s admissibility on the basis of the “identifier” numbers it contains.

¹²³⁰ *Contra* Mladić-AB, para.744.

¹²³¹ *Above* Response to Sub-ground 5.B, para.237.

¹²³² *See* Mladić-AB, para.749 *referring to* Exh.P2530.

POWs”¹²³³ casts doubt on the credibility of his order a day later to place the hostages at strategic locations.

310. Contrary to Mladić’s argument,¹²³⁴ the Chamber did not attribute Milovanović’s 27 May 1995 order to Mladić, nor did it rely on this order to find that Mladić “directly ordered” the placement of the UN personnel at potential airstrike targets; rather it took the order into account to support its findings on the existence of a common purpose.¹²³⁵

311. The Chamber did not fail to give sufficient weight to Mladić’s orders to his subordinates to “treat the detainees as POWs in accordance with the Geneva Conventions”.¹²³⁶ The very orders Mladić cites also include instructions to take UN personnel as hostages.¹²³⁷ Based on the totality of their language,¹²³⁸ together with the evidence of how the orders were implemented by Mladić’s subordinates (hostages were captured, threatened, intimidated, and chained to strategic locations),¹²³⁹ the Chamber properly relied on the orders to support its findings that Mladić and his fellow JCE members in the VRS Main Staff issued them in furtherance of the hostage-taking common purpose.¹²⁴⁰

312. The Chamber also reasonably found that Mladić visited the hostages based on evidence of UNMO Kalbarczyk.¹²⁴¹ A chamber has broad discretion to accept the testimony of a single witness even as to a material fact.¹²⁴² The Chamber assessed the evidence that Mladić now claims is inconsistent with the Chamber’s finding,¹²⁴³ and reviewed the entries in Mladić’s notebook for the relevant period.¹²⁴⁴ Neither the fact

¹²³³ Judgement, para.2294 *citing* Exh.P345, pp.151-155. *Contra* Mladić-AB, para.745.

¹²³⁴ *Contra* Mladić-AB, paras.743-744. While Mladić objects to the alleged attribution of this order to him in one paragraph, in a later part of his argument Mladić seems to refer to this order as one of “his orders”, Mladić-AB, para.745 *referring to* Judgement, para.2219. *Also* Mladić-AB, paras.746, 750 *referring to* Judgement, para.2219.

¹²³⁵ Judgement, para.5137. *Also* Judgement, paras.5141-5142.

¹²³⁶ *Contra* Mladić-AB, para.750. *Also* Mladić-AB, paras.746, 749.

¹²³⁷ *See* Judgement, paras.2219. *Contra* Mladić-AB, paras.745-746, 750 *referring to* Judgement, paras.2219-2220.

¹²³⁸ *See* Judgement, paras.2219-2220, 2316.

¹²³⁹ *See* Judgement, paras.2227-2228, 2235-2236, 2240-2241, 2253, 2256, 2262, 2268, 2279, 2316. *Contra* Mladić-AB, paras.745-746, 750.

¹²⁴⁰ Judgement, paras.5141-5142. *Contra* Mladić-AB, para.751.

¹²⁴¹ Judgement, paras.2309, 5153. *Contra* Mladić-AB, para.742.

¹²⁴² *See* *Nyiramasuhuko* AJ, para.2063.

¹²⁴³ *See* Judgement, para.2309 *referring to* P.Rechner:Exh.D393, J.Glissen:Exh.P397, G.Evans:Exh.P396.

¹²⁴⁴ *See* Judgement, paras.2294-2295, 2297 *citing* Exh.P345, pp.151-155, 164, 166-167.

that some witness's statements did not explicitly mention Mladić's visit nor the lack of an entry about it in Mladić's notebook,¹²⁴⁵ shows that the Chamber was unreasonable to rely on one witness's testimony.¹²⁴⁶

313. Mladić also fails to show that the Chamber was unreasonable to find that Mladić ordered hostages to be filmed based on evidence of another UNMO, Rechner, whom the Chamber found reliable.¹²⁴⁷ Corroboration is not a requirement¹²⁴⁸ and the Chamber was entitled to rely on reliable and credible hearsay evidence.¹²⁴⁹ The Chamber assessed the supposedly "exculpatory evidence" to which Mladić cites,¹²⁵⁰ but was reasonable to conclude that it did not undermine Rechner's evidence that the filming was ordered by Mladić. Kalbarczyk who, unlike Rechner, does not speak Serbian, did not follow the conversation between VRS soldiers concerning Mladić's order, about which Rechner testified.¹²⁵¹ Nor does Lalović's evidence preclude the finding that Mladić issued an order to film the hostages. Lalović (a journalist "closely related" to Mladić) merely claimed that *he* was sent to film strategically-chained hostages by his editor and said that he did not hear about Mladić's order.¹²⁵² In any event, the significance of Mladić's contribution does not hinge on him having visited or ordered filming of the hostages, in light of his orders for hostages to be detained, placed at potential NATO airstrike targets, and his negotiating and ordering their conditional release.¹²⁵³

314. Finally, Mladić's trial argument—which he now repeats on appeal—that the orders to block, detain and disarm UN personnel were lawful,¹²⁵⁴ does not undermine the finding that Mladić significantly contributed to the JCE. A contribution to the JCE does not have to be unlawful *per se*.¹²⁵⁵ Moreover, Mladić's contribution, as it relates to his orders, was not limited to just ordering the detention of UN personnel, but also

¹²⁴⁵ Mladić-AB, para.742.

¹²⁴⁶ *Contra* Mladić-AB, para.742.

¹²⁴⁷ Judgement, paras.5153, 2238, 5147. *Contra* Mladić-AB, para.748.

¹²⁴⁸ *See Nyiramasuhuko* AJ, para.944.

¹²⁴⁹ *See Prlić* AJ, para.493; *Popović* AJ, para.1276; *Šainović* AJ, para.846. *Contra* Mladić-AB, para.748.

¹²⁵⁰ *Contra* Mladić-AB, paras.747-748. *E.g.* Judgement, paras.2236, 2238 *citing, inter alia*, J.Kalbarczyk:T.19352-19353; S.Lalović:Exh.D858.

¹²⁵¹ J.Kalbarczyk:T.19352-19353. *Also* [REDACTED].

¹²⁵² S.Lalović:Exh.P858, paras.4, 8, 11. In fact, both Kalbarczyk and Rechner recalled that a VRS officer with a camera was also present. *See* J.Kalbarczyk:Exh.P2801, p.3, P.Rechner:Exh.P2554, paras.51-53 *cited at* Judgement, para.2238.

¹²⁵³ *See* Judgement, para.5156.

¹²⁵⁴ *Compare* Mladić-AB, para.749 *with* Mladić-FTB, paras.3313, 3315, 3376, 3382, 3385.

to taking them hostage and chaining them at strategic locations to prevent NATO airstrikes.¹²⁵⁶

C. Mladić shared the intent to achieve the common purpose of the Hostage-Taking JCE (6.C.4)

315. Mladić shared the intent with the other members of the Hostage-Taking JCE.¹²⁵⁷ He intended to “capture the UN personnel deployed in various parts of BiH and detain them in strategic military locations”.¹²⁵⁸ He threatened to kill them or continue to detain them.¹²⁵⁹ And he intended the hostage-taking to prevent NATO from launching further airstrikes on Bosnian Serb military targets.¹²⁶⁰

316. None of the evidence to which Mladić now cites shows error in these findings.¹²⁶¹ If anything, they support them. Mladić’s desire to “bring a peaceful end to the situation”,¹²⁶² by threatening to kill hostages he detained illegally¹²⁶³ does not exculpate him, it incriminates him. Likewise, any supposedly ‘fair’ treatment of the hostages,¹²⁶⁴ or their release on orders of Karadžić,¹²⁶⁵ even if attributable to Mladić, does not undermine that UN personnel were taken hostage on Mladić’s orders in the first place.¹²⁶⁶

317. Mladić’s argument¹²⁶⁷ that POWs can be detained until a determinative termination of hostilities is beside the point.¹²⁶⁸ In light of the reasons for the detention and the manner in which they were detained, the detention of UN personnel was clearly unlawful, regardless of their status.¹²⁶⁹ Mladić’s role in conditioning the

¹²⁵⁵ See *Popović* AJ, para.1615; *Krajišnik* AJ, para.215.

¹²⁵⁶ Judgement, paras.5136, 5163. *Contra* Mladić-AB, para.749. *Below* Response to Sub-ground 6.C.4.

¹²⁵⁷ Judgement, para.5163.

¹²⁵⁸ Judgement, para.5163.

¹²⁵⁹ Judgement, para.5163.

¹²⁶⁰ Judgement, para.5163.

¹²⁶¹ *Contra* Mladić-AB, paras.753-758. *Also contra* Mladić-AB, para.139.

¹²⁶² Mladić-AB, para.753.

¹²⁶³ Judgement, para.5163. *Also above* paras.311, 315.

¹²⁶⁴ *Contra* Mladić-AB, para.755.

¹²⁶⁵ *Contra* Mladić-AB, para.754.

¹²⁶⁶ See Judgement, paras.5148-5158.

¹²⁶⁷ Mladić-AB, para.756.

¹²⁶⁸ Judgement, para.5163. *Also* Judgement, paras.2228-2229.

¹²⁶⁹ Judgement, paras.3221, 3226. *Also above* paras.300-303, 307.

release of persons chained to strategic locations on the cessation of bombing amounts to a gross violation of IHL,¹²⁷⁰ rather than “normal practice” of peace negotiations.¹²⁷¹

318. Finally, Mladić played a central role in the implementation of the Hostage-Taking JCE,¹²⁷² regardless of whether he had the ultimate power to decide on the capture, treatment and liberation of the UNPROFOR personnel.¹²⁷³ The entirety of the hostage crisis—the capture, treatment, and release—was an orchestrated effort spanning several levels of leadership, of which Mladić was an instrumental part.¹²⁷⁴

¹²⁷⁰ *E.g.* GCIII, Art.23.

¹²⁷¹ *Contra* Mladić-AB, para.756.

¹²⁷² Judgement, paras.5137-5140.

¹²⁷³ *Contra* Mladić-AB, para.757.

¹²⁷⁴ Judgement, paras.5137, 5139.

VIII. GROUND 7: MLADIĆ WAS NEITHER CONVICTED NOR SENTENCED UNDER ARTICLE 7(3)

319. The Chamber convicted Mladić of genocide, crimes against humanity and war crimes because it found that he committed these crimes as a member of the four JCEs criminal enterprises identified in the Indictment.¹²⁷⁵ As Mladić concedes,¹²⁷⁶ he was convicted only under Article 7(1), not under Article 7(3).¹²⁷⁷

320. In sentencing, the Chamber found, as an aggravating circumstance, that Mladić abused his superior position to commit crimes.¹²⁷⁸ To do so, it was not required to enter findings of Article 7(3) responsibility.¹²⁷⁹ Abuse of authority is a distinct aggravating factor, which does not depend on a finding of superior responsibility under Article 7(3).¹²⁸⁰

321. The Chamber made all the necessary factual findings required for the abuse of authority aggravating factor. It found that Mladić abused his superior position by participating in the four JCEs in his official capacity as VRS Main Staff Commander, as proven in the context of his Article 7(1) liability.¹²⁸¹ For aggravation based on abuse of authority, there was no need for the Chamber to make any findings on the elements of superior responsibility under Article 7(3).¹²⁸²

322. The *D.Milošević* Appeal Judgement does not support Mladić's argument that superior responsibility findings were a required precondition for the aggravating factor of abuse of authority.¹²⁸³ His *D.Milošević* Appeal Judgement reference concerns convictions on alternative modes of liability, not sentencing factors.¹²⁸⁴

¹²⁷⁵ Judgement, paras.5188-5192.

¹²⁷⁶ Mladić-AB, para.771.

¹²⁷⁷ Judgement, para.5166.

¹²⁷⁸ Judgement, paras.5185, 5193. To avoid "the pitfall that a specific factor will be counted twice for sentencing purposes", the Chamber considered the gravity of the offences together with aggravating circumstances. Judgement, para.5184.

¹²⁷⁹ See *Semanza* AJ, para.336. *Contra* Mladić-AB, para.774.

¹²⁸⁰ E.g. *Prlić* TJ, Vol.I, paras.262-265, Vol.IV, para.1287 (no Art.7(3) liability) and *Prlić* AJ, paras.3265, 3270, 3279, 3284, 3290 (no error in considering abuse of authority in aggravation); *Stanišić & Župljanin* TJ, Vol.II, paras.529, 780, 798 (no Art.7(3) liability) and *Stanišić & Župljanin* AJ, para.1139 (no error in considering abuse of authority in aggravation).

¹²⁸¹ Judgement, para.5193. *Also* Judgement, para.5166.

¹²⁸² *Contra* Mladić-AB, paras.778, 917-920.

¹²⁸³ *Contra* Mladić-AB, para.774.

¹²⁸⁴ *D.Milošević* AJ, paras.281-282. Mladić makes no argument that this Appeals Chamber would be precluded from considering alternative modes of liability.

323. Ground 7 should be dismissed, and Mladić's life sentence affirmed.

IX. GROUND 8: MLADIĆ RECEIVED A FAIR TRIAL

324. Mladić's claim that his fair trial right was "grossly" violated is untenable. Mladić misrepresents the record;¹²⁸⁵ seeks to re-litigate failed trial arguments without showing error;¹²⁸⁶ and raises new issues on appeal that he ought to have raised at trial.¹²⁸⁷

325. Mladić also fails to show prejudice from any of these alleged errors, instead he makes abstract allegations of harm divorced from the circumstances of his case. He objects that he had insufficient pre-trial preparation time, although the Chamber granted him a substantial adjournment at the start of the proceedings and adopted other measures to ensure adequate preparation time.¹²⁸⁸ He complains about disclosure failures, even though their effects were at best negligible.¹²⁸⁹ He complains he was unable to call witnesses whose evidence had no apparent relevance to the case.¹²⁹⁰ He claims that because of the sitting schedule he was unfit at trial when in fact he was actively engaged in his own defence.¹²⁹¹ He invokes lawyer-client privilege for making loud offensive statements in a non-confidential setting.¹²⁹² Mladić attempts to show impact by making empty assertions that he was put at "a substantial disadvantage vis-à-vis the Prosecution"¹²⁹³ without providing a single concrete example. This does not meet his burden to establish prejudice that invalidates the Judgement, in whole or in part.¹²⁹⁴

326. Mladić has failed to identify any individual errors meriting reversal, retrial or remit. He is also not entitled to any remedy based on the purported "cumulative effect"¹²⁹⁵ of these alleged errors.¹²⁹⁶

327. Ground 8 should be dismissed.

¹²⁸⁵ *Below e.g.* Response to Sub-grounds 8.A, 8.B.2.

¹²⁸⁶ *Below e.g.* Response to Sub-grounds 8.A, 8.B, 8.C, 8.D.

¹²⁸⁷ *Below e.g.* Response to Sub-ground 8.B.1.

¹²⁸⁸ *Below e.g.* Response to Sub-ground 8.D.

¹²⁸⁹ *Below e.g.* Response to Sub-ground 8.D.

¹²⁹⁰ *Below e.g.* Response to Sub-grounds 8.A, 8.C.

¹²⁹¹ *Below e.g.* Response to Sub-ground 8.B.1.

¹²⁹² *Below e.g.* Response to Sub-ground 8.B.2.

¹²⁹³ Mladić-AB, para.908.

¹²⁹⁴ *E.g. Haradinaj* AJ, para.17; *Galić* AJ, para.21.

¹²⁹⁵ Mladić-AB, paras.909-911, 913.

¹²⁹⁶ *Below e.g.* Response to Sub-ground 8.E.

A. The Chamber properly exercised its broad discretion in managing the conduct of the proceedings (8.A)

328. Mladić fails to show any abuse of discretion in the Chamber's decisions not to extend his deadline to enable him to present evidence and to close his case without hearing it, because the evidence he points to has no apparent relevance. Mladić does not demonstrate any prejudice from these decisions, let alone any impact on the verdict.

1. The Chamber did not err by declining to vary the deadline to present belated witnesses

329. The Chamber's denial of Mladić's last-minute request to vary the deadline for presentation of witnesses to allow Meholjić and [REDACTED] to testify was a proper and reasonable exercise of its discretion. Mladić does not demonstrate that the Chamber failed to consider any relevant factors in denying his request for an extension and shows no abuse of discretion.

330. Trial chambers' decisions related to trial management, including determining the time available to a party to present its case as well as requests for additional time to present evidence, are discretionary decisions to which the Appeals Chamber should give deference.¹²⁹⁷ The exercise of the Chamber's discretion in varying the time allotted is informed by the potential importance of the evidence to the party's case.¹²⁹⁸

331. These principles are borne out in this instance. Due to the questionable relevance and negligible probative value of Meholjić's and [REDACTED] evidence, the Chamber acted well within its broad discretion when it correctly determined that Mladić failed to show good cause to vary the deadline for presentation of witnesses because the evidence he sought to present was [REDACTED].¹²⁹⁹ Mladić's claim about [REDACTED],¹³⁰⁰ is contradicted by its express acknowledgement that [REDACTED].¹³⁰¹ [REDACTED].¹³⁰²

¹²⁹⁷ *Haradinaj* AJ, para.17. Also *Hadžić* Continuation of Proceedings AD, para.6; *Šainović* AJ, para.29.

¹²⁹⁸ See *Haradinaj* AJ, paras.38-40, 43.

¹²⁹⁹ See [REDACTED]; [REDACTED].

¹³⁰⁰ Mladić-AB, para.795.

¹³⁰¹ [REDACTED].

(a) Meholjić

332. [REDACTED],¹³⁰³ [REDACTED].¹³⁰⁴ Having failed to assert this as an area of anticipated testimony at trial, Mladić cannot fault the Chamber for supposedly neglecting to consider it in determining whether to vary the deadline to call this witness.¹³⁰⁵ In any event, [REDACTED].¹³⁰⁶ Contrary to Mladić's implied claim,¹³⁰⁷ the Chamber did not find that all Srebrenica killing victims were civilians.¹³⁰⁸ Instead, the Chamber concluded that in all Srebrenica incidents, the victims of the killings were either civilians or *hors de combat* and therefore not actively participating in the hostilities.¹³⁰⁹ In reaching this conclusion, it conducted an incident-by-incident analysis of the status of the victims and their causes of death, and excluded or did not count certain deaths in the total number of victims where appropriate.¹³¹⁰ Mladić makes no attempt to show how this incident-by-incident analysis would be purportedly affected by Meholjić's evidence. To the contrary, he does not even specify what that evidence would supposedly entail.

333. Nor does Mladić explain how Meholjić's supposed information about comments by Izetbegović concerning Srebrenica or the alleged military intervention offered by President Clinton could be probative to the causes of death of the Srebrenica victims or the identity of the perpetrators.¹³¹¹ Mladić repeats his arguments about the purported significance of Meholjić's evidence [REDACTED],¹³¹² [REDACTED].¹³¹³ [REDACTED]¹³¹⁴ [REDACTED]¹³¹⁵ [REDACTED].¹³¹⁶ Mladić fails to explain why the Chamber was precluded from considering the negligible

¹³⁰² *Contra* [REDACTED].

¹³⁰³ [REDACTED].

¹³⁰⁴ [REDACTED].

¹³⁰⁵ [REDACTED].

¹³⁰⁶ *See* [REDACTED].

¹³⁰⁷ [REDACTED].

¹³⁰⁸ [REDACTED].

¹³⁰⁹ *See* Judgement, paras.3062, 3546. *Also above* Response to Sub-ground 5.E.

¹³¹⁰ *E.g.* Judgement, para.2683, fns.11458, 12371. *Also* Judgement, paras.2920-2921, 2706, 2660. *Also above* Response to Sub-ground 5.E.

¹³¹¹ *See* [REDACTED].

¹³¹² *Compare* [REDACTED] *with* [REDACTED].

¹³¹³ [REDACTED].

¹³¹⁴ *See* [REDACTED].

¹³¹⁵ *Contra* [REDACTED].

¹³¹⁶ [REDACTED].

significance of Meholjić's evidence in exercising its discretion as to whether to vary the deadline to hear it.

(b) [REDACTED]

334. [REDACTED]¹³¹⁷ [REDACTED].¹³¹⁸ Mladić's trial arguments, repeated on appeal, [REDACTED],¹³¹⁹ [REDACTED]. Likewise, Mladić's mere assertion that [REDACTED]¹³²⁰ that would have relevance to certain Scheduled Incidents¹³²¹ does not show error in the Chamber's determination that the Defence had failed to show that [REDACTED].¹³²²

2. Mladić fails to show impact

335. For the reasons discussed above,¹³²³ Mladić fails to demonstrate that Meholjić's and [REDACTED] evidence, with low, if any probative value, had he been able to present it, would have affected the verdict.

3. The Chamber did not err in closing the Defence case

336. Mladić fails to show prejudice from the timing of the Chamber considering his case closed. The Chamber assessed the merits of Mladić's motion challenging the [REDACTED] Decision, and denied it for reasons unrelated to its determination that the Defence case had already been closed—[REDACTED].¹³²⁴

B. Mladić was fit to stand trial (8.B.1)

337. Mladić asks that the Appeals Chamber find now, years after the trial ended, that the Chamber erred in failing to rule on a fitness-to-stand-trial argument that Mladić

¹³¹⁷ [REDACTED]; [REDACTED].

¹³¹⁸ [REDACTED].

¹³¹⁹ Compare [REDACTED] with [REDACTED].

¹³²⁰ Mladić-AB, para.802.

¹³²¹ Mladić-AB, para.801.

¹³²² [REDACTED].

¹³²³ Above paras.329-334.

¹³²⁴ See [REDACTED]. Moreover, Mladić wrongly claims that he put the Chamber on notice that he would seek reconsideration of the [REDACTED] Decision, when, instead, he indicated that he intended to seek certification to appeal it. See T.44316, 44319. Also Closure of the Defence Case Motion for Reconsideration, para.10. *Contra* Mladić-AB, para.804.

never presented at trial.¹³²⁵ By failing to identify any ‘special circumstances’ for raising this issue for the first time now, Mladić has waived his right to argue this issue on appeal. In any event, the evidence Mladić relies on contradicts his fitness argument. The trial record shows Mladić actively engaging in his own defence throughout the time he now alleges he had slipped into incompetence.¹³²⁶

338. Mladić also fails to show how the Chamber supposedly abused its discretion in denying his Third Defence Sitting Motion, especially in light of the record before the Chamber that: (i) doctors had consistently opined that Mladić was able to participate in his case; and (ii) doctors had indicated that extending the length of the trial by reducing the hearing week from five to four days would pose a greater risk to Mladić’s health than the five-day-per-week hearing schedule that resulted in a shorter trial. In any event, Mladić fails to demonstrate any concrete impact on his fair trial rights, particularly given that this decision resulted in five-day-per-week court sessions for a total of just six weeks over a three-month period.

1. Mladić waived his right to raise his fitness to stand trial by failing to raise it before the Chamber best-placed to assess it

339. In his repeated demands for a four-day-per-week hearing schedule, Mladić argued that the five-day-per-week schedule would be detrimental to his health, not that such a schedule would render him unfit to stand trial.

- In his First Motion, Mladić argued that [REDACTED].¹³²⁷
- Similarly, in his Second Motion, he asserted that a modified sitting schedule would [REDACTED].¹³²⁸
- In his Third Motion, Mladić asked to continue the four-day schedule to [REDACTED].¹³²⁹

¹³²⁵ Mladić-AB, paras.811-815, 835, 838-840.

¹³²⁶ See Mladić-AB, paras.818[REDACTED], 825 [REDACTED].

¹³²⁷ [REDACTED]. Also Sitting Schedule AD, para.3.

¹³²⁸ [REDACTED]. Also [REDACTED]. Also Sitting Schedule AD, para.5.

¹³²⁹ [REDACTED].

343. In any event, as noted above, the evidence Mladić asks the Appeals Chamber to rely upon actually expresses or supports a determination that Mladić *was* able to participate in the proceedings. He points to no new evidence suggesting he could now meet his burden of showing by a preponderance of the evidence that he was unfit to stand trial.¹³³⁹

2. Mladić actively participated in his own defence

344. Mladić’s retroactive claim that he was not fit at trial is further refuted by Mladić’s active participation at trial. While the Chamber was best placed to determine Mladić’s fitness, the trial record also supports the medical opinions that Mladić was able to participate in his own defence, including during the period in which he now claims the five-day sitting schedule had rendered him unfit.¹³⁴⁰ Specific instances include:

- On **16 January 2013**, two days after Mladić submitted his First Defence Sitting Motion, Mladić interrupted the proceedings during the direct examination of Michael Rose to “instruct” his attorney on “how to follow the testimony”.¹³⁴¹
- On **24 January 2013**, Mladić instructed his attorney to not object to the admission of recordings of phone calls between Mladić and others.¹³⁴²
- On **20 February 2013**, [REDACTED].¹³⁴³
- On **16 April 2013**, the day after he submitted his Second Defence Sitting Motion, [REDACTED].¹³⁴⁴

¹³³⁹ *Strugar* AJ, para.56. *Also* Mladić-AB, para.815.

¹³⁴⁰ *Above* paras.338-339, 341; *below* para.348.

¹³⁴¹ T.6853-6854 (“MR. LUKIĆ: Just I was briefly instructed by my client – JUDGE ORIE: Yes –

MR. LUKIĆ: how to follow the testimony of General Rose.”).

¹³⁴² T.7352-7353 (“MR. IVETIĆ: Yes, Your Honour. My client has instructed that he does not object to the admission of these documents so long as they are read and presented in their entirety so that the public gets the true, full picture of what was discussed and we get to the truth of the matters that are of interest to these proceedings finally.”).

¹³⁴³ [REDACTED].

¹³⁴⁴ [REDACTED].

- On **5 September 2013**, Mladić instructed his attorneys to correct the record when a witness referred to him as “President Mladić”, and to clarify his whereabouts during the war.¹³⁴⁵
- On **2 June 2014**, Mladić was so actively engaged with a witness’s testimony that the presiding judge admonished to not disrupt the proceedings.¹³⁴⁶
- On **26 June 2014**, Mladić actively examined a map used as evidence.¹³⁴⁷

345. These examples, most from near the end of each court day,¹³⁴⁸ illustrate Mladić’s ability to understand the course of the proceedings, to understand the details of the evidence, to instruct counsel and to understand the consequences of the proceedings.¹³⁴⁹

¹³⁴⁵ T.16313 (“JUDGE ORIE: [...] Apparently Mr. Mladić is seeking to consult with Mr. Ivetić. Mr. Ivetić, your client apparently seeks to consult with you. [...]

MR. IVETIĆ: If I may, Your Honour, that might assist.

JUDGE ORIE: Yes.

[Defence counsel and Accused confer]

MR. IVETIĆ: Your Honours, I’m drawn -- my attention is drawn to the fact that the witness stated President Mladić and that this was President Mladić so I believe he might be talking about someone else. I’m told that Cerska was never the call sign for General Mladić’s office nor was he ever in Cerska.

JUDGE ORIE: Well, that’s the position of the Defence. I do understand.

THE WITNESS: Sir, if I said President Mladić, obviously I mean President Karadžić, a sure sign that I’ve not had enough coffee yet this morning.”)

¹³⁴⁶ T.21991-21992 (“JUDGE ORIE: Yes. I noted that Mr. Mladić, several times, expressed either agreement with or at least he sometimes spoke even a bit louder. Mr. Mladić is ordered to refrain from any expression of agreement, disagreement, appreciation, whatever, any comment on the testimony of this witness, and that should be clear to him, and I do understand from his body language that he has understood this instruction very well.”).

¹³⁴⁷ T.23097-23098 (“MR. IVETIĆ: I believe -- what I was able to hear from Mr. Mladić is that he is unable to see and he’s asking for the areas to be marked.

JUDGE ORIE: Okay. There’s nothing wrong in what he wishes to achieve at this moment. Mr. Groome, may I take it that you will invite the witness to make markings on the map on the screen now or not? Because Mr. Mladić was at such a distance that he couldn’t see it.

MR. GROOME: Your Honour, if I can --

JUDGE ORIE: Where the pins are.

MR. GROOME: --state for the record: Before court started today, Mr. Mladić did have an opportunity to come up to the map with Mr. Lukić. I asked Mr. Lukić to point out the two pins to him so he would know what we’re talking about during this portion of the evidence.

JUDGE ORIE: Okay.

MR. GROOME: I certainly have no issue with Mr. Mladić during the next break coming back to look at these pins in this map.

JUDGE ORIE: Of course. The Chamber was not aware that such an opportunity has been given to Mr. Mladić, but in view of that fact we can proceed.”).

¹³⁴⁸ On 16 January 2013 (T.6815-6898), Mladić advised his counsel on transcript page 6854. On 24 January 2013 (T.7279-7375), Mladić instructed his attorneys at transcript page 7352. [REDACTED]. [REDACTED]. On 5 September 2013 (T.16280-16343), Mladić instructed his attorneys on transcript page 16313.

¹³⁴⁹ *Strugar* AJ, paras.41, 55; Mladić-AB, para.812.

3. The Chamber properly denied Mladić's Third Defence Sitting Motion

346. The Chamber based its 14 March 2014 decision denying Mladić's Third Defence Sitting Motion in part on the medical findings of two doctors who concluded that "delaying or protracting the course of the trial [by cutting the sitting schedule from five to four days per week] would be disadvantageous to Mr. Mladić's health".¹³⁵⁰ Mladić fails to explain how the Chamber abused its discretion in making this decision: he relies solely on a passing reference to the Appeals Chamber's reversal of an earlier Chamber's decision denying his Second Defence Sitting Motion.¹³⁵¹

347. To the extent that Mladić's argument depends on a comparison between these two decisions, it must fail. The Appeals Chamber found that, in denying the Second Defence Sitting Motion, the Chamber erred in rejecting the medical evidence before it as "insufficient" without ordering any other medical reports upon which it could rely to make a properly informed decision.¹³⁵² In contrast, the Chamber based its 14 March 2014 decision¹³⁵³ on the medical opinions of two doctors. They concluded that prolonging the trial by adopting a four-day-per-week sitting schedule might be worse for Mladić's overall health than a trial schedule that would stretch to five days per week but would result in a shorter overall trial.¹³⁵⁴ Mladić fails to show that the Chamber abused its discretion under these circumstances.

348. In any event, the Chamber's decision ultimately resulted in a five-day schedule being adopted for just six weeks during May, June and July 2014.¹³⁵⁵ Mladić fails to show that these six weeks rendered his 239-week-long trial¹³⁵⁶ unfair, deprived him of any rights, or diminished his effective participation in the trial.¹³⁵⁷

¹³⁵⁰ Sitting Schedule Decision 14 March 2014, para.15.

¹³⁵¹ Mladić-AB, para.830 *citing* Sitting Schedule AD (reversing Sitting Schedule Decision 12 July 2013).

¹³⁵² Sitting Schedule AD, para.13.

¹³⁵³ This 14 March 2014 decision arose from the Appeals Chamber's order that the Chamber "reassess the trial sitting schedule at the beginning of the Defence case", *see* Sitting Schedule Decision 14 March 2014, para.5.

¹³⁵⁴ Sitting Schedule Decision 14 March 2014, paras.15, 19.

¹³⁵⁵ *See* T.21035-21480 (19-23 May), T.21481-21940 (26-30 May), T.21941-22405 (2-6 June), T.22867-23255 (24-27 June), T.23537-23970 (7-11 July), T.23971-24361 (14-18 July).

¹³⁵⁶ Opening statements began on 16 May 2012 (*see* T.399), and closing arguments ended on 15 December 2016 (*see* T.44905).

¹³⁵⁷ *Contra* Mladić-AB, paras.831, 838.

C. Mladić's statements in court were relevant, admissible and not private

(8.B.2)

349. On 18 February 2013, Mladić made loud, offensive and relevant statements about [REDACTED] who testified before the Chamber. [REDACTED].¹³⁵⁸ [REDACTED]¹³⁵⁹ [REDACTED]¹³⁶⁰

350. Mladić made these loud utterances, that were relevant to his case, within easy earshot of Prosecution staff members who were openly and visibly sitting in the same courtroom. Though Mladić's counsel were present when he said these things, his statements were not made in a private space and not confidential. Mladić cannot avail himself of lawyer-client privilege in these circumstances. Mladić reveals no error in the Chamber's decision to admit and rely on his utterances. His arguments should be dismissed.

351. Even if the Chamber erred in relying on these utterances, this error occasioned no miscarriage of justice¹³⁶¹ in light of other overwhelming evidence of Mladić's intent.

1. Mladić's utterances in court were not confidential and privileged

352. Contrary to Mladić's arguments,¹³⁶² Rule 97 does not apply to his utterances because they were not made in a private space. They were not confidential communications between him and his lawyers. The basis of the lawyer-client privilege is to ensure that communications between lawyers and clients "will remain confidential".¹³⁶³ This privilege prevents lawyers from revealing important but potentially damning information divulged to them in confidence by their clients during the course of their special lawyer-client relationship,¹³⁶⁴ as Mladić's counsel

¹³⁵⁸ See [REDACTED]. Also [REDACTED].

¹³⁵⁹ [REDACTED].

¹³⁶⁰ [REDACTED].

¹³⁶¹ *Contra* Mladić-AB, para.873.

¹³⁶² Mladić-AB, paras.842, 851, 856-859.

¹³⁶³ *Michaud* Judgement, para.118 (emphasis added).

¹³⁶⁴ *E.g. Krajišnik* Decision, para.33 ("Privilege stems from the attorney-client relationship, as indicated in Article 21(4)(b) of the Statute and as set forth in Rule 97 of the Rules, which provides that all 'communications between lawyer and client shall be regarded as privileged'."). *Also Popović* Decision, para.7 ("This privilege is vital to the defence of an accused or appellant by allowing for the open communication between attorney and client necessary for effective legal assistance as guaranteed under Article 21(4)(d) of the Statute.").

acknowledged.¹³⁶⁵ Mladić made his remarks in a setting that lacked confidentiality, in front of people with whom he had no such special lawyer-client relationship. As the Chamber reasonably concluded, by speaking loudly in this setting, Mladić was not communicating confidentially, and thereby waived any privilege that may otherwise have attached.¹³⁶⁶ These comments could never be considered to have been confidential.

353. Moreover, Mladić had been warned as early as August 2012 that he could not rely on Rule 97 to exclude from evidence any loud utterances he might make in the courtroom in the presence of people other than his attorneys.¹³⁶⁷ He nevertheless persisted in making these loud statements, such as on 18 February 2013. Under these circumstances, even assuming that Rule 97 could attach in such a setting, it would have been reasonable to conclude that Mladić had “voluntarily disclosed the content of the communication to a third party”, who then gave evidence of that disclosure.¹³⁶⁸

2. The Chamber considered the issue of privilege before admitting the statements

354. Mladić wrongly asserts that the Chamber admitted the statements on 4 June 2013, and did so without assessing whether the circumstances surrounding their recording rendered them inadmissible.¹³⁶⁹ In fact, on 4 June 2013 the Chamber denied, without prejudice, the admission of an investigator’s report recording the statements of the Prosecution staff members who had heard Mladić’s statements in court and video footage. It was only in September and October 2013 that the Chamber received witness testimony concerning Mladić’s statements, and admitted into evidence the investigator’s report and video footage.¹³⁷⁰ During these sessions, the Chamber heard—and even elicited—extensive evidence on the admissibility of the statements, questioning witnesses on the circumstances surrounding the utterances and how they came to be memorialised.¹³⁷¹

¹³⁶⁵ See T.16588 (“According to the code of conduct of Defence counsel, the counsel is duty-bound to keep [client communications] to himself and cannot use it for any other purposes save for his contacts with his client.”).

¹³⁶⁶ T.16589.

¹³⁶⁷ T.1481.

¹³⁶⁸ Rule 97.

¹³⁶⁹ Mladić-AB, para.848. See Utterances Decision, para.7.

¹³⁷⁰ T.16589, 18163-18184 (21 October 2013). Also T.18170 admitting Exh.P2533 (information report memorialising Mladić’s statements, through Sokola).

¹³⁷¹ [REDACTED].

3. Mladić shouted his statements across the courtroom

355. In admitting Mladić's statements, the Chamber relied on the testimony of two Prosecution staff members and video recordings of the events, not on the unsworn assertions of Prosecution counsel.¹³⁷² This evidence shows that these staff members, Karall and Sokola, heard Mladić clearly from the Prosecution side of the courtroom.

356. Both witnesses testified that, when they heard Mladić's statements, they were sitting on the opposite side of the courtroom,¹³⁷³ at a distance of about 15.5 metres.¹³⁷⁴ From their position, Mladić's statements were "easily heard" because he spoke "loudly".¹³⁷⁵

357. The witnesses did not hide their presence in the courtroom,¹³⁷⁶ which during the court break was open to both parties. Other Prosecution staff were also in the courtroom at the same time.¹³⁷⁷ The Chamber was well aware of the circumstances under which Mladić's comments were heard; it did not fail to consider them.¹³⁷⁸

¹³⁷² *Contra* Mladić-AB, paras.850, 857. See T.16591-16593, [REDACTED], 16596-16599, [REDACTED], 16602-16607, 18163-18184.

¹³⁷³ M.Karall:T.16594 (confidential); D.Sokola:T.18179. *Also* [REDACTED].

¹³⁷⁴ T.16610.

¹³⁷⁵ M.Karall:T.16594 (confidential) ("[KARALL] [...] I can hear [the accused] very well because he speaks loudly.").

D.Sokola:T.18166 ([SOKOLA] "Mr. Mladić is fairly loud."), 18180 ("JUDGE ORIE: Was the volume of Mr. Mladić's voice such that it was easy for you to hear him, or did you have to make a great effort in trying to hear what he said?

A. [SOKOLA] It was very easy to hear him.

JUDGE ORIE: Which means, if I understand you well, that it was so loud as for you to easily hear what he said from the other side of the courtroom.

A. That's correct."), 18183 ("[SOKOLA] Mr. Mladić was louder than the rest of the people in court.").

¹³⁷⁶ D.Sokola:T.18181 ("JUDGE MOLOTO: When you were sitting where you were sitting, were you hiding away or were you sitting in such a way that Mr. Mladić could see you?

A. [SOKOLA] No, I believe Mr. Mladić could see me.

JUDGE MOLOTO: Were you alone in the courtroom, other than the team, the Defence team?

A. No, most of the Prosecution team was already here.

JUDGE MOLOTO: They were all there.

A. Most of them, yes.

JUDGE MOLOTO: And Mr. Mladić could see them too? They were not hiding.

A. Yes, yes, of course.

JUDGE MOLOTO: Thank you so much.").

¹³⁷⁷ M.Karall:T.16598-16599 ("Q. Would you tell us if you remember who at that moment, apart from the counsel, the security, you and General Mladić, was in the courtroom, if anyone?

A. [KARALL] Mr. Groome was here. He was still sitting and making notes. I think Ms. Marcus had left the room already. There might have been an intern left, perhaps the court reporter. I don't remember that.").

D.Sokola:T.18166 ([SOKOLA] "I recall that most of the Prosecution team was already there, and the outburst occurred as the Defence team came in.").

¹³⁷⁸ *Contra* Mladić-AB, paras.860-865.

358. [REDACTED].¹³⁷⁹ [REDACTED].

4. Karall and Sokola were credible; Mladić fails to show the Chamber erred in weighing their testimony

359. The Chamber found the Prosecution witnesses credible after observing them testify in person, observing them under cross-examination, and after putting many of its own questions to them. A trial chamber is best placed to assess the credibility of witnesses;¹³⁸⁰ an appeals chamber should be loath to substitute its own evaluation of witness credibility for that of judges who saw the witnesses testify in person.¹³⁸¹

360. [REDACTED],¹³⁸² the Chamber was not required to set out in detail why it accepted or rejected particular testimony, and an accused's right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of particular witnesses.¹³⁸³

5. Mladić fails to show that his alleged health problems prevented him from speaking to his lawyers in a confidential manner

361. Mladić fails to establish any connection between his health and any alleged inability to speak to his lawyers in a confidential manner.¹³⁸⁴ Mladić's counsel argued only that his medical condition causes him to speak loudly, not that it compels him to speak involuntarily.¹³⁸⁵ Mladić was free to make these utterances confidentially to his counsel in private, where the communications would have enjoyed the protection of Rule 97. Moreover, at other times during trial, Mladić demonstrated his ability to speak confidentially to his counsel in the courtroom.¹³⁸⁶ In contrast, Mladić made his 18 February 2013 utterances openly and loudly, in front of the Prosecution. He fails to

¹³⁷⁹ [REDACTED]. *Also* M.Karall:T.16604, 16608-16609.

¹³⁸⁰ *Popović* AJ, para.131.

¹³⁸¹ *Popović* AJ, para.131 (*citing Nizeyimana* AJ, para.56; *Hategekimana* AJ, para.202).

¹³⁸² *See* [REDACTED].

¹³⁸³ *Popović* AJ, para.133.

¹³⁸⁴ *Mladić-AB*, paras.869-871. *Also* *Mladić-AB*, para.866.

¹³⁸⁵ T.16588.

¹³⁸⁶ *See* Sitting Schedule Decision 13 March 2013, para.13 *citing* T.3884-3885, 7510, 7574, 8127, 8139, 8326-8327, 9017, [REDACTED].

show that the Chamber erred in failing to give sufficient weight to the alleged impact of his health problems.¹³⁸⁷

6. The Chamber properly relied on Mladić’s statements to establish his Overarching JCE *mens rea*

362. Karall and Sokola appeared as “witness[es] of fact”, testifying about what they saw and heard in the courtroom on 18 February 2013.¹³⁸⁸ The Chamber reminded Prosecution counsel that the witnesses were not called as experts to express any opinions or analysis regarding Mladić’s *mens rea*.¹³⁸⁹ The Prosecution complied with this reminder, and Karall and Sokola’s testimony is limited to what they saw and heard, not what they might believe. [REDACTED] was relevant to the Chamber’s assessment of whether Mladić shared the intent of the Overarching JCE.¹³⁹⁰ Mladić received no assurances [REDACTED],¹³⁹¹ [REDACTED]. Mladić fails to demonstrate that the Chamber committed any error in relying on this evidence.¹³⁹²

7. Overwhelming evidence supports the Chamber’s finding that Mladić intended the crimes of the Overarching JCE

363. Evidence was overwhelming that Mladić shared the intent of the Overarching JCE and the crimes committed as a part of it. In determining Mladić’s JCE intent, the Chamber relied on Mladić’s significant contribution to the Overarching JCE coupled with his awareness that the crimes of persecution, murder, extermination, deportation, and inhumane acts (forcible transfer) were being committed against Bosnian Muslims and Bosnian Croats in the Municipalities;¹³⁹³ expressions of intent arising from Mladić’s “repeated use of derogatory terms such as ‘Turks’, ‘balijas’, and ‘Ustašas’ to refer to Bosnian Muslims and Bosnian Croats”, “references to the threat of ‘genocide’ against the Bosnian Serbs; [...] statements indicating an intention not to respect the laws of war in Croatia in 1991, and his later references to repeating the destruction [in BiH]”; and “expressions of commitment to an ethnically homogenous Bosnian-Serb

¹³⁸⁷ *Contra* Mladić-AB, para.871.

¹³⁸⁸ T.16589-16590.

¹³⁸⁹ T.16589.

¹³⁹⁰ Judgement, para.4643. *Also* [REDACTED].

¹³⁹¹ [REDACTED].

¹³⁹² *Contra* Mladić-AB, paras.872-873.

¹³⁹³ Judgement, para.4685.

Republic, even in territories that previously had a large percentage of non-Serb inhabitants”.¹³⁹⁴ Even if the Chamber were to exclude Mladić’s in-court utterances, it would still find him guilty of the crimes of the Overarching JCE based on the other conclusive evidence of his criminal intent.¹³⁹⁵

D. Mladić shows no unfairness arising from trial scheduling or disclosure (8.D)

1. Mladić had sufficient pre-trial preparation time

364. Mladić shows no error in the Chamber’s assessment of the necessary pre-trial preparation time. The Chamber granted appropriate remedies to address the late disclosure of material, including a substantial adjournment of the start of the proceedings, to ensure that Mladić’s rights were not prejudiced. Mladić ignores the deferential standard of review accorded to such discretionary decisions.¹³⁹⁶ He alleges no legal or factual error, nor makes any claim that the Chamber acted so unfairly or unreasonably that it abused its discretion. He likewise fails to make any concrete showing of any unremedied prejudice suffered as a result of the Chamber’s decisions.

365. Within the bounds of its considerable discretion in scheduling trials, determining appropriate preparation time and modalities of disclosure,¹³⁹⁷ the Chamber conducted a detailed, fact-intensive analysis in the present case, which Mladić largely ignores. For instance, Mladić’s complaint about the adjournment period¹³⁹⁸ distracts from the Chamber’s finding that “the effect of the disclosure failures [was] sometimes very small or even non-existent”.¹³⁹⁹ He fails to even acknowledge—let alone contest—the Chamber’s findings that documents subject to incomplete disclosure were illustrative or duplicative of the material already in his possession and required minimal additional work.¹⁴⁰⁰ Mladić further disregards that

¹³⁹⁴ Judgement, para.4686.

¹³⁹⁵ *E.g. above* para.97.

¹³⁹⁶ *See Prlić* AJ, para.26.

¹³⁹⁷ *See Karadžić* Commencement of Trial AD, paras.19, 23; *Ngirabatware* Trial Date AD, para.22; *Rukundo* AJ, para.139. *Also* EDS Disclosure AD, para.40.

¹³⁹⁸ In February 2012, the Chamber scheduled the trial to commence on 14 May 2012, with the presentation of evidence commencing on 29 May 2012. *See* Scheduling Order, p.7. The Chamber then partially granted two subsequent adjournment requests, postponing the presentation of evidence until 25 June 2012, and later to 9 July 2012. *See* Trial Adjournment Decision, paras.3-6, 16-19, 27; Reasons for Reconsideration Decision, para.25. *Also* Mladić-AB, para.879 (incorrectly stating that the Chamber postponed the trial for 90 days).

¹³⁹⁹ Trial Adjournment Decision, para.25.

¹⁴⁰⁰ Trial Adjournment Decision, paras.23, 25.

the Chamber: (i) also took into account the efforts by the Prosecution—“beyond its disclosure obligations”—to facilitate defence preparations; (ii) adopted additional measures to ensure adequate Defence preparation time, including instructions to the Prosecution to commence its presentation of evidence with the “witnesses least impacted by the disclosure failures”; and (iii) subsequently agreed to reconsider its decision, granting him an additional period of preparation time and other remedies.¹⁴⁰¹

366. Mladić takes issue with only one aspect of the Chamber’s reasoning—that “preparing a Defence is not exclusively done during the pre-trial phase.”¹⁴⁰² He ignores that this principle has been affirmed by the Appeals Chamber.¹⁴⁰³

367. Mladić’s vague allegation of prejudice¹⁴⁰⁴ does not meet his burden of demonstrating it.¹⁴⁰⁵ Mladić does not: (i) provide a single instance where he allegedly had inadequate time to prepare;¹⁴⁰⁶ (ii) explain how, given the nature of the belatedly disclosed material, additional preparation time would have assisted him in developing his defence strategy;¹⁴⁰⁷ or (iii) attempt to reconcile his prejudice allegations on appeal with his failure to act on the Chamber’s repeated invitations to him to seek additional remedies if any concrete prejudice arose in the course of the proceedings due to belated disclosure.¹⁴⁰⁸ His failure to identify any material prejudice refutes his “unfair advantage” claim.¹⁴⁰⁹

2. Mladić shows no unfairness relating to an absence of meta-data

368. Mladić’s parallel claim about lack of additional time to review documents without meta-data,¹⁴¹⁰ ignores that this very same argument was dismissed in an

¹⁴⁰¹ See Trial Adjournment Decision, paras.25, 27; Reasons for Reconsideration Decision, paras.24-25; Reconsideration Decision, p.2.

¹⁴⁰² Mladić-AB, para.880. See Trial Adjournment Decision, paras.25-26; Reasons for Reconsideration Decision, para.23.

¹⁴⁰³ *Karadžić* Commencement of Trial AD, para.24.

¹⁴⁰⁴ Mladić-AB, paras.880, 908.

¹⁴⁰⁵ E.g. *Krstić* AJ, para.153; *Kordić* AJ, para.242; *Karemera* Disclosure Decision, para.21; *Ngirabatware* AD, paras.23, 25.

¹⁴⁰⁶ Trial Adjournment Decision, para.25; Reconsideration Decision, p.1; Reasons for Reconsideration Decision, para.25.

¹⁴⁰⁷ Reasons for Reconsideration Decision, paras.23-24.

¹⁴⁰⁸ Trial Adjournment Decision, para.25.

¹⁴⁰⁹ *Contra* Mladić-AB, paras.877, 880.

¹⁴¹⁰ Mladić-AB, para.879.

interlocutory appeal decision.¹⁴¹¹ His argument amounts to a request for reconsideration of this decision with no attempt to meet the requisite test.¹⁴¹²

369. In any event, Mladić disregards the Chamber’s assessment, endorsed by the Appeals Chamber, that the purported difficulties “amounted only to an ‘inconvenience’”.¹⁴¹³

E. None of Mladić’s arguments, individually or cumulatively, merit any remedy (8.E)

370. Since Mladić has failed to identify any error of law invalidating any Chamber decision or any error of fact resulting in a miscarriage of justice, he is not entitled to any remedy from the Appeals Chamber. Because he fails to identify any *individual* errors meriting reversal, retrial or remit, he is not entitled to any remedy based on the purported “cumulative effect”¹⁴¹⁴ of these alleged errors.

371. In any event, the remedies for which Mladić advocates are unreasonable or impractical in relation to the alleged errors. The arguments in this ground, like those in his other grounds, should be dismissed. Mladić was properly convicted of genocide, crimes against humanity and war crimes. His convictions and life sentence should be affirmed.

1. Mladić fails in his burden of establishing any error

372. Only appellants who meet their burden of establishing that a trial chamber committed an error on a question of law invalidating the decision or an error of fact occasioning a miscarriage of justice are entitled to appellate relief.¹⁴¹⁵ As the Prosecution has articulated throughout this Brief, each of Mladić’s arguments merit dismissal for failing to meet this burden; he fails to show that the Chamber applied the incorrect legal standard,¹⁴¹⁶ failed to provide a reasoned opinion,¹⁴¹⁷ incorrectly

¹⁴¹¹ EDS Disclosure AD, paras.39-44.

¹⁴¹² See *Nyiramasuhuko* AJ, para.127.

¹⁴¹³ See EDS Disclosure AD, para.42; EDS Disclosure TD, para.12.

¹⁴¹⁴ Mladić-AB, paras.909-911, 913.

¹⁴¹⁵ See *Ngirabatware* AJ, para.7. Also Mechanism Statute, Art.23.

¹⁴¹⁶ *Contra* Mladić-AB, paras.890-891. *Above* paras.46-50, 91-93, 162-174, 198-205, 225-234, 282-283, 285-286, 300-303, 307-314, 319-323.

¹⁴¹⁷ *Contra* Mladić-AB, paras.892-893. *Above* paras.53-96, 104-124, 212-216, 220-280, 307-318.

assessed his liability as a JCE member,¹⁴¹⁸ improperly relied on adjudicated facts,¹⁴¹⁹ or violated his fair trial rights.¹⁴²⁰ Many of his complaints can be dismissed summarily.¹⁴²¹ By failing to meet his burden of showing error, Mladić has also failed to show how the Appeals Chamber can give him any of the remedies he seeks.

373. As Mladić fails to establish any individual errors, he cannot show he is entitled to any remedy because of the Chamber’s alleged cumulative errors.¹⁴²² In law, as in mathematics, multiples of zero must always result in a product of zero.

2. Mladić seeks unreasonable and impractical remedies

374. Even if Mladić were able to somehow persuade the Appeals Chamber of error, a retrial “is an exceptional measure to which resort must necessarily be limited”.¹⁴²³ This “exceptional remedy” is well out of proportion to his vague claims of harm and unreasonable.¹⁴²⁴ He fails to explain, for example, how a second trial is a reasonable way to remedy errors arising from the rigors of the first trial, which he alleges was too daunting for him.¹⁴²⁵

375. Since Mladić has not demonstrated that any of the alleged errors constituted a miscarriage of justice or invalidated the verdict sufficient to overturn any of his convictions, his alternative request for a partial remittal of his case is untenable.¹⁴²⁶ It would also be impractical for the Appeals Chamber to “remit”¹⁴²⁷ any alleged errors to the Trial Chamber because one of its members, Judge Moloto, does not hold office at the Mechanism.¹⁴²⁸

¹⁴¹⁸ *Contra* Mladić-AB, paras.894-896. *Above* paras.100-103, 144-168, 169-174.

¹⁴¹⁹ *Contra* Mladić-AB, paras.897-902. *Above* paras.36-40, 46-52, 198-205, 281-286, 294.

¹⁴²⁰ *Contra* Mladić-AB, paras.903-908. *Above* paras.328-348, 364-369.

¹⁴²¹ *E.g. above* fn.204; paras.48, 53-54, 199, 211, 226, 239, 255, 285.

¹⁴²² *Contra* Mladić-AB, paras.909-911.

¹⁴²³ *See Stanišić & Simatović* AJ, para.127; *Muvunyi* AJ, para.148.

¹⁴²⁴ *Rwamakuba* Remedy AD, para.27. *Contra* Mladić-AB, para.885.

¹⁴²⁵ *Contra* Mladić-AB, paras.904-905.

¹⁴²⁶ *Contra* Mladić-AB, paras.883, 911, 916.

¹⁴²⁷ Mladić-AB, paras.883, 911, 916.

¹⁴²⁸ *See Stanišić & Simatović* AJ, para.126.

X. GROUND 9: MLADIĆ WAS PROPERLY SENTENCED TO LIFE IMPRISONMENT

376. Mladić was convicted of some of the most heinous crimes in international law, including genocide, and extermination.¹⁴²⁹ His offences, committed over a four-year period, left thousands dead and displaced.¹⁴³⁰ As VRS Main Staff Commander, he presided over the bloody shelling and sniping of the civilian population of Sarajevo, the brutal expulsion of Bosnian Croats and Muslims from much of his country's territory, and the execution and forcible transfer of the Bosnian Muslims of Srebrenica.¹⁴³¹ He abused his authority, and targeted victims vulnerable to his violent, persecutory campaigns.¹⁴³² Life imprisonment is the only sentence that both reflects the gravity of his crimes and the form and degree of his participation in them. His sentence should stand.

377. Ground 9 should be dismissed.

A. The Chamber properly relied on abuse of authority as an aggravating factor (9.A)

378. The Chamber properly took into account in aggravation that Mladić abused his authority as VRS Main Staff Commander when he committed the crimes of which he was convicted as a member of four JCEs.¹⁴³³ For this aggravating factor it was not required to establish any element of superior responsibility.¹⁴³⁴

B. The Chamber gave proper consideration to Mladić's proposed mitigating factors (9.B-9.C)

379. The Chamber considered each of the mitigating factors Mladić argued at trial. In deciding how much weight, if any, to accord to these mitigating circumstances it enjoyed a considerable degree of discretion.¹⁴³⁵ Mladić fails to show that it abused its

¹⁴²⁹ Judgement, para.5188.

¹⁴³⁰ Judgement, paras.5189-5193.

¹⁴³¹ Judgement, paras.5189-5193.

¹⁴³² Judgement, para.5193.

¹⁴³³ Judgement, para.5193. *Contra* Mladić-AB, paras.917-920.

¹⁴³⁴ *Above Ground 7.*

¹⁴³⁵ *See Prlić AJ, para.3308 (citing Popović AJ, para.2053; Bagosora AJ, para.424; D.Milošević AJ, para.316; Đorđević AJ, para.944).*

discretion—and thereby committed a discernable error—by either not considering certain factors in mitigation or by giving them insufficient weight.

1. The Chamber properly exercised its discretion in its assessment of Mladić’s age, health and “benevolent” acts in mitigation

380. Mladić does not explain how the Chamber supposedly abused its discretion in assessing Mladić’s age, health,¹⁴³⁶ and purported “benevolent treatment of, and assistance to, victims”¹⁴³⁷ as mitigating factors.

381. The Chamber explicitly gave “due consideration to Mladić’s age”.¹⁴³⁸

382. It further explicitly considered Defence submissions regarding Mladić’s health, and took into account that Mladić suffered from certain health problems.¹⁴³⁹ Mladić fails to show that the Chamber abused its discretion when it considered that these health problems did not warrant mitigation in light of Mladić’s stable general condition,¹⁴⁴⁰ in particular as poor health of the convicted person is only exceptionally considered to be a mitigating factor.¹⁴⁴¹

383. Similarly, the Chamber analysed the instances in which Mladić argued that he acted with benevolence towards a few of his victims, and disregarded them as mitigating factors since Mladić—in light of his position and powers—could have done much more, had he wished to provide assistance.¹⁴⁴² Mladić merely disagrees with the Chamber’s characterisation of his acts as “sporadic”,¹⁴⁴³ but does not engage with the Chamber’s reasoning.

2. The Chamber properly assessed the death of Mladić’s daughter in mitigation

384. The Chamber properly considered Mladić’s daughter’s death in the context in which Mladić raised it—relating to his diminished mental capacity.¹⁴⁴⁴ The Chamber

¹⁴³⁶ Mladić-AB, paras.923-925.

¹⁴³⁷ Mladić-AB, para.927. *Also* Mladić-AB, paras.928-929.

¹⁴³⁸ Judgement, para.5204.

¹⁴³⁹ Judgement, paras.5202-5203.

¹⁴⁴⁰ Judgement, para.5203.

¹⁴⁴¹ *Prlić* AJ, para.3315 (*citing Šainović* AJ, para.1827; *Galić* AJ, para.436; *Blaškić* AJ, para.696).

¹⁴⁴² Judgement, paras.5197-5198. *E.g. Čelebići* AJ, para.776, *Kunarac* AJ, para.408; *Ndahimana* AJ, paras.224-225, *Niyitegeka* AJ, para.266.

¹⁴⁴³ Mladić-AB, para.929.

¹⁴⁴⁴ Judgement, paras.5200-5201. *See* Mladić-FTB, para.3405.

rejected as unsupported Mladić's argument that his daughter's death resulted in him having diminished mental capacity,¹⁴⁴⁵ and Mladić does not challenge this conclusion on appeal.

385. Mladić faults the Chamber for failing to consider the death of his daughter as "evidence of his family circumstances" meriting mitigation.¹⁴⁴⁶ However, Mladić never made this argument at trial, so cannot raise it now for the first time.¹⁴⁴⁷

3. None of the mitigating factors Mladić cites can discount his sentence in light of the extreme gravity of his crimes

386. In any event, none of the factors relied on by Mladić, individually or cumulatively,¹⁴⁴⁸ could reduce the gravity of the crimes for which he has been convicted to justify a sentence below life imprisonment. The existence of mitigating circumstances does not automatically result in a sentence reduction,¹⁴⁴⁹ nor does it preclude the imposition of a life sentence where the gravity of the offences requires it.¹⁴⁵⁰ Mladić's advanced age, poor (but stable) health, family circumstances,¹⁴⁵¹ and "sporadic" acts of kindness towards his victims pale in comparison to the extreme gravity of his crimes and cannot reduce his sentence below life imprisonment.

C. The Chamber properly exercised its discretion in imposing a life sentence on Mladić (9.D)

387. Imposing a sentence of life imprisonment was well within the discretion of the Chamber and does not violate the principles of *nulla poena sine lege* and *lex mitior*. It was further sufficiently foreseeable to Mladić at the time.

1. The Chambers are not bound by the sentencing practices of the former Yugoslavia

388. Mladić's argument that the Chamber violated the principles of *nulla poena sine lege* and *lex mitior* is based on his erroneous argument that national law of the former

¹⁴⁴⁵ Judgement, paras.5200-5201.

¹⁴⁴⁶ Mladić-AB, para.924.

¹⁴⁴⁷ *Popović* AJ, para.2060.

¹⁴⁴⁸ *Contra* Mladić-AB, para.931.

¹⁴⁴⁹ *Prlić* AJ, para.3308.

¹⁴⁵⁰ *Popović* AJ, para.2053.

¹⁴⁵¹ A chamber will afford little weight to the family situation of an accused in the absence of exceptional circumstances. *Prlić* AJ, para.3309 citing *Jokić* SAJ, para.62; *Ntabakuze* AJ, para.284; *Nahimana* AJ, para.1108.

Yugoslavia was binding on the Chamber.¹⁴⁵² Mladić recognises that the Appeals Chamber has consistently held that the ICTY is not bound by the sentencing law in the former Yugoslavia and fails to show cogent reasons to depart from this jurisprudence.¹⁴⁵³

389. Mladić’s interpretation of Article 24 of the ICTY Statute contradicts the literal meaning of the article¹⁴⁵⁴ and the discussions at the time of the Statute’s adoption. Article 24 only requires a Chamber to have “recourse” to the sentencing practices of the former Yugoslavia, not to follow them.¹⁴⁵⁵ Moreover, as Madeleine Albright, United States Ambassador to the UN, noted during the discussion at which the Security Council passed the Statute: “We also understand that the Tribunal may impose a sentence of life imprisonment, or consecutive sentences for multiple offences, in any appropriate case.”¹⁴⁵⁶

390. Since the laws in the former Yugoslavia are not binding on the Tribunal, the principle of *lex mitior* is not applicable in relation to those laws.¹⁴⁵⁷

391. Mladić’s reliance on *Maktouf*—an argument he repeats from trial¹⁴⁵⁸—is misplaced. *Maktouf*, which Mladić acknowledges is not binding,¹⁴⁵⁹ related to changes in the law within the same jurisdiction.¹⁴⁶⁰ Mladić, on the other hand, was sentenced under a unified penal scheme with a maximum sentence that was solidly rooted in customary international law in 1992.¹⁴⁶¹ In any event, the ECtHR in *Maktouf* emphasised that in case of changes to the sentencing regime the question of which provision is most favourable to the accused is assessed on a case-by-case basis, taking into account the specific circumstances of the case.¹⁴⁶² On the facts of that case, the ECtHR concluded that because of the nature of Maktouf’s crimes—he was convicted

¹⁴⁵² See Mladić-AB, para.955.

¹⁴⁵³ See Mladić-AB, para.953.

¹⁴⁵⁴ E.g. *Čelebići* TJ, para.161.

¹⁴⁵⁵ ICTY Statute, Art.24(1). *Also* Judgement, para.5209.

¹⁴⁵⁶ UNSC 3217th Meeting Record, p.17. Other Security Council representatives spoke of the importance of maintaining “the primacy of the International Tribunal over national courts”. UNSC 3217th Meeting Record, p.41. *Also* p.18.

¹⁴⁵⁷ *Deronjić* SAJ, para.98; *D.Nikolić* SAJ, para.85. *Contra* Mladić-AB, paras.952, 955.

¹⁴⁵⁸ See Mladić-FTB, paras.3415-3418. *Also* T.44820-44821.

¹⁴⁵⁹ Mladić-AB, para.932.

¹⁴⁶⁰ *Maktouf* Judgement, paras.68, 76.

¹⁴⁶¹ See *Čelebići* AJ, fn.1401.

¹⁴⁶² *Maktouf* Judgement, para.65.

of aiding and abetting the war crime of hostage-taking¹⁴⁶³—Maktouf would not have been subject to the death penalty under the 1976 Code, which allowed for the death penalty only in the most serious instances of war crimes.¹⁴⁶⁴ In contrast, the death penalty could have been imposed for Mladić’s crimes under the sentencing regime applicable in the former Yugoslavia at the time in light of their seriousness.¹⁴⁶⁵

2. The imposition of a life sentence for the most serious crimes was foreseeable to Mladić

392. Moreover, the imposition of a life sentence for the most egregious crimes was foreseeable to Mladić.¹⁴⁶⁶

393. International tribunals preceding the ICTY handed down life sentences for those convicted of the most serious violations of IHL.¹⁴⁶⁷ “There can be no doubt”, the ICTY Appeals Chamber held, “that [the accused] must have been aware of the fact that the crimes for which he or she is indicted constitute serious violations of international humanitarian law, punishable by the most severe penalties.”¹⁴⁶⁸

Word Count: 58,860¹⁴⁶⁹

¹⁴⁶³ *Maktouf* Judgement, para.13.

¹⁴⁶⁴ *Maktouf* Judgement, para.69.

¹⁴⁶⁵ *See* Judgement, paras.5207-5208.

¹⁴⁶⁶ *Contra* Mladić-AB, paras.949-953.

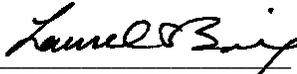
¹⁴⁶⁷ *Čelebići* AJ, fn.1401.

¹⁴⁶⁸ *Čelebići* AJ, para.817. *Also* Judgement, para.5205. Moreover, Rule 101(A), “clearly constituting notice of a maximum custodial sentence of life imprisonment for the crimes falling within the jurisdiction of the Tribunal”, was already in place before Mladić committed some of his most egregious crimes, including the genocide in Srebrenica. *Popović* AJ, para.2089. *See* Mladić-AB, para.952, pointing out that Rule 101(A) was adopted in 1994.

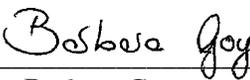
¹⁴⁶⁹ Annex A is not included in this word count, because it is a non-argumentative annex. In any event, the total word count including Annex A is 63,361, which is still within the word limit.

XI. DECLARATION PURSUANT TO RULE 139(B)

The Prosecutor will exercise due diligence to comply with his continuing Rule 73 disclosure obligations during the appeal stage of this case. As of the date of this filing, the Prosecutor has disclosed to Mladić all material under Rule 73(A) which has come into the Prosecutor's actual knowledge and, in addition, has made available to him collections of relevant material held by the Prosecutor.



Laurel Baig
Senior Appeals Counsel



Barbara Goy
Senior Appeals Counsel



Katrina Gustafson
Senior Appeals Counsel

Dated this 14th day of November 2018
At The Hague, The Netherlands

XII. GLOSSARY

Pleadings, Orders, Decisions etc. from *Prosecutor v. Ratko Mladić*, Case Nos. IT-09-92 and MICT-13-56-A

Abbreviation used in Prosecution Response Brief	Full citation
[REDACTED]	[REDACTED]
6 th 92bis Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution Sixth Motion to Admit Written Statements and Transcripts in Lieu of Oral Testimony Pursuant to Rule 92bis, 27 September 2012 (distributed on 28 September 2012)
[REDACTED]	[REDACTED]
14 th 92bis Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution Fourteenth Motion to Admit Evidence Pursuant to Rule 92bis, 7 February 2013 (distributed on 8 February 2013) (public with confidential Annex)
17 th 92bis Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution Seventeenth Motion to Admit Written Statements and Transcripts in Lieu of Oral Testimony Pursuant to Rule 92bis (Sarajevo Witnesses), 15 February 2013 (distributed on 18 February 2013) (public with confidential Annex)
18 th 92bis Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution 18 th Motion to Admit Evidence Pursuant to Rule 92bis, 21 February 2013 (distributed on 22 February 2013) (public with confidential Annex)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
92ter Motion:Brennskag	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution 92ter Motion: Per Anton Brennskag (RM108), 24 January 2013
92ter Motion:Đozo	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution 92ter Motion: Nedžib Đozo (RM113), 19 October 2012
[REDACTED]	[REDACTED]
92ter Motion:RM039	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution Rule 92ter Motion: RM039 (Šefik Hurko), 9 May 2012

Abbreviation used in Prosecution Response Brief	Full citation
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
92ter Motion:RM177	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution Rule 92ter Motion: RM177, 11 May 2012
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Additional Submission on M.Bell Evidence	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Additional Submission as to Associated Exhibits and Statement to Be Tendered Through Witness Martin Bell, 11 February 2013
Adjudicated Facts AD	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-AR73.1, App.Ch., Decision on Ratko Mladić’s Appeal Against the Trial Chamber’s Decisions on the Prosecution Motion for Judicial Notice of Adjudicated Facts, 12 November 2013
Adjudicated Facts Appeal	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-AR73.1, Defense Interlocutory Appeal Brief Against the Trial Chamber Decisions on the Prosecution Motion for Judicial Notice of Adjudicated Facts, 4 July 2012
Adjudicated Facts Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, Prosecution Motion for Judicial Notice of Adjudicated Facts, 9 December 2011
Adjudicated Facts Rebuttal Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, T.Ch., Fourth Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Concerning the Rebuttal Evidence Procedure, 2 May 2012
Adjudicated Facts Response	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, Defense Response to “Prosecution Motion for Judicial Notice of Adjudicated Facts” Filed 9 December 2012, 1 February 2012
Bar Table Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution Motion to Admit Evidence From the Bar Table, 31 October 2013 (public with confidential Annexes A and B)
Closure of the Defence Case	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Motion for Reconsideration or, in the Alternative, Certification

Abbreviation used in Prosecution Response Brief	Full citation
Motion for Reconsideration	to Appeal the Decision on Defence Request for Reasoned Decision Regarding Closure of Defence Case, 30 August 2016 (distributed on 31 August 2016)
Decision Admitting Deronjić's Evidence	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Prosecution Motion to Admit the Evidence of Ljubomir Bojanović and Miroslav Deronjić Pursuant to Rule 92 <i>Quater</i> , 13 January 2014
Decision on Motion Alleging Indictment Defects	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Defence Motion Alleging Defects in the Form of the Indictment, 30 November 2016
Decision on Motion for Access to Completed Cases	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Mladić Motion for Access to Completed Cases, 7 September 2012
Decision on Motion for Reconsideration	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Defence Motion for Reconsideration of or, in the Alternative, Certification to Appeal the Decision on Defence Motion Alleging Defects in the Form of the Indictment, 23 February 2017 (distributed on 24 February 2017)
Decision on Motion Objecting to Indictment	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, T.Ch., Decision on Defence Preliminary Motion Objecting to the Form of the Second Amended Indictment, 13 October 2011
Decision on Prosecution 25 th 92bis Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Prosecution Twenty-Fifth Motion to Admit Evidence Pursuant to Rule 92 <i>bis</i> , 20 December 2013
[REDACTED]	[REDACTED]
Decision on Sarajevo Bar Table Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Prosecution Motion for Admission of Documents from the Bar Table (Sarajevo Documents and Documents of General Relevance), 28 January 2014
Drinić Defence Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Motion pursuant to Rule 92 <i>ter</i> to Admit the Written Testimony of Predrag Drinić, 15 September 2014
EDS Disclosure AD	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-AR73.2, App.Ch., Decision on Defence Interlocutory Appeal against the Trial Chamber's Decision on EDS Disclosure Methods, 28 November 2013

Abbreviation used in Prosecution Response Brief	Full citation
EDS Disclosure TD	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Submissions relative to the proposed “EDS” Method of Disclosure, 26 June 2012
Expert Reports Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Interim Decision regarding the Expert Reports of Mile Poparić and Zorica Subotić, 17 September 2015
Fifth Bar Table Motion Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Defence’s Fifth Motion for the Admission of Documents from the Bar Table, 30 May 2016
Fifth Sarajevo 92bis Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Prosecution Fifth Motion to Admit Evidence Pursuant to Rule 92bis: Sarajevo Witnesses, 11 January 2013
First Adjudicated Facts Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, T.Ch., First Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 February 2012
[REDACTED]	[REDACTED]
Indictment	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, Prosecution Submission of the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011
Judgement	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Judgement, 22 November 2017 (public with public Annexes and confidential Annex D)
[REDACTED]	[REDACTED]

Abbreviation used in Prosecution Response Brief	Full citation
[REDACTED]	[REDACTED]
Mladić-AB	<p><i>Prosecutor v. Ratko Mladić</i>, Case No. MICT-13-56-A, Appeal Brief on Behalf of Ratko Mladić, 6 August 2018 (confidential)</p> <p><i>Prosecutor v. Ratko Mladić</i>, Case No. MICT-13-56-A, Defence Notice of Filing of Public Redacted Appeal Brief on Behalf of Ratko Mladić, 11 September 2018</p>
Mladić-FTB	<p><i>Prosecutor v. Ratko Mladić</i>, Case No. IT-09-92-T, “Annex A to Corrigendum to Annex A to Notice of Filing Under Objection and with Reservation of Rights, Filed 25 October 2016” (Defence Final Trial Brief), 1 November 2016 (distributed on 2 November 2016) (confidential)</p> <p><i>Prosecutor v. Ratko Mladić</i>, Case No. MICT-13-56-A, Notice of Filing of Public Redacted Final Trial Brief, 8 March 2018</p>
Mladić-NOA	<i>Prosecutor v. Ratko Mladić</i> , Case No. MICT-13-56-A, Notice of Appeal of Ratko Mladić, 22 March 2018
Motion Alleging Defects in the Form of the Indictment	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Motion Alleging Defects in the Form of the Indictment, 24 October 2016 (distributed on 25 October 2016)
Motion for Reconsideration	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Motion for Reconsideration or, in the Alternative, Certification to Appeal the Decision on Defence Motion Alleging Defects in the Form of the Indictment, 7 December 2016

Abbreviation used in Prosecution Response Brief	Full citation
Notice of Disclosure of Expert Report of Riedlmayer	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution's Notice of Disclosure of Expert Report of Andras Riedlmayer (RM618) Pursuant to Rule 94bis and Motion to Amend Rule 65ter Exhibit List, 25 April 2013 (distributed on 26 April 2013)
Notice of Disclosure of Expert Reports of van der Weijden and Higgs	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution's Notice of Disclosure of Expert Reports of Patrick van der Weijden (RM622) and Richard Higgs (RM611) Pursuant to Rule 94bis, 19 November 2012 (public with confidential Annex A)
Objection and Motion to Bar Relative to van der Weijden and Higgs	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defense Rule 94bis Notice, Objection and Motion to Bar Relative to Proposed Prosecution Witnesses Patrick van der Weijden and Richard Higgs, 19 December 2012
Orić 92bis Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Prosecution Motion to Admit Evidence of Mevludin Orić pursuant to Rule 92 bis, 8 July 2013
Prosecution-FTB	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution's Submission of Final Trial Brief, 25 October 2016 (confidential with confidential Annexes) <i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Notice of Filing of Corrigendum to Updated Public Redacted Version of Prosecution Final Trial Brief, 13 October 2017
Prosecution-PTB	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Prosecution Pre-Trial Brief with Public Annexes A-F, 24 February 2012
Prosecution 65ter Witness List	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, Prosecution Witness List, 10 February 2012 (confidential)
Reasons for Reconsideration Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Reasons for Decision on Defence Motion for Reconsideration, 29 June 2012
Reconsideration Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Defence Motion for Reconsideration, 22 June 2012
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Abbreviation used in Prosecution Response Brief	Full citation
Response to 6 th 92bis Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Response to Prosecution Sixth Motion to Admit Written Statement and Transcript in Lieu of Oral Testimony Pursuant to Rule 92bis, 25 October 2012
[REDACTED]	[REDACTED]
Response to 17 th 92bis Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Response to Prosecution 17 th Motion to Admit Evidence Pursuant to Rule 92bis, 17 April 2013
Response to 18 th 92bis Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Response to Prosecution 18 th Motion to Admit Evidence Pursuant to Rule 92bis, 13 May 2013
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Response to 92ter Motion:Brennskag	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Response to Prosecution 92ter Motion: Per Anton Brennskag (RM108), 7 February 2013
Response to 92ter Motion:Đozo	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Response to Prosecution 92ter Motion: Neždib Đozo (RM113), 2 November 2012
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Response to 92ter Motion:RM039	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Response to Prosecution Rule 92ter Motion: RM039 (Šefik Hurko), 24 May 2012
[REDACTED]	[REDACTED]

Abbreviation used in Prosecution Response Brief	Full citation
Response to Bar Table Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Response in Opposition to “Prosecution Motion to Admit Evidence From the Bar Table”, 30 December 2013
Response to Sarajevo Bar Table Motion	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, Defence Response in Opposition to “Prosecution Motion to Admit Evidence from the Bar Table: Materials related to the Siege of Sarajevo and other Material of General Relevance, 28 November 2013
Rule 73bis(D) Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, T.Ch., Decision pursuant to Rule 73 bis (D), 2 December 2011
Scheduling Order	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Scheduling Order, 15 February 2012 (public with confidential Annex)
Second Adjudicated Facts Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, T.Ch., Second Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 21 March 2012
[REDACTED]	[REDACTED]
Sitting Schedule AD	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-AR73.3, App.Ch., Decision on Mladić’s Interlocutory Appeal regarding Modification of Trial Sitting Schedule due to Health Concerns, 22 October 2013
Sitting Schedule Decision 13 March 2013	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Defence Motion Seeking Adjustment of Modalities of Trial, 13 March 2013
Sitting Schedule Decision 12 July 2013	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Second Defence Motion Seeking Adjustment of the Trial Sitting Schedule due to Health Concerns of the Accused, 12 July 2013
Sitting Schedule Decision 14 March 2014	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on the Trial Sitting Schedule, 14 March 2014
[REDACTED]	[REDACTED]
Stay of Proceedings AD	<i>Prosecutor v. Ratko Mladić</i> , Case No. MICT-13-56-A, App.Ch., Public Redacted Version of the “Decision on a Motion to Vacate the Trial Judgement and to Stay the Proceedings” Filed on 30 April 2018, 8 June 2018

Abbreviation used in Prosecution Response Brief	Full citation
Third Adjudicated Facts Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-PT, T.Ch., Third Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 13 April 2012
[REDACTED]	[REDACTED]
Trial Adjournment Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Urgent Motion of 14 May 2012 and Reasons for Decision on Two Defence Requests for Adjournment of the Start of Trial of 3 May 2012, 24 May 2012
Utterances Decision	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on the Prosecution's Motion for Admission of the Utterances of the Accused, 4 June 2013
[REDACTED]	[REDACTED]

Other ICTY authorities

Abbreviation used in Prosecution Response Brief	Full citation
<i>Aleksovski</i> AJ	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, App.Ch., Judgement, 24 March 2000
<i>Babić</i> SAJ	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, App.Ch., Judgement on Sentencing Appeal, 18 July 2005
<i>Blagojević</i> AJ	<i>Prosecutor v. Vidoje Blagojević & Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
<i>Blagojević</i> Decision	<i>Prosecutor v. Vidoje Blagojević & Dragan Jokić</i> , Case No. IT-02-60-T, T.Ch., Decision on Vidoje Blagojević's Expedited Motion to Compel the Prosecution to Disclose its Notes from Plea Discussions with the Accused Nikolić & Request for an Expedited Open Session Hearing, 13 June 2003
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Brdanin</i> AJ	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007
<i>Brdanin</i> TJ	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, T.Ch., Judgement, 1 September 2004

Abbreviation used in Prosecution Response Brief	Full citation
Čelebići AJ	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
Čelebići TJ	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-T, T.Ch., Judgement, 16 November 1998
<i>Delić</i> Evidence Decision	<i>Prosecutor v. Rasim Delić</i> , Case No. IT-04-83, T.Ch., Decision Adopting Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, 24 July 2007
<i>Deronjić</i> SAJ	<i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, App.Ch., Judgement on Sentencing Appeal, 20 July 2005
<i>D.Milošević</i> Adjudicated Facts AD	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-AR73.1, App.Ch., Decision on Interlocutory Appeals against Chamber's Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Prosecution's Catalogue of Agreed Facts, 26 June 2007
<i>D.Milošević</i> AJ	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, App.Ch., Judgement, 12 November 2009
<i>D.Milošević</i> AJ, Dissenting Opinion of Judge Liu Daqun	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, App.Ch., Partly Dissenting Opinion of Judge Liu Daqun, Judgement, 12 November 2009
<i>D.Milošević</i> TJ	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-T, T.Ch., Judgement, 12 December 2007
<i>D.Nikolić</i> SAJ	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-02-A, App.Ch., Judgement on Sentencing Appeal, 4 February 2005
Đorđević AJ	<i>Prosecutor v. Vlastimir Đorđević</i> , Case. No. IT-05-87/1-A, App.Ch., Judgement, 27 January 2014
<i>Furundžija</i> AJ	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, App.Ch., Judgement, 21 July 2000
<i>Galić</i> 92bis AD	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-AR73.2, App.Ch., Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Galić</i> AJ, Separate Opinion of Judge Shahabuddeen	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Separate Opinion of Judge Shahabuddeen, Judgement, 30 November 2006

Abbreviation used in Prosecution Response Brief	Full citation
<i>Galić</i> Decision on Leave to Appeal	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-AR72, App.Ch., Decision on Application by Defence for Leave to Appeal, 30 November 2001
<i>Galić</i> TJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, T.Ch., Judgement and Opinion, 5 December 2003
<i>Gotovina</i> AJ	<i>Prosecutor v. Ante Gotovina & Mladen Markač</i> , Case No. IT-06-90-A, App.Ch., Judgement, 16 November 2012
<i>Hadžić</i> Continuation of Proceedings AD	<i>Prosecutor v. Goran Hadžić</i> , Case No. IT-04-75-AR73.1, App.Ch., Decision on Prosecution's Urgent Interlocutory Appeal from Consolidated Decision on the Continuation of Proceedings, 4 March 2016
<i>Halilović</i> AJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, App.Ch., Judgement, 16 October 2007
<i>Haradinaj</i> AJ	<i>Prosecutor v. Ramush Haradinaj et al.</i> , Case No. IT-04-84-A, App.Ch., Judgement, 19 July 2010 (distributed on 21 July 2010)
<i>Haradinaj</i> TJ	<i>Prosecutor v. Ramush Haradinaj et al.</i> , Case No. IT-04-84-T, T.Ch., Judgement, 3 April 2008
<i>Jokić</i> SAJ	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-A, App.Ch., Judgement on Sentencing Appeal, 30 August 2005
<i>Karadžić</i> 98bis AJ	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR98bis.1, App.Ch., Judgement, 11 July 2013
<i>Karadžić</i> AF Reconsideration Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Decision on Accused's Motions for Reconsideration of Decisions on Judicial Notice of Adjudicated Facts, 14 June 2010
<i>Karadžić</i> Commencement of Trial AD	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR.73.5, App.Ch., Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009
<i>Karadžić</i> Count 11 AD	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR72.5, App.Ch., Decision on Appeal of Trial Chamber's Decision on Preliminary Motion to Dismiss Count 11 of the Indictment, 9 July 2009
<i>Karadžić</i> Fourth AF Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Decision on Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts, 14 June 2010

Abbreviation used in Prosecution Response Brief	Full citation
<i>Karadžić</i> Hostage-Taking AD	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR73.9, App.Ch., Decision on Appeal from Denial of Judgement of Acquittal for Hostage-Taking, 11 December 2012
<i>Karadžić</i> Indictment Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Decision on Accused's Motion for Relief from Defects in the Indictment, 20 September 2014 (distributed on 30 September 2014)
<i>Karadžić</i> Preliminary Motions Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-PT, T.Ch., Decision on Six Preliminary Motions Challenging Jurisdiction, 28 April 2009
<i>Karadžić</i> Reconsideration Adjudicated Facts Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Decision on Accused's Motions for Reconsideration of Decisions on Judicial Notice of Adjudicated Facts, 14 June 2010
<i>Karadžić</i> Scheduled Incidents Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Decision on the Accused's Motion to Strike Scheduled Sarajevo Shelling and Sniping Incidents, 27 January 2012
<i>Karadžić</i> Time Allocation AD	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR73.10, App.Ch., Decision on Appeal from Decision on Duration of Defence Case, 29 January 2013
<i>Karadžić</i> TJ	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Judgement, 24 March 2016
<i>Kordić</i> AJ	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-A, App.Ch., Judgement, 17 December 2004
<i>Krajišnik</i> Adjudicated Facts Decision	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-PT, T.Ch., Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92bis, 28 February 2003
<i>Krajišnik</i> AJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, App.Ch., Judgement, 17 March 2009
<i>Krajišnik</i> Decision	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, App.Ch., Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007
<i>Krajišnik</i> TJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, T.Ch., Judgement, 27 September 2006

Abbreviation used in Prosecution Response Brief	Full citation
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<i>Krstić</i> AJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, App.Ch., Judgement, 19 April 2004
<i>Kunarac</i> AJ	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23 & IT-96-23/1-A, App.Ch., Judgement, 12 June 2002
<i>Kupreškić</i> AJ	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-A, App.Ch., Judgement, 23 October 2001
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Lukić</i> AJ	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-A, App.Ch., Judgement, 4 December 2012
<i>Lukić</i> Appeals Judges Assignment Order	<i>Prosecutor v. Milan Lukić</i> , Case No. MICT-13-52-R.1, Order Assigning Judges to a Case before the Appeals Chamber, 24 February 2014
<i>Martić</i> AJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, App.Ch., Judgement, 8 October 2008
<i>Milutinović</i> TJ	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, T.Ch., Judgement, 26 February 2009
<i>Mrkšić</i> AJ	<i>Prosecutor v. Mile Mrkšić & Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009
<i>Naletilić</i> AJ	<i>Prosecutor v. Miladen Naletilić, a.k.a. “Tuta” & Vinko Martinović, a.k.a. “Štela”</i> , Case No. IT-98-34-A, App.Ch., Judgement, 3 May 2006
<i>Ojdanić</i> JCE Decision	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-99-37-AR72, App.Ch., Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003
<i>Orić</i> AJ	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-A, App.Ch., Judgement, 3 July 2008
<i>Orić</i> TJ	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-T, T.Ch., Judgement, 30 June 2006
<i>Perišić</i> Rule 73bis Decision	<i>Prosecutor v. Momčilo Perišić</i> , Case No. IT-04-81-PT, T.Ch., Decision on Application of Rule 73bis and Amendment of

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<i>Perišić</i> TJ	<i>Prosecutor v. Momčilo Perišić</i> , Case No. IT-04-81-T, T.Ch., Judgement, 6 September 2011
<i>Popović</i> AJ	<i>Prosecutor v. Vujadin Popović et al.</i> , Case No. IT-05-88-A, App.Ch., Judgement, 30 January 2015
<i>Popović</i> Decision	<i>Prosecutor v. Vujadin Popović et al.</i> , Case No. IT-05-88-A, App.Ch., Decision on Prosecution Motion for the Appointment of Independent Counsel to Review Material Potentially Subject to Lawyer-Client Privilege, 16 July 2012 (public redacted version)
<i>Popović</i> TJ	<i>Prosecutor v. Vujadin Popović et al.</i> , Case No. IT-05-88-T, T.Ch., Judgement, 10 June 2010
<i>Prlić</i> Adjudicated Facts Decision	<i>Prosecutor v. Jadranko Prlić et al.</i> , Case No. IT-04-74-T, T.Ch., Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts (<i>Prosecutor v. Naletiić and Martinović</i>), 26 November 2009 (distributed on 10 June 2010)
<i>Prlić</i> AJ	<i>Prosecutor v. Jadranko Prlić et al.</i> , Case No. IT-04-74-A, App.Ch., Judgement, 29 November 2017
<i>Prlić</i> TJ	<i>Prosecutor v. Jadranko Prlić et al.</i> , Case No. IT-04-74-T, T.Ch., Judgement, 29 May 2013 (English translation filed 6 June 2014)
<i>S.Milošević</i> Admissibility AD	<i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-AR73.2, App.Ch., Decision on Admissibility of Prosecution Investigator's Evidence, 30 September 2002
<i>S.Milošević</i> AF AD	<i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-AR73.5, App.Ch., Decision on the Prosecution's Interlocutory Appeal Against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 October 2003
<i>Šainović</i> AJ	<i>Prosecutor v. Nikola Šainović et al.</i> , Case No. IT-05-87-A, App.Ch., Judgement, 23 January 2014
<i>S&S</i> Decision on Hadžić Access	<i>Prosecutor v. Jovica Stanišić & Franko Simatović</i> , Case Nos. IT-03-69-A & IT-04-75-T, App.Ch., Decision on Goran Hadžić's Motion for Access to Confidential Material in the <i>Stanišić and Simatović</i> Case, 1 November 2013
<i>Stanišić & Simatović</i> AJ	<i>Prosecutor v. Jovica Stanišić & Franko Simatović</i> , Case No.

Abbreviation used in Prosecution Response Brief	Full citation
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<i>Stanišić & Simatović</i> TJ	<i>Prosecutor v. Jovica Stanišić & Franko Simatović</i> , Case No. IT-03-69-T, T.Ch., Judgement, 30 May 2013
<i>Stanišić & Župljanin</i> 2010 Adjudicated Facts Decision	<i>Prosecutor v. Mićo Stanišić & Stojan Župljanin</i> , Case No. IT-08-91-T, T.Ch., Decision Granting in part Prosecution's Motion Seeking to Add Witnesses to its Rule 65ter List of Witnesses and to Expand the Testimony of Two Other Witnesses in Response to Challenged Adjudicated Facts, 12 October 2010
<i>Stanišić & Župljanin</i> AJ	<i>Prosecutor v. Mićo Stanišić & Stojan Župljanin</i> , Case No. IT-08-91-A, App.Ch., Judgement, 30 June 2016
<i>Stanišić & Župljanin</i> TJ	<i>Prosecutor v. Mićo Stanišić & Stojan Župljanin</i> , Case No. IT-08-91-T, T.Ch., Judgement, 27 March 2013
<i>Strugar</i> AJ	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, App.Ch., Judgement, 17 July 2008
<i>Tadić</i> AJ	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, App.Ch., Judgement, 15 July 1999
<i>Tadić</i> Jurisdiction AD	<i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-AR72, App.Ch., Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tolimir</i> AJ	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-A, App.Ch., Judgement, 8 April 2015
<i>Vasiljević</i> AJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, App.Ch., Judgement, 25 February 2004
<i>Vasiljević</i> TJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, T.Ch., Judgement, 29 November 2002

ICTR authorities

Abbreviation used in Prosecution Response Brief	Full citation
<i>Akayesu</i> TJ	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, T.Ch., Judgement, 2 September 1998
<i>Bagosora</i> AJ	<i>Prosecutor v. Théoneste Bagosora & Anatole Nsengiyumva</i> , Case No. ICTR-98-41-A, App.Ch., Judgement, 14 December

Abbreviation used in Prosecution Response Brief	Full citation
	2011
<i>Bagosora</i> Notice AD	<i>Prosecutor v. Théoneste Bagosora et al.</i> , Case No. ICTR-98-41-AR73, App.Ch., Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006
<i>Bizimungu</i> AJ	<i>Augustin Bizimungu v. Prosecutor</i> , Case No. ICTR-00-56B-A, App.Ch., Judgement, 30 June 2014
<i>Gacumbitsi</i> AJ	<i>Sylvestre Gacumbitsi v. Prosecutor</i> , Case No. ICTR-2001-64-A, App.Ch., Judgement, 7 July 2006
<i>Hategekimana</i> AJ	<i>Ildephonse Hategekimana v. Prosecutor</i> , Case No. ICTR-00-55B-A, App.Ch., Judgement, 8 May 2012
<i>Kalimanzira</i> AJ	<i>Prosecutor v. Callixte Kalimanzira</i> , Case No. ICTR-05-88-A, App.Ch., Judgement, 20 October 2010
<i>Kamuhanda</i> AJ	<i>Jean de Dieu Kamuhanda v. Prosecutor</i> , Case No. ICTR-99-54A-A, App.Ch., Judgement, 19 September 2005
<i>Karemera</i> Adjudicated Facts Decision	<i>Prosecutor v. Édouard Karemera et al.</i> , Case No. ICTR-98-44-AR73.17, App.Ch., Decision on Joseph Nzirorera’s Appeal of Decision on Admission of Evidence Rebutting Adjudicated Facts, 29 May 2009
<i>Karemera</i> AJ	<i>Édouard Karemera & Matthieu Ngirumpatse v. Prosecutor</i> , Case No. ICTR-98-44-A, App.Ch., Judgement, 29 September 2014
<i>Karemera</i> Disclosure Decision	<i>Prosecutor v. Édouard Karemera et al.</i> , Case No. ICTR-98-44-T, T.Ch., Redacted Decision on Prosecution Submission on Entering Into Evidence Exhibits Arising from the Prosecution Cross-Examination of Karemera Defence Witnesses KBL, LSP, and TXL and Joseph Nzirorera’s Eighteenth Motion for Remedial and Punitive Measures for Violation of Rule 66, 10 November 2008 (distributed on 14 January 2009)
<i>Karemera</i> Judicial Notice AD	<i>Prosecutor v. Édouard Karemera et al.</i> , Case No. ICTR-98-44-AR73(C), App.Ch., Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006
<i>Karera</i> AJ	<i>François Karera v. Prosecutor</i> , Case No. ICTR-01-74-A, App.Ch., Judgement, 2 February 2009
<i>Muvunyi</i> AJ	<i>Tharcisse Muvunyi v. Prosecutor</i> Case No. ICTR-2000-55A-A,

Abbreviation used in Prosecution Response Brief	Full citation
	App.Ch., Judgement, 29 August 2008
<i>Nahimana</i> AJ	<i>Ferdinand Nahimana et al., v. Prosecutor</i> Case No. ICTR-99-52-A, App.Ch., Judgement, 28 November 2007 (distributed on 16 May 2008)
<i>Ndahimana</i> AJ	<i>Grégoire Ndahimana v. Prosecutor</i> , Case No. ICTR-01-68-A, App.Ch., Judgement, 16 December 2013
<i>Ndindiliyimana</i> AJ	<i>Augustin Ndindiliyimana et al. v. Prosecutor</i> , Case No. ICTR-00-56-A, App.Ch., Judgement, 11 February 2014
<i>Ngirabatware</i> Trial Date AD	<i>Augustin Ngirabatware v. Prosecutor</i> , Case No. ICTR-99-54-A, App.Ch., Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009
<i>Niyitegeka</i> AJ	<i>Eliézer Niyitegeka v. Prosecutor</i> , Case No. ICTR-96-14-A, App.Ch., Judgement, 9 July 2004
<i>Nizeyimana</i> AJ	<i>Ildéphonse Nizeyimana v. Prosecutor</i> , Case No. ICTR-00-55C-A, App.Ch., Judgement, 29 September 2014
<i>Ntabakuze</i> AJ	<i>Aloys Ntabakuze v. Prosecutor</i> , Case No. ICTR-98-41A-A, App.Ch., Judgement, 8 May 2012
<i>Ntakirutimana</i> AJ	<i>Prosecutor v. Elizaphan Ntakirutimana & Gérard Ntakirutimana</i> , Cases No. ICTR-96-10-A & ICTR-96-17-A, App.Ch., Judgement, 13 December 2004
<i>Nyiramasuhuko</i> AJ	<i>Prosecutor v. Pauline Nyiramasuhuko et al.</i> , Case No. ICTR-98-42-A, App.Ch., Judgement, 14 December 2015
<i>Nzabonimana</i> AJ	<i>Prosecutor v. Callixte Nzabonimana</i> , Case No. ICTR-98-44D-A, App.Ch., Judgement, 29 September 2014
<i>Rukundo</i> AJ	<i>Emmanuel Rukundo v. Prosecutor</i> , Case No. ICTR-2001-70-A, App.Ch., Judgement, 20 October 2010
<i>Rwamakuba</i> Remedy AD	<i>André Rwamakuba v. Prosecutor</i> , Case No. ICTR-98-44C-A, App.Ch., Decision on Appeal Against Decision on Appropriate Remedy, 13 September 2007
<i>Semanza</i> AJ	<i>Laurent Semanza v. Prosecutor</i> , Case No. ICTR-97-20-A, App.Ch., Judgement, 20 May 2005

Other Mechanism authorities

Abbreviation used in Prosecution Response Brief	Full citation
<i>Munyarugarama</i> Referral AD	<i>Phénéas Munyarugarama v. Prosecutor</i> , Case No. MICT-12-09-AR14, App.Ch., Decision on Appeal against the Referral of Phénéas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, 5 October 2012
<i>Ngirabatware</i> AD	<i>Augustin Ngirabatware v. Prosecutor</i> , Case No. MICT-12-29-A, App.Ch., Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order for Disclosure, 15 April 2014
<i>Ngirabatware</i> AJ	<i>Augustin Ngirabatware v. Prosecutor</i> , Case No. MICT-12-29-A, App.Ch., Judgement, 18 December 2014
<i>Orić</i> AD	<i>Prosecutor v. Naser Orić</i> , Case No. MICT-14-79, App.Ch., Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015, 17 February 2016

ICC authorities

Abbreviation used in Prosecution Response Brief	Full citation
<i>Bemba</i> AJ	<i>Prosecutor v. Jean-Pierre Bemba Gombo</i> , Case No. ICC-01/05-01/08 A, App.Ch., Judgement, 8 June 2018
ICC Elements of Crimes	ICC, Elements of Crimes (The Hague: International Criminal Court, 2013)

SCSL authorities

Abbreviation used in Prosecution Response Brief	Full citation
<i>Sesay</i> AJ	<i>Prosecutor v. Issa Hassan Sesay et al.</i> , Case No. SCSL-04-15-A, App.Ch., Judgment, 26 October 2009

ECtHR authorities

Abbreviation used in Prosecution Response Brief	Full citation
<i>Michaud</i> Judgement	<i>Michaud v. France</i> , App.No.12323/11, Judgment (ECtHR 6 December 2012)
<i>Maktouf</i> Judgement	<i>Maktouf and Damjanović v. Bosnia and Herzegovina</i> , App.Nos.2312/08 and 34179/08, Judgment (ECtHR 18 July 2013)

Judgements and Decisions Relating to Crimes Committed During WWII

Abbreviation used in Prosecution Response Brief	Full citation
Trial of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No.10, Vol.III (“ <i>Justice case</i> ”)	Trials of the Major War Criminals before the Nuremberg Military Tribunals under Control Council Law No.10, Nuremberg October 1946 - April 1949, Vol.III, Washington, United States: Government Printing Office, 1951), Judgement of 3-4 December 1947, pp. 954-1177

ICJ authorities

Abbreviation used in Prosecution Response Brief	Full citation
<i>Nicaragua Case</i>	<i>Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)</i> , Judgment, I.C.J. Reports 1986, 27 June 1986
<i>North Sea Continental Shelf Case</i>	<i>North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)</i> , Judgment, I.C.J. Reports 1969, 20 February 1969

National law sources

Abbreviation used in Prosecution Response Brief	Full citation
Yugoslavia 1976 Criminal Code	Criminal Code of the Socialist Federal Republic of Yugoslavia, adopted on 28 September 1976 <i>published in</i> the Official Gazette SFRY No.44, 8 October 1976
China Law on the Trial of War Criminals	Law Governing the Trial of War Criminals, 24 October 1946
Denmark Military Criminal Code	Military Criminal Code, 1973
US Naval Handbook	Annotated Supplement to the Commander's Handbook on the Law of Naval Operations, NWP 9 (Rev.A)/FMFM 1-10 (Washington, D.C., 1989)
Yugoslavia 1988 Military Manual	Regulations on the Application of International Laws of War in the Armed Forces of the SFRY, Federal Secretariat for National Defence, 1988

General Sources

Abbreviation used in Prosecution Response Brief	Full citation
2016 Commentary to GCI	ICRC, Commentary on the First Geneva Convention, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, K. Dörmann <i>et al.</i> , eds. (Cambridge: Cambridge University Press, 2016)
API	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3 (entered into force 7 December 1978)
API and APII Ratification by Yugoslavia	Ratifications by Yugoslavia to Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1140 U.N.T.S. 399 (11 June 1979 with effect from 11 December 1979)

Abbreviation used in Prosecution Response Brief	Full citation
APII	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 U.N.T.S. 609 (entered into force 7 December 1978)
Commentary to APs	ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Y. Sandoz <i>et al.</i> , eds. (Dordrecht: Martinus Nijhoff Publishers, 1987)
Commentary to GCIII	ICRC, Commentary, III Geneva Convention Relative to the Treatment of Prisoners of War, The Geneva Conventions of 12 August 1949, J. S. Pictet, ed. (Geneva: ICRC, 1960)
Commentary to GCIV	ICRC, Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, The Geneva Conventions of 12 August 1949, J. S. Pictet, ed. (Geneva: ICRC, 1958)
GCIII	Third Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 134 (entered into force 21 October 1950)
GCIV	Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 (entered into force 21 October 1950)
Hostages Convention	International Convention Against the Taking of Hostages, 17 December 1979, 1316 U.N.T.S. 205 (entered into force 3 June 1983)
ICRC 1991 Annual Report	ICRC, 1991 Annual Report (Geneva: ICRC Library, 1991)
ICRC Study	ICRC, <i>Customary International Humanitarian Law, Volume I: Rules</i> , J-M. Henckaerts and L. Doswald-Beck, eds. (Cambridge: Cambridge University Press, 2005)
ILC Draft Code	ILC, Draft Code of Crimes Against the Peace and Security of Mankind <i>in</i> Report of the International Law Commission on the Work of its Forty-Eighth Session (6 May-26 July 1996), UN Doc.A/51/10
UNSC 3217 th Meeting Record	United Nations Security Council, Provisional Verbatim Record of the Three Thousand Two Hundred and Seventeenth Meeting, 25 May 1993, UN Doc.S/PV.3217

Other abbreviations

Abbreviation used in Prosecution Response Brief	Full citation
1KK	1 st Krajina Corps of the VRS
2KK	2 nd Krajina Corps of the VRS
ABiH	Army of Bosnia-Herzegovina
AF	Adjudicated Fact
Art.	Article
BiH	Socialist Federal Republic of Bosnia and Herzegovina (later, Republic of Bosnia and Herzegovina)
BSF	Bosnian Serb Forces
Chamber	Trial Chamber in <i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T
CNN	Cable News Network
Common Article 3	Article 3, common to all four Geneva Conventions (GCI, GCII, GCIII and GCIV)
CSB	Security Service Centre (<i>Centar službi bezbjednosti</i>)
Directive 4	Army of Republika Srpska Main Staff, Directive for Further Operations of the Army of Republika Srpska, Directive Operational No.4, dated 19 November 1992 (Exh.P976)
Directive 7	Supreme Command of the Armed Forces of Republika Srpska, Directive for Further Operations No.7, dated 8 March 1995 (Exh.P838)
Directive 7/1	Main Staff of the Army of Republika Srpska, Directive for Forthcoming Actions No.7/1, dated 31 March 1995 (Exh.P4628)
DNA	Deoxyribonucleic acid (Genetic code)
DutchBat	Dutch Battalion of UNPROFOR
ECtHR	European Court of Human Rights
Exh.	Exhibit
Exhs.	Exhibits

Abbreviation used in Prosecution Response Brief	Full citation
fn.	Footnote
fns.	Footnotes
GCIH	Third Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 134 (entered into force 21 October 1950)
ILC	International Law Commission
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTR Statute	Statute of the International Criminal Tribunal for Rwanda established by the United Nations Security Council Resolution 955 (1994)
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTY Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the United Nations Security Council Resolution 827 (1993)
IHL	International Humanitarian Law
JCE	Joint criminal enterprise
JNA	Yugoslav People's Army (<i>Jugoslovenska narodna armija</i>)
Krivaja-95	Command of the Drina Corps, Order for Active Combat Operations, Operations no.1, dated 2 July 1995, signed Major General Milenko Živanović
MAB	Modified air bomb
MABs	Modified air bombs
Mechanism	International Residual Mechanism for Criminal Tribunals
Mechanism Statute	Statute of the International Residual Mechanism for Criminal Tribunals established by the United Nations Security Council Resolution 1966 (2010)
MP	Military Police

Abbreviation used in Prosecution Response Brief	Full citation
Municipalities	Banja Luka, Bijeljina, Foča, Ilidža, Kalinovik, Ključ, Kotor Varoš, Novi Grad, Pale, Prijedor, Rogotica, Sanski Most, Sokolac, Vlasenica
MUP	Ministry of Interior
NATO	North Atlantic Treaty Organisation
Overarching JCE	The joint criminal enterprise existing from 1991 to 30 November 1995 with the objective of permanently removing Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in BiH through persecution, extermination, murder, inhumane acts (forcible transfer) and deportation
para.	Paragraph
paras.	Paragraphs
p.	Page
pp.	Pages
POWs	Prisoners of war
RS	<i>Republika Srpska</i> (before 12 August 1992, named Serbian Republic of Bosnia and Herzegovina)
Rule(s)	Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia, 8 July 2015
Security Council	Security Council of the United Nations
SJB	Public Security Station (<i>Stanica javne bezbednosti</i>)
SRK	Sarajevo Romanija Corps of the VRS (<i>Sarajevo-Romanija Korpus</i>)
T.	Trial Transcript
UN	United Nations
UNMO	United Nations Military Observers
UNPROFOR	United Nations Protection Forces
VMA	Military Medical Academy
VRS	Army of Republika Srpska

Abbreviation used in Prosecution Response Brief	Full citation
VJ	Army of Yugoslavia

Annex A

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
Incident F.5		
AF2262 ¹	Mile Poparić's evidence that "there was a line of sight from ABiH-held territory to the impact site." ²	While the evidence "stands in stark contrast with" AF2262, the Chamber relied on AF2263 and 2266, not AF2262, for establishing the origin of fire. ³
AF2263, 2266 ⁴	Poparić's evidence that "the shot could not have been fired from SRK-held territory due to the lie of the land". ⁵	The evidence is not sufficiently reliable. ⁶
	Defence argument that "the evidence is too contradictory and unclear to serve as a basis for finding that the charge has been proven." ⁷	The argument relates to evidence not relied on for establishing the origin of fire and whether the victim was targeted and injured and does not contradict any Adjudicated Facts. ⁸
		The contradictions relate to "marginal aspects of this incident [...] and do not affect the outcome of this finding." ⁹
Incident F.11		
AF2303 ¹⁰	UNPROFOR report determining that "the shooting came from 'house number 14'." ¹¹	The evidence is not sufficiently reliable. ¹²
	Michael Rose's testimony that "the shots came from the Jewish Cemetery." ¹³	The evidence is not sufficiently reliable. ¹⁴
	Report that Mladić claimed the shots "originated from the Holiday Inn." ¹⁵	The evidence is not sufficiently reliable. ¹⁶

¹ AF2262: "There was no line of sight to nearby ABiH-controlled areas". See Judgement, para.1932.

² Judgement, para.1934. Also Judgement, para.1932.

³ Judgement, para.1933.

⁴ AF2263: "Ramiza Kundo was injured by a bullet fired from SRK-held territory in the field area, where Brijesće and Bačići are."; AF2266: "Ramiza Kundo was targeted from an SRK-controlled area". See Judgement, para.1932.

⁵ Judgement, para.1934. Also Judgement, para.1932.

⁶ Judgement, para.1934 (finding, e.g., that the witness incorrectly plotted the impact site and provided "very unclear" evidence).

⁷ Judgement, para.1935.

⁸ Judgement, para.1935.

⁹ Judgement, para.1936.

¹⁰ AF2303: "The shots came from the direction of the Metalka Building, which was held by the SRK. The shots were fired by a member of the SRK". See Judgement, para.1945.

¹¹ Judgement, para.1949. Also Judgement, para.1946.

¹² Judgement, para.1951 (finding the evidence was based on an imprecise methodology).

¹³ Judgement, para.1949. Also Judgement, para.1947.

¹⁴ Judgement, para.1950 (finding "[t]here is no indication on what basis Rose concludes that the shooting came from the Jewish Cemetery").

¹⁵ Judgement, para.1949. Also Judgement, para.1947.

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
	Poparić's testimony that "there was no line of sight to VRS positions and that the shots came from the ABiH." ¹⁷	The evidence is not sufficiently reliable. ¹⁸
Incident F.12		
AF2317, 2319 ¹⁹	Poparić's evidence "on the number of projectiles and direction of fire." ²⁰	The evidence is not sufficiently reliable. ²¹
	Defence argument "about contradictions in the evidence." ²²	The argument relates to evidence not relied on and does not contradict any Adjudicated Facts. ²³
Incident F.13		
AF2335 ²⁴	Poparić's evidence "in relation to the affiliation of the perpetrator". ²⁵	The evidence is not sufficiently reliable. ²⁶
AF2334-2336 ²⁷	Defence argument "with respect to inconsistencies in evidence regarding origin of fire". ²⁸	The argument relates to evidence not relied on and does not contradict any Adjudicated Facts. ²⁹
Incident F.15		
AF2351 ³⁰	Poparić's conclusion that "the fire came from ABiH territory". ³¹	The evidence is not sufficiently reliable. ³²

¹⁶ Judgement, para.1950 (finding "[t]here is no indication [...] why Mladić, according to a report, concluded that it came from the Holiday Inn").

¹⁷ Judgement, para.1949. *Also* Judgement, para.1948.

¹⁸ Judgement, para.1952 (finding that Poparić's evidence was based of unsupported assumptions and ignored relevant factors).

¹⁹ AF2317: "Dženana Sokolović was shot in the right side of her body and the bullet went through her abdomen and exited on the left side, continuing through Nermin Divović's head."; AF2319: "The shots were fired by a member of the SRK". *See* Judgement, para.1955.

²⁰ Judgement, para.1957. *Also* Judgement, para.1956.

²¹ Judgement, para.1957 (finding Poparić drew conclusions from inconsistencies in the evidence and from his own assumptions, which fell outside his scope of expertise and was insufficiently founded).

²² Judgement, para.1958.

²³ Judgement, para.1958.

²⁴ *Below* fn.27.

²⁵ Judgement, para.1963 *relying on* para.1962.

²⁶ Judgement, para.1963 (finding Poparić drew conclusions from his review of evidence, rather than on-site analysis, which fell outside his scope of expertise).

²⁷ AF2334: "On 23 November 1994, the tram was hit at the intersection in front of the Holiday Inn, or shortly thereafter in front of the Marshal Tito Barracks between the two museums."; AF2335: "The origin of fire was either the high-rise buildings on Lenjinova Street or the Metalka Building, both held by the SRK. The shots were fired by a member of the SRK."; AF2336: "Sabina Šabanić and Afeza Karačić, who were on the tram, sustained serious injuries". *See* Judgement, para.1961.

²⁸ Judgement, para.1963.

²⁹ Judgement, para.1963.

³⁰ AF2351: "The shots came from Grbavica, which was SRK-held territory. The shots were fired by a member of the SRK". *See* Judgement, para.1966.

³¹ Judgement, para.1968. *Also* Judgement, paras.1965, 1967.

³² Judgement, para.1968 (finding Poparić's calculations were based on unsubstantiated assumptions and ignored alternative possibilities).

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
Incident F.16		
AF2354, 2362 ³³	Poparić's evidence that "the shots came from ABiH territory". ³⁴	The evidence is not sufficiently reliable. ³⁵
Incident G.4		
AF2364-2368, 2370-2383, 2385-2386, 2389, 2391, 2396-2397, 2399,	Zorica Subotić's evidence "in relation to this incident". ³⁷	The evidence is not sufficiently reliable. ³⁸
	Defence argument "about the reliability of the conclusions of the three	The argument relates to evidence not relied on and

³³ AF2354: "On 6 March 1995, Tarik Žunić, aged 14 years, was wearing jeans and a green jacket."; AF2362: "Tarik Žunić was shot and seriously wounded by a machine gun from SRK-held positions at Špicasta Stijena when he was walking on Sedrenik Street and appeared from behind a sheet of canvas". See Judgement, para.1971.

³⁴ Judgement, para.1973. Also Judgement, para.1972.

³⁵ Judgement, para.1973 (finding the evidence was based on inaccurate or flawed methodology).

³⁷ Judgement, para.2039.

³⁸ Judgement, para.2039, fn.8717 (finding, e.g., that the witness (i) relied on an assumption that was "simply absurd"; (ii) was unclear about her reasoning; (iii) applied a methodology outside the her scope of expertise; and (iv) failed to understand basic principles of mortar fire).

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
2401-2402, 2406 ³⁶	investigations”. ³⁹	does not contradict any Adjudicated Facts. ⁴⁰
	Defence argument “about evidence that no shots were fired from the Lima 5A position”. ⁴¹	The argument does not contradict any Adjudicated Facts. ⁴²
	Defence argument that “there were no other SRK firing positions along the projected bearing”. ⁴³	The argument is not supported by evidence. ⁴⁴
	Defence argument that “the shot originated from ABiH positions”. ⁴⁵	The argument is not supported by evidence. ⁴⁶

³⁶ AF2364: “On 1 June 1993, some residents of Dobrinja decided to organize a football tournament in the community of Dobrinja IIIB.”; AF2365: “On 1 June 1993, it was a beautiful, sunny day.”; AF2366: “Being aware of the danger of organising such an event, the residents looked for a safe place to hold the tournament.”; AF2367: “Children aged between 10 to 15 years positioned themselves next to some old cars, damaged by previous shelling, that had been overturned and placed around the football pitch to mark the field.”; AF2368: “The football pitch was set up in the corner of a parking lot, which was bounded by six-storey apartment blocks on three sides and on the fourth side, which faced the north, by Mojmiilo hill, and was not visible from any point on the SRK side of the confrontation line.”; AF2370: “Around 200 spectators, among whom were women and children, gathered to watch the teams play.”; AF2371: “The first match of the tournament began at around 9 am and the second one started an hour later.”; AF2372: “Some minutes after 10 am, during the second match, two shells exploded at the parking lot.”; AF2373: “Ismet Fažlić, a member of the civil defence, was the referee of the second game.”; AF2374: “About 10 to 20 minutes into that game, as they carried out a penalty kick, the first shell landed among the players in the centre of the pitch.”; AF2375: “Ismet Fažlić was hit by shrapnel and sustained serious injuries in both legs as well as in other parts of his body.”; AF2376: “There were eleven young men on the ground, eight of whom had died on the spot.”; AF2377: “Omer Hadžiabdić, who was 15 years old at the time, was watching the match from the overturned cars when the first shell struck the football pitch.”; AF2378: “Omer Hadžiabdić was wounded by shrapnel in his leg.”; AF2379: “Nedim Gavranović, who was 12 years old at the time, was standing behind one of the goals when he heard the first explosion and felt a very strong blow.”; AF2380: “Nedim Gavranović sustained an entry and exit wound in his right lower leg caused by shrapnel.”; AF2381: “On 1 June 1993, a second shell landed at almost the same spot in Dobrinja IIIB within seconds of the first shell.”; AF2382: “It fell in front of a young man and tore his leg off.”; AF2383: “There were many wounded people on the ground.”; AF2385: “The explosion of 1 June 1993 in Dobrinja killed over 10 persons and injured approximately 100 others.”; AF2386: “The shells that hit the football pitch in Dobrinja IIIB on 1 June 1993 were of a calibre of at least 81-82mm and originated from the direction east-south-east, within SRK-held territory.”; AF2389: “The distance from the site of the event to the confrontation lines in the direction of the fire was approximately 300 metres.”; AF2391: “The origin of fire was SRK-held territory.”; AF2396: “There was a nuclear shelter of the Dobrinja IIIB community, located approximately 100 metres away from the parking lot behind a block of flats.”; AF2397: “Only two shells were fired, they fell in quick succession and landed at almost the same spot on the parking lot; the second shell did not land any closer to the nuclear shelter.”; AF2399: “The trench system was not the intended target of the attack, considering the pattern of the firing and that the second shell fired did not fall any closer to the location of the trenches.”; AF2401: “There were ABiH soldiers present at the parking lot, who were off-duty, unarmed and not engaged in any military activity.”; AF2402: “The crowd was carrying out a civilian activity, i.e., playing football.”; AF2406: “Due to its location, the parking lot was not visible from SRK lines”. See Judgement, paras.2036-2038.

³⁹ Judgement, para.2040.

⁴⁰ Judgement, para.2040.

⁴¹ Judgement, fn.8718.

⁴² Judgement, fn.8718 (finding “neither the Indictment nor the Adjudicated Facts identify [the Lima 5A] position as the origin of fire”).

⁴³ Judgement, fn.8718.

⁴⁴ Judgement, fn.8718.

⁴⁵ Judgement, fn.8718.

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
Incident G.7		
AF2474, 2476-2477 ⁴⁷	Subotić's "projections and calculations regarding the origin of fire based on photographs." ⁴⁸	The evidence is not sufficiently reliable. ⁴⁹
	Dušan Škrba's testimony that no fire was opened by his unit and he only learned about the incident before testifying in <i>Karadžić</i> . ⁵⁰	The evidence is not sufficiently reliable. ⁵¹
AF2436, 2444, 2458, 2466, 2473-2478 ⁵²	Defence argument "about errors in the CSB's investigation". ⁵³	The argument relates to evidence not relied on and does not contradict any Adjudicated Facts. ⁵⁴
Incident G.8		
AF2519, 2525 ⁵⁵	UNPROFOR and Bosnian MUP investigative reports concluding, respectively, that "it could not be determined from which side of the confrontation line the mortar shell had been fired" and "that there were six potential firing origins, one of which was under the control of the ABiH". ⁵⁶	The evidence does not contradict any Adjudicated Facts. ⁵⁷

⁴⁶ Judgement, fn.8718.

⁴⁷ Below fn.52.

⁴⁸ Judgement, para.2054. Also Judgement, para.2053.

⁴⁹ Judgement, para.2054 (finding that Subotić "could not plausibly explain" her assumptions).

⁵⁰ Judgement, para.2055. Also Judgement, para.2053.

⁵¹ Judgement, para.2055 (finding (i) the witness had an interest in distancing himself from the incident; (ii) it was "highly implausible" that, as commander, he had not heard about this well-documented incident; and (iii) the witness was unable to clarify inconsistencies).

⁵² AF2436: "On 4 February 1994 around 11.30 a.m. three mortar shells struck a residential neighbourhood in Dobrinja killing at least eight civilians including a child and injuring at least 18 people including two children."; AF2444: "Medical records confirm that Sabahudin Ljusa sustained severe shrapnel wounds to the chest."; AF2458: "A medical record from Dobrinja General Hospital states that a woman known as Witness R in the *Prosecutor v. Galić* (Case No. IT-98-29) was 'injured by shell explosion' in the leg."; AF2466: "A hospital record dated 4 February 1994 describes Hafizović's injury."; AF2473: "The shell which exploded against the eastern facade of the apartment block on Oslobodilaca Sarajeva Street, and which injured Sabahudin Ljusa, struck first."; AF2474: "The latter two shells were 120 mm calibre and flew in from the east and from east-northeast, respectively."; AF2475: "The confrontation line east of the site of the incident was no more than 600 metres away."; AF2476: "With respect to two shells, the origin of fire was SRK-held territory."; AF2477: "The first shell to strike formed part of the same attack and therefore also originated in SRK territory. Three shells struck civilians engaged in peaceful activities."; AF2478: "The Territorial defence office was not the target of the attack". See Judgement, para.2052.

⁵³ Judgement, para.2056.

⁵⁴ Judgement, para.2056.

⁵⁵ Below fn.61.

⁵⁶ Judgement, para.2084. Also Judgement, paras.2068-2069.

⁵⁷ Judgement, para.2084 (finding the investigations "do not provide – nor do they intend to provide – conclusive answers to the matters established in the Adjudicated Facts regarding the mortar shell's origin of fire and the entity controlling that position").

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
AF2515 ⁵⁸	John Russell's testimony that "the approximate direction of the mortar shell fired at Markale Market [was] east-north-east." ⁵⁹	The evidence is not sufficiently reliable. ⁶⁰
AF2482, 2499, 2504, 2511, 2513, 2515, 2517, 2519-2520, 2522-2525, 2528 ⁶¹	GRM097's testimony that "the shell [...] appeared to have come in with a very high trajectory, indicating a close-range firing." ⁶²	The evidence does not contradict any Adjudicated Facts. ⁶³
	Milorad Batinić's evidence "about having seen a video showing two men running away from the market". ⁶⁴	The evidence does not contradict any Adjudicated Facts. ⁶⁵
	Jan Segers' testimony that "he heard two theories about the event from UNMO personnel: that an explosive placed under a market table had caused the explosion at Markale Market and that the explosive	The evidence does not contradict any Adjudicated Facts. ⁶⁷

⁵⁸ Below fn.61.

⁵⁹ Judgement, para.2085 *relying on* para.2066.

⁶⁰ Judgement, para.2085 (finding the witness (i) was "not thorough in his analyses or measurements"; (ii) was "uninformed of important factors [...] relevant to making his determinations"; (iii) relied on incorrect firing tables; and (iv) conducted a quick crater analysis).

⁶¹ AF2482: "Edin Suljić, on behalf of a local investigative team set up to investigate the incident at Markale open-air market on 5 February 1994, and Afzaal Niaz, on behalf of the UN, visited the hospitals and the morgue where the victims of the blast were taken."; AF2499: "A man known as Witness AF in the *Prosecutor v. Galić* (IT-98-29) was in the garden of his mother's house on 5 February 1994, when he heard the sound of a heavy weapon like a mortar being fired from behind an SRK position, Špicasta Stijena, at Mrkovići."; AF2504: "The distance between Markale market and the SRK confrontation line to the north-north east at the time of the incident was approximately 2,600 metres."; AF2511: "A representative of the SRK, Colonel Cvetković, confirmed to Commandant John Hamill, member of the UN investigative team, that there were a number of 120-mm mortars in Mrkovići along the estimated line of fire to the north-northeast of Markale."; AF2513: "A 120 mm mortar shell exploded upon contact with the ground in Markale market on 5 February 1994 between 12:00 -12:30 hours, killing over 60 persons and injuring over 140 others."; AF2515: "The 120 mm mortar was fired from the direction north northeast of the market or at a bearing of approximately 18 degrees."; AF2517: "From the angle of descent alone it is not possible to calculate the distance a shell travelled. The number of charges (1 to 6) used in addition to the initial (0) charge progressively increase the distance a shell travels."; AF2519: "The shell which exploded in Markale market travelled a distance considerably greater than 2,600 metres from the north-east direction, placing the position from which the shell was fired well within SRK-controlled territory."; AF2520: "The crater caused by the explosion was approximately 9 centimetres deep and that the depth of the tunnel of the tail-fin and the depth of the crater were together 200-250 mm."; AF2522: "The shell could not have been fired from any place on the ABiH side of the confrontation lines in a direction north-northeast of Markale market."; AF2523: "A target, such as Markale market, can be hit from a great distance with one shot if the area is pre-recorded."; AF2524: "In the four months preceding the incident at Markale market, about 10 to 12 mortar shells fell around Markale market and that most of them were of a 120 mm calibre and originated from the direction north-northeast of Sedrenik."; AF2525: "The mortar shell which exploded at Markale market on 5 February 1994 was fired from SRK-controlled territory."; AF2528: "That market drew large numbers of people". See Judgement, paras.2061-2063, 2071.

⁶² Judgement, para.2073 (explaining that the witness provided evidence that the shell "appeared to have come in with a very high trajectory, indicating a close-range firing" (emphasis added)) *citing* Exh.D1298 (confidential), para.7 [REDACTED] *relied on at* Judgement, para.2086.

⁶³ Judgement, para.2086. *Also* Judgement, fn.8989.

⁶⁴ Judgement, para.2086 *relying on* para.2076.

⁶⁵ Judgement, para.2086.

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
	had been caused by the Serb army firing a mortar shell at the market.” ⁶⁶	
	GRM037's testimony that “he saw someone flash a photograph, described by that person as being of a person dropping a mortar shell”. ⁶⁸	The evidence is not sufficiently reliable. ⁶⁹
	Slavko Gengo's testimony that “a commission set up to investigate the Markale incident concluded that the 7 th Battalion stationed at Mrkovići was not responsible for the mortar shell”. ⁷⁰	The evidence is not sufficiently reliable. ⁷¹
	Milorad Džida's testimony that “a commission set up to investigate the Markale incident concluded that the 7 th Battalion stationed at Mrkovići was not responsible for the mortar shell”. ⁷²	The evidence is not sufficiently reliable. ⁷³
	Sergii Moroz's hearsay evidence “that a Russian UNMO informally told him [...] a mortar [...] could not have come from the Serb side” and “was probably not caused by a mortar, but by some sort of special explosive.” ⁷⁴	The evidence is not sufficiently reliable. ⁷⁵
	Subotić's “assessment of the credibility of witnesses who testified in this case; evidence regarding where the VRS/SRK or ABiH held positions during the war; the speed and method of evacuation of the wounded following the explosion; and the media's response to the incident.” ⁷⁶	The evidence is not sufficiently reliable. ⁷⁷
	Subotić's evidence that “bodies at the scene of the explosion had been ‘staged’ or planted there for the occasion.” ⁷⁸	The evidence is not sufficiently reliable. ⁷⁹

⁶⁷ Judgement, para.2086.

⁶⁶ Judgement, para.2086 *relying on* para.2074.

⁶⁸ Judgement, paras.2088, 2087. *Also* Judgement, para.2075.

⁶⁹ Judgement, paras.2088 (finding the evidence was based on flawed methodology and the witness ultimately admitted his theory was impossible on the evidence), 2095-2096.

⁷⁰ Judgement, paras.2089, 2087. *Also* Judgement, para.2077.

⁷¹ Judgement, paras.2089 (finding, e.g., the witness could not recall important details and his evidence was inconsistent with prior testimony), 2095-2096.

⁷² Judgement, paras.2089, 2087. *Also* Judgement, para.2078.

⁷³ Judgement, paras.2089 (finding, e.g., the witness could not recall important details and his evidence was inconsistent with prior testimony), 2095-2096.

⁷⁴ Judgement, paras.2090, 2087. *Also* Judgement, para.2072.

⁷⁵ Judgement, paras.2090 (finding the evidence fell outside the scope of expertise of the witness), 2095-2096.

⁷⁶ Judgement, paras.2091, 2087. *Also* Judgement, paras.2080-2083.

⁷⁷ Judgement, paras.2091 (finding the topics fell outside the scope of expertise of the witness), 2095-2096.

⁷⁸ Judgement, paras.2091, 2087. *Also* Judgement, paras.2080-2083.

⁷⁹ Judgement, paras.2091 (finding the theory fell outside the scope of expertise of the witness and “rested on rampant speculation”), 2095-2096.

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
	Subotić's claims that "(i) the mortar shell [...] could not have fallen at the angle which other experts concluded it had, and (ii) that the tail fin [...] was planted at the Markale Market site after the explosion." ⁸⁰	The evidence is not sufficiently reliable. ⁸¹
	Siniša Maksimović's testimony that "the Markale incident was staged by the ABiH." ⁸²	The evidence is not sufficiently reliable. ⁸³
	GRM116's hearsay evidence that "he had heard Izetbegović approve a plan to strike the market with a mortar from Serb positions in order to provoke a foreign military intervention." ⁸⁴	The evidence is not sufficiently reliable. ⁸⁵
Incident G.18		
AF2580 ⁸⁶	Evidence from Rupert Smith and Milovan Milutinović regarding "the general statement by Mladić that his troops had not been involved in the attack" ⁸⁷ and a VRS Main Staff report that SRK commanders confirmed to the Corps Command they had not fired artillery. ⁸⁸	The evidence is not sufficiently reliable. ⁸⁹
AF2571 ⁹⁰	Evidence that "the direction of fire was 160 or 220 degrees." ⁹¹	While the evidence may rebut AF2571, the Chamber relied on AF2580, not AF2571, for establishing the origin of fire. ⁹²
AF2564, 2571, 2577-2578, 2580 ⁹³	Subotić's conclusion that "the explosion must have been static or that the shell was	The evidence is not sufficiently reliable. ⁹⁵

⁸⁰ Judgement, paras.2092, 2087. *Also* Judgement, paras.2080-2083.

⁸¹ Judgement, paras.2092 (finding the evidence was based on flawed methodology, incorrect assumptions, and inappropriate source material), 2095-2096.

⁸² Judgement, paras.2093, 2087. *Also* Judgement, para.2079.

⁸³ Judgement, paras.2093 (finding the witness "had no personal knowledge on the events of 5 February 1994 and he was not in Sarajevo at that time"), 2095-2096.

⁸⁴ Judgement, paras.2094, 2087. *Also* Judgement, para.2059.

⁸⁵ Judgement, paras.2094 (finding, e.g., the witness could not recall or was confused or imprecise about important details and his evidence was inconsistent with prior testimony), 2095-2096.

⁸⁶ *Below* fn.93.

⁸⁷ Judgement, para.2147. *Also* Judgement, paras.2133-2134.

⁸⁸ Judgement, paras.2147, 2136.

⁸⁹ Judgement, para.2147 (finding (i) Mladić had an interest in distancing himself from the incident; and (ii) there was no information about whether or how Mladić investigated the SRK's involvement in the incident).

⁹⁰ *Below* fn.93.

⁹¹ Judgement, para.2149. *Also* Judgement, para.2130.

⁹² Judgement, para.2149.

⁹³ AF2564: "On 28 August 1995, at 1110 hours, there was an explosion on Mula Mustafe Bašeskije Street, just outside the Markale Market."; AF2571: "The direction of fire was 170 degrees, that is, Mount Trebević, which was SRK-held territory."; AF2577: "At least 35 persons died and at least 78 persons were wounded, many of them seriously."; AF2578: "The great majority of wounded were civilians. Only

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
	<p>thrown from a roof or window.”⁹⁴</p> <p>A newspaper article “suggest[ing] that UN officials, including those who investigated the site, considered it likely that the shell had been fired from the Muslim side.”⁹⁶</p> <p>Stevan Veljović’s evidence that “the 4th Sarajevo Light Infantry Brigade [...] had no 120-millimetre mortar shells at Mount Trebević on 28 August 1995, and [...] such shells could not have reached the Markale Market.”⁹⁸</p> <p>Andrey Demurenko’s testimony that “a shell could not have been fired by the VRS.”¹⁰⁰</p>	<p>The evidence is not sufficiently reliable.⁹⁷</p> <p>The evidence is not sufficiently reliable.⁹⁹</p> <p>The evidence is not sufficiently reliable.¹⁰¹</p>
Incident of 24 October 1994		
AF2741, 2745, 2752-2757 ¹⁰²	Poparić’s testimony that “trees <i>likely</i> blocked the view from the School of the Blind”. ¹⁰³	The evidence does not contradict any Adjudicated Facts. ¹⁰⁴

one of the deceased was a soldier of the ABiH. The other 34 deceased were civilians.”; AF2580: “The mortar shell that struck the street in the vicinity of the Markale Market was fired from the territory under the control of the SRK by members of the SRK”. See Judgement, paras.2122, 2149.

⁹⁵ Judgement, para.2144 (finding the witness’s analysis was “riddled with numerous assumptions”, based on flawed methodology and “focus[ed] on interpreting evidence rather than providing a ballistic analysis”).

⁹⁴ Judgement, para.2144. *Also* Judgement, para.2132.

⁹⁶ Judgement, para.2145. *Also* Judgement, para.2127.

⁹⁷ Judgement, para.2145 (finding (i) the evidence “only stemmed from an interview in a newspaper article”; (ii) the interviewee did not recall the incident; and (iii) the evidence was “unclear in relation to the UN members’ bases of knowledge for pronouncing on the likelihood of the shell’s origin of fire”).

⁹⁸ Judgement, para.2146. *Also* Judgement, para.2135.

⁹⁹ Judgement, para.2146 (finding (i) the witness had an interest in distancing himself from the incident; (ii) he made statements that reflected his bias and poor recollection; and (iii) his evidence was “too sweeping to be reliable”).

¹⁰⁰ Judgement, para.2148.

¹⁰¹ Judgement, para.2148 (finding the witness (i) “was often evasive [...] to the point of even being obstructive”; (ii) “gave incomplete answers in relation to central aspects of his evidence”; (iii) ignored basic principles of mortar fire; and (iv) was inconsistent).

¹⁰² AF2741: “On 24 October 1994, Adnan Kasapović, a 14-year-old boy and a civilian, was shot and killed when walking by a passageway in Vojničko Polje.”; AF2745: “In a passageway to one side Vemeks department store, Adnan Kasapović was shot.”; AF2752: “The shots came from the School of the Blind, a known sniper location of the SRK.”; AF2753: “The shots were fired by a member of the SRK.”; AF2754: “Nothing obstructed the view from the School of the Blind.”; AF2755: “There was a direct line of sight from the School of the Blind to the passageway.”; AF2756: “The sniper in the School of the Blind, particularly with the benefit of telescopic sights and from the upper floors of the School of the Blind, had a clear view of Adnan Kasapović.”; AF2757: “There was sufficient visibility in the early morning of that day for a shooter with telescopic sight to see Adnan Kasapović”. See Judgement, para.2001.

¹⁰³ Judgement, para.2002 (emphasis in original). *Also* Judgement, para.2001.

¹⁰⁴ Judgement, para.2002.

<u>Adjudicated Fact(s)</u>	<u>Potential rebuttal evidence discussed by the Chamber</u>	<u>The Chamber's reason why the Adjudicated Fact(s) were found not rebutted</u>
	Defence argument that "the Prosecution presented defective evidence from [v]an der Weijden in relation to whether there was a clear line of sight." ¹⁰⁵	The argument relates to evidence not relied on and does not contradict any Adjudicated Facts. ¹⁰⁶
Incident of 22 November 1994		
AF2802 ¹⁰⁷	Poparić evidence "that there was no line of sight". ¹⁰⁸	While the evidence may contradict AF2802, the Chamber relied on AF2803, not AF2802, for establishing the origin of fire. ¹⁰⁹
AF2801-2803 ¹¹⁰	Defence argument that "the Prosecution presented defective evidence from [v]an der Weijden and Hogan, who committed errors in marking the exact impact spot". ¹¹¹	The argument relates to evidence not relied on and does not contradict any Adjudicated Facts. ¹¹²
Incident of 10 December 1994		
AF2817 ¹¹³	Poparić's suggestion that "it was impossible to shoot Selmanović from Špicasta Stijena." ¹¹⁴	The evidence is not sufficiently reliable. ¹¹⁵
AF2807, 2817, 2819-2820 ¹¹⁶	Defence argument "with respect to any errors regarding the determination of the line of sight committed by van der Weijden". ¹¹⁷	The argument relates to evidence not relied on and does not contradict any Adjudicated Facts. ¹¹⁸

¹⁰⁵ Judgement, para.2001.

¹⁰⁶ Judgement, para.2002.

¹⁰⁷ Below fn.110.

¹⁰⁸ Judgement, para.2006.

¹⁰⁹ Judgement, para.2007.

¹¹⁰ AF2801: "On 22 November 1994, Sanela Dedović was shot and seriously wounded in the ankle by a fragment of a bullet fired from a sniper weapon."; AF2802: "The shot originated from the ridge Špicasta Stijena, which was controlled by the SRK."; AF2803: "The shots were fired by a member of the SRK". See Judgement, para.2006.

¹¹¹ Judgement, para.2006.

¹¹² Judgement, para.2007.

¹¹³ Below fn.116.

¹¹⁴ Judgement, para.2010. Also Judgement, paras.2008-2009.

¹¹⁵ Judgement, para.2010 (finding the evidence was based on assumptions which the witness "cannot put forth as reliable arguments").

¹¹⁶ AF2807: "On 10 December 1994, Derviša Selmanović went out into a friend's garden to get firewood."; AF2817: "Derviša Selmanović was shot with a machine gun and seriously wounded in her right leg when she was in the backyard of a house in Sedrenik. The shots came from the SRK-controlled ridge Špicasta Stijena."; AF2819: "The shots were fired by a member of the SRK."; AF2820: "Derviša Selmanović was an unarmed cook". See Judgement, para.2009.

¹¹⁷ Judgement, para.2010.

¹¹⁸ Judgement, para.2010.



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