

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No: MICT-13-56-A

Date: 7 August 2018

Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Carmel Agius  
Judge Liu Daqun  
Judge Prisca Matimba Nyambe  
Judge Seymour Panton

**Registrar:** Mr. Olufemi Elias

**THE PROSECUTOR**

v.

**RATKO MLADIĆ**

**PUBLIC**

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

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**The Office of the Prosecutor:**

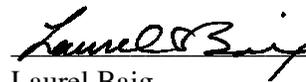
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1. The Prosecution hereby files a public redacted version of its Appeal Brief.<sup>1</sup>

Word Count: 26



Laurel Baig  
Senior Appeals Counsel

Dated this 7<sup>th</sup> day of August 2018  
At The Hague, The Netherlands

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<sup>1</sup> *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Prosecution Appeal Brief, 6 August 2018.

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**PROSECUTION APPEAL BRIEF**

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## I. OVERVIEW

1. The Appeals Chamber should overturn Mladić's acquittal for genocide under Count 1 of the Indictment. The errors identified in this appeal led the Chamber to erroneously conclude that:

- Mladić and other perpetrators did not possess genocidal intent<sup>1</sup> with respect to Bosnian Muslims in the municipalities of Kotor Varoš, Sanski Most, Foča, Vlasenica and Prijedor (the "Count 1 Municipalities");<sup>2</sup>
- genocide did not form part of the Overarching JCE; and
- Mladić was not responsible for genocide under Count 1 pursuant to the first category of JCE liability ("JCE1").

The Chamber's errors should be corrected, and the Appeals Chamber should convict Mladić of genocide under Count 1.

2. As the VRS Main Staff Commander, Mladić was instrumental in implementing the common purpose of the Overarching JCE. He and other JCE members commanded forces that perpetrated crimes devastating non-Serb communities in BiH. A majority of the Chamber ("Majority") rightly concluded—in light of the nature, scale, and temporal and geographic proximity of crimes against Bosnian Muslims—that numerous local perpetrators under the command of Mladić and other JCE members intended to destroy the Bosnian Muslim community in the Count 1 Municipalities in which those local perpetrators operated. However, as set out in Ground 1, the Chamber erred in fact in concluding that the Bosnian Muslim community in each of these municipalities did not constitute a substantial part of the Bosnian Muslims of BiH ("Bosnian Muslim Group"). Each of these communities comprised many thousands of Bosnian Muslims; each possessed characteristics which made it prominent within and emblematic of the Bosnian Muslim Group as a whole; and the territory covered by the municipalities represented the full extent of the perpetrators' respective areas of activity and control. No reasonable trier of fact could have considered these factors and yet

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<sup>1</sup> A majority of the Chamber found that certain local perpetrators in each of the Count 1 Municipalities intended to destroy the Bosnian Muslim community in their respective municipalities, but concluded that none of these communities formed a substantial part of the protected group. *See* Judgement, paras.3526, 3536.

<sup>2</sup> The Prosecution does not appeal the Chamber's findings under Count 1 of the Indictment in relation to Ključ Municipality and does not appeal its Count 1 findings in relation to the Bosnian Croats for any of the municipalities that are the subject of Count 1.

concluded that these communities did not constitute substantial parts of the Bosnian Muslim Group.

3. As set out in Ground 2, the Chamber also erred in assessing the intent of Mladić and other Overarching JCE members and erroneously concluded that they did not possess destructive intent towards any of the Bosnian Muslim communities in the Count 1 Municipalities. As set out in Sub-ground 2(a), the Chamber erred in law in applying a heightened evidentiary threshold when considering whether Mladić and other JCE members possessed destructive intent. It incorrectly discounted the relevance of the underlying crimes merely because Mladić and other JCE members used tools to commit these crimes rather than physically committing the crimes themselves. Alternatively, or in addition, as set out in Sub-ground 2(b), the Chamber's conclusion that Mladić and other JCE members did not intend to destroy the Bosnian Muslims in the Count 1 Municipalities was one that no reasonable trier of fact could have reached.

4. The Appeals Chamber should correct the errors identified in this appeal and convict Mladić of genocide under Count 1 of the Indictment pursuant to JCE1. Alternatively, should the Appeals Chamber conclude that Mladić is not responsible for genocide pursuant to JCE1, it should correct the errors identified in Ground 1 and convict Mladić of genocide under Count 1 pursuant to the third category of JCE liability ("JCE3") or as a superior under Article 7(3) of the ICTY Statute.<sup>3</sup>

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<sup>3</sup> See Mechanism Statute, Article 1(1).

## **II. GROUND 1: THE BOSNIAN MUSLIM COMMUNITY IN EACH OF THE COUNT 1 MUNICIPALITIES CONSTITUTED A SUBSTANTIAL PART OF THE BOSNIAN MUSLIM GROUP**

5. The Chamber erroneously concluded that the Bosnian Muslim community in each of the five Count 1 Municipalities (the “Count 1 Communities”) did not constitute a substantial part of the Bosnian Muslim Group.<sup>4</sup> The Chamber correctly understood that when a part of a protected group is targeted, the targeted part must be significant enough to have an impact on the group as a whole, considering factors such as the size of the targeted part, its prominence and emblematic nature and the area of the perpetrators’ activity and control.<sup>5</sup> Nevertheless, the Chamber held that the Count 1 Communities were not substantial parts of the Bosnian Muslim Group. This conclusion was one that no reasonable trier of fact could have reached.

6. Many thousands of Bosnian Muslims lived in each of the Count 1 Municipalities. The destruction of any one of these sizeable communities was significant enough to have an impact on the Bosnian Muslim Group as a whole. Moreover, the perpetrators found to have destructive intent applied that intent to the greatest possible geographical extent: the territories of the municipalities in which these perpetrators operated represented the full extent of their area of activity and control. Furthermore, each of the Count 1 Communities possessed characteristics which made it prominent and emblematic in relation to the Bosnian Muslim Group as a whole.

7. In relation to both their size and other relevant characteristics, the Count 1 Communities were comparable to the Bosnian Muslims of Srebrenica—a community that has repeatedly been found to constitute a substantial part of the Bosnian Muslim Group,<sup>6</sup> including by the Chamber.<sup>7</sup> This comparison underscores the unreasonableness of the Chamber’s Count 1 substantiality conclusions.

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<sup>4</sup> Judgement, paras.3535-3536.

<sup>5</sup> Judgement, para.3437 citing *Krstić* AJ, paras.8, 12-14. Also Judgement, paras.3528, 3530-3534.

<sup>6</sup> E.g. *Krstić* AJ, paras.21, 23; *Karadžić* TJ, para.5672; *Blagojević* TJ, para.673.

<sup>7</sup> Judgement, para.3554.

**A. The Bosnian Muslim community in each of the Count 1 Municipalities was substantial in size**

8. In each of the Count 1 Municipalities, the targeted part of the Bosnian Muslim Group comprised the municipality's entire Bosnian Muslim population, each consisting of many thousands of group members. This degree of intended destruction clearly entailed the type of "actions undertaken on a mass scale" contemplated by the substantiality requirement.<sup>8</sup> Moreover, it is well established that a population of a single municipality—in particular in the BiH context—can constitute a substantial part of the group.<sup>9</sup> And it is self-evident that wiping away one of the sizeable municipal units of the Bosnian Muslim Group at issue here could be "significant enough to have an impact on the group as a whole",<sup>10</sup> particularly given the limited size of the overall group.<sup>11</sup>

9. While the Chamber noted that each of the Count 1 Communities formed a "relatively small part" of the Bosnian Muslim Group,<sup>12</sup> each of the targeted communities was comparable in size to Srebrenica's Bosnian Muslim population. By way of comparison, while the Chamber found the Bosnian Muslims of Srebrenica formed less than 2% of the Bosnian Muslim Group,<sup>13</sup> the Bosnian Muslims of Prijedor comprised 2.6% of the group.<sup>14</sup>

10. Furthermore, numeric size must be assessed in light of the perpetrators' area of activity and control,<sup>15</sup> as "[t]he intent to destroy formed by a perpetrator of genocide will always be limited by the opportunity presented to him."<sup>16</sup> The Chamber's findings show that the respective Count 1 Communities were the *only* parts of the protected group within the

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<sup>8</sup> Executive Sessions of the Senate Foreign Relations Committee, Historical Series, Vol.II (1976), p.370 (Raphael Lemkin expressed the view that "the Convention applies only to actions undertaken on a mass scale and not to individual acts") *cited at Krstić* AJ, para.10. Also Nehemiah Robinson, *The Genocide Convention: A Commentary* (New York: Institute of Jewish Affairs, 1960), p.63 ("the Convention is intended to deal with action against large numbers, not individuals even if they happen to possess the same group characteristics.") *cited at Krstić* AJ, para.10; *Jelisić* TJ, para.82.

<sup>9</sup> *See Brdanin* TJ, para.703; *Jelisić* TJ, para.83; *Stakić* TJ, para.523. A finding of substantiality does not require the part targeted to be both qualitatively and quantitatively significant. *See Sikirica* Judgement on Acquittal Motions, paras.65, 76.

<sup>10</sup> *See Krstić* AJ, para.8.

<sup>11</sup> The entire Bosnian Muslim Group comprised approximately 1.9 million individuals. *See* Judgement, para.3529. *See Krstić* AJ, para.12.

<sup>12</sup> Judgement, para.3535.

<sup>13</sup> Judgement, para.3551.

<sup>14</sup> The Chamber incorrectly found that the Bosnian Muslims in Prijedor formed 2.2% of the total protected group. *See* Judgement, para.3534. According to the Chamber's own findings, the Bosnian Muslim population in BiH in 1991 was 1.9 million and the Bosnian Muslim population of Prijedor was 49,700, which amounts to approximately 2.6% of the protected group. *See* Judgement, paras.3529, 3534. Between 11,000 and 28,000 Bosnian Muslims resided in each of the other four municipalities. *See* Judgement, paras.3530-3533.

<sup>15</sup> *Krstić* AJ, paras.12-13.

area of activity and control of the perpetrators whom the Majority found possessed destructive intent.<sup>17</sup> For example, the authority of the 43<sup>rd</sup> Motorized Brigade did not extend beyond Prijedor, while that of the 6<sup>th</sup> Krajina Brigade was limited to Prijedor and Sanski Most.<sup>18</sup> Thus, the perpetrators found to have destructive intent acted with the intent to destroy as large a part of the Bosnian Muslim Group as was within their reach.

**B. The Bosnian Muslim community in each of the Count 1 Municipalities was prominent within and emblematic of the Bosnian Muslim Group as a whole**

11. In addition to their significant size, the substantial nature of the Count 1 Communities is further evidenced by characteristics that made these communities prominent and emblematic in relation to the Bosnian Muslim Group as a whole. The Chamber unreasonably concluded that there was “insufficient evidence indicating why the Bosnian Muslims in each of the [Count 1 Municipalities] or the municipalities themselves had a special significance or were emblematic in relation to the protected group as a whole.”<sup>19</sup> The Chamber’s own predicate findings and the underlying evidence demonstrate the contrary—that the Count 1 Communities were prominent and emblematic in relation to the entire group in ways that parallel the Bosnian Muslim community of Srebrenica.<sup>20</sup>

12. Prior to 1992, each of the Count 1 Municipalities was home to a sizeable community of Bosnian Muslims with a unique historic and cultural identity built up through a centuries-long presence within these territories.<sup>21</sup> For instance, just as Srebrenica was viewed as an Islamic “stronghold”,<sup>22</sup> Foča was considered “extremely important” to the Muslims in light of its rich Muslim heritage.<sup>23</sup> Bosnian Serb leaders warned that Foča had been destined to become “another Mecca” or “the second Islamic Centre for Muslims in Europe”.<sup>24</sup> Thus, the campaign aimed at destroying the Bosnian Muslims of Foča also represented an attack on the religious heritage and identity of the entire Bosnian Muslim Group. Likewise, while the Bosnian Serb leadership considered the Srebrenica area synonymous with Muslim

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<sup>16</sup> Judgement, para.3528 *citing* *Krstić* AJ, paras.13-14. *Also* *Krstić* AJ, para.17.

<sup>17</sup> Judgement, para.3535. *Also* Judgement, paras.3530-3534.

<sup>18</sup> Judgement, paras.3530, 3534.

<sup>19</sup> *See* Judgement, para.3535.

<sup>20</sup> Judgement, paras.3530-3534. *Below* paras.12-14.

<sup>21</sup> Judgement, paras.3442, 3530-3534. *Also* [REDACTED]; N.Sivac:Exh.P480, p.76 (T.6753); [REDACTED].

<sup>22</sup> Judgement, para.3552.

<sup>23</sup> Judgement, para.3531 *quoting* Exh.P3076, p.26.

<sup>24</sup> Judgement, para.3531. Additionally, Foča was the largest municipality in Bosnian-Serb claimed territory. *See* Exh.P2852.

domination over the Serbs,<sup>25</sup> the non-Serb communities of Sanski Most and Prijedor symbolised to Bosnian Serbs the extent of Serb suffering during WWII and “the slaughter” of Serbs throughout the region.<sup>26</sup>

13. More generally, the pattern of crimes aimed at destroying the Count 1 Communities was as much of a signal to the Bosnian Muslims in BiH of their vulnerability and defencelessness as the acts of destruction targeting the Bosnian Muslims of Srebrenica.<sup>27</sup> While Srebrenica served as a “refuge to Bosnian Muslims” from ethnic violence at the end of the conflict,<sup>28</sup> Prijedor—as a symbol of “brotherhood and unity” and “the last town where ethnic conflict was possible”—represented a perceived refuge from ethnic violence for Bosnian Muslims at the start of the conflict.<sup>29</sup> And all the Count 1 Municipalities were highly integrated areas where Serbs and Muslims had lived side-by-side for decades.<sup>30</sup> Targeting the Count 1 Communities in the early stages of the conflict sent a powerful signal to the entire Bosnian Muslim Group of its vulnerability and defencelessness. It signalled that “brotherhood and unity” was dead and that a new order of ethnic homogeneity was being imposed—with catastrophic consequences for the Bosnian Muslim people.

14. Like Srebrenica,<sup>31</sup> each of the Count 1 Municipalities also held immense strategic importance for the Bosnian Serb leadership. Forging ethnically homogeneous Serb territories in the Count 1 Municipalities was not only central to the creation of a Bosnian Serb entity but also impeded the existence of a viable Muslim presence in much of BiH. Each of the Count 1 Municipalities was encompassed by the Bosnian Serbs’ Six Strategic Objectives,<sup>32</sup> which demarcated territories that were to be taken over and cleansed of Muslims and Croats “by whatever means”.<sup>33</sup> Foča and Vlasenica—like Srebrenica<sup>34</sup>—were situated in the Drina River area in Eastern Bosnia and were essential territories to achieving Strategic Objective

<sup>25</sup> Judgement, para.3552.

<sup>26</sup> Judgement, paras.3530 (citing Exh.P7294; N.Erceg:T.34091-34092), 3534.

<sup>27</sup> See Judgement, para.3553. Also *Krstić* AJ, para.16.

<sup>28</sup> Judgement, paras.3553-3554.

<sup>29</sup> See Judgement, para.3534. Also N.Sivac:T.4837 (explaining that the breakdown in inter-ethnic relations in Prijedor was “obvious” because Prijedor had been “a very tolerant environment where all ethnic communities lived together”); [REDACTED].

<sup>30</sup> Judgement, paras.3530-3534. Also e.g. *Sanski Most*: A.Draganović:Exh.P3293, p.13; [REDACTED]; [REDACTED]; *Foča*: [REDACTED]; RM063:T.5438; *Kotor Varoš*: [REDACTED]; *Vlasenica*: M.Deurić:Exh.D797, para.7; M.Đurić:Exh.D732, paras.3, 5; *Prijedor*: [REDACTED]; N.Sivac:T.4837; G.Dragojević:T.35620.

<sup>31</sup> Judgement, para.3554.

<sup>32</sup> Judgement, paras.3697-3702, 3708. Also Exh.P178, pp.7-8; RM015:Exh.P2362, para.51 (confidential).

<sup>33</sup> Judgement, paras.3703 (citing Exh.P431, p.28), 3708.

<sup>34</sup> Judgement, para.3554.

Three, the establishment of a corridor in the Drina Valley.<sup>35</sup> Carving out an ethnically homogeneous Serb corridor in the Drina area would connect Serbs on both sides of the Drina and, as Radovan Karadžić explained, render any Muslim presence in the area “permanently unstable”.<sup>36</sup> Mladić insisted on Serb control over “the entire West Bank of [the] Drina”<sup>37</sup> and highlighted the strategic significance of Vlasenica, declaring, “whoever controls Vlasenica, controls Eastern Bosnia.”<sup>38</sup> Similarly, Sanski Most, Kotor Varoš and Prijedor were essential territories in relation to Strategic Objective Two: the “very important goal” of establishing an ethnically homogenous Serb corridor between Semberija and Krajina across northern Bosnia.<sup>39</sup> This corridor was aimed at linking Serb-claimed territories in the Republika Srpska (“RS”) to Serbia proper<sup>40</sup> and preventing the Muslim side from connecting its territories in that area.<sup>41</sup> Both Karadžić and Momčilo Krajišnik stressed, in particular, the strategic significance of Sanski Most and “the need to retain it.”<sup>42</sup>

15. The acts of destruction directed against the Count 1 Communities thus targeted parts of the Bosnian Muslim Group that were emblematic of the group as a whole and whose elimination from strategic territories represented powerful, early steps in the Bosnian Serb campaign towards an ethnically homogenous state. The process of destroying these prominent communities was therefore as demonstrative of the ultimate fate that awaited Bosnian Muslims in BiH as the acts targeting Srebrenica’s Bosnian Muslims.<sup>43</sup>

16. In light of all these factors, no reasonable trier of fact could have failed to conclude that the destruction of the Count 1 Communities would in each case have been significant enough to have an impact on the Bosnian Muslim Group as a whole—and consequently, that each of these communities constituted a substantial part of the Bosnian Muslim Group.

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<sup>35</sup> Judgement, para.3699.

<sup>36</sup> Judgement, para.3699. *Also* Judgement, para.2321; Exhs.P2210, para.3.0; P3071, pp.4-5; P7743, p.6.

<sup>37</sup> Judgement, para.4464.

<sup>38</sup> Judgement, para.3533.

<sup>39</sup> Judgement, para.3698.

<sup>40</sup> Judgement, para.3698. *Also* Judgement, paras.3532, 3534; V.Ubiparip:Exh.D891, para.17; Exhs.P2210, para.3.1; P178, pp.7-8.

<sup>41</sup> Exh.P1470, pp.3-4 *referenced at* Judgement, para.2376.

<sup>42</sup> Judgement, para.3530.

<sup>43</sup> *See* Judgement, para.3553.

### C. Remedy

17. The Appeals Chamber should correct the Chamber's errors and find that in each of the five Count 1 Municipalities the local perpetrators found to have destructive intent intended to destroy a substantial part of the Bosnian Muslim Group. As a consequence, the Appeals Chamber should find that these perpetrators had genocidal intent and accordingly conclude that these perpetrators committed genocide.

18. As set out in more detail below, together with the remedy requested under Ground 2, the Appeals Chamber should convict Mladić of genocide under Count 1 pursuant to JCE1.<sup>44</sup> Alternatively, if the Appeals Chamber finds that Mladić is not responsible for genocide under Count 1 pursuant to JCE1 as argued under Ground 2, it should apply the correct legal standard to the evidence and the Chamber's factual findings and find Mladić responsible for genocide pursuant to JCE3, or alternatively as a superior under Article 7(3) of the ICTY Statute.<sup>45</sup>

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<sup>44</sup> Below paras.43-44.

<sup>45</sup> Below paras.48-50.

### III. GROUND 2: MLADIĆ AND OTHER JCE MEMBERS POSSESSED DESTRUCTIVE INTENT

19. The Chamber's finding that Mladić and other members of the Overarching JCE did not possess destructive intent—and consequently that genocide did not form part of the common purpose—should be overturned. The Majority found that numerous local perpetrators<sup>46</sup> in the five Count 1 Municipalities—many of whom were Mladić's own VRS subordinates—possessed destructive intent based on their commission of genocidal and other culpable acts in the context of a broader pattern of crimes in their municipalities. The Chamber erroneously failed to reach the same conclusion regarding Mladić and other members of the Overarching JCE, even though its own findings demonstrate that the JCE members:

- orchestrated the criminal campaign across the Count 1 Municipalities and bear the greatest responsibility for the pattern of crimes;
- used the local perpetrators—including all the perpetrators whom the Majority found to have destructive intent—as tools to commit the underlying crimes in these municipalities;
- intended all the genocidal and other culpable acts carried out by all the local perpetrators whom the Majority found possessed destructive intent across all five Count 1 Municipalities; and
- made statements reflecting their destructive intent.

20. In finding that Mladić and other members of the Overarching JCE did not possess destructive intent, the Chamber committed the following errors:

- As set out in Sub-ground 2(a), the Chamber erred in law by applying an erroneously heightened evidentiary threshold when assessing whether Mladić and other JCE members possessed destructive intent. In particular, the Chamber incorrectly discounted the relevance of the underlying genocidal and other culpable acts merely

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<sup>46</sup> The Chamber referred to the local perpetrators found by the Majority to have destructive intent as “certain physical perpetrators”. Judgement, para.4236. However, as discussed below, some of these perpetrators did not physically commit any crimes. *Below* para.25. The Prosecution therefore uses the term “local perpetrators” rather than “physical perpetrators” to describe these individuals.

because Mladić and other JCE members acted through tools when committing these crimes, rather than physically committing the crimes themselves.

- Alternatively, or in addition to the legal error, as set out in Sub-ground 2(b), the Chamber erred in fact by failing to find that Mladić and other JCE members possessed destructive intent.

21. These errors led the Chamber to erroneously conclude that genocide did not form part of the common purpose of the Overarching JCE.

**A. Sub-ground 2(a): The Chamber erroneously applied a heightened evidentiary threshold when assessing the destructive intent of Mladić and other JCE members**

22. When assessing whether Mladić and other JCE members possessed destructive intent, the Chamber applied an erroneously heightened evidentiary threshold. Because Mladić and other JCE members were members of the “Bosnian-Serb leadership” who did not physically commit the crimes, the Chamber discounted the significance of the underlying crimes.<sup>47</sup> These underlying crimes were a sufficient evidentiary basis for the Majority to infer destructive intent on the part of certain local perpetrators. Yet, when it came to Mladić and other leadership figures, the Chamber held that it could not infer destructive intent on the basis of these underlying “prohibited acts of physical perpetrators alone”,<sup>48</sup> even though the JCE members used these local perpetrators as tools.<sup>49</sup> Instead, it required “more” evidence that “unambiguously” supported genocidal intent on the part of JCE members.<sup>50</sup> This was an error.

23. The accumulated criminal conduct from which the Majority inferred destructive intent on the part of local perpetrators was equally attributable to Mladić and other JCE members. The Majority’s destructive intent findings were based solely on the crimes committed in the Count 1 Municipalities. For each municipality, the Majority relied on the scale and intensity of the crimes, the systematic, organised and discriminatory nature of their commission, and the involvement of the local perpetrators in the pattern of crimes to infer the intent of these perpetrators.<sup>51</sup> It did not rely on any indicia of destructive intent that were not also

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<sup>47</sup> Judgement, para.4236.

<sup>48</sup> Judgement, para.4236.

<sup>49</sup> Judgement, para.4239.

<sup>50</sup> Judgement, para.4236.

<sup>51</sup> Judgement, paras.3511, 3513, 3515, 3519, 3524.

attributable to the JCE members, such as individualised statements by the local perpetrators reflecting destructive intent. Moreover, the JCE members were found to have committed the same pattern of crimes collectively committed by the local perpetrators. All local perpetrators whom the Majority found committed crimes with destructive intent were also found by the Chamber to have been tools the JCE members used to commit those very crimes.<sup>52</sup> In addition, the JCE members intended those crimes<sup>53</sup> and exercised overall control over the pattern of crimes in the Count 1 Municipalities.<sup>54</sup> In other words, the body of criminal conduct that the Majority used to infer the destructive intent of local perpetrators was equally attributable to the JCE members. Yet the Chamber held that it could not infer destructive intent on the part of JCE members from this body of criminal conduct absent additional, “unambiguous[]” evidence of destructive intent.<sup>55</sup>

24. The Chamber erred by imposing this categorical restriction on its ability to infer destructive intent on the part of JCE members from a pattern of crimes they committed. Such a restriction is not supported by any legal rule or precedent. Nor is there any basis in law or logic to discount the evidentiary weight of an underlying pattern of crimes simply because it is being used to assess the intent of a leadership figure who committed that broad pattern of crimes through the use of JCE tools. To the contrary, in this case, the pattern of crimes committed by JCE members through tools across the Count 1 Municipalities should have *greater* evidentiary value for assessing the destructive intent of Mladić and other JCE members than for assessing the intent of any of their tools. Genocidal intent—the intent to destroy a group in whole or in substantial part—must be directed at a large collection of victims; its *actus reus* typically involves large-scale criminality, and it did so in this case. In such a scenario, the inferences drawn from the large-scale organised commission of crimes in relation to the *mens rea* of leadership figures responsible for that large-scale criminality should logically be *stronger*, not *weaker*, than those drawn in relation to low-level

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<sup>52</sup> All the local perpetrators found to have destructive intent belonged to structures used by JCE members as tools to commit the underlying crimes, and all the genocidal and other culpable acts in which perpetrators with destructive intent participated across all five Count 1 Municipalities were within the scope of the common purpose. *Compare* Judgement, paras.3510-3511, 3513-3524 (identifying the perpetrators with destructive intent) *with* paras.4232, 4239, 4685, 4688 (holding that persecution, extermination, murder, forcible transfer and deportation were all within the scope of the common purpose and identifying the structures used as tools to commit these crimes, which included the VRS, the MUP and forces acting under their authority). All of the named perpetrators found to have destructive intent were members of the VRS or MUP, or acting under their authority. *See* Judgement, paras.629, 774, 1036, 1062, 3287(c), 3510-3511, 3513-3515, 3517-3519, 3524. Their crimes were therefore attributed to and committed by the JCE members. *See* Judgement, para.4239.

<sup>53</sup> Judgement, paras.4232, 4688.

<sup>54</sup> *Below* paras.30-36.

<sup>55</sup> Judgement, para.4236.

perpetrators responsible for only a small fraction of that criminal conduct and who had limited ability to steer the overall pattern of crimes. For the Chamber, however, it was the other way around.

25. Furthermore, some of the so-called physical perpetrators whom the Majority found possessed destructive intent were in fact mid- and low-level commanders who never physically committed any crimes themselves but instead exercised authority over physical perpetrators.<sup>56</sup> The Majority was able to infer the destructive intent of these commanders on the basis of their authority over certain physical perpetrators. But for JCE members, the Chamber instead applied a categorical rule by which it required “more” evidence that “unambiguously” supported genocidal intent.<sup>57</sup> It did this even though its own findings demonstrate that the JCE members exercised greater authority—over a larger number of physical perpetrators and in relation to a much broader array of crimes—than any of the non-physical perpetrators found to have destructive intent.<sup>58</sup> The disparate treatment of these mid- and low-level commanders on the one hand, and Mladić and other JCE members on the other, underlines the arbitrary—and erroneous—nature of the Chamber’s heightened evidentiary standard.

#### **B. Sub-ground 2(b): Mladić and other JCE members possessed destructive intent**

26. The genocidal and other culpable acts in the Count 1 Municipalities that the Majority used to infer the destructive intent of local perpetrators were in every relevant respect—their scale, timing and geographic distribution—orchestrated by members of the JCE who controlled the overall course of the criminal campaign. It was unreasonable for the Majority to find that the pattern of crimes in individual Count 1 Municipalities supported findings of destructive intent on the part of local perpetrators, but then for the Chamber to unanimously conclude that those most responsible for the pattern across all Count 1 Municipalities—the JCE members—did not have destructive intent.

27. In particular, the Majority inferred destructive intent of local perpetrators based on the intensity of the crimes targeting the Count 1 Communities, their organised and systematic nature and the involvement of local perpetrators. Yet, as found by the Chamber, it was Mladić and other JCE members who:

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<sup>56</sup> Non-physical perpetrators who possessed destructive intent include Dušan Novaković, Slobodan Župljanin, Marko Kovač and Mane Đurić. *See* Judgement, paras.3510-3511, 3514-3519.

- orchestrated the criminal campaign across the Count 1 Municipalities and controlled its implementation;
- used the local perpetrators—including all perpetrators found to have destructive intent—as tools to commit the underlying crimes;
- intended and were responsible for committing far more genocidal and other culpable acts than any individual perpetrator found to have destructive intent; and
- made statements that directly reflected their destructive intent towards Bosnian Muslims.

1. The Majority's analysis of the destructive intent of local perpetrators compels the finding that Mladić and other JCE members who controlled the criminal campaign shared destructive intent

28. The JCE members pursued the common purpose of the Overarching JCE through crimes which devastated Bosnian Muslim communities throughout BiH. The scale,<sup>59</sup> systematic nature,<sup>60</sup> and temporal and geographic proximity<sup>61</sup> of crimes against the Count 1 Communities led the Majority to correctly conclude that local perpetrators intended to destroy these communities as parts of the protected group. No reasonable trier of fact could have found that local perpetrators possessed destructive intent based on the scale and nature of the crimes in the Count 1 Municipalities, but that Mladić and other JCE members did not. The JCE members committed far more crimes than any individual local perpetrator. Their crimes spanned all five Count 1 Municipalities. And they controlled the overall pattern of crimes across these municipalities.

(a) The scale of genocidal acts committed by the JCE members far exceeded that of any perpetrator whom the Majority found possessed destructive intent

29. Mladić and the other JCE members are responsible under JCE1 for all the underlying genocidal and other culpable acts committed by their tools across all five Count 1

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<sup>57</sup> Judgement, para.4236.

<sup>58</sup> Below paras.28-36.

<sup>59</sup> Judgement, paras.3511, 3513, 3515, 3519, 3524.

<sup>60</sup> Judgement, paras.3515, 3519.

<sup>61</sup> Judgement, paras.3515, 3519, 3524.

Municipalities. They deliberately employed these crimes in pursuit of their shared common purpose.<sup>62</sup> Without Mladić's contributions, "the crimes would not have been committed as they were."<sup>63</sup> While almost every local perpetrator the Majority found possessed destructive intent operated in a single municipality,<sup>64</sup> the JCE members committed—and intended—all the genocidal and other culpable acts of *all* these local perpetrators across *all* the Count 1 Municipalities.<sup>65</sup> The JCE members also committed and intended an additional array of genocidal and other culpable acts in the Count 1 Municipalities carried out by unidentified VRS and Crisis Staff members whose destructive intent the Majority was unable to assess.<sup>66</sup> The scale of the JCE members' criminal responsibility across the Count 1 Municipalities—a factor relevant to determining their destructive intent<sup>67</sup>—is far greater than that of any individual perpetrator found to possess destructive intent.

(b) In contrast to local perpetrators found to possess destructive intent, the JCE members controlled the overall pattern of crimes

30. The Majority's findings on the destructive intent of local perpetrators are grounded on the pattern of crimes in their respective municipalities and the local perpetrators' involvement in implementing that pattern.<sup>68</sup> Yet it was Mladić and other JCE members who were responsible for the pattern itself—for planning, implementing and committing through a common criminal purpose the widespread and systematic campaign of crimes that was carried out in a coordinated fashion by military, police and civilian authorities.<sup>69</sup> It was unreasonable for the Majority to ground its destructive intent findings on this pattern of crimes, but for the Chamber to unanimously conclude that this pattern did not support destructive intent on the part of the architects of that pattern.

31. The Chamber appeared to justify its differential treatment of intent in relation to local perpetrators versus JCE members on the basis that the former group physically participated in genocidal and other culpable acts, while the latter did not. This is not only flawed in

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<sup>62</sup> See Judgement, paras.4232, 4239, 4685, 4688.

<sup>63</sup> Judgement, para.4612.

<sup>64</sup> The only exception is the 6<sup>th</sup> Krajina Brigade commanded by Branko Basara, which operated in the municipalities of Sanski Most and Prijedor. See Judgement, paras.3513, 3524.

<sup>65</sup> All the local perpetrators found to have destructive intent were used by JCE members as tools to commit the underlying crimes, and all the genocidal and other culpable acts in which perpetrators with destructive intent participated across all five Count 1 Municipalities were within the scope of the common purpose. *Above* fn.52.

<sup>66</sup> See Judgement, paras.3512, 3525, 4239.

<sup>67</sup> *Jelisić* AJ, para.47.

<sup>68</sup> *Above* para.23.

<sup>69</sup> *Below* paras.32-36.

principle,<sup>70</sup> it is also misconceived in that some of these so-called physical perpetrators were mid- and low-level commanders who did not physically commit any crimes.<sup>71</sup> They were found to have destructive intent even though none of them exercised the degree of control that JCE members exercised over the structures through which the crimes were committed,<sup>72</sup> had the JCE members' ability to control the overall pattern of crimes,<sup>73</sup> or were found to have used the physical perpetrators to commit every crime underlying the Majority's destructive intent findings in furtherance of the Overarching JCE.<sup>74</sup> The disparate treatment of these mid- and low-level commanders on the one hand, and the JCE members on the other, highlights the unreasonableness of the Chamber's conclusion on the intent of the JCE members.

(i) JCE members planned and prepared for the campaign of crimes in the Count 1 Municipalities

32. The JCE members' responsibility for and control over the pattern of crimes in the Count 1 Municipalities is demonstrated in the first place by the Chamber's findings on their careful advance planning and preparation of the structures and methods they would later use to implement the Overarching JCE.

- Karadžić began preparing for the takeover of Serb-claimed territory as early as April 1991<sup>75</sup> and was "threaten[ing] violence and extinction" as a means to achieve it by October 1991.<sup>76</sup> "In doing so, Karadžić repeatedly referred to, *inter alia*, the 'expulsion', 'disappearance' and 'extinction' of the Bosnian Muslims within this territory."<sup>77</sup>
- As part of these preparations, in the months prior to the outbreak of the conflict, JCE members began establishing the parallel Bosnian Serb structures they needed to implement their ethnic division objective.<sup>78</sup>

<sup>70</sup> Above Sub-ground 2(a).

<sup>71</sup> Above para.25.

<sup>72</sup> Below para.36. Also Judgement, paras.104, 106, 341-342, 4225, 4385-4394, 4612.

<sup>73</sup> Below paras.32-36.

<sup>74</sup> The perpetration of underlying genocidal and other culpable acts pursuant to a plan or policy may serve as a factor from which genocidal intent is inferred. See *Jelišić* AJ, para.48; *Karadžić 98bis* AJ, para.80; *Krstić* TJ, para.572; *Tolimir* TJ, para.745; *Tolimir* AJ, para.252.

<sup>75</sup> Judgement, para.3669.

<sup>76</sup> Judgement, paras.3610, 3669.

<sup>77</sup> Judgement, para.3669.

<sup>78</sup> Judgement, paras.3668, 3674-3675, 3690, 4219, 4221.

- In December 1991, the Bosnian Serb leadership issued detailed instructions (“Variant A/B Instructions”) for the “takeover of *de facto* power in the municipalities and the division of Bosnia-Herzegovina along ethnic lines”, including the creation of an elaborate command apparatus linking the Bosnian Serb leadership to Bosnian Serb officials in each municipality.<sup>79</sup> Thereafter, Bosnian Serb political, military and police structures became closely intertwined,<sup>80</sup> particularly in the Count 1 Municipalities.<sup>81</sup>

(ii) JCE members controlled and furthered the implementation of the campaign of crimes in the Count 1 Municipalities

33. Following their extensive preparations, as found by the Chamber, the JCE members unleashed their criminal campaign in a coordinated fashion, then controlled its implementation. This further demonstrates their control over, and responsibility for, the ensuing pattern of crimes in the Count 1 Municipalities.

34. Karadžić triggered the Serb seizure of power with the activation of the second phase of the Variant A/B Instructions on 14 February 1992,<sup>82</sup> causing SDS crisis staffs to transform into municipal organs exercising governmental functions.<sup>83</sup> On 12 May 1992—the day Mladić was appointed chief of the VRS Main Staff—the Bosnian Serb leadership committed to “the separation of people along ethnic lines [...] by ‘whatever means’” necessary.<sup>84</sup>

35. Violent attacks in the Count 1 Municipalities, including the widespread commission of genocidal and other culpable acts, followed almost immediately.<sup>85</sup> JCE members used VRS forces, MUP units and regional and municipal authorities as tools to perpetrate an organised and coordinated campaign of crimes that followed a similar pattern across the Count 1 Municipalities.<sup>86</sup> Mladić and Karadžić furthered the campaign by spreading misinformation, deliberately misleading international observers in an effort to cover up horrific crimes by forces under their control<sup>87</sup> and failing to take appropriate steps to

<sup>79</sup> Judgement, paras.87-88, 3689-3690.

<sup>80</sup> See Judgement, paras.88-89, 3980, 3982-3983.

<sup>81</sup> See Judgement, paras.3982-3983.

<sup>82</sup> See Judgement, paras.3690, 4221.

<sup>83</sup> Judgement, para.87.

<sup>84</sup> Judgement, para.3708. Also Judgement, para.3703 citing Exh.P431, p.28.

<sup>85</sup> See Judgement, paras.3464, 3473, 3479, 3496, 3502, 3510, 3513-3514, 3516-3523.

<sup>86</sup> Judgement, paras.3036-3039, 3041, 3045, 3459-3464, 3470-3502, 3510, 3513-3524, 3819, 3824, 3982-3983. Also above fn.52.

<sup>87</sup> See Judgement, paras.4058-4059, 4065, 4067, 4224, 4512, 4611.

investigate or punish crimes.<sup>88</sup> Nearly all the genocidal and other culpable acts in the Count 1 Municipalities were committed over the course of a few months.<sup>89</sup>

36. The Chamber's findings demonstrate that, throughout the campaign, Mladić and other JCE members controlled both the forces committing the underlying crimes and the course of the campaign itself. JCE members set the republic-level policies and strategies for achieving their ethnic separation objective.<sup>90</sup> Mladić exercised a "very high level of command and control over VRS subordinates",<sup>91</sup> including those who committed genocidal and other culpable acts with destructive intent. He demanded "absolute obedience" from the moment he was appointed to lead the VRS<sup>92</sup> and exercised his authority by issuing orders to VRS units and closely monitoring the criminal campaign.<sup>93</sup> Without Mladić's contributions to the common purpose, "the crimes would not have been committed as they were."<sup>94</sup> As RS President and Supreme Commander of the VRS, Karadžić controlled the entire RS military and political structure.<sup>95</sup> JCE member Mićo Stanišić exercised "exclusive authority" over the MUP's security-related operations.<sup>96</sup>

## 2. Mladić and other JCE members made public statements reflecting an intent to destroy Bosnian Muslims

37. Mladić and other JCE members, acting through tools, committed the same crimes the Majority found demonstrated the destructive intent of local perpetrators, while also making statements reflective of such destructive intent. Given that the Majority found the commission of "prohibited acts [...] alone" sufficient to infer the destructive intent of local perpetrators,<sup>97</sup> the commission of those same prohibited acts together with explicit expressions of genocidal intent clearly demonstrates the destructive intent of leadership figures. The Chamber unreasonably concluded otherwise. It held that statements of Mladić and other JCE members—portraying Bosnian Muslims as genocidal enemies of the Serbs and calling for their destruction and disappearance—did not reflect genocidal intent because they

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<sup>88</sup> Judgement, para.4546.

<sup>89</sup> Judgement, paras.3510-3511, 3513-3524 (describing genocidal and other culpable acts, the vast majority of which were committed between May and August 1992, and nearly all by November 1992).

<sup>90</sup> Judgement, paras.3708, 4219-4223, 4238-4239.

<sup>91</sup> Judgement, para.4391.

<sup>92</sup> Judgement, paras.4329, 4390.

<sup>93</sup> See Judgement, para.4393.

<sup>94</sup> Judgement, para.4612.

<sup>95</sup> Judgement, paras.29-31, 104, 265, 341.

<sup>96</sup> Judgement, paras.338, 341.

<sup>97</sup> Above para.22. Also Judgement, para.4236.

“assisted in the task of ethnic separation and division rather than the physical destruction of the protected groups”.<sup>98</sup>

(a) JCE members painted Bosnian Muslims as genocidal enemies and called for their disappearance and destruction

38. The Chamber found that Mladić used propaganda to “engender in Bosnian Serbs fear and hatred towards Bosnian Muslims”.<sup>99</sup> He labelled Muslims “the worst scum”<sup>100</sup> and portrayed them as historic enemies who “betrayed the Serb people and repressed them for 500 years”,<sup>101</sup> committed genocide against Serbs during WWII<sup>102</sup> and were intent on repeating those crimes in the imminent future.<sup>103</sup> He called on Serbs “to take all available measures to defend ourselves from genocidal intentions and actions of our enemies”<sup>104</sup> and expressed his commitment to make non-Serbs “vanish completely”.<sup>105</sup> Soon after the genocidal campaign reached its apex in Prijedor—where the Chamber found that forces under the command of JCE members systematically attacked and destroyed Muslim settlements across the municipality, killing hundreds of civilians and detaining thousands more in abysmal conditions before expelling nearly all the rest<sup>106</sup>—Mladić visited the area for a session of the RS Assembly and publicly applauded their efforts.<sup>107</sup>

39. As the Chamber found, Mladić’s co-JCE member and Supreme Commander Karadžić repeatedly threatened the destruction of the Bosnian Muslim population.<sup>108</sup> By October 1991, Karadžić was already foreshadowing that “hundreds of thousands” of Bosnian Muslims would “disappear”,<sup>109</sup> that war would lead to their “extinction”<sup>110</sup> and that Serbs “would destroy them completely.”<sup>111</sup> Karadžić warned that the Muslims were “merciless” towards Bosnian Serbs and called on Serbs to behave reciprocally.<sup>112</sup> In the midst of the ongoing

<sup>98</sup> Judgement, para.4235.

<sup>99</sup> Judgement, para.4500.

<sup>100</sup> Judgement, para.4499. *Also* Judgement, para.4484 *citing* Exh.P7719.

<sup>101</sup> Judgement, paras.4498-4499. *Also* Judgement, para.4484 *citing* Exh.P7719. *Further* Exh.P431, pp.37, 41.

<sup>102</sup> Judgement, para.4499. *Also* Judgement, para.4482 *citing* Exh.P7391. *Further* Exh.P1973, p.4.

<sup>103</sup> Judgement, para.4486. *Also* Exhs.P1966, p.3; P1968, p.2.

<sup>104</sup> Exh.P1966, p.3 *referenced at* Judgement, para.4481. *Also* Exhs.P474, p.1; P2913, p.2.

<sup>105</sup> Judgement, para.4468 *citing* Exh.P3076, p.20.

<sup>106</sup> Judgement, paras.1036-1037, 1040, 1049, 1053, 1059-1062, 1072, 1082-1087, 1091, 1100, 1121, 1140-1144, 1157, 1175, 1231-1236, 1322-1325, 1329, 1449.

<sup>107</sup> Exh.P7629, pp.2-3.

<sup>108</sup> Judgement, paras.3669-3671.

<sup>109</sup> Judgement, para.3603 *citing* Exh.P4109, p.7. *Also* Exh.P4110, p.3.

<sup>110</sup> Judgement, para.3610 *citing* Exh.P2654, p.6. *Also* Exh.P2004, p.3 *referenced at* Judgement, para.3609.

<sup>111</sup> Judgement, para.3610 *citing* Exh.P2654, p.6.

<sup>112</sup> Judgement, para.3620 *citing* Exh.P2005.

widespread commission of genocidal acts in the Count 1 Municipalities, Karadžić proclaimed that Muslims were “vanishing”.<sup>113</sup>

(b) The Chamber unreasonably concluded that JCE members’ statements were aimed only at ethnic separation and division

40. The Chamber found that such speeches and statements by Mladić and other JCE members “were inflammatory, caused fear, and incited ethnic hatred.”<sup>114</sup> However, it concluded that these statements “could have been directed to the military enemy and have been used as propaganda, rather than to demonstrate an expression of a genocidal intent.”<sup>115</sup> This is not a reasonable finding in light of the Chamber’s conclusion that the JCE members deliberately employed an intensely violent pattern of crimes against the Count 1 Communities—a pattern that the Majority found reflected destructive intent on the part of certain tools of the JCE. Likewise, it is beside the point that the record reveals “instances where Mladić, Koljević and Karadžić intimated that conciliation and compromise were possible” in pursuit of their ethnic separation goal.<sup>116</sup> The Chamber found that the JCE members did not in fact compromise, but rather committed themselves to “the separation of people along ethnic lines [...] by ‘whatever means’” necessary<sup>117</sup> and deliberately implemented an intensely violent campaign to achieve it. The Chamber’s ultimate conclusion on these statements of JCE members—that they “assisted in the task of ethnic separation and division rather than the physical destruction of the protected groups”<sup>118</sup>—is unreasonable because it cannot be reconciled with the Majority’s finding that the manner in which that ethnic separation was implemented on the ground in the Count 1 Municipalities reflected destructive intent on the part of local perpetrators. In other words, in those municipalities, statements that assisted in ethnic separation likewise assisted in destruction of the targeted communities.

41. The JCE members’ calls for the disappearance and destruction of a group that they portrayed as a historic, genocidal enemy must be interpreted in light of the actions they orchestrated on the ground: committing thousands of genocidal acts across five different municipalities through the use of their tools. Both their pattern of crimes and their statements

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<sup>113</sup> Exh.P4581, p.86 (25-26 July 1992 Karadžić RS Assembly speech) *referenced at* Judgement, para.3716.

<sup>114</sup> Judgement, para.4235.

<sup>115</sup> Judgement, para.4235.

<sup>116</sup> Judgement, para.4235.

<sup>117</sup> Judgement, para.3708. *Also* Judgement, para.3703 *citing* Exh.P431, p.28.

<sup>118</sup> Judgement, para.4235.

reflect destructive intent. When assessed together, there is only one reasonable conclusion: Mladić and other JCE members acted with destructive intent towards the Count 1 Communities. The Chamber erred in finding otherwise.

### **C. Remedy**

42. The Appeals Chamber should find that Mladić and other JCE members intended to destroy the Bosnian Muslim communities in the Count 1 Municipalities. As set out in more detail below,<sup>119</sup> the Appeals Chamber should further find that Mladić and other JCE members possessed and shared genocidal intent and that genocide formed part of the common purpose of the Overarching JCE. The Appeals Chamber should accordingly convict Mladić of genocide under Count 1 pursuant to JCE1.

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<sup>119</sup> Below paras.43-47.

## IV. COMBINED REMEDY FOR GROUNDS 1 AND 2

### A. Mladić is responsible for genocide under JCE1

43. The Appeals Chamber should correct the Chamber's errors identified under Ground 2 and find that Mladić and other members of the Overarching JCE intended to destroy the Bosnian Muslims in the five Count 1 Municipalities.

#### 1. Mladić and other JCE members possessed genocidal intent in relation to each of the Count 1 Communities considered individually

44. Together with the remedy requested under Ground 1, the Appeals Chamber should find that Mladić and other JCE members possessed and shared genocidal intent in relation to the Bosnian Muslims in one or more of the five Count 1 Municipalities considered individually and, consequently, that genocide formed part of the common purpose of the Overarching JCE. The Appeals Chamber should accordingly convict Mladić of genocide under Count 1 pursuant to JCE1.

#### 2. Alternatively, Mladić and other JCE members possessed genocidal intent in relation to two or more of the Count 1 Communities considered cumulatively

45. Alternatively, if the Appeals Chamber declines to grant the remedy requested under Ground 1, the Appeals Chamber should find that the Bosnian Muslims in two or more of the Count 1 Municipalities—considered cumulatively—constituted a substantial part of the Bosnian Muslim Group. As discussed above, the Bosnian Muslim community in each of the Count 1 Municipalities comprised many thousands of Bosnian Muslims,<sup>120</sup> and each community was prominent within and emblematic of the Bosnian Muslim Group.<sup>121</sup> When two or more of these communities are aggregated, the correspondingly larger numerical part of the Bosnian Muslim Group unquestionably comprised a substantial part of the Group.<sup>122</sup> Moreover, combining these communities for the purpose of assessing the intent of JCE members is logical. In contrast to the local perpetrators found to have destructive intent in their respective municipalities, Mladić and other JCE members intended to destroy all five of the Count 1 Communities. Both the scope of their authority, control and activity, as well as

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<sup>120</sup> Above paras.8-9.

<sup>121</sup> Above paras.11-16.

<sup>122</sup> Considered cumulatively, the Bosnian Muslim population in the Count 1 Municipalities was 128,443—constituting approximately 6.7% of the Bosnian Muslim Group. See Judgement, paras.3529-3534.

their calls for the destruction and disappearance of the Bosnian Muslim people, extended to the Bosnian Muslim communities in all five Count 1 Municipalities.

46. Aggregating the Count 1 Municipalities for substantiality purposes is appropriate.<sup>123</sup> The key consideration in assessing substantiality is whether the part is significant enough to have an impact on the group as a whole.<sup>124</sup> That the targeted part consisted of multiple communities interspersed throughout a larger area rather than constituting a single geographic area<sup>125</sup> has, at most, a limited bearing on this impact analysis.

47. The Appeals Chamber should find therefore that Mladić and other JCE members possessed and shared genocidal intent in relation to all five—or alternatively two or more—of the Count 1 Communities as a substantial part of the Bosnian Muslim Group. The Appeals Chamber should consequently conclude that genocide formed part of the common purpose of the Overarching JCE and accordingly convict Mladić of genocide under Count 1 pursuant to JCE1.

**B. Alternatively, Mladić is responsible for genocide under JCE3 or as a superior under Article 7(3)**

48. If the Appeals Chamber declines to grant the remedy requested under Ground 2, it should nevertheless correct the errors identified under Ground 1. Applying the correct legal standard to the evidence, the Appeals Chamber should convict Mladić for genocide under JCE3, or alternatively as a superior under Article 7(3), for acts of genocide carried out by local perpetrators whom the Majority found acted with destructive intent.

1. Mladić is responsible for genocide under JCE3

49. Mladić should be convicted for genocide under JCE3. The organised and intensely violent pattern of crimes in the Count 1 Municipalities demonstrates that genocide was an objectively foreseeable consequence of the implementation of the common purpose.<sup>126</sup> In addition, Mladić was aware that genocide might be committed in the implementation of the common purpose of the Overarching JCE, and yet he willingly accepted this risk by

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<sup>123</sup> The *Karadžić* Trial Chamber assessed genocidal intent in relation to a similar aggregation of municipalities. See *Karadžić* TJ, para.2594.

<sup>124</sup> *Above* para.5.

<sup>125</sup> While the Count 1 Municipalities are not all geographically contiguous, Prijedor and Sanski Most are. See Exh.P178, p.3.

<sup>126</sup> See *Karadžić* JCE3 Decision, para.15 citing *Brdanin* AJ, para.411.

continuing to contribute to this purpose.<sup>127</sup> The Chamber found that Mladić knew that the crimes constituting genocidal and other culpable acts were being committed on a large-scale across the Count 1 Municipalities.<sup>128</sup> And it found that he intended the underlying crimes that the Majority relied on to infer the destructive intent of local perpetrators.<sup>129</sup> As the Chamber found, Mladić played a key role in steering the violent, persecutory campaign targeting members of the Bosnian Muslim Group that formed part of the common purpose of the Overarching JCE.<sup>130</sup> And Mladić deployed the Bosnian Serbs' propaganda machinery to engender in Bosnian Serbs fear and hatred of Bosnian Muslims.<sup>131</sup> This is more than sufficient to have alerted Mladić to the risk that tools used to implement the common purpose might act with genocidal intent.

## 2. Mladić is responsible for genocide as a superior under Article 7(3)

50. Mladić is responsible for genocide as a superior under Article 7(3) of the ICTY Statute for genocidal acts carried out by perpetrators operating under VRS command.<sup>132</sup> The Chamber's own findings establish the elements of Article 7(3) liability. As the commander of the VRS Main Staff, Mladić exercised effective control over all VRS perpetrators who were responsible for genocide.<sup>133</sup> Mladić possessed the requisite awareness triggering his duty as a superior both to prevent his subordinates from committing genocide and to punish them afterwards. As detailed above,<sup>134</sup> he had actual knowledge of—and intended—the widespread commission of the crimes constituting underlying acts of genocide and other culpable acts by his subordinates and played a key role in steering the persecutory campaign of which these acts formed part. Mladić was therefore well-aware of the risk that his subordinates might commit, or might have committed, genocide.<sup>135</sup> Despite his obligation to take necessary and reasonable measures to prevent his subordinates from committing genocide and punish them afterwards, Mladić failed to fulfil either obligation.<sup>136</sup>

Word Count: 8,088

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<sup>127</sup> See *Karadžić* JCE3 Decision, para.15 citing *Brdanin* AJ, para.411.

<sup>128</sup> See Judgement, para.4685.

<sup>129</sup> As noted above, all the local perpetrators found to have destructive intent were used by JCE members as tools to commit the underlying crimes, and all those crimes formed part of the common purpose. *Above* fn.52.

<sup>130</sup> See Judgement, para.4612.

<sup>131</sup> Judgement, para.4500. *Also above* para.38.

<sup>132</sup> Numerous perpetrators found to have acted with destructive intent were operating under VRS command. See Judgement, paras.3510-3511, 3513-3515, 3524.

<sup>133</sup> Judgement, paras.4383, 4390-4391, 4393, 4544-4545. See *Čelebići* AJ, para.256; *Halilović* AJ, para.59.

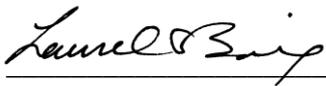
<sup>134</sup> *Above* para.49.

<sup>135</sup> See *Hadžihasanović* AJ, para.27; *Strugar* AJ, para.304; *Karemera* AJ, para.307.

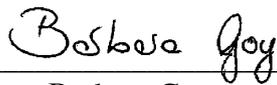
<sup>136</sup> Judgement, paras.4545-4546. See *Halilović* AJ, para.63.

**DECLARATION PURSUANT TO RULE 138(B)**

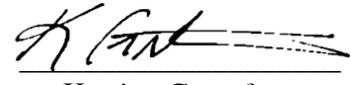
The Prosecutor will exercise due diligence to comply with his continuing Rule 73 disclosure obligations during the appeal stage of this case. As of the date of this filing, the Prosecutor has disclosed to Mladić all material under Rule 73(A) which has come into the Prosecutor’s actual knowledge and, 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 6<sup>th</sup> day of August 2018  
At The Hague, The Netherlands

## V. GLOSSARY

### *Pleadings, Orders, Decisions etc. from Prosecutor v. Ratko Mladić, Case No. IT-09-92*

<b>Abbreviation used in Prosecution Appeal Brief</b>	<b>Full citation</b>
Chamber	Trial Chamber in <i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T
Judgement	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Judgement, 22 November 2017
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, Annex A

### *Other ICTY authorities*

<b>Abbreviation used in Prosecution Appeal Brief</b>	<b>Full citation</b>
<i>Blagojević TJ</i>	<i>Prosecutor v. Vidoje Blagojević &amp; Dragan Jokić</i> , Case No. IT-02-60-T, T.Ch., Judgement, 17 January 2005
<i>Brdanin AJ</i>	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007
<i>Brdanin TJ</i>	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, T.Ch., Judgement, 1 September 2004
<i>Čelebići AJ</i>	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić &amp; Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
<i>Hadžihasanović AJ</i>	<i>Prosecutor v. Enver Hadžihasanović &amp; Amir Kubura</i> , Case No. IT-01-47-A, App.Ch., Judgement, 22 April 2008
<i>Halilović AJ</i>	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, App.Ch., Judgement, 16 October 2007
<i>Jelisić AJ</i>	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, App.Ch., Judgement, 5 July 2001

<b>Abbreviation used in Prosecution Appeal Brief</b>	<b>Full citation</b>
<i>Jelisić</i> TJ	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, T.Ch., Judgement, 14 December 1999
<i>Karadžić 98bis</i> AJ	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR98bis.1, App.Ch., Judgement, 11 July 2013
<i>Karadžić</i> JCE3 Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR72.4, App.Ch., Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability, 25 June 2009
<i>Karadžić</i> TJ	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Judgement, 24 March 2016
<i>Krstić</i> AJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, App.Ch., Judgement, 19 April 2004
<i>Krstić</i> TJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, T.Ch., Judgement, 2 August 2001
<i>Sikirica</i> Judgement on Acquittal Motions	<i>Prosecutor v. Duško Sikirica, Damir Došen &amp; Dragan Kolundžija</i> , Case No. IT-95-8-T, T.Ch., Judgement on Defence Motions to Acquit, 3 September 2001
<i>Stakić</i> TJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, T.Ch., Judgement, 31 July 2003
<i>Strugar</i> AJ	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, App.Ch., Judgement, 17 July 2008
<i>Tolimir</i> AJ	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-A, App.Ch., Judgement, 8 April 2015
<i>Tolimir</i> TJ	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-T, T.Ch., Judgement, 12 December 2012

**ICTR authorities**

<b>Abbreviation used in Prosecution Appeal Brief</b>	<b>Full citation</b>
<i>Karempera</i> AJ	<i>Édouard Karempera &amp; Matthieu Ngirumpatse v. Prosecutor</i> , Case No. ICTR-98-44-A, App.Ch., Judgement, 29 September 2014

**General Sources**

<b>Abbreviation used in Prosecution Appeal Brief</b>	<b>Full citation</b>
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 U.N.T.S. 277 (entered into force 12 January 1951)

**Other Abbreviations**

<b>Abbreviation used in Prosecution Appeal Brief</b>	<b>Full citation</b>
BiH	Socialist Federal Republic of Bosnia and Herzegovina (later, Republic of Bosnia and Herzegovina)
Bosnian Muslim Group	Bosnian Muslims of Bosnia and Herzegovina
Count 1 Communities	The Bosnian Muslim communities of Foča, Kotor Varoš, Prijedor, Sanski Most and Vlasenica
Count 1 Municipalities	Foča, Kotor Varoš, Prijedor, Sanski Most and Vlasenica
Exh.	Exhibit
Exhs.	Exhibits
fn.	footnote
ICTY Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the United Nations Security Council Resolution 827 (1993)
JCE	Joint criminal enterprise
JCE1	First category of joint criminal enterprise
JCE3	Third category of joint criminal enterprise

<b>Abbreviation used in Prosecution Appeal Brief</b>	<b>Full citation</b>
Mechanism Statute	Statute of the International Residual Mechanism for Criminal Tribunals established by the United Nations Security Council Resolution 1966 (2010)
MUP	Ministry of Interior
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
RS	<i>Republika Srpska</i> (before 12 August 1992, named Serbian Republic of Bosnia and Herzegovina)
SDS	Serb Democratic Party
Six Strategic Objectives	A list of six objectives presented by Radovan Karadžić at the 16 <sup>th</sup> Session of the RS Assembly on 12 May 1992
T.	Trial Transcript
UN	United Nations
Variant A/B Instructions	Instructions for the Organisation and Activity of Organs of the Serbian People in BiH in a State of Emergency, 19 December 1991 ( <i>see e.g.</i> Exh.P3038).
VRS	Army of Republika Srpska
WWII	World War II



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