



The International Residual Mechanism for Criminal Tribunals ("Mechanism") was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for the former Yugoslavia ("ICTY") after the completion of their respective mandates.

JUDGEMENT SUMMARY

APPEALS CHAMBER

(Exclusively for the use of the media. Not an official document)

The Hague, 20 March 2019

Appeal Judgement Summary for Radovan Karadžić

Please find below the summary of the Judgement read out today by Judge Vagn Joensen.

The Appeals Chamber pronounced the judgement in the case of *Prosecutor v. Radovan Karadžić* today pursuant to Rule 144(D) of the Mechanism's Rules of Procedure and Evidence ("Rules"). This summary contains the essential issues on appeal and the central findings of the Appeals Chamber and does not constitute any part of the official and authoritative Judgement.

A. Background

During the relevant period, Radovan Karadžić held positions with the Bosnian Serb leadership and, from December 1992, he was President of the *Republika Srpska* ("RS") and Supreme Commander of its armed forces ("VRS").

1. On 24 March 2016, a Trial Chamber of the International Criminal Tribunal for the former Yugoslavia ("ICTY") convicted Karadžić of genocide, crimes against humanity, and violations of the laws or customs of war in connection with his participation in four joint criminal enterprises: (i) the "Overarching JCE" aiming to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in municipalities throughout Bosnia and Herzegovina; (ii) the "Sarajevo JCE" aiming to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling; (iii) the "Srebrenica JCE" aiming to eliminate the Bosnian Muslims in Srebrenica in 1995; and (iv) the "Hostages JCE" aiming to take UNPROFOR and UNMO personnel ("UN Personnel") hostage to compel NATO to abstain from conducting air strikes against Bosnian Serb targets. The Trial Chamber sentenced Karadžić to 40 years of imprisonment.



2. Karadžić filed an appeal before the Mechanism challenging his convictions and sentence. He requests that the Appeals Chamber vacate each of his convictions and enter a judgement of acquittal or, alternatively, order a new trial, or reduce his sentence. The Prosecution also filed an appeal challenging some of the Trial Chamber's findings and the sentence imposed on Karadžić. The Appeals Chamber heard oral submissions by the parties on 23 and 24 April 2018.

B. Fairness of the Trial Proceedings

3. In Grounds 1 to 27 of his appeal, Karadžić submits that the proceedings before the Trial Chamber were unfair. He submits that the Trial Chamber violated his fair trial rights and in particular his rights to self-representation, to be present at site visits, to receive adequate notice of the charges in the Indictment, and to be tried by an impartial tribunal. He also submits that the Trial Chamber erred by: failing to reduce the scope of the Prosecution's case against him and remedy disclosure violations; taking judicial notice and relying on a great number of adjudicated facts; admitting and unfairly relying on written evidence in lieu of oral testimony; dismissing his request to cross-examine a Prosecution witness; refusing to admit and unfairly excluding Defence evidence; allowing certain Prosecution witnesses to testify with protective measures; refusing to facilitate the presentation of the Defence case including by refusing to subpoena, compel, grant protective measures, assign counsel to defence witnesses, or re-open the case to hear a prospective Defence witness; refusing to exclude the testimony of war correspondents; and failing to recognise parliamentary privilege.

4. The Appeals Chamber finds that the Trial Chamber violated Karadžić's right to be tried in his presence by its decision to conduct two site visits without Karadžić being present. However, the Appeals Chamber finds that Karadžić's absence from the site visits did not materially prejudice him and the recognition of the violation of his rights constitutes an effective remedy.

5. The Appeals Chamber also finds that the Trial Chamber erred by not adjudicating the merits of Karadžić's motion alleging a disclosure violation relating to a witness statement, but concludes that this error did not result in prejudice to Karadžić. In all other respects, the Appeals Chamber finds that Karadžić has failed to demonstrate that the trial proceedings against him have been unfair. The Appeals Chamber therefore dismisses Grounds 1 to 27 of Karadžić's appeal.



C. Municipalities

6. In Ground 28 of his appeal, Karadžić challenges the Trial Chamber's finding that there was a common plan to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in municipalities throughout Bosnia and Herzegovina as well as the Trial Chamber's assessment of the evidence relating to the Overarching JCE. The Appeals Chamber finds that Karadžić's submissions reflect mere disagreement with the Trial Chamber's assessment of the evidence without demonstrating any error. The Appeals Chamber therefore dismisses Ground 28 of Karadžić's appeal.

7. In Ground 29, Karadžić challenges his conviction pursuant to the third form of joint criminal enterprise for the crimes listed in Counts 3 to 6 of the Indictment and submits that there are cogent reasons for the Appeals Chamber to depart from the *mens rea* standard upon which the Trial Chamber relied in convicting him of persecution, murder, and extermination. Specifically, he argues that the Appeals Chamber should depart from the *mens rea* standard of awareness of the *possibility* that such crimes *might* be committed, given the reversal by the Supreme Court of the United Kingdom of the analogous standard in the case of *R v. Jogee; Ruddock v. The Queen*. Having considered the matter, the Appeals Chamber does not find any cogent reason for departing from the Appeals Chamber's well-established jurisprudence on the *mens rea* of the third category of joint criminal enterprise. The Appeals Chamber therefore dismisses Ground 29 of Karadžić's appeal.

8. In Ground 30, Karadžić submits that the Trial Chamber erred by convicting him of persecution by forcible transfer of detained persons who were the subject of prisoner exchanges, as such conduct was not charged in the Indictment. The Appeals Chamber observes that although the Indictment did not specify that the victims of forcible transfer or deportation included persons who had been detained and/or exchanged, the Indictment nonetheless charged that persecution as a crime against humanity was committed against Bosnian Muslims and Bosnian Croats in 21 areas of Bosnia and Herzegovina over a period of more than three years. For the reasons explained in the Judgement, the Appeals Chamber finds that the interim detention of some victims of forcible transfer before their expulsion from the Overarching JCE Municipalities was not a material fact that had to be pleaded in the Indictment. The Appeals Chamber therefore dismisses Ground 30 of Karadžić's appeal.



9. In Ground 31, Karadžić submits that, in finding him responsible for the crimes related to 36 Scheduled Incidents, the Trial Chamber violated his right to examine the evidence against him. Specifically, he submits that, in reaching findings in support of these convictions, the Trial Chamber impermissibly relied solely or in a decisive manner on untested evidence in the form of adjudicated facts and/or evidence admitted pursuant to Rule 92 *bis* and *quater* of the ICTY Rules of Procedure and Evidence. The Appeals Chamber considers that requiring corroboration of adjudicated facts after their admission would undermine the judicial economy function served by taking judicial notice of adjudicated facts. Karadžić's general argument that the Trial Chamber erred by relying solely or in a decisive manner on adjudicated facts fails to demonstrate error.

10. However, in relation to Scheduled Incidents C.27.5, B.20.4, and E.11.1 as well as Scheduled Incident B.13.1 with respect to the killing of one detainee in Kula prison and Scheduled Incident C.22.5 in relation to the mistreatment of two Muslim men at the Magarice military facility, the Appeals Chamber finds, Judges Joensen and de Prada dissenting, that the Trial Chamber violated his fundamental right to examine the witnesses against him by convicting him after having relied solely or decisively on untested evidence in reaching its findings on these events. This error has resulted in material prejudice invalidating the judgement to the extent that Karadžić's convictions are based upon these findings. The Appeals Chamber, Judges Joensen and de Prada dissenting, accordingly grants Ground 31 of Karadžić's appeal, in part, and reverses his convictions to the extent they rely on the above mentioned Scheduled Incidents. The Appeals Chamber dismisses the remainder of Ground 31 of Karadžić's appeal.

D. Sarajevo

11. In convicting Karadžić of crimes arising from the shelling of Sarajevo, the Trial Chamber relied on its findings that the shelling from 28 to 29 May 1992 and from 5 to 8 June 1992, described as Scheduled Incidents G.1 and G.2 in the Indictment, was "indiscriminate" and "disproportionate". The Trial Chamber determined that Scheduled Incidents G.1 and G.2 occurred "in a purely urban setting" and that the shelling "targeted entire civilian neighbourhoods of Sarajevo, without differentiating between civilian and military targets".



12. In Ground 33, Karadžić submits that the Trial Chamber erred in finding that the shelling in Sarajevo, particularly as it relates to Scheduled Incidents G.1 and G.2, was “indiscriminate” and “disproportionate”.

13. The Appeals Chamber recalls that there is an absolute prohibition on the targeting of civilians in customary international law and considers that the principle of distinction, interpreted and applied in accordance with Article 51(4) of Additional Protocol I of the Geneva Conventions, prohibits indiscriminate attacks, that is to say, attacks which are of a nature to strike military objectives and civilians or civilian objects without distinction. Thus, only military objectives may be lawfully attacked. The Appeals Chamber considers that the Trial Chamber’s findings reflect that the shelling targeted military objectives and civilian objects and the civilian population without distinction, notwithstanding the possibility that mobile positions of the Army of the Republic of Bosnia and Herzegovina may have been intermingled in civilian areas of Sarajevo. The Appeals Chamber finds that Karadžić does not demonstrate error in the Trial Chamber’s conclusions that Scheduled Incidents G.1 and G.2 were indiscriminate attacks.

14. For the reasons explained in the Judgement, the Appeals Chamber found it not necessary to assess whether the Trial Chamber erred in finding that the shelling related to Scheduled Incidents G.1 and G.2 was disproportionate as any error in this respect would have no impact on the verdict and would not result in a miscarriage of justice. The Appeals Chamber therefore dismisses Ground 33 of Karadžić’s appeal.

15. In Ground 34, Karadžić challenges the Trial Chamber’s finding that the VRS fired a mortar shell that hit the “Markale” open-air market frequented by civilians in Sarajevo on 5 February 1994 causing the death of at least 67 people and injuring over 140. Karadžić argues that the Trial Chamber erred by calculating the shell’s angle of descent on the basis of measurements taken after the crater was disturbed and unreasonably disregarded evidence that the measurements were unreliable. For the reasons explained in the Judgement, the Appeals Chamber finds that Karadžić has failed to demonstrate error in the Trial Chamber’s finding and assessment of evidence. The Appeals Chamber therefore dismisses Ground 34 of Karadžić’s appeal.



16. In Grounds 36 and 37, Karadžić submits that, in finding that he shared the common purpose of the Sarajevo JCE, the Trial Chamber erred: (i) by relying on a meeting which never occurred; (ii) by disregarding evidence of his orders prohibiting the targeting of civilians; and (iii) in assessing his knowledge of the attacks on civilians.

17. The Appeals Chamber considers that Karadžić's suggestion that any error related to the late May 1992 meeting would invalidate the verdict is unpersuasive. The Trial Chamber found that the plan of sniping and shelling the city materialised in late May 1992 and this conclusion is not dependent upon Karadžić's participation in the late May 1992 meeting. The Trial Chamber also found that, prior to this meeting, Karadžić supported Ratko Mladić and his plan of shelling and sniping Sarajevo when he voted for him as the Commander of the VRS on 12 May 1992, after Mladić presented to the Bosnian Serb leadership his Sarajevo strategy, including the besieging and targeting of the city with a large number of heavy weapons. Furthermore, the Trial Chamber relied on other factors that were critical to finding Karadžić's agreement and contributions to the Sarajevo JCE that would remain undisturbed irrespective of the Trial Chamber's conclusions as to his participation in the late May 1992 meeting.

18. The Appeals Chamber recalls that, in determining Karadžić's intent with regard to the crimes arising from the Sarajevo JCE, the Trial Chamber assessed numerous statements and orders given by Karadžić and others, including those instructing Serb forces in Sarajevo not to target civilians or to respect the laws of war. The Trial Chamber noted and discussed in detail nearly all of the orders to which Karadžić refers and the Appeals Chamber considers that Karadžić simply offers an alternative interpretation of the record without demonstrating error.

19. Similarly, the Appeals Chamber finds no merit in Karadžić's assertion that his political motivation was irrelevant in assessing his intent. The context in which Karadžić issued orders prohibiting the targeting of civilians in Sarajevo is directly relevant to whether his actions reflected a genuine concern for their safety. In this respect, the Trial Chamber reasonably found that Karadžić issued such orders while negotiating with foreign diplomats or when he had agreed to cease-fires, or when he was being pressured by the international community or threatened with air strikes. Likewise, the Trial Chamber reasonably concluded that orders prohibiting the targeting of civilians did not indicate that Karadžić disapproved of the shelling and sniping of Sarajevo, but they were rather conducted at times inconvenient to him. In this context, it was reasonable to determine that the relevant orders were



“politically motivated”. Karadžić fails to demonstrate error in the Trial Chamber’s assessment of his orders in determining his intent to commit murder, torture, and unlawful attacks on civilians in relation to the Sarajevo JCE.

20. With respect to his knowledge of attacks on civilians, Karadžić submits that the Trial Chamber erred in its assessment by focusing on information he received, rather than information he “reasonably believed”. For the reasons explained in the Judgement, the Appeals Chamber finds unpersuasive Karadžić’s argument. The Appeals Chamber therefore dismisses Grounds 36 and 37 of Karadžić’s appeal.

E. Srebrenica

21. The Trial Chamber found that the Srebrenica JCE was established as Srebrenica fell on 11 July 1995, with a common plan to eliminate the Bosnian Muslims in Srebrenica – first through forcible removal of Bosnian Muslim women, children, and elderly men and later through the killing of the men and boys.

22. In Grounds 38 and 39, Karadžić submits that the Trial Chamber erred in finding that he shared the common purpose of the Srebrenica JCE on the basis of: (i) Directive 7 issued by him on 8 March 1995; (ii) restriction of humanitarian aid; (iii) three orders he issued on 11 July 1995; and (iv) facts establishing forcible transfer.

23. The Trial Chamber found that, on 8 March 1995, Karadžić issued Directive 7, a strictly confidential directive that contained a passage ordering the Drina Corps to “create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”. The Trial Chamber found that this passage indicated an intent to force the Bosnian Muslim population to leave Srebrenica and Žepa. It further found that, at least by the time Directive 7 was issued, Karadžić had a long-term strategy aimed at the forcible removal of Bosnian Muslims from Srebrenica through the deliberate restriction of humanitarian aid as well as the targeting of the enclave by the Bosnian Serb forces.

24. Karadžić submits that the Trial Chamber erred in finding that he had intended to remove the Bosnian Muslim population of Srebrenica by failing to consider his submission and supporting evidence that he had signed Directive 7 without reading or being aware of the above-mentioned passage.



25. In light of the evidence considered by the Trial Chamber, particularly on the importance of Directive 7, Karadžić's role in the drafting process of the seven main VRS directives, including Directive 7, Karadžić's personal acknowledgment of the directive as his own, and his admission that he examined and approved it, the Appeals Chamber finds that the Trial Chamber did not err by relying upon the passage in Directive 7 in establishing Karadžić's intent to force the Bosnian Muslim population to leave Srebrenica and Žepa.

26. With respect to humanitarian aid, Karadžić submits that the Trial Chamber ignored and misinterpreted relevant evidence in finding that the State Committee he formed and placed in charge of approving humanitarian convoys gave him control over the convoys and that he used that control to restrict humanitarian aid to Srebrenica. He also argues that the finding that he exercised such control to restrict humanitarian aid to Srebrenica was not the only reasonable inference available from the evidence, as another inference was that lower level soldiers obstructed the convoys on their own initiative.

27. The Appeals Chamber finds that the evidence on which Karadžić relies does not support his contentions and he has not demonstrated that the Trial Chamber disregarded relevant evidence. In reaching its findings, the Trial Chamber considered evidence showing that following the issuance of Directive 7, humanitarian aid deliveries considerably decreased, the conditions in Srebrenica deteriorated to "disastrous levels", and by the end of June 1995, some residents had died of starvation. In light of the evidence considered by the Trial Chamber in concluding that Directive 7 was implemented through the reduction of the amount of humanitarian aid reaching Srebrenica, Karadžić has failed to demonstrate that the Trial Chamber's conclusion was unsupported or otherwise unreasonable.

28. With respect to Karadžić's contention that no reasonable trial chamber could have excluded the possibility that the obstructions to the convoys were caused by lower level soldiers without his knowledge, Karadžić proposes an alternative conclusion without substantiating his argument or pointing to any basis for this conclusion in the trial record.

29. The Appeals Chamber therefore finds that Karadžić has failed to demonstrate that the Trial Chamber erred in finding that Karadžić implemented Directive 7 by restricting access to humanitarian aid in Srebrenica.



30. Karadžić also challenges the Trial Chamber’s reliance on three orders he issued immediately after the fall of the enclave on 11 July 1995. These were: (i) an order appointing Miroslav Deronjić as civilian commissioner for Srebrenica, tasked to establish Bosnian Serb municipal authority organs and a Bosnian Serb Public Security Station and ensure their efficient functioning; (ii) an order to the *Republika Srpska* Ministry of Internal Affairs to form a Public Security Station in “Serb Srebrenica”; and (iii) an order stating that, from then on, only the State Committee would give approval for humanitarian convoys following prior consultations with Karadžić.

31. The Trial Chamber found that the establishment of Bosnian Serb structures in Srebrenica indicated that the removal of the enclave’s Bosnian Muslim population was intended to be permanent and that the order on approval of humanitarian convoys had the practical effect of limiting international access to the enclave. For the reasons set out in the Judgement, the Appeals Chamber finds that Karadžić has failed to demonstrate that the Trial Chamber erred in relying on the three orders in finding that he shared the common purpose to eliminate the Bosnian Muslims in Srebrenica through forcible removal.

32. Karadžić also submits that he was not aware of the circumstances on which the Trial Chamber relied to find that the transfer of Bosnian Muslims was forcible. As explained in the Judgement, the Appeals Chamber finds no error on the part of the Trial Chamber in this. The Appeals Chamber therefore dismisses Grounds 38 and 39 of Karadžić’s appeal.

33. In ground 40, Karadžić contends that the Trial Chamber erred in finding that he shared the Srebrenica JCE’s expanded common purpose of the killing of able-bodied Bosnian Muslim men and boys. Specifically, he argues that the Trial Chamber erred by: (i) inferring that he ordered prisoners to be transferred to Zvornik where they were later killed; (ii) inferring that he possessed contemporaneous knowledge of killings occurring in Srebrenica; and (iii) relying on his actions subsequent to the executions in Srebrenica to establish his intent.

34. The Appeals Chamber has considered the factors and evidence relied upon by Karadžić in support of his suggested alternative inference that he had directed the detainees’ transfer to Batković, but observes that Karadžić effectively reiterates his disagreement with the Trial Chamber’s evaluation of the relevant evidence without demonstrating error. Considering the Trial Chamber’s findings on



Karadžić's active oversight of the killing operation, the implementation of the plan by his subordinates, the role of his close associates on the ground, the fact that he maintained regular contact with them throughout the implementation of the killing operation, and the fact that the detainees were transferred to Zvornik where they were executed, the Appeals Chamber finds that the Trial Chamber committed no error in concluding that the only reasonable inference from the totality of the evidence was that Karadžić had ordered the detainees to be transferred to Zvornik.

35. As explained in the Judgement, the Appeals Chamber further finds that Karadžić has failed to demonstrate error in the Trial Chamber's finding that he had contemporaneous knowledge of the killings and events on the ground in Srebrenica and in relying on his actions subsequent to the executions in Srebrenica as a basis for establishing his intent. The Appeals Chamber thus finds that Karadžić fails to demonstrate error in the Trial Chamber's finding that he agreed to the expansion of the common purpose to entail the killing of Bosnian Muslim men and boys of Srebrenica. Based on the foregoing, the Appeals Chamber dismisses Ground 40 of Karadžić's appeal.

36. In Ground 41, Karadžić submits that the Trial Chamber erred in inferring his genocidal intent due to its erroneous evaluation of the evidence and inferences. Karadžić maintains that his decision allowing local staff of UNPROFOR to leave Srebrenica demonstrates that he did not intend that every able-bodied Bosnian Muslim male from Srebrenica be killed. In this respect, the Appeals Chamber reiterates that evidence of limited and selective assistance to a few individuals does not preclude a trier of fact from reasonably finding the requisite intent to commit genocide.

37. Turning to Karadžić's submission that the Trial Chamber erred in finding that he wanted to close the corridor near Zvornik that opened on 16 July 1995 to facilitate Bosnian Muslims to pass freely into Bosnian-Muslim territory, the Appeals Chamber notes that Karadžić misrepresents the Trial Chamber's assessment and findings, as explained in the Judgement.

38. As to Karadžić's argument that the Trial Chamber misinterpreted his remarks before the Bosnian Serb Assembly on 6 August 1995, the Appeals Chamber notes that the Trial Chamber drew support for its finding that Karadžić shared the intent for every Bosnian Muslim male from Srebrenica to be killed from his expressed regret about the fact that some Bosnian Muslim males had managed to pass through



Bosnian Serb lines. The Appeals Chamber finds that Karadžić merely provides an alternative interpretation of the evidence and fails to demonstrate error.

39. Finally, contrary to Karadžić's claim, the Trial Chamber did not solely rely on his knowledge of executions and inaction to prevent them in finding that he had genocidal intent. The Trial Chamber's finding as to Karadžić's genocidal intent rests on Karadžić's knowledge of the executions as well as his agreement to implement the plan. This is demonstrated by his order for the detainees to be moved to Zvornik where they were killed and by his failure to intervene to halt or hinder the killings between the evening of 13 July and 17 July 1995.

40. In light of the foregoing, the Appeals Chamber finds that Karadžić has failed to demonstrate error in the Trial Chamber's finding on his *mens rea* for genocide. The Appeals Chamber therefore dismisses Ground 41 of Karadžić's appeal.

41. In Grounds 42 and 43, Karadžić submits that the Trial Chamber erred in finding that he knew of the killings that occurred in the aftermath of the fall of the Srebrenica enclave on 13 July 1995 and by convicting him as a superior in connection with them.

42. The Appeals Chamber notes that Karadžić misrepresents the Trial Chamber's finding that he knew of the killings that occurred on 13 July 1995. In particular, the Trial Chamber found that Karadžić knew about the Kravica warehouse killings and had reason to know that other killings had also been committed. In claiming that he was not informed of the scale or criminal nature of the killings and had no reason to know about them, Karadžić merely disagrees with the Trial Chamber's findings and evaluation of the relevant evidence without demonstrating error. In addition, Karadžić's claim that the Trial Chamber should have entertained the inference that the incident was not described to him in a way triggering his obligation to investigate and punish the perpetrators is neither persuasive nor reasonable on the basis of the record. The Trial Chamber correctly determined that the receipt of information about the killing of 755 to 1,016 Bosnian Muslim men detained by forces under his control at the Kravica warehouse sufficed to trigger his obligation to investigate this and other related crimes in Srebrenica and punish the perpetrators. Karadžić's contention that the Trial Chamber presumed he knew of crimes simply because he was "President" is unpersuasive. The Trial Chamber assessed the specific circumstances and, as noted above, found that Karadžić knew of the large-scale killings that took



place at the Kravica warehouse and reasonably determined that he had reason to know of other killings perpetrated by his subordinates. Karadžić fails to demonstrate any error in this respect.

43. The Appeals Chamber finds that Karadžić fails to demonstrate error in the Trial Chamber’s assessment of his *mens rea* for the purposes of finding him responsible as a superior in connection with the killings that occurred prior to Karadžić’s agreement to the expansion of the means of eliminating the Bosnian Muslims in Srebrenica on 13 July 1995. Based on the foregoing, the Appeals Chamber dismisses Grounds 42 and 43 of Karadžić’s appeal.

F. Hostage-Taking

44. In Grounds 44 and 45, Karadžić challenges the Trial Chamber’s findings related to hostage-taking. The Trial Chamber found that, between 25 May and 18 June 1995, the Hostages JCE existed with the aim to take UN Personnel hostage so as to compel NATO to abstain from striking Bosnian Serb targets. The Trial Chamber also found that Bosnian Serb forces detained over 200 UN Personnel, took them to various locations, including those of military significance, and threatened to harm, kill, or continue to detain them unless NATO ceased air strikes.

45. Karadžić submits that the Trial Chamber erred in finding that he shared the common purpose and intent to commit hostage-taking as: (i) there was no evidence that he issued or approved threats to kill or injure the UN Personnel; and (ii) the UN Personnel were lawfully detained.

46. The Appeals Chamber recalls that the Trial Chamber did not rely on threats issued by Karadžić when establishing the *actus reus* of the crime of hostage-taking. The Trial Chamber found that Karadžić issued and intended to issue threats against UN Personnel on the basis, *inter alia*, that Karadžić: (i) stated in a television interview that any attempt to liberate the UN Personnel would “end in catastrophe” and that it “would be a slaughter”; (ii) in the same interview, threatened to escalate the Bosnian Serb response if the UN ordered more NATO air strikes; (iii) warned UNPROFOR that he would treat UN soldiers “as enemies” if NATO conducted air strikes; (iv) ordered the activation of the decision for the VRS to “arrest everything foreign in RS territory” and to treat military personnel as prisoners of war and “hold them as hostages”; and (v) approved an order to place detained UN Personnel at strategic locations of potential targets of the air strikes. For the reasons explained in the Judgement, the Appeals Chamber finds that Karadžić does not demonstrate that the Trial Chamber erred in finding that he



shared the common purpose of the Hostages JCE and intended for threats to be issued against the UN Personnel in order to stop further NATO air strikes.

47. With respect to Karadžić's arguments that the Trial Chamber erred in not finding that unlawful detention is an element of hostage-taking and that, in his view, the UN Personnel were detained lawfully, the Appeals Chamber recalls the absolute prohibition of taking hostage any person taking no active part in hostilities, including detained individuals irrespective of their status prior to detention. In this respect, the *hors de combat* status of detainees triggers Common Article 3's protections, including the prohibition on their use as hostages. Therefore, whether the detention of the UN Personnel was lawful or not would have no bearing on the applicability of the prohibition on hostage-taking under Common Article 3. Consequently, the Appeals Chamber dismisses Karadžić's arguments in this respect.

48. The Appeals Chamber therefore finds that the prohibition on hostage-taking applies to UN Personnel in this case and dismisses Grounds 44 and 45 of Karadžić's appeal.

G. The Prosecution's Appeal

49. In its first ground of appeal, the Prosecution submits that the Trial Chamber erred in finding the evidence insufficient to demonstrate that proven acts of persecution charged in Count 3 of the Indictment, as well as the crimes of murder and extermination as charged in Counts 4, 5, and 6 of the Indictment were included in the common plan of the Overarching JCE to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory ("Excluded Crimes").

50. The Trial Chamber found that another reasonable inference available on the evidence was that, while Karadžić did not intend for these other crimes to be committed, he did not care enough to stop pursuing the common plan. It thus convicted Karadžić on the basis of the third form of joint criminal enterprise liability for each of the Excluded Crimes.

51. The Appeals Chamber recalls that, while an accused's knowledge of particular crimes combined with continued participation in the execution of the common plan from which those crimes result may be a basis to infer that he or she shared the requisite intent for the crimes in question, this does not necessarily compel such a conclusion. Further, where intent is inferred from circumstantial evidence, it must be the only reasonable inference available on the evidence. The Appeals Chamber therefore finds,



Judge de Prada dissenting, that the Prosecution fails to demonstrate that the Trial Chamber committed error in this respect.

52. For the reasons set out in the Judgement, the Appeals Chamber, Judge de Prada dissenting, concludes that none of the findings relied upon by the Prosecution leads to the conclusion that the only reasonable inference was that the Excluded Crimes formed part of the common purpose. The Appeals Chamber now turns to consider whether these findings do so cumulatively. A reasonable trier of fact could find that these findings, considered cumulatively, support the conclusion that some or all of the Excluded Crimes formed part of the common purpose. However, the Appeals Chamber, Judge de Prada dissenting, finds that the Trial Chamber did not err in finding that these factual findings do not compel this as the only reasonable conclusion. In light of the Appeals Chamber's finding, Judge de Prada dissenting, the Appeals Chamber dismisses Ground 1 of the Prosecution's appeal.

53. In its second ground of appeal, the Prosecution submits that the Trial Chamber erred in not finding that Bosnian Muslims and Bosnian Croats were subjected to destructive conditions of life within the meaning of Article 4(2)(c) of the ICTY Statute. Specifically, the Prosecution submits that the Trial Chamber erred by failing to provide a reasoned opinion and/or by improperly compartmentalizing its analysis of the evidence. As explained in the Judgement, the Appeals Chamber, Judge de Prada dissenting, finds no merit in this submission.

54. The Prosecution also argues that the Trial Chamber erred when determining that the elements required under Article 4(2)(c) of the ICTY Statute had not been established with respect to certain detention facilities in municipalities referred to in Count 1 of the Indictment ("Count 1 Municipalities"). The Appeals Chamber does not agree. The Trial Judgement reflects the Trial Chamber's extensive assessment of both the discriminatory and the destructive conditions in which the relevant detention facilities were operated. While the Prosecution argues that the Trial Chamber ignored these factors, the Appeals Chamber observes that the Trial Chamber found that the conditions demonstrated discriminatory intent and were sufficient to establish persecution, in part, on the basis of cruel and inhumane treatment. However, the persecutory and severe mistreatment demonstrated by the evidence and reflected in the Trial Chamber's findings did not compel it to find, as the only reasonable inference, the existence of the deliberate infliction of conditions of life calculated to bring about the physical destruction of the Bosnian Muslim and Bosnian Croat groups as such. The Appeals Chamber



finds, Judge de Prada dissenting, that the Prosecution has not demonstrated that the Trial Chamber erred in its assessment of the record in not finding the elements of Article 4(2)(c) of the ICTY Statute proven beyond reasonable doubt. The Appeals Chamber, Judge de Prada dissenting, therefore dismisses Ground 2 of the Prosecution's appeal.

55. In its third ground of appeal, the Prosecution submits that the Trial Chamber erred when it failed to find that Karadžić and other members of the Overarching JCE possessed genocidal intent as charged under Count 1 of the Indictment. The Prosecution argues that the Trial Chamber erred in assessing the pattern of crimes as well as the specific statements and conduct of Karadžić and other members of the Overarching JCE.

56. With respect to the alleged errors regarding the pattern of crimes, as explained in the Judgement, the Appeals Chamber finds, Judge de Prada dissenting, that the Prosecution has failed to demonstrate any error in the Trial Chamber's assessment.

57. The Appeals Chamber also rejects the contention that the Trial Chamber erred in applying the law when assessing the statements and conduct of Karadžić and other members of the Overarching JCE. The Appeals Chamber is not convinced that the Trial Chamber ignored any of the evidence relied upon by the Prosecution or that it was compelled to conclude that genocidal intent was the only reasonable inference based on the conduct of Karadžić and the other members of the Overarching JCE as well as the pattern of crimes committed in Prijedor Municipality. In this respect, the Appeals Chamber considers that evidence demonstrating ethnic bias, however reprehensible, does not necessarily prove genocidal intent. The Trial Judgement reflects the Trial Chamber's adherence to this approach. In light of the above, the Appeals Chamber, Judge de Prada dissenting, cannot conclude that the statements and conduct to which the Prosecution refers required a reasonable trier of fact to infer as the only reasonable inference that the conduct and statements of Karadžić and other JCE members reflected an intent to destroy the Bosnian Muslim and the Bosnian Croat groups as such in the Count 1 Municipalities. Based on the foregoing, the Appeals Chamber, Judge de Prada dissenting, dismisses Ground 3 of the Prosecution's appeal.



H. Sentencing

58. Both Karadžić and the Prosecution have appealed against the 40-year sentence imposed by the Trial Chamber. Karadžić submits that the Trial Chamber erred in declining to find several mitigating circumstances. As to the Trial Chamber's alleged failure to consider Karadžić's lack of preparation and control during the war, the Appeals Chamber observes that the Trial Chamber explicitly noted his submissions but concluded that it did not consider his alleged lack of training and preparation for war to be mitigating in light of its findings on his authority over Bosnian Serb forces and relevant political and governmental organs. Karadžić's contention that he was a "psychiatrist and poet, with no military training" ignores the Trial Chamber's extensive findings of his authority over Bosnian Serb forces and his central involvement in four joint criminal enterprises.

59. As to Karadžić's submissions relating to his good conduct during the war, the Appeals Chamber observes that the Trial Chamber noted Karadžić's submission on this point and found that, given the gravity of his crimes and his central involvement in them, it did not "consider his conduct during the war to be mitigating in any way". The Appeals Chamber also recalls the Trial Chamber's findings that Karadžić's participation was integral to crimes committed in furtherance of four joint criminal enterprises. In light of these considerations and for the further reasons set out in the Judgement, the Appeals Chamber finds that Karadžić does not demonstrate any error on the part of the Trial Chamber in assessing mitigating circumstances and dismisses Grounds 47 to 50 of Karadžić's appeal.

60. In its appeal concerning the sentence, the Prosecution submits that the Trial Chamber abused its discretion by imposing a sentence of 40 years' imprisonment and seeks to have Karadžić's sentence increased to life imprisonment. It argues that the 40-year sentence does not reflect the Trial Chamber's own findings and analysis on the gravity of Karadžić's crimes and his responsibility for the largest and gravest set of crimes ever attributed to a single person at the ICTY. Taking into account the Trial Chamber's conclusions reflecting the magnitude of Karadžić's crimes, the Appeals Chamber is in agreement with the Prosecution's position and considers that the 40-year sentence inadequately reflects the extraordinary gravity of Karadžić's crimes as well as his central and instrumental participation in four joint criminal enterprises.



61. The incongruence between the gravity of Karadžić's crimes and his 40-year sentence is apparent when Karadžić's crimes and punishment are compared to the life sentences imposed on Tolimir, Beara, Popović, and Galić for their responsibility in only a fraction of Karadžić's crimes. The Appeals Chamber notes that the Trial Chamber did not explicitly consider these cases in its determination of Karadžić's sentence. The fact that Tolimir, Beara, Popović, and Galić were each sentenced to life imprisonment for participating in only one of the four joint criminal enterprises involved in this case, and the fact that they were subordinated to Karadžić, further demonstrates that the 40-year sentence imposed on Karadžić was inadequate.

62. Given the above, the Appeals Chamber considers that the sentence of 40 years imposed by the Trial Chamber underestimates the extraordinary gravity of Karadžić's responsibility and his integral participation in "the most egregious of crimes" that were committed throughout the entire period of the conflict in Bosnia and Herzegovina and were noted for their "sheer scale" and "systematic cruelty". In the circumstances of this case, the sentence the Trial Chamber imposed was so unreasonable and plainly unjust that the Appeals Chamber can only infer that the Trial Chamber failed to properly exercise its discretion.

63. The Appeals Chamber finds, Judges de Prada and Rosa dissenting, that the Trial Chamber committed a discernible error and abused its discretion in imposing a sentence of only 40 years of imprisonment. The Appeals Chamber, Judges de Prada and Rosa dissenting, therefore grants Ground 4 of the Prosecution's appeal.

64. The Appeals Chamber recalls that it has granted, in part, Judges Joensen and de Prada dissenting, Ground 31 of Karadžić's appeal and has reversed his convictions related to the Overarching JCE to the extent that they are based on Scheduled Incidents C.27.5, B.20.4, B.13.1 in part, C.22.5 in part, and E.11.1. Notwithstanding, the Appeals Chamber has dismissed all other aspects of Karadžić's appeal and has affirmed his remaining convictions for genocide, persecution, extermination, murder, deportation, and other inhumane acts (forcible transfer) as crimes against humanity, as well as for murder, terror, unlawful attacks on civilians, and hostage-taking as violations of the laws or customs of war, in relation to his participation in the Overarching JCE, the Sarajevo JCE, the Srebrenica JCE, and the Hostages JCE. The Appeals Chamber further recalls that it has granted, Judges de Prada and Rosa dissenting, Ground 4 of the Prosecution's appeal.



I. Disposition

For the foregoing reasons, **THE APPEALS CHAMBER**,

PURSUANT to Article 23 of the Statute and Rule 144 of the Rules;

NOTING the written submissions of the parties and their oral arguments presented at the appeal hearing on 23 and 24 April 2018;

SITTING in open session;

GRANTS, Judges Joensen and de Prada dissenting, Karadžić's Thirty-First Ground of Appeal, in part, and **REVERSES**, Judges Joensen and de Prada dissenting, Karadžić's convictions to the extent that they rely on Scheduled Incidents C.27.5, B.20.4, B.13.1 in part, C.22.5 in part, and E.11.1;

DISMISSES Karadžić's appeal in all other respects;

AFFIRMS Karadžić's remaining convictions, pursuant to Article 1 of the Statute and Articles 7(1) and 7(3) of the ICTY Statute, for genocide, persecution, extermination, murder, deportation, and other inhumane acts (forcible transfer) as crimes against humanity, as well as for murder, terror, unlawful attacks on civilians, and hostage-taking as violations of the laws or customs of war, in relation to his participation in the Overarching JCE, the Sarajevo JCE, the Srebrenica JCE, and the Hostages JCE;

GRANTS, Judges de Prada and Rosa dissenting, the Prosecution's Fourth Ground of Appeal;

DISMISSES, Judge de Prada dissenting, the Prosecution's appeal in all other respects;

SETS ASIDE, Judges de Prada and Rosa dissenting, the sentence of 40 years of imprisonment and

IMPOSES, Judges de Prada and Rosa dissenting, a sentence of life imprisonment, subject to credit being given under Rules 125(C) and 131 of the Rules for the period Karadžić has already spent in detention since his arrest on 21 July 2008;

RULES that this Judgement shall be enforced immediately pursuant to Rule 145(A) of the Rules;

ORDERS that, in accordance with Rules 127(C) and 131 of the Rules, Karadžić shall remain in the custody of the Mechanism pending the finalization of arrangements for his transfer to the State where his sentence will be served.



Judge Vagn Joensen appends partially dissenting and separate concurring opinions.

Judge José Ricardo de Prada Solaesa appends a partially dissenting opinion.
