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JUDGEMENT SUMMARY

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APPEALS CHAMBER

The Hague, 11 July 2013

Rule 98 bis Appeals Judgement summary in the case of Radovan Karadžić

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

This case concerns events that occurred between 31 March 1992 and 31 December 1992 in certain municipalities of Bosnia and Herzegovina claimed as Bosnian Serb territory, collectively referred to as the “Municipalities”. The Indictment alleges that during this period, Mr. Karadžić was the highest civilian and military authority in the Republika Srpska and participated in a joint criminal enterprise, or “JCE”, together with other members of the Serb and Bosnian Serb leadership to permanently remove Bosnian Muslims and Bosnian Croats from the Municipalities through a campaign of persecutions, which included conduct that demonstrated an intent to destroy in part the national, ethnical, or religious groups of Bosnian Muslims or Bosnian Croats as such. The genocidal acts allegedly committed against Bosnian Muslims and/or Bosnian Croats include: (i) killing; (ii) causing serious bodily or mental harm; and (iii) deliberately inflicting upon detainees conditions of life calculated to bring about their physical destruction.

On 11 June 2012, Karadžić moved for a judgement of acquittal on all counts of the Indictment following the close of the Prosecution case. At a hearing on 28 June 2012, the Trial Chamber found that there was “no evidence, even taken at its highest, which could be capable of supporting a conviction for genocide in the municipalities as charged under Article 4(3) of the Statute”. The Trial Chamber entered the Judgement of Acquittal on Count 1 of the Indictment, which charges Mr. Karadžić with genocide in the Municipalities, alleging that Mr. Karadžić was responsible as a superior for and committed in concert with others, planned, instigated, ordered, and/or aided and abetted genocide.

GROUND OF APPEAL

The Prosecution advances four grounds of appeal against the Judgement of Acquittal and requests that the Appeals Chamber reverse the Judgement of Acquittal and reinstate the charges under Count 1 of the Indictment. The Appeals Chamber first addresses submissions related to the Trial Chamber’s assessment of underlying acts of genocide alleged in the Indictment. In assessing these submissions, the Appeals Chamber has been cognizant that the test to be applied by the trial chamber at the Rule 98 bis stage is “whether there is evidence (if accepted) upon which a reasonable [trier] of fact could be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question”, not whether an accused’s guilt has been established beyond reasonable doubt.

A. Underlying Acts of Genocide

The Prosecution, in its First ground of Appeal, submits that the Trial Chamber erred in law or in fact in addressing the actus reus of genocide in the Judgement of Acquittal.

1. Killings

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The Prosecution asserts that the Trial Chamber erred by not finding that killings in the Municipalities constituted the actus reus of genocide. The Prosecution submits, inter alia, that the Trial Chamber erred in law by imposing a “group impact” requirement on the actus reus of killing. In the alternative, the Prosecution contends that even if a group impact requirement applies, the Trial Chamber erred in fact in failing to find that there was evidence (if accepted) based upon which a reasonable trier of fact could conclude that killings as an underlying act of genocide had occurred.

Karadžić concedes that the Trial Chamber’s findings with respect to killings were sufficient to meet the actus reus requirement of Article 4 of the Statute.

The Appeals Chamber notes that while the Trial Chamber assessed whether a reasonable trier of fact could infer that “a significant section of the Bosnian Muslim and/or Bosnian Croat groups and a substantial number of members of these groups were targeted for destruction [...] as such”, its findings on this issue pertain not to the sufficiency of the evidence of the underlying genocidal acts of killing, but to the element of genocidal intent. The Appeals Chamber accordingly discerns nothing in the Trial Chamber’s ruling to suggest that it erred in law by imposing a “group impact” requirement on the actus reus of killing, as the Prosecution claims.

In the Judgement of Acquittal, the Trial Chamber stated that there was evidence indicating that a large number of Bosnian Muslims and/or Bosnian Croats were killed by Bosnian Serb forces in the Municipalities and recalled its earlier finding that this evidence was sufficient to support a conclusion that Bosnian Muslims and/or Bosnian Croats were killed on a large scale with persecutory intent. The Appeals Chamber considers that the Trial Chamber was thus satisfied that, for purposes of ruling on a motion pursuant to Rule 98 bis of the Rules, there was evidence (if accepted) upon which a reasonable trier of fact could be satisfied beyond reasonable doubt that killings of Bosnian Muslims and/or Bosnian Croats in the Municipalities occurred and that these groups had been singled out on national, ethnical, racial, or religious grounds.

The Appeals Chamber notes that the Prosecution’s relevant submissions are all premised on the incorrect assumption that the Trial Chamber did not find evidence of killings in the Municipalities sufficient to demonstrate the actus reus of genocide in the context of Rule 98 bis of the Rules. As noted above, the Judgement of Acquittal indicates that the Trial Chamber found that evidence of these killings was sufficient. The Prosecution’s contentions that the Trial Chamber erred with respect to underlying genocidal acts of killings are therefore moot.

2. Causing Serious Bodily or Mental Harm

The Prosecution contends that the Trial Chamber improperly added an actus reus element by requiring that the serious bodily or mental harm in question achieve a certain level of destructive impact on the group. In the alternative, the Prosecution submits that the Trial Chamber erred in fact in failing to find that there is evidence on the record that serious bodily or mental harm was inflicted on Bosnian Muslims and/or Bosnian Croats in the Municipalities. In support of this contention, the Prosecution notes evidence of, inter alia, beatings, sexual violence, and torture that occurred within detention facilities.

Karadžić recognises that the Trial Chamber acknowledged evidence that Bosnian Serb forces caused serious bodily and mental harm to many Bosnian Muslims and/or Bosnian Croats while they were held in multiple detention facilities. He submits, however, that the Trial Chamber then concluded that the evidence of acts of causing serious bodily or mental harm, taken at its highest, did not support a finding that these acts were committed with the intent to destroy the groups.

The Appeals Chamber notes that the evidence reviewed by the Trial Chamber, taken at its highest, indicates that Bosnian Muslims and/or Bosnian Croats suffered injuries, including

rape and severe non-fatal physical violence, which are, on their face, suggestive of causing serious bodily harm.

More specifically, the Appeals Chamber notes evidence on the record indicating that Bosnian Muslim and/or Bosnian Croat detainees were kicked and were violently beaten with a range of objects, including, inter alia, rifles and rifle butts, truncheons and batons, sticks and poles, bats, chains, pieces of cable, metal pipes and rods, and pieces of furniture. Detainees were often beaten over the course of several days, for extended periods of time, and multiple times a day. Evidence on the record also indicates that in some instances detainees were thrown down flights of stairs, beaten until they lost consciousness, or had their heads hit against walls. These beatings allegedly resulted in serious injuries, including, inter alia, rib fractures, skull fractures, jaw fractures, vertebrae fractures, and concussions. Long-term alleged effects from these beatings included, inter alia, tooth loss, permanent headaches, facial deformities, deformed fingers, chronic leg pain, and partial paralysis of limbs.

The Appeals Chamber underscores that the commission of individual paradigmatic acts does not automatically demonstrate that the actus reus of genocide has taken place. However, the Appeals Chamber considers that no reasonable trial chamber reviewing the specific evidence on the record in this case, including evidence of sexual violence and of beatings causing serious physical injuries, could have concluded that it was insufficient to establish the actus reus of genocide in the context of Rule 98 bis of the Rules.

Accordingly, the Appeals Chamber finds that the Trial Chamber erred in fact in concluding that the evidence, taken at its highest, was insufficient for a reasonable trier of fact to conclude beyond reasonable doubt that underlying genocidal acts of causing serious bodily or mental harm occurred, and that this error resulted in a miscarriage of justice.

3. Deliberately Inflicting Conditions of Life Calculated to Destroy

The Prosecution submits that the Trial Chamber erred by failing to provide a reasoned opinion in relation to its conclusion that the conditions of life in detention facilities in the Municipalities did not satisfy the requirements of genocide under Article 4(2)(c) of the Statute. Additionally, the Prosecution submits that the Trial Chamber erred in fact by failing to find that the evidence on the record satisfied the requirements of Article 4(2)(c) of the Statute. Inter alia, the Prosecution contends that evidence accepted by the Trial Chamber demonstrates that the conditions in the facilities in which Bosnian Muslims and/or Bosnian Croats were detained were “horrific” and supports a conclusion as to the objective probability of physical destruction.

Karadžić does not respond to the Prosecution’s arguments in relation to the deliberate infliction of conditions of life calculated to destroy.

The Appeals Chamber is not persuaded that the Trial Chamber failed to provide a reasoned opinion. The Trial Chamber articulated the legal test that it applied to the evidence and expressly affirmed that it had focused on and assessed the relevant legal factors in reviewing the evidence regarding the alleged underlying genocidal act of deliberately inflicting conditions of life calculated to destroy. The Trial Chamber also identified the evidence that it considered in this context and made specific reference to an earlier and more detailed discussion of this same evidence in relation to Count 3 of the Indictment.

By contrast, the Prosecution is convincing in asserting that the Trial Chamber erred in assessing the factual evidence before it. The Trial Chamber noted evidence indicating that detained Bosnian Muslims and/or Bosnian Croats suffered “cruel and inhumane treatment, torture, physical and psychological abuse, rape and sexual violence, inhumane living conditions, [and] forced labour” and were not provided “adequate accommodation, shelter, food, water, medical care or hygienic facilities”.

More specifically, the Trial Chamber received evidence indicating, inter alia, that Bosnian Muslims and/or Bosnian Croats were detained in overcrowded conditions, at times with hundreds of individuals confined to a single room. For example, evidence before the Trial Chamber indicates that: at Keraterm camp in Prijedor 570 detainees were held in a single room; at KP Dom in Foča, 18 detainees were kept in a room designed for solitary confinement; at Omarska camp in Prijedor 200 individuals were held in a room of 40 square meters and were also crowded into lavatories; and at the Betonirka factory in Sanski Most detainees had to sleep sitting upright as there was no room to lie down. Other evidence before the Trial Chamber suggests that Bosnian Muslim and/or Bosnian Croat detainees were denied or received inadequate medical care; for example, it was alleged that: there were no medical facilities for detainees at the Betonirka factory in Sanski Most; at KP Dom in Foča, there was inadequate medical care and detainees who were kept in isolation cells were denied all access to medical care; and at Keraterm camp in Prijedor many detainees suffered from dysentery as well as from injuries inflicted during beatings, but they were not provided with any medical care. Finally, the Trial Chamber also received evidence indicating that Bosnian Muslim and/or Bosnian Croat detainees: were given insufficient or no food, leading to malnutrition, starvation, and severe weight loss; were sometimes deprived of water; and were not given access to proper toilet or bathing facilities, leading to the spread of disease.

The Appeals Chamber is satisfied that evidence adduced by the Prosecution, when taken at its highest, indicates that Bosnian Muslims and Bosnian Croats were subjected to conditions of life that would bring about their physical destruction, including severe overcrowding, deprivation of nourishment, and lack of access to medical care. This evidence is sufficiently compelling in its totality that no reasonable trial chamber could have concluded, in the context of Rule 98 bis of the Rules, that there is no evidence capable of demonstrating the *actus reus* of deliberately inflicting conditions of life calculated to destroy.

Accordingly, the Appeals Chamber finds that the Trial Chamber erred in fact in concluding that there was no evidence, taken at its highest, based upon which a reasonable trier of fact could be satisfied beyond reasonable doubt that underlying genocidal acts of deliberately inflicting conditions of life calculated to destroy occurred, and that this error resulted in a miscarriage of justice.

B. Alleged Errors Relating to Genocidal Intent

The Prosecution submits that the Trial Chamber erred in law and in fact in assessing genocidal intent. Inter alia, the Prosecution submits that insofar as the Trial Chamber conducted an assessment of genocidal intent, it erred in law by impermissibly weighing the evidence. In addition, the Prosecution contends that the Trial Chamber committed a legal error by failing to take the evidence of genocidal intent at its highest, as evidenced by the Trial Chamber's characterisation of the statements of Karadžić and other members of the Bosnian Serb leadership as a "rhetorical warning of the disappearance, elimination, annihilation or extinction of Bosnian Muslims in the event that war broke out". Finally, the Prosecution submits that the Trial Chamber erred in fact by failing to find that Karadžić and other alleged JCE members shared the intent to commit genocide based upon the evidence on the record.

Karadžić responds that the Prosecution fails to show any legal error on the part of the Trial Chamber.

The Appeals Chamber finds convincing the Prosecution's contentions regarding the Trial Chamber's interpretation of evidence on the record. The Appeals Chamber notes that the Trial Chamber received evidence that in meetings with Karadžić "it had been decided that one third of Muslims would be killed, one third would be converted to the Orthodox religion and a third will leave on their own" and thus all Muslims would disappear from Bosnia. At the Appeal Hearing, Karadžić's legal advisor accepted that, taken at its highest, this statement could constitute evidence of genocidal intent.

Other statements on the record also suggest that Karadžić possessed genocidal intent. For example, Karadžić is alleged to have said that his goal was “to get rid of the enemies in our house, the Croats and Muslims, and not to be in the same state with them [anymore]” and that if war started in Bosnia, Muslims would disappear and be annihilated. Evidence on the record also indicates that other senior members of the Bosnian Serb leadership, alleged to have been members of the JCE, possessed genocidal intent. For example, in discussing Bosnian Muslims and Bosnian Croats, Ratko Mladić (“Mladić”), the Commander of the Army of the Republika Srpska Main Staff, is alleged to have said that “[m]y concern is to have them vanish completely”. In addition, Slobodan Milošević, President of Serbia, stated that Momčilo Krajišnik, President of the Bosnian-Serb Assembly, wished to “kill off all the [Muslims and Croats]”.

Finally, the Appeals Chamber notes that the Trial Chamber received extensive indirect evidence from which a reasonable trier of fact could infer genocidal intent. The Appeals Chamber recalls that specific intent may be inferred from “a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts”. In this regard, the Trial Chamber noted evidence of “culpable acts systematically directed against Bosnian Muslims and/or Bosnian Croats” in the Municipalities, as well as evidence of repetitive “discriminatory acts and derogatory language”. In particular, the Appeals Chamber observes that the record includes evidence of genocidal and other culpable acts committed against Bosnian Muslims and Bosnian Croats throughout the Municipalities, such as killings, beatings, rape, and sexual violence, as well as evidence of the large scale and discriminatory nature of these acts.

The Appeals Chamber recalls again that pursuant to Rule 98 bis of the Rules, the Prosecution’s evidence is assumed to be credible and is taken at its highest and that a judgement of acquittal shall be entered only if there is “no evidence capable of supporting a conviction”. In the context of this appeal, the Appeals Chamber considers that the evidence on the record, taken at its highest, could indicate that Karadžić possessed genocidal intent. Other evidence on the record indicates that other alleged members of the JCE also possessed such intent. The Appeals Chamber considers that this evidence, assessed in conjunction with evidence regarding the scale and nature of the alleged genocidal and other culpable acts, is sufficiently compelling in its totality that no reasonable trial chamber could have concluded, in the context of Rule 98 bis of the Rules, that there was no evidence capable of demonstrating that Karadžić and other alleged JCE members possessed genocidal intent.

Accordingly, the Appeals Chamber finds that the Trial Chamber erred in fact in concluding that there was no evidence, taken at its highest, based upon which a reasonable trier of fact could be satisfied that Karadžić and other alleged JCE members possessed genocidal intent, and that this error resulted in a miscarriage of justice.

For the foregoing reasons, the Appeals Chamber grants Grounds 2 and 3 of the Prosecution’s appeal, in part, and reverses the Trial Chamber’s finding that there was no evidence from which, if accepted, a reasonable trier of fact could infer genocidal intent on the part of Karadžić and other alleged JCE members.

KARADŽIĆ’S ALTERNATIVE CONTENTIONS

In his Response, Karadžić suggests that insofar as the Trial Chamber found evidence indicative of both the actus reus of genocide and of his genocidal intent, it correctly concluded that there was no “confluence” between the acts and his intent, and that “killings and serious harm in the municipalities were not done with the intent to destroy the Bosnian Muslims as a group”. Karadžić also submits that, in the interests of justice, the Appeals Chamber should not reverse the Judgement of Acquittal even if it determines that

the Trial Chamber erred. Karadžić contends that reversal of the Judgement of Acquittal would disrupt the ongoing trial on the remaining counts of the Indictment and would represent an irresponsible use of public funds.

The Prosecution replies, *inter alia*, that evidence on the record indicates that there is a confluence between genocidal intent and *actus reus*. The Prosecution further maintains that it is in the interests of justice to proceed to a “proper full determination of [Count 1 of the Indictment] at the end of the trial”.

The Appeals Chamber finds unconvincing Karadžić’s assertion that the Trial Chamber’s decision to acquit him of genocide in the Municipalities was premised on the lack of a confluence between killings and other harmful acts against Bosnian Muslims and/or Bosnian Croats and genocidal intent. The Appeals Chamber is also unconvinced by Karadžić’s contention that the Appeals Chamber should refrain from reversing the Judgement of Acquittal on prudential grounds. No exceptional circumstances exist in the present case. Specifically, Karadžić did not plead guilty to the acts underlying Count 1 of the Indictment, and there has been no final adjudication of the underlying acts of genocide through other counts of the Indictment. Moreover, the Appeals Chamber observes that no sentence has been pronounced against Karadžić at this stage of the trial, given that the proceedings for the remaining counts of the Indictment are ongoing. The Appeals Chamber is similarly unpersuaded by Karadžić’s submission that a reversal of the Judgement of Acquittal would disrupt the ongoing trial on the remaining Counts of the Indictment and would represent an irresponsible use of public funds. Accordingly, Karadžić’s argument in this respect is rejected.

DISPOSITION

I shall now read out the full operative text of the Appeals Chamber’s disposition. Mr. Karadžić, will you please stand.

For the foregoing reasons, THE APPEALS CHAMBER,

PURSUANT TO Article 25 of the Statute and Rule 117 of the Rules;

NOTING the respective written submissions of the parties and the arguments they presented at the appeal hearing of 17 April 2013;

SITTING in open session;

GRANTS the Prosecution’s First Ground of Appeal, in part;

GRANTS the Prosecution’s Second and Third Grounds of Appeal, in part;

REVERSES the Trial Chamber’s acquittal of Mr. Karadžić for genocide in the Municipalities under Count 1 of the Indictment; and REINSTATES the charges against Mr. Karadžić under Count 1 of the Indictment;

DISMISSES the Prosecution’s remaining grounds of appeal; and

REMANDS the matter to the Trial Chamber for further action consistent with this Judgement.

Mr. Karadžić, you may be seated.
