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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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

APPEALS CHAMBER

The Hague, 9 May 2007

SUMMARY OF APPEALS JUDGEMENT FOR VIDOJE BLAGOJEVIĆ AND DRAGAN JOKIĆ

Please find below the summary of the judgement today read out by President Pocar:

Following the practice of the International Tribunal, I will not read out the text of the Judgement except for the Disposition. Instead, I will summarise the issues raised in this appeal and the findings of the Appeals Chamber. I emphasise that this summary is not part of the written Judgement, which is the only authoritative account of the Appeals Chamber's rulings and reasons. Copies of the written Judgement will be made available to the parties at the conclusion of this hearing.

The events giving rise to these appeals took place in the immediate aftermath of the take-over of the Srebrenica "safe area" by the Army of the Republika Srpska which I will subsequently refer to as the VRS. Srebrenica, a predominantly Muslim municipality before the war, is in eastern Bosnia and Herzegovina near the border with Serbia. On 16 April 1993, the United Nations Security Council declared it a "safe area which should be free from any armed attack or any other hostile act." Between 6 and 11 July 1995, the VRS attacked and gained control of Srebrenica. In the following days, various elements of the VRS detained and killed thousands of Bosnian Muslim men, while transporting the women, children, and elderly out of Srebrenica on buses. This case has focused primarily on the role played in these events by the Bratunac and Zvornik Brigades of the Drina Corps of the VRS and, in particular, by two of their respective officers at the time, Colonel Vidoje Blagojević and Major Dragan Jokić.

Mr. Vidoje Blagojević commanded the Bratunac Brigade in July 1995. Based on his actions as well as those of the Bratunac Brigade in the events following the fall of Srebrenica, the Trial Chamber convicted Mr. Blagojević under Article 7(1) of the Statute for complicity in genocide (Count 1B); aiding and abetting murder as a violation of the laws or customs of war (Count 4); and aiding and abetting murder (Count 3), persecutions (Count 5), and other inhumane acts (forcible transfer) (Count 6) as crimes against humanity. The Trial Chamber sentenced Mr. Blagojević to a single sentence of imprisonment for 18 years.

Mr. Dragan Jokić held the position of Chief of Engineering of the Zvornik Brigade, in July 1995, with the rank of major. Based on his actions as well as those of the Zvornik Brigade in the events following the fall of Srebrenica, the Trial Chamber convicted Mr. Jokić under Article 7(1) of the Statute for aiding and abetting murder as a violation of the laws or customs of war (Count 4); and of aiding and abetting extermination (Count 2) and persecutions through murder (Count 5) as crimes against humanity. The Trial Chamber sentenced Mr. Jokić to a single sentence of imprisonment for 9 years.

I will now address the grounds of appeal in turn, beginning with Mr. Blagojević who brings 8 grounds of appeal. I will then address Mr. Jokić's 7 grounds of appeal and finally the Prosecution's ground of appeal concerning the corroboration of testimony under Rule 92bis (D) followed by its grounds of appeal in relation to Mr. Blagojević and Mr. Jokić. Lastly, I will address the Prosecution's grounds of appeal on sentencing in relation to both accused and the impact of the Appeals Chamber's findings on sentencing, which will be followed by a reading of the Disposition of the Judgement.

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In Ground 1, Mr. Blagojević alleges that his trial was not fair because he was denied the right to counsel of his choice, the right to competent counsel, and the right to appear as a witness in his own trial. He requests the Appeals Chamber to grant him a new trial to rectify these alleged violations.

The origin of these complaints involves a dispute between Mr. Blagojević and his assigned counsel which led to a breakdown in trust and communication, ultimately pervading the entire trial. The Appeals Chamber considered many of the issues raised by Mr. Blagojević on the composition and competence of his defence team when it dismissed his interlocutory appeal at the outset of trial. Therefore, in assessing the alleged violations under this ground of appeal, the Appeals Chamber focuses primarily on events following its interlocutory appeal decision that either would call into question the basis of the decision or that might constitute previously unconsidered violations.

With respect to the right to choose counsel, the Appeals Chamber recalls that once counsel has been properly assigned, as was done here, counsel has a professional obligation to continue representing the accused and may only be withdrawn or replaced, if sufficient cause exists. Mr. Blagojević argues sufficient cause on the basis of his claim that his counsel falsely accused him of trying to engage in fee-splitting, thereby destroying all possibility of re-establishing any form of cooperation between them. The Appeals Chamber however noted that the assigned counsel did not breach any client confidence by raising the issue of fee-splitting and determined that this issue should not unduly impact the relationship.

Moreover, while Mr. Blagojević seeks to reopen the issues considered and decided in the interlocutory appeal by arguing that the Appeals Chamber and Trial Chamber failed to appreciate that the breakdown of his relationship with his counsel would last throughout the trial, his submissions before trial clearly indicated that he considered the breakdown irreparable. The Appeals Chamber considers that an appellant cannot premise a request for a new trial on a claim of a total breakdown in communication in circumstances where the appellant unjustifiably refused to cooperate with his or her assigned counsel throughout the trial proceedings.

With respect to the competence of counsel, the Appeals Chamber recalls that an assigned counsel is presumed to be competent and that such a presumption can only be rebutted by evidence to the contrary. In his submissions Mr. Blagojević simply disagrees or complains about decisions made by his counsel. Moreover, Mr. Blagojević's complaints about his counsel's performance during trial stem from his refusal to communicate with his counsel and instruct his Defence team. The Appeals Chamber considers that this is not an acceptable basis for challenging counsel's conduct.

Lastly, Blagojević submits that the Trial Chamber denied him the right to appear as a witness by requiring that he be examined by his assigned counsel if he wished to testify in his defence. The Appeals Chamber has previously confirmed that an accused has the right to appear as a witness in his defence. The Appeals Chamber equally determined that this right does not prevent a Trial Chamber from exercising its authority to control the conduct of a trial by imposing conditions on the appearance, provided that these conditions do not unreasonably interfere with the right to testify. The Appeals Chamber is not satisfied in the circumstances that the conditions placed by the Trial Chamber on Mr. Blagojević's right to testify on his own behalf, namely that his counsel conduct the examination, so unreasonably interfered with his right to testify that his right to a fair trial was infringed.

Accordingly, the Appeals Chamber dismisses this ground of appeal. Judge Shahabuddeen dissents on the ground that Mr. Blagojević was denied the right to a fair trial and considers that his case should be remanded for a new trial.

Under Ground 2, Mr. Blagojević submits that the Trial Chamber committed several errors of fact resulting in his convictions. Mr. Blagojević specifically submits that the Trial

Chamber erred in finding that the Bratunac Brigade played a role in blocking humanitarian convoys bound for Srebrenica; erred in characterising the attack against Srebrenica as an illegitimate attack directed at the civilian population as well as in its findings on the role Mr. Blagojević and the Bratunac Brigade played in the attack; erred in finding that the Bratunac Brigade fired on Srebrenica during the period before and after the fall of the enclave on 11 July 1995; erred in connecting Mr. Blagojević and the Bratunac Brigade to the removal of civilians from Potočari; erred in finding that the Bratunac Brigade played a role in an attack on a column of mostly Bosnian Muslim men and boys fleeing Srebrenica; erred in its finding that Mr. Blagojević had knowledge of and contributed to the detention, mistreatment and murder of Bosnian Muslim men in and around the Vuk Karadžić School in Bratunac town; erred in its evaluation of the testimonies of Momir Nikolić and Dragan Obrenović; erred in fact in finding that Mr. Blagojević remained in command and control of all units of the Bratunac Brigade, including Momir Nikolić and the brigade's military police; and erred in finding that the Bratunac Brigade had a specific geographic "zone of responsibility".

For the reasons provided in the Judgement, the Appeals Chamber finds the second ground of Blagojević's appeal unfounded and, therefore, dismisses it in its entirety, Judge Shahabuddeen dissenting.

In Ground 3, Mr. Blagojević further challenges the Trial Chamber's factual findings underpinning his convictions for aiding and abetting murder as a crime against humanity and as a violation of the laws and customs of war based on the killing of more than 50 Bosnian Muslim men in and around the Vuk Karadžić School in Bratunac town. In addition to arguments raised under Ground 2, Mr. Blagojević further claims that the Trial Chamber erred in fact in its estimation of the number of murder victims and in finding that these crimes formed part of a widespread or systematic attack against a civilian population and his knowledge thereof.

In the view of the Appeals Chamber, Mr. Blagojević has not demonstrated that no reasonable trier of fact could have made the Trial Chamber's finding on the number of victims murdered. Furthermore, the Appeals Chamber addressed and rejected under Ground 2 portions of Mr. Blagojević's argument related to the legitimacy of the attack against Srebrenica and the role of the Bratunac Brigade in it. Mr. Blagojević fails to address the main aspect of the Trial Chamber's findings on the nature of the attack, which concerns the resulting impact on the civilian population after the fall of the enclave on 11 July 1995. Mr. Blagojević's simple denial that he lacked knowledge of the context in which the attack occurred is insufficient to call into question the reasonableness of the Trial Chamber's findings on this point. Accordingly, the Appeals Chamber dismisses his third ground of appeal, Judge Shahabuddeen dissenting.

Under his fourth ground, Mr. Blagojević challenges his convictions for aiding and abetting inhumane acts and persecutions as crimes against humanity based on the finding of his responsibility for the forcible transfer of thousands of Bosnian Muslims from Srebrenica. He submits that the Trial Chamber erred in fact in finding that the forcible transfer occurred and that he contributed to and had knowledge of it. In light of the circumstances taken into account by the Trial Chamber, it was reasonable for it to find that the request on the part of the Bosnian Muslims to leave Srebrenica was not the result of a genuine choice, but rather stemmed from the coercive circumstances in which they found themselves and the humanitarian disaster caused by what the Trial Chamber described as the VRS's unlawful activity. Mr. Blagojević's arguments on this point do not demonstrate that no reasonable trier of fact could have found that the transfer of Bosnian Muslims from Srebrenica was forcible.

Mr. Blagojević further disputes that he contributed to or had any knowledge of the forcible transfer. Under this ground, Mr. Blagojević points to no error in the assessment of the relevant evidence, and the Appeals Chamber has addressed and rejected his challenges to the findings on his presence in Bratunac town elsewhere in this Judgement.

Consequently, in the Appeals Chamber's view, Mr. Blagojević has failed to demonstrate that no reasonable trier of fact could have found that he had knowledge of the forcible transfer. The Appeals Chamber accordingly dismisses the fourth ground of appeal, Judge Shahabuddeen dissenting.

Mr. Blagojević's fifth ground of appeal relates to his conviction for aiding and abetting persecutions as a crime against humanity through murder, cruel and inhumane treatment, terrorising of Bosnian Muslim civilians in Srebrenica and Potočari and through the forcible transfer of Bosnian Muslims from the Srebrenica enclave. Mr. Blagojević submits that the Trial Chamber erred in fact in finding that he was aware of the discriminatory intent of the perpetrators as well as the discriminatory context in which the underlying crimes were committed. The Appeals Chamber has already addressed and rejected Mr. Blagojević's arguments disputing the Trial Chamber's characterization of the nature and purpose of the attack against the civilian population of Srebrenica under other grounds of his appeal. Mr. Blagojević further fails to address the majority of the evidence relied on by the Trial Chamber in determining that the attack against the civilian population of Srebrenica was discriminatory in nature, beyond disagreeing with the conclusions reached from it, nor does he support his arguments with any relevant reference to the trial record. Accordingly, the Appeals Chamber dismisses this ground of appeal, Judge Shahabuddeen dissenting.

The Trial Chamber convicted Mr. Blagojević for complicity in genocide as an aider and abettor. Mr. Blagojević submits that the Trial Chamber erred in fact in finding that he had knowledge of the commission of the crime of genocide or the genocidal intent of the principal perpetrators. In disputing his awareness of the commission of genocide and of the genocidal intent of the principal perpetrators, Mr. Blagojević points to the Trial Chamber's finding that he lacked knowledge about the mass killings, which the Trial Chamber determined formed part of the genocide. The Prosecution responds that the fact that Mr. Blagojević was unaware of the mass killings is irrelevant to his liability as an aider and abettor of the crime of genocide.

The Appeals Chamber accepts that the forcible transfer operation, the separations, and the mistreatment and murders in Bratunac town are relevant considerations in assessing whether the principal perpetrators had genocidal intent. However, the Appeals Chamber is not convinced by the Trial Chamber's reasoning that the forcible transfer operation alone or coupled with the murders and mistreatment in Bratunac town would suffice to demonstrate the principal perpetrators' intent to "destroy" the protected group.

The Krstić Appeals Judgement clearly held that "forcible transfer does not constitute in and of itself a genocidal act", and it is simply a relevant consideration as part of the overall factual assessment. Similarly, the Appeals Chamber notes that "opportunistic killings" by their very nature provide a very limited basis for inferring genocidal intent. In the view of the Appeals Chamber no reasonable trier of fact could find beyond reasonable doubt that, without knowledge of the mass killings, Mr. Blagojević's awareness of the other facts related to the forcible transfer operation shows that he had knowledge of the principal perpetrators' genocidal intent.

On the basis of the foregoing, the Appeals Chamber grants Mr. Blagojević's sixth ground of appeal and reverses his conviction for complicity in genocide, Judge Shahabuddeen dissenting.

Under this ground of appeal, Mr. Blagojević raises four errors of law and fact in connection with his conviction for aiding and abetting, including an alleged legal error in the definition of aiding and abetting and alleged factual errors related to his knowledge of the underlying crimes, whether he made Bratunac Brigade resources available, and whether this constituted substantial assistance.

The Appeals Chamber considers that Mr. Blagojević has failed to identify any legal error on the part of the Trial Chamber in setting forth the applicable law on aiding and abetting. Further, with regard to his knowledge of the underlying crimes, Mr. Blagojević simply incorporates by reference arguments advanced elsewhere in his appeal which the Appeals Chamber, has addressed and rejected with the exception of his challenge to his conviction for complicity in genocide.

As explained in the Judgement, Mr. Blagojević's submissions are insufficient to call into question the reasonableness of the Trial Chamber's findings that he permitted Bratunac Brigade resources to facilitate the commission of the crimes. Furthermore, Mr. Blagojević has not demonstrated error in the Trial Chamber's finding that the Bratunac Brigade substantially contributed to the commission of the crimes. In making its findings, the Trial Chamber was aware of the more limited scope of assistance provided by the Bratunac Brigade in relation to other elements of the VRS and civilian authorities. Nonetheless, the Trial Chamber described the contribution of the resources made available by Mr. Blagojević as "practical assistance" to the crimes which had a substantial effect on the commission of the crimes. The Appeals Chamber recalls that, in a similar context, it reached the same conclusion in the Krstić Appeals Judgement.

For the reasons given in connection with the sixth ground of appeal, the Appeals Chamber grants Mr. Blagojević's seventh ground of appeal with respect to the crime of genocide, and dismisses his appeal against the Trial Chamber's findings related to aiding and abetting in all other respects. Judge Shahabuddeen dissents.

Mr. Blagojević submits that the Trial Chamber erred in law in assessing the aggravating and mitigating factors in assessing his sentence. He contends that the Trial Chamber's emphasis on the gravity of the discriminatory nature of the crime of persecutions reflects that it impermissibly aggravated his sentence based on a factor that is also an element of the crime. Mr. Blagojević also submits that the Trial Chamber did not properly take into account that he was not among the major participants in the crimes. The Appeals Chamber however, notes that the Trial Chamber considered Mr. Blagojević's knowledge and the form of assistance that he provided to the principal perpetrators in determining his sentence. The Appeals Chamber finds that Mr. Blagojević has not pointed to any discernible error on the part of the Trial Chamber in determining his sentence. Accordingly, the Appeals Chamber dismisses this ground of appeal in its entirety, Judge Shahabuddeen dissenting.

Turning now to the appeal of Mr. Jokić. Mr. Jokić submits under his first and second grounds of appeal that the Trial Chamber erred when it found that he acted with the requisite mens rea in relation to the killings at Orahovac, Pilica School/Branjevo Military Farm, and Kozluk. In particular, Mr. Jokić submits that the Trial Chamber erred in fact in finding that he was aware of the impending executions of detainees at these sites.

For the reasons provided in the Judgement, the Appeals Chamber finds Mr. Jokić's first and second grounds of appeal unfounded and, therefore, dismisses them in their entirety.

Under his fourth ground Mr. Jokić submits that the Trial Chamber erred by convicting him as an aider and abettor when the evidence against him clearly shows that his conduct was confined to ex post facto assistance. This ground turns on Mr. Jokić's apparent assumption that the Trial Chamber had before it no evidence on which it could reasonably conclude that he provided ex ante or contemporaneous assistance to the mass killings at Pilica School/Branjevo Military Farm and Kozluk. That, however, was not the case. The Appeals Chamber considers the Trial Chamber to have reasonably concluded that Mr. Jokić was integrally involved in the murder operation, spanning multiple mass killing sites. Accordingly, the Appeals Chamber dismisses this ground of appeal.

Under his third ground of appeal Mr. Jokić submits that the Trial Chamber erred in law by holding that his acts, as found, constituted the *actus reus* of aiding and abetting. Mr. Jokić posits as a legal element of the *actus reus* of aiding and abetting that the practical assistance given to the perpetrators, in addition to having a substantial effect on the commission of the crime, must be specifically or sufficiently directed to this end. In relation to the incidents which took place at the mass execution sites, Mr. Jokić argues that any assistance the principal perpetrators may have derived from his ordering a particular member of the Zvornik Brigade Engineering Company to go with equipment to a particular place at a particular time was too remote or insubstantial to have had a substantial effect on the commission of the crime.

The Appeals Chamber observes that a finding of specific direction will often be implicit in the finding that the accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime. The Appeals Chamber considers that it was reasonable for the Trial Chamber to conclude that the assistance Mr. Jokić provided in his capacity as Chief of Engineering in deploying engineering machinery and personnel for the burial operations at Orahovac, Pilica/Branjevo Military Farm, and Kozluk, had a substantial effect on the commission of the mass executions at these three sites. Assisting the organizers of the mass executions with the disposal of the victims was substantial to the achievement of the murder operation. Accordingly, the Appeals Chamber dismisses this ground of appeal.

Under his fifth ground of appeal, Mr. Jokić submits that the Trial Chamber erred by convicting him when the evidence against him clearly showed that there was an equally probable explanation for his acts and omissions that was consistent with innocence: that it was in the interests of public health that the bodies of the victims be buried without delay. The Trial Chamber found, and the Appeals Chamber confirmed, that Mr. Jokić substantially contributed to the mass executions when he sent engineering equipment to the execution sites and that he did this knowing that the equipment would be used to dig mass graves for the victims. Even if Mr. Jokić were concerned about public safety and health, this would not change the fact that his actions substantially contributed to the crimes or the conclusion that he did so with knowledge that his actions would assist the organizers of the “murder campaign”. Ground 5 is accordingly dismissed.

Mr. Jokić submits under Ground 6 that the Trial Chamber erred when it found that he was present at the duty officer’s station in the early hours of 15 July 1995 when officers of the Zvornik Brigade returned from Orahovac and celebrated their “successful mission”. In light of its previous findings the Appeals Chamber considers that the question of Mr. Jokić’s presence at the station is immaterial.

Mr. Jokić submits under Ground 7 that the Trial Chamber erred when it found that he was responsible for the provision of engineering resources and personnel to the Pilica School burial site. In the view of the Appeals Chamber, none of the evidence pointed to by Mr. Jokić shows that the Trial Chamber erred. Both Grounds 6 and 7 are accordingly dismissed.

I will now turn to the appeal of the Prosecution. The Prosecution brings three grounds of appeal in relation to Mr. Blagojević, one ground in relation to Mr. Jokić, as well as an additional ground challenging their respective sentences. In addition, the Prosecution brings a ground of appeal relating to the use of transcript evidence admitted pursuant to Rule 92*bis*(D). The Prosecution submits that the Trial Chamber erred by requiring that evidence admitted under Rule 92*bis*(D) of the Rules must be corroborated in order to be relied upon to lead to a conviction. The Prosecution concedes that this error does not impact the verdict but argues that it raises an issue significant to the jurisprudence of the Tribunal, and that, as such, it should be considered on appeal. As explained in the Judgement, however, the Prosecution has not made detailed submissions on the significance of this issue to the jurisprudence of the International Tribunal and the Appeals Chamber declines to exercise its discretion to consider this ground of appeal.

The Prosecution alleges under Ground 1 that the Trial Chamber erred in finding that Mr. Blagojević did not have knowledge of the mass killings between 12 and 14 July 1995 and, consequently, erred in finding that he lacked the requisite *mens rea* for aiding and abetting these crimes. First, the Prosecution submits that the Trial Chamber erred by not applying the correct definition of the *mens rea* for aiding and abetting. Second, according to the Prosecution, the Trial Chamber erred in its application of the standard of proof beyond reasonable doubt. Third, the Prosecution contests a number of factual findings and alleges that no reasonable Trial Chamber could have concluded that Mr. Blagojević did not have knowledge of the mass killings.

The Appeals Chamber finds that the Trial Chamber did not decline to find that Mr. Blagojević knew about the mass killing operation because he lacked certainty, but because it could not rule out the equally reasonable inference that he thought that his acts were directed towards another goal.

Secondly, the Appeals Chamber considers that the Prosecution has not demonstrated that the Trial Chamber erred in its choice of method of assessment of evidence or in its application of the standard of proof. Thirdly, on the basis of the analysis provided in the Judgement, the Appeals Chamber finds that the Prosecution has not established as unreasonable the finding of the Trial Chamber that there was insufficient evidence on which to find that Mr. Blagojević had the requisite *mens rea* for aiding and abetting murder in relation to the mass executions. The Appeals Chamber accordingly dismisses the Prosecution's first ground of appeal.

Under Ground 2 the Prosecution asserts that the Trial Chamber erred in finding that Mr. Blagojević did not have the requisite intent to commit forcible transfer as a part of the joint criminal enterprise to forcibly transfer the Bosnian Muslim population out of Srebrenica. The Prosecution contends that, if properly considered, the evidence and findings as to Mr. Blagojević's role in making life in the Srebrenica enclave unbearable as well as his participation in the "Krivaja 95" operation, knowing its stated purpose, lead to the only reasonable conclusion that he shared the intent to commit forcible transfer.

The Trial Chamber concluded that Mr. Blagojević was aware that elements of the Bratunac Brigade were actively involved in sniping and shelling the Srebrenica enclave and checking humanitarian aid convoys with the aim of blocking supplies to the Dutch Battalion of UNPROFOR and making life within the enclave impossible for civilians. However, while this supports the Trial Chamber's finding that Mr. Blagojević knew of the plan to make life in the enclave unbearable, it does not necessarily demonstrate that he supported it. Additionally, the Appeals Chamber considers that while the Trial Chamber may have found tacitly that Mr. Blagojević intended some of the objectives of operation "Krivaja 95", it was reasonable to conclude that he did not intend to commit forcible transfer.

Likewise, the Prosecution does not show how Mr. Blagojević's failure to try to provide humanitarian aid invariably demonstrates his intent to commit forcible transfer, nor simply how the failure to provide humanitarian aid to fleeing refugees furthered their forcible transfer. Without such a showing, the Appeals Chamber will not set aside the Trial Chamber's reasoned analysis. The Prosecution has not demonstrated that Mr. Blagojević's conduct and knowledge necessitated a finding that he intended to commit forcible transfer. Accordingly, the Appeals Chamber dismisses this ground of appeal.

The Prosecution submits that the Trial Chamber erred in finding that Mr. Blagojević was not responsible for the participation of members of the Bratunac Brigade, including Momir Nikolić, in the "murder operation". The Prosecution divides its argument into four sub-grounds. First, the Prosecution submits that the Trial Chamber erred in law in holding that liability under Article 7(3) of the Statute may attach only where the accused's subordinates have participated in a crime through "committing" under Article 7(1) of the Statute. Second, the Prosecution submits that the Trial Chamber erred in law in finding that

a superior cannot be liable under Article 7(3) of the Statute for the acts of his subordinates when he does not know the exact identity of the perpetrators of the crimes. Third, the Prosecution submits that because of these errors, the Trial Chamber failed to consider the *mens rea* of members of the Bratunac Brigade. As a result of this alleged error, the Prosecution submits that the Trial Chamber failed to find that members of the Bratunac Brigade aided and abetted the murder operation, and failed to fully consider Mr. Blagojević's Article 7(3) liability. Fourth, the Prosecution submits that the Trial Chamber erred in finding that no superior-subordinate relationship existed between Mr. Blagojević and Momir Nikolić.

As a threshold matter, the Appeals Chamber confirms that superior responsibility under Article 7(3) of the Statute encompasses all forms of criminal conduct by subordinates, not only the "committing" of crimes in the restricted sense of the term, but all other modes of participation under Article 7(1). However, the Appeals Chamber understands the Trial Judgement as simply stating that it was not established that members of the Bratunac Brigade "committed", in the broad sense of the word, any of the crimes encompassed by the murder operation with which Mr. Blagojević was charged.

Secondly, the Appeals Chamber agrees that a superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 7(3) of the Statute. However, the Trial Chamber does not appear to refer, as the Prosecution suggests, to a statement of law but rather, appears to refer to its conclusion that it lacked sufficient evidence to find that one of Mr. Blagojević's subordinates "committed", in the broad sense of the word, one of the crimes encompassed in the murder operation. The Appeals Chamber, therefore, does not find any legal error on the part of the Trial Chamber in stating that it could not identify the specific perpetrators whom Mr. Blagojević had the duty to punish.

Thirdly, with regard to the Prosecution's submission that the Trial Chamber failed to consider the *mens rea* of Bratunac Brigade members with respect to aiding and abetting the murder operation, the Appeals Chamber is not convinced that this was not taken into account. Nonetheless, for clarity, the Appeals Chamber addresses the Prosecution's specific arguments regarding the *mens rea* of Bratunac Brigade soldiers in turn and for the reasons offered in the Judgement, finds no error in the Trial Chamber's finding that Mr. Blagojević did not bear Article 7(3) liability for the mass killings.

Lastly, the Appeals Chamber does not consider the conclusions regarding the scope of Mr. Blagojević's authority irreconcilable with the finding that he did not exercise effective control over Momir Nikolić.

Accordingly, the Appeals Chamber dismisses this ground of appeal in its entirety.

The Prosecution alleges under Ground 4 that the Trial Chamber erred in concluding that Mr. Jokić did not render substantial assistance to the mass executions at the Petkovci School and Dam. For the reasons provided in the Judgement the Appeals Chamber finds that the Prosecution has not demonstrated that Mr. Jokić provided assistance that had a substantial effect on the mass killings at the Petkovci School and Dam either through his communications about the detainees or by sending equipment there. Accordingly, the Appeals Chamber dismisses this ground of appeal.

Turning to the Prosecution's submissions on sentencing, the Prosecution alleges five errors in the Trial Chamber's determination of Mr. Jokić's sentence with respect to its consideration of the gravity of the offence and form and degree of Mr. Jokić's participation; its consideration of certain mitigating factors; and in handing down a sentence that it argues is manifestly inadequate.

For reasons given in the Judgement, the Appeals Chamber dismisses the Prosecution's appeal against Mr. Jokić's sentence.

Turning to the Prosecution's sentencing submissions in respect of Mr. Blagojević, the Prosecution argues that the Trial Chamber erred in assessing the aggravating and mitigating circumstances and in handing down a sentence that is manifestly inadequate in comparison to others. First, the Prosecution submits that the Trial Chamber erred by determining that his position as a military leader was not an aggravating circumstance. The Trial Chamber considered Mr. Blagojević's position and his role as a commander in the context of assessing any relevant aggravating circumstances and determined that it did not warrant aggravation in the circumstances of the case. Beyond disagreeing with this determination, the Prosecution does not identify any discernible error in the exercise of the Trial Chamber's sentencing discretion.

With regard to mitigating circumstances, the Appeals Chamber holds that the Trial Chamber permissibly considered Mr. Blagojević's participation in de-mining activities under the broad category of post-conflict conduct that goes to the character of the accused.

Finally, the Prosecution argues that Mr. Blagojević's sentence is inadequate in light of the magnitude of his crimes, and in comparison to other persons either found guilty of or who pled guilty to participation in crimes that occurred in Srebrenica. For reasons given in the Judgement, Mr. Blagojević's criminal liability, however, is substantially distinguishable.

I recall now that the Appeals Chamber has reversed Mr. Blagojević's conviction for complicity in genocide on the basis that his knowledge of the forcible transfer operation, the separations, and the mistreatment and murders in Bratunac town were insufficient, without knowledge of the mass killings, to allow a reasonable trier of fact to find genocidal intent beyond reasonable doubt. The Appeals Chamber considers, Judge Shahabuddeen dissenting, that in light of the circumstances of this case, as well as the gravity of the crimes for which Mr. Blagojević is responsible, and taking into account the principle of proportionality, that the sentence imposed by the Trial Chamber requires a limited reduction.

DISPOSITION

I will now read out in full the operative paragraphs of the Appeals Chamber's Judgement, that is, the Disposition. Mr. Blagojević and Mr. Jokić, will you please stand.

For the foregoing reasons, The Appeals Chamber

PURSUANT to Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the Parties and the arguments they presented at the hearings of 5 and 6 December 2006;

SITTING in open session;

ALLOWS Mr. Blagojević's appeal, in part, with respect to Grounds 6 and 7; **REVERSES** his conviction for Complicity in Genocide (Count 1B); **REDUCES** the sentence of eighteen years' imprisonment imposed on Mr. Blagojević by the Trial Chamber to a sentence of fifteen years' imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period Mr. Blagojević has already spent in detention; and **DISMISSES** Mr. Blagojević's appeal in all other respects, Judge Shahabuddeen dissenting;

DISMISSES Mr. Jokić's appeal in its entirety;

DISMISSES the Prosecution's appeal in its entirety;

ORDERS in accordance with Rule 103(C) and Rule 107 of the Rules, that Mr. Blagojević and Mr. Jokić are to remain in the custody of the International Tribunal pending the finalization of arrangements for their transfer to the State(s) in which their sentences will be served.

Mr. Blagojević and Mr. Jokić, you may be seated.

I now request the Registrar to please deliver copies of the Judgement to the parties in this case. This hearing of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia stands adjourned.
