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Tribunal Pénal  
International pour  
l'ex-Yougoslavie

# JUDGEMENT SUMMARY

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

CHAMBERS

The Hague, 15 April 2014

## Rule 98 bis Judgement summary in the case of Ratko Mladić

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

The Chamber will now deliver its decision on the Defence's request for acquittal pursuant to Rule 98 bis.

The Chamber heard oral submissions from the Defence on 17 March 2014, and in response from the Prosecution on 18 March 2014. On 19 March 2014, both parties made further submissions. In reaching its decision, the Chamber has considered all submissions of the Defence and the Prosecution, as well as all evidence admitted by the time of hearing the submissions.

The Chamber will first give a brief summary of those submissions. Thereafter, it will address those submissions, give an overview of the Indictment, and then address the evidence related to all counts of the Indictment.

The Defence made four submissions under Rule 98 bis.

First, the Defence argues that the word "count" in the text of Rule 98 bis has been restrictively interpreted by Trial Chambers to mean that judgements for acquittals can only be entered in respect of entire counts and not individual charges or incidents. The Defence submits that the precise meaning of the wording of Rule 98 bis should be determined with recourse to the intention of the drafters and the object and purpose of the Rule. According to the Defence, the object and purpose of Rule 98 bis is to streamline the case by removing allegations that cannot be sustained, ensuring that the trial is expedited and that the Defence's resources are not laid to waste.

Secondly, the Defence requests that the charges concerning the Jadar River incident, which is Scheduled Incident E.1.1, the charges concerning the Širokača shelling incident of 28 May 1992, which is part of Scheduled Incident G.1, and all the charges relating to destruction of cultural monuments and sacred sites, set out in Schedule D, be dismissed.

Thirdly, the Defence submits that the Prosecution has not proffered any evidence capable of sustaining a conviction under Article 7 (3) of the Statute on crimes perpetrated by third party, or non-VRS, actors. In advancing this proposition, the Defence asserts that the Prosecution has failed to identify the subordinates over whom it alleges that the Accused exercised effective de jure or de facto control. In addition, the Defence contends that there is evidence which supports the claim that the Accused did not have effective control over armed groups other than the Bosnian-Serb Army, hereinafter VRS, in particular, over the Bosnian Serb Ministry of Interior, hereinafter MUP, forces, Arkan's Tigers, and the Skorpions.

Fourthly, the Defence makes a number of submissions with respect to genocide as charged under Counts 1 and 2, characterising the Prosecution's evidentiary basis as

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deficient in meeting the reduced burden of proof set by Rule 98 *bis*. In respect of Count 1, the Defence argues that in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice, hereinafter referred to as ICJ, decided to dismiss allegations of the crime of genocide in the municipalities on the ground that there existed insufficient evidence of the specific intent to destroy a protected group. The Defence also points to the Judgements in the cases of Stakić, Sikirica, Krajišnik, and Brđanin, which concluded similarly. Moreover, the Defence argues that even though the Chamber has received evidence of criminal acts directed against Bosnian Muslims and Bosnian Croats in the municipalities, the evidence on these crimes does not establish that they were committed with genocidal intent.

As regards Count 2, the Defence argues that according to the testimony of General Milovanović pertaining to military Directive 7.1, the Accused left out two crucial portions of Directive 7 when issuing Directive 7.1. The first of these two portions was Karadžić's instruction that complete physical separation of Srebrenica from Žepa should be carried out as soon as possible. The second related to the creation of an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa. The Defence submits that the Accused by leaving out these two instructions has shown that he did not share the common purpose to commit genocide in Srebrenica.

The Chamber now moves to the Prosecution's submissions.

Responding to the Defence's first three submissions, the Prosecution argues that the Defence has provided no sound reason as to why the Chamber should depart from the well-established practice of this Tribunal and look within each individual count and examine whether the Accused may be acquitted of a portion thereof. Moreover, the Prosecution submits that there is sufficient evidence to maintain the charges specifically challenged by the Defence.

The Prosecution sets out the evidence concerning each of the counts in the Indictment, especially in respect of Counts 1 and 2. As regards Count 1, the Prosecution submits that there is evidence indicating that in 1992, Bosnian Muslim and Bosnian Croat communities were targeted for destruction and that those that survived the ensuing destruction were forcibly displaced. According to the Prosecution, the combination of physically destructive acts and other acts targeting the foundation of the two protected communities, such as displacements and the destruction of property and cultural and religious sites, effectively led to their physical demise and their inability to reconstitute themselves. The Prosecution submits, moreover, that the fact that the ICJ did not declare that in 1992 genocide had occurred in Bosnia-Herzegovina is not relevant to the present proceedings as the ICJ made that determination on the basis of a different legal standard and a different body of evidence. Furthermore, the Prosecution argues that in all prior Tribunal cases at the Rule 98 *bis* stage, the genocide count for the municipalities has been upheld, whether by Trial Chambers or by the Appeals Chamber following an appeal.

With regard to Count 2, the Prosecution submits that Directive 7 and Directive 7.1 form an indivisible whole since Directive 7.1 expressly refers to Directive 7. The wording of the latter document therefore remains valid and important.

The Chamber will now set out the law applicable at this stage of the proceedings.

Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence provides as follows: "At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction." Under the case law of the Tribunal, the Chamber must examine whether there is evidence upon which a reasonable trier of fact could be satisfied beyond a reasonable doubt of the guilt of the accused. Thus, if a reasonable Chamber could be satisfied beyond a reasonable doubt of the guilt of an Accused on the basis of the evidence adduced in relation to a count, then the count must

stand. There must be sufficient evidence for each element of the alleged crimes, and for one of the modes of liability contained in the Indictment. The test would not be satisfied if there was no evidence. If the Prosecution has presented evidence, that evidence is entitled to credence unless incapable of belief. At this stage, the evidence should be taken at its highest for the Prosecution. The Chamber therefore will not concern itself with issues of credibility or reliability, unless a witness is so lacking in credibility and reliability that no reasonable Chamber could find him or her credible or reliable.

As a preliminary remark before addressing the submissions in substance, the Chamber notes one matter. During its Rule 98 *bis* submissions, the Defence objected to how the Indictment was pled, suggesting that the charges lack specificity. In particular, the Defence invited the Chamber to consider the “far-reaching consequences of including this many actors as sharing in the common purpose in light of the lack of specificity in the Indictment.” According to the Rules, motions challenging the Indictment are to be filed prior to the start of a case. On 13 October 2011, the Chamber decided upon such a motion and dismissed alleged Indictment defects, including those now raised again by the Defence. The Chamber will not revisit the issue.

The Chamber will now address the parties’ submissions.

In relation to the Defence’s first argument, the Chamber considers that Rule 98 *bis* as a procedural rule is a corollary of the right of an accused to be presumed innocent until proven guilty. There are various procedural avenues which give effect to this right, and they are not necessarily limited to the stage of the end of the Prosecution’s case. The Rule’s amendment in 2004 adjusting the scope of Rule 98 *bis* decisions was intended to streamline the proceedings in the interests of judicial economy. The amendment changed the procedure from a written to an oral one, and shifted the determination to be made to the counts rather than to individual charges in an Indictment. The Rule’s amendment did not affect an accused’s right to be presumed innocent until proven guilty. Effect will ultimately be given to this right in the final Judgement. The Hadžić Trial Chamber, in its Rule 98 *bis* decision issued on 20 February 2014, presented an extensive overview of the practice in this Tribunal in relation to the count-based approach of Rule 98 *bis*.

The Chamber further notes that a failure of the Prosecution to adduce any evidence or insufficient evidence on individual charges has an effect on the proceedings that will follow. For the purpose of preparing and presenting its evidence, the Defence will in effect be left with no case to answer in relation to those individual charges. The Defence is not forced to spend resources to challenge charges which it believes have not been supported by evidence. The Defence is not forced to present any evidence for that matter. The Prosecution has to establish beyond a reasonable doubt that the charges are proven. If according to the Defence the evidence does not prove the charges, it may decide to refrain from presenting evidence thereon. This may especially be the case in relation to charges where the Defence believes that the Prosecution has not even met the lower threshold applicable at this stage of the proceedings. For the foregoing reasons, the Chamber rejects the Defence’s first argument.

In its second argument, the Defence challenges a number of specific incidents: the Jadar river killings, the shelling of Širokača on 28 May 1992, and the incidents listed in Schedule D of the Indictment in relation to destruction of religious sites. The Jadar river killings incident is one out of 20 scheduled killing incidents in relation to Srebrenica alone. The Širokača shelling is not even specifically mentioned in Schedule G to the Indictment, but forms part of Scheduled Incident G.1, which charges shelling of the city of Sarajevo as of 28 May 1992. The destructions of religious sites are part of one of seven charged underlying acts of persecution for the Municipalities part of the case. The other part of this underlying act concerns the destruction of public and private property. Considering these very narrow challenges and in light of the Chamber’s analysis of Rule 98 *bis* and the Tribunal practice developed as set out earlier, the Chamber will not further consider these incidents in this decision.

The Defence further generally challenged the mode of liability under Article 7(3) of the Statute on the basis that the Prosecution has failed to establish that non-VRS persons or groups allegedly committing crimes were under the effective de jure or de facto control of the Accused. In addition, the Defence asserts that there is no evidence to suggest that the Accused issued any criminal orders to persons who are alleged to have been perpetrators of crimes and therefore liability under the ordering limb of Article 7(1) cannot be sustained for charges in the Indictment.

The Chamber refers to its position in relation to challenges to portions of a count set out earlier. In similar vein, considering that various modes of liability are charged in respect of all counts it is sufficient that there is evidence capable of supporting a conviction on the basis of one of the modes of liability. The Defence challenges in this respect are narrow given that they pertain to one element of the alleged superior responsibility of Mladić, the de jure or de facto control, under Article 7(3) and ordering under Article 7(1), and in relation to a small number of alleged perpetrator groups. For the foregoing reasons, the Chamber rejects the Defence's third argument.

The Chamber further considers that the Defence's challenges of specific crimes do not extend to a challenge of the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute of the Tribunal.

Notwithstanding the above, the Chamber considers that there is a duty under Rule 98 *bis* to assess whether there is evidence capable of supporting a conviction on every count of the Indictment, irrespective of whether the Defence explicitly challenged all counts.

For a better understanding, the Chamber will first provide a summary of relevant parts of the Indictment.

The Indictment covers eleven counts of crimes allegedly committed between March 1992 and 30 November 1995. The areas covered by the Indictment include Sarajevo, Srebrenica, Gorazde, and the following municipalities in Bosnia-Herzegovina, which are dealt with together in the Indictment: Banja Luka, Bijeljina, Foča, Ilidža, Kalinovik, Ključ, Kotor Varoš, Novi Grad, Pale, Prijedor, Rogatica, Sanski Most, Sokolac, Trnovo, and Vlasenica. Hereinafter, I will refer to the part of the Indictment covering these 15 municipalities as the "municipalities".

According to the Indictment, the Accused held various positions in the Yugoslav People's Army, hereinafter referred to as JNA, and later in the VRS and was the Commander of the Main Staff of the VRS as of 12 May 1992.

The first two counts charge genocide. The third count charges persecution as a crime against humanity. The fourth and fifth counts respectively charge extermination and murder as crimes against humanity. The sixth count charges murder as a violation of the laws or customs of war as recognized by common Article 3(1)(a) of the Geneva Conventions of 1949. The seventh and the eighth counts respectively charge deportation and the inhumane act of forcible transfer as crimes against humanity. The ninth and the tenth counts respectively charge terror and unlawful attacks on civilians as violations of the laws or customs of war. The final count charges taking of hostages as a violation of the laws or customs of war.

The Indictment alleges that the Accused and others participated in an overarching joint criminal enterprise, hereinafter referred to as JCE, the objective of which was the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia-Herzegovina. This objective was allegedly carried out by the commission of crimes charged in Counts 1, and 3 to 8. Alternatively, this objective was carried out by the commission of crimes charged in Counts 7 and 8, while the Accused willingly took the risk of the commission of crimes charged in Counts 1 to 6 as a foreseeable consequence of the implementation of the objective.

According to the Indictment, the Accused's participation in the JCE included commanding and controlling the VRS and other elements of the Serb forces and encouraging the commission of crimes by members thereof. It also included participating in the development of Bosnian Serb governmental policies and disseminating propaganda intended to advance the objective of the JCE, failing to take adequate measures to protect prisoners of war and detainees under his effective control, as well as directing the restriction of humanitarian aid to non-Bosnian Serb enclaves.

The Indictment further alleges that the Accused and others participated in three additional JCEs. The objective of the second JCE was to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling consisting of crimes charged in Counts 5, 6, 9, and 10. The objective of the third JCE was to eliminate the Bosnian Muslims in Srebrenica through crimes charged in Counts 2 to 8. The objective of the fourth JCE was to take United Nations personnel as hostages through the crime charged in Count 11. The Accused's participation in these three additional JCEs included various forms of participation in the overarching JCE.

The Indictment further charges the Accused with criminal responsibility for having planned, instigated, ordered and/or aided and abetted the crimes, as well as with criminal responsibility as a superior.

The Chamber will now address whether each count in the Indictment stands.

In its legal characterizations, the Chamber adopts and applies the Tribunal's consistent case law with respect to the definition of the elements of the crimes and modes of liability charged in this case. In this decision, the Chamber will address the law more specifically only when this is required to explain the Chamber's findings.

The volume of evidence before the Chamber and the character of the Rule 98 bis proceedings do not allow for a comprehensive discussion of the evidence in this decision. The Chamber has, however, considered the evidence in its entirety. The specific evidence that the Chamber will refer to in this decision is therefore a focussed selection of what the Chamber has considered to be relevant for the purposes of this decision.

In relation to the crimes charged, the Chamber verified whether the evidence addresses all the elements of each of the crimes. Similarly, it verified whether the evidence addresses all the requirements for criminal responsibility as charged against the Accused. Finally, in relation to each crime charged, the Chamber verified whether the evidence, taken at its highest for the Prosecution, could lead a reasonable trier of fact to conclude, beyond a reasonable doubt, both that the crime has been committed and that the Accused bears criminal responsibility for it.

Turning to the counts, in relation to Counts 1-3, 5, and 6 there is evidence of crimes taking place during the Indictment period in the municipalities and Srebrenica. The Chamber will start with murders in the municipalities part of the case and will focus on a few incidents in order to determine whether the counts stand.

In relation to Scheduled Incident B16.2, the Chamber heard from Witness RM-066 that on 30 September 1992 four Serb police officers sent by the chief of the Public Security Service, hereinafter SJB, in Vlasenica arrived at the Sušica camp. During the night, the Serb police officers called out three groups of detainees, each consisting of 30 or 40 persons, loaded them into a truck and transported them from the camp. The witness later learned from Ilija Janković, a police officer from the SJB Vlasenica, that the majority of these detainees - mainly Muslims from Vlasenica and surrounding villages - had been killed. The witness testified the camp was a joint operation between the VRS and the Bosnian-Serb MUP, in Vlasenica municipality.

In relation to Scheduled Incident B5.1, the Chamber received evidence that in July 1992, the KP Dom Foča detention warden Krnojelac reported that 469 prisoners had been brought to the KP Dom detention centre since the start of the war, 459 of whom were Bosnian Muslims. This is contained in exhibit P4019. Witnesses RM-063 and RM-046, who were detained at the KP Dom detention centre from April 1992 for a period of 6 months and more than a year respectively, testified that every night during their detention a number of detainees were taken out for beatings. Witness RM-063 testified that the beatings were carried out by a policeman called Dragoljub Obrenović and a number of KP Dom guards. According to Witness RM-063, detainees were very often taken to solitary cells, from which moans, screams, thuds, and shots could be heard. During a weekend in August 1992, Witness RM-063 saw approximately 200 detainees taken away in groups from the KP Dom. These detainees never returned.

In relation to Scheduled Incident B13.1, Witness Safet Tači, who was detained in Room 2 of Keraterm detention camp, testified that one day he saw a table with a machine gun and a portable spotlight being put up and directed at the door of Room 3, a small room where 180-200 detainees were squeezed in. Around midnight he heard machine-gun fire after the door of Room 3 had been opened and people started to stream out. The next day, the witness was ordered by a soldier to load the bodies inside and in front of the door of Room 3 onto a truck. The Chamber notes that according to one adjudicated fact, the machine-gun outside Room 3 had been placed there by Bosnian-Serb army personnel on 20 or 21 July 1992.

In relation to Scheduled Incident B.8.1, Witness RM-018 stated that on 31 May 1992, soldiers wearing JNA uniforms escorted him and around 70 other Muslim men from Častovići and Vojići, to a room in an elementary school in Velagići. At 11:30 p.m., soldiers cursed and beat the men and ordered them to form a line and face two armed soldiers. Soon after, those soldiers opened fire at them. The witness was able to hide under the bodies. The witness heard the soldiers discuss going to Lanište, where the Knin Corps was stationed, to get a loader and a truck to dispose of the bodies in the forest.

In relation to Scheduled Incident A3.3, Witness Dževad Džaferagić stated that on 10 July 1992 at about 5.30 a.m., he woke up to the sound of automatic gunfire. From his house, he saw a convoy of 50 to 60 men in civilian clothes being led to Ključ by eight or nine Serb soldiers wearing JNA uniforms. The witness saw Serb soldiers entering houses, removing men and beating them. From approximately 10 a.m., groups of Serb soldiers wearing JNA and camouflage uniforms escorted groups of seven or eight Muslim men to a stable from where he heard gunfire. At approximately 6 p.m., the witness saw a yellow excavator and a lorry arrive at the stable and several unidentified Serb soldiers loading bodies from the stable onto the excavator. During this process, one of the soldiers said [quote] "that is the way of the true Serb" . The Chamber heard evidence indicating that the attack had been planned and carried out by troops belonging to the VRS.

In relation to all of these incidents, the Chamber also received forensic material in support of the witness's evidence.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now turn to Srebrenica.

The Chamber heard the evidence of witness Drazen Erdemović, who testified that on the morning of 16 July 1995, he and seven other members of the VRS 10th Sabotage Detachment were ordered by their group commander, Brano Gojković, to go to the Zvornik Brigade headquarters. From there, they were escorted by a VRS lieutenant colonel and two members of the Drina Corps military police to Branjevo Military Farm. Upon arrival at the farm, Erdemović overheard Gojković talking with the lieutenant colonel about buses

arriving, and then Gojković told the witness and the other members of his unit that buses carrying civilians from Srebrenica would arrive and they were to execute these people.

Buses began arriving carrying Bosnian Muslim males aged between 17 and 65 and dressed in civilian clothing, and each bus had two armed Drina Corps military police escorts onboard. The Bosnian Muslims from the first bus were blindfolded and had their hands tied together. The detainees were led from the buses to the execution site where Erdemović and the other VRS soldiers were ordered by Gojković to open fire on them. Erdemović also testified that Gojković had ordered the bus drivers to kill at least one prisoner each so that they would not later testify about what had happened.

Later that day, as the last bus with Bosnian Muslim detainees arrived, a group of ten VRS soldiers from Bratunac joined the witness's unit at the execution site. These soldiers beat and cursed the detainees, forcing them to kneel and pray "in the Muslim manner." The VRS lieutenant-colonel who had earlier escorted the witness and members of his unit to the execution site arrived at the end of the executions and discussed the burial of the victims in the field. Erdemović testified that he and other VRS soldiers participated in the execution of between 1,000 to 1,200 Bosnian Muslim males dressed in civilian clothes who had been brought to the execution site by between 15 and 20 buses that day.

The Chamber also heard evidence from witnesses RM-346 and RM-255, who testified about surviving the Branjevo Farm executions. Both witnesses gave evidence that after being captured and detained by soldiers, they and other Bosnian Muslim detainees, some of whom were blindfolded with their hands tied behind their backs, were transported by bus to a field on 16 July 1995. Witness RM-346 testified that upon arrival Serb soldiers began cursing the detainees saying things like "Alija does not want you, step out", as the soldiers took the detainees off the buses in groups of ten. Witness RM-255 gave evidence that one of the soldiers asked if he wanted to declare himself as a Serb and then be released. In response to this, two of the detainees then said they were Serbian, but were not separated from the line. The detainees were led to an area where they were lined up between corpses that were already on the ground. They were ordered to turn their backs and to lie down, and then a group of ten soldiers began shooting the detainees. Having survived the executions, witnesses RM-255 and RM-346 lay motionless among the corpses listening to the process repeat itself throughout the day: the soldiers returning multiple times with groups of detainees, ordering the detainees to line up, shooting them, asking if anyone was still alive, and then killing anyone that responded. Witness RM-255 also gave evidence that on two occasions he heard that the soldiers were making statements about them committing genocide, once while he was being led to the execution site, and another time after his escape while he was hiding nearby.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now set out some evidence on rapes and cruel and inhumane treatment for the Municipalities part of the case.

The Chamber also heard evidence in relation to a large number of rapes committed at various locations in Foča Municipality. For the purposes of this decision, the Chamber will focus on the evidence it heard regarding Karaman's house as set out in Schedule C.6.2 of the Indictment. Witnesses RM-070 and RM-048 testified that around 3 August 1992 they and other girls were taken by one of Pero Elez's soldiers and the soldiers of Dragan Kunarac a.k.a. Žaga in Miljevina, Foča Municipality. Witness RM-070 testified that the youngest girl at Karaman's house was 12 years old. During the evenings, soldiers from Pero Elez's group raped one or more of the girls, and the soldiers would regularly beat the girls when they refused to follow orders. Witness RM-070 testified that Pero Elez raped all of the girls once or twice. Witness RM-048 testified that she learnt that Elez was the commander of a group of soldiers under the command of Marko Kovač, about whom the Chamber heard evidence that he was the Commander of a VRS brigade from May 1992 until the end of 1994. Around

mid-August 1992, Witness RM-048 was taken from Karaman's house to the house of a Serb soldier where she was held and raped, until she was released in July 1993. During this time, the soldier took the witness to a celebration where Mladić approached them asking the soldier whether the witness was his "Herzegovinian girl". Mladić then turned to the witness directly and asked her whether it was "better than in Alija's state". The witness testified that this made her believe that Mladić knew about girls that were kept as sexual slaves. According to Witness RM-048, there were no Muslim women or girls living freely in Foča at the time. The Chamber notes that one of Mladić's notebooks, exhibit P359, records the names of two young women the Bosnia-Herzegovina officials were looking for, and about whom witnesses have testified they were held in Foča as sexual slaves.

The Chamber heard a large amount of evidence regarding the cruel and inhumane treatment of persons detained in camps in the Municipalities. For the purposes of this decision, it will only focus on the Keraterm and Omarska camps in Prijedor Municipality, mentioned in Schedules C.15.2 and C.15.3 of the Indictment, and Manjača camp in Banja Luka Municipality, referred to in Schedule C.1.2.

In relation to the Keraterm Camp, Safet Tači testified regarding his detention in Room 2, which was approximately ten by twelve metres, very hot, unhygienic and filled with a large number of Croats and Muslims, many of them severely beaten. The witness testified that on one occasion, a man by the name of Duča entered Room 2, called on two detainees who were brothers and forced them to beat each other severely. According to the adjudicated facts, the Keraterm camp held up to 1,500 prisoners crowded into a number of large unlit rooms or halls, which got intensely hot in the summer as there were no windows or ventilation. Prisoners were kept locked in these rooms for days, crowded together. The detainees were allowed to go to the toilet only once a day. Infestations of lice appeared at the camp, and dysentery was rife. There was no medical care. Detainees suffered from malnutrition and starvation, and were beaten on arrival.

In relation to the Omarska Camp, Witness Nusret Sivac testified he was taken to Omarska camp on 20 June 1992. Upon his arrival, he and other prisoners were beaten severely by members of an intervention platoon, including Mrđa and Zoran Babić. On one occasion, all the detainees in the camp were beaten, from the early hours of the morning until late afternoon. The shift on duty, led by Mlado Radić, a.k.a. Krkan, set up a gauntlet of guards, assisted by guards from other shifts. The witness saw people screaming and falling down everywhere as the guards beat them with baseball bats and metal chains with balls attached to them. One guard struck the witness on his head using a metal chain and ball, after which he lost consciousness. According to the Adjudicated facts, sometimes 200 persons were held at the Omarska camp in a room of 40 square metres; and 300 prisoners were confined in one small room. Some prisoners spent the time crowded together in the lavatories. In the lavatories, prisoners were packed one on top of the other and they often had to lie on excrements. Many of the prisoners confined in the White House on the Omarska compound did not receive food during their time there; some prisoners lost 20 to 30 kilograms during their time at Omarska, others considerably more. Drinking water at Omarska was often denied to the prisoners for long periods, and the water given to the detainees was not fit for human consumption. Prisoners had to wait hours before being allowed to use the lavatories, and sometimes risked being beaten if they asked to use them. There were no effective washing facilities; skin diseases were prevalent, as were acute cases of diarrhoea and dysentery.

The Chamber also received a large number of detailed reports that were sent to VRS officials regarding the inhumane treatment in the camps. From as early as 22 June 1992, the operational team in charge of interrogating detainees at the Manjača Camp sent daily reports to 1st Krajina Corps Commander Talić regarding the treatment of prisoners in the Manjaca camp in Banja Luka. On 1 July, it was reported that "more than 95% of the prisoners are Muslims". The operational team urged Talić to remind the military Police Commander at the Camp that it "is not a torture house", that prisoners were "maltreated, beaten and humiliated to the extreme", that policemen at the camp beat the prisoners as



they pleased but that it was difficult to eradicate this behaviour as the security commander of the camp often said in front of the soldiers that the prisoners “should all be killed”. On 22 July 1992, a daily report mentioned that it was the first time that the operational team had witnessed that a group of detainees had been brought to the camp “intact, i.e. there are no traces of violence”.

The Chamber will now assess whether counts 1-3, 5, and 6 stand as far as the crime base evidence is concerned.

Specifically in relation to Counts 1 and 2, there is evidence that acts of genocide took place in the Municipalities and in Srebrenica during the Indictment period. The Chamber already addressed the killings of a number of individuals earlier. Killing is one of the charged underlying acts of genocide. The Chamber also refers to the evidence cited in relation to the crimes of detention and cruel and inhumane treatment, including rape and other acts of sexual violence as causing serious bodily or mental harm and conditions calculated to bring about the victims’ physical destruction. The evidence cited also provides information on the perpetrators’ genocidal intent.

The Chamber considers that the evidence before it, including the mentioned examples, addresses all the elements of the crime of genocide, the crimes of persecution and murder as a crime against humanity, and the crime of murder as a violation of the laws or customs of war.

The Chamber now turns to the responsibility of the Accused for these crimes.

The Chamber will examine the evidence with regard to the mode of liability of participation in a JCE. As set out in the case law of the Tribunal, the elements of this mode of liability are: a plurality of persons; a common objective which amounts to or involves the commission of a crime provided for in the Statute; and the participation of the accused in the objective’s implementation. The contribution of an accused need not have been substantial or necessary to the achievement of the common objective. However, it should at least be a significant contribution to the crimes forming part of the common objective. The mental element required is that the participants in the JCE shared the intent to achieve the common objective through the commission of the statutory crime or crimes.

The parties have agreed on many aspects of the Accused’s military background and role as alleged in the Indictment, which the Chamber will proceed to summarize. The Accused held various positions in the 9th Corps of the JNA and, on 30 December 1991, became its commander. On 10 May 1992, Mladić assumed the command of the Second Military District Headquarters of the JNA. On 12 May 1992, the VRS was formed. On 12 May 1992, the Bosnian-Serb Assembly in Banja Luka during its 16th session appointed Mladić as commander of the VRS Main Staff, as evidenced by the transcript of that session admitted as exhibit P431, and supported by evidence from expert witnesses Reynaud Theunens and Robert Donia. Mladić was in command of the VRS Main Staff until at least 8 November 1996.

The first joint criminal enterprise charged in the Indictment relates to the goal of permanently removing Bosnian Muslim and Bosnian Croat inhabitants from Serb-claimed territory of Bosnia-Herzegovina through the commission of crimes enumerated in Counts 1 and 3-8. Alleged JCE members include Radovan Karadžić, Slobodan Milošević, and Momčilo Krajišnik. The Indictment alleges that the Accused significantly contributed to achieving the objective of the JCE and shared the intent for the commission of the charged crimes with others who acted in concert with him.

In relation to the common plan and the plurality of persons of the overarching JCE, the Chamber heard evidence regarding the planned take-over of the municipalities which sought to establish separate Bosnian-Serb institutions and the creation of a Bosnian-Serb homogeneous state. It received evidence that throughout 1991 and early 1992 the Bosnian-Serb leadership, under the direction of Radovan Karadžić, began creating parallel Serb

civilian and military structures in the municipalities throughout Bosnia-Herzegovina. The Chamber refers in this respect to the evidence of Milan Babić. It notes that on 24 October 1991, the Bosnian-Serb leadership established a separate Bosnian-Serb Assembly and on or about 20 December 1991, Karadžić issued the so called Variant A and B instructions to municipality leaders for the creation of bodies not provided for in the existing legal order, including the Serbian Crisis Staffs.

The Chamber heard extensive evidence with regard to the promulgation of the six strategic objectives. On 6 May 1992, the Accused recorded a meeting in his notebook, exhibit P352, with Karadžić and a group of JNA generals. During this meeting, Karadžić emphasized the imperative of ethnic separation and articulated three other goals that subsequently became strategic goals two, three, and six of the so called six strategic goals. During a meeting on the following day, attended by the Accused, Momčilo Krajišnik stipulated the six strategic goals of the Bosnian-Serb leadership in express terms. On 12 May 1992, the six strategic objectives were publicly announced by Radovan Karadžić and adopted at the 16th Assembly Session of the Bosnian-Serb Republic on the same day. The Chamber refers to exhibit P431. At this same session, at which the Accused was also appointed as the VRS Main Staff commander, the Accused showed that he shared these objectives and appeared to have participated in creating them, stating that he had [quote]“read, mulled over for a long time and discussed within the most select circle of comrades whom we convened, the strategic goals that are of substance”.

The Chamber heard evidence about the relationship between Karadžić and the Accused. It notes the testimony of Witness Herbert Okun that Karadžić on at least two occasions between 1992 and 1993 explicitly told him that the Accused was under his control, adding on one occasion that “you know how the soldiers are. They don't like to be controlled by civilians, but we control them.”

Further, the Defence submitted that the Accused “always issued orders seeking to have perpetrators disarmed, arrested, investigated and prosecuted”.

The Chamber heard evidence that instructions were issued to VRS forces condemning the commission of crimes in the Municipalities, but that in practice the VRS soldiers were instructed to continue with their behaviour irrespective of whether it was criminal. The Chamber notes that on 12 June 1992, the VRS Main Staff issued instructions regarding the treatment of prisoners and the creation of detention camps. The Chamber refers in this respect to exhibits P377, P189, P3910, P3979, and the notebook of Mladić P353 at page 160. The Chamber also refers to the evidence of Witness RM-019, a member of the 11th Herzegovina Light Infantry Brigade from May 1992, who testified that at the end of May or in early June 1992, Zoran Vuković, the Battalion commander, read out a statement allegedly signed by Karadžić to a group of soldiers, including the witness. According to the statement, the soldiers were not to burn any more property or kill any more prisoners. Following the statement, Vuković asked each soldier to sign a paper to the effect that they had heard the statement. Vuković conveyed the best regards of the commander in Pale to the soldiers and told them they were doing a great job and should continue to do so. One of the soldiers asked Vuković why he wanted him to sign the statement if the killing and burning should continue, to which Vuković responded that the soldier should not think too much.

Witness RM-081 testified that he watched television coverage of the Assembly in Sarajevo where Karadžić announced that at some point Muslims will disappear from the face of the earth. He also testified that around September 1992 Sveto Veselinović, president of the Serbian Democratic Party in Rogatica and member of the War Commission of the Serbian Republic of Rogatica, told the witness that all Muslims would disappear from the territory. Veselinović disclosed to the witness that he had met with Karadžić in Pale, where it had been decided that one-third of Muslims would be killed, another one-third would be converted to the Orthodox religion, and the remaining one-third would leave.

The Chamber heard evidence that throughout the municipalities, the execution of the policy of the Bosnian Serb leadership resulted in large-scale expulsion of the non-Serb populations from the Municipalities. From the beginning of the conflict in April through August 1992, more than 30,000 Bosnian Muslims and Croats moved out of the municipality of Prijedor alone, either out of fear or due to unbearable circumstances. The Chamber also recalls its earlier findings regarding the large-scale killings in and around the detention camps throughout the municipalities. There is ample witness testimony and documentary evidence that persons detained at the detention camps in the Municipalities were placed there solely on the basis of their ethnicity. The Chamber refers in this respect to exhibit P3801, a report by the Bosnian-Serb MUP to Radovan Karadžić dated 17 July 1992 stating that “the Army, crisis staffs and war presidencies have requested that the Army round up or capture as many Muslims as possible”, who were to be placed in camps.

Based on the foregoing, the Chamber considers that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment there existed a joint criminal enterprise composed of, inter alia, members of the Bosnian Serb leadership and the VRS, including Radovan Karadžić and the Accused, the purpose of which was to permanently remove the Bosnian Muslims and/or Bosnian Croats from Bosnian-Serb claimed territories in Bosnia-Herzegovina through the commission of the crimes charged in the Indictment.

In relation to the Accused’s contributions to this JCE, there is evidence that the Accused, as Commander of the VRS Main Staff, implemented measures to carry out the strategic goals, as previously set out, to advance the objective of the joint criminal enterprise. The Chamber received evidence that throughout the Indictment period the Accused issued nine operational directives implementing the six strategic goals into orders for major VRS combat operations. The Chamber refers, for example, to the operational directives in evidence as exhibits P747, P1963, and P1968, as well as the report compiled by Reynaud Theunens.

Witness Pyers Tucker testified that the Accused told him that the prisons at Foča, Batković, and Kula were under his control. The Chamber also received documentary evidence indicating the Accused’s control over the detention camps. Particularly, it notes exhibit P201, a VRS order of August 1992, indicating that the Accused personally exercised direct military control over units in control of detention camps in Manjača, Trnopolje, Omarska, and Prijedor. Other evidence of direct involvement of the Main Staff in the detention camps is reflected in exhibits P2899, P4147, and P3687.

In relation to the Accused’s *mens rea*, the Chamber refers to Mladić’s involvement in the creation and promulgation of the six strategic goals in May 1992, as discussed earlier. The Chamber notes that there is evidence that the Accused throughout the period of the Indictment knew about the crimes committed in the municipalities. John Wilson testified that in December 1992 or January 1993, he spoke to Mladić in Geneva about a photograph circulating in the media of a malnourished man held at a Serb detention camp. The Chamber further recalls the evidence of Witness RM-048 who testified that Mladić knew that girls from Foča were kept by his troops as sexual slaves.

The Chamber notes the effect that the rapes had on the Bosnian Muslim women, and the testimony of a rape victim who stated that in her opinion, the Serbs “wanted to destroy, kill, destroy our spirit as much as they could because there is no cure for a woman who was raped”, adding that she would never recover.

The Chamber also refers to the evidence of David Harland, who testified that during the week ending on 3 November 1993 he attended a meeting where Mladić stated that unless all 22 Serb POWs in the Goražde pocket were returned, he would kill everyone in the eastern enclaves except for the children. Mladić’s words at this meeting were recorded by international observers in exhibits P4639 and D7.

The Chamber also received intercept evidence regarding the Accused's state of mind. In an intercepted telephone conversation of May 1992, Mladić warned Fikret Abdić that he would "order the shelling of the entire Bihać". Mladić stated that "the whole of Bosnia will burn if I start to 'speak'", and continued by saying "not just Sarajevo". In an intercepted conversation of 5 August 1992, Mladić threatened to use heavy artillery weapons on a "densely populated area" if his demands to cease combat activities were not met.

The Chamber also heard the evidence of Šefik Hurko, a Bosnian Muslim who was detained in the Rasadnik camp in Rogatica municipality from August 1992 through April 1994, who testified that sometime in April 1994, 10-15 detainees from the camp, including the witness, were brought to a place near Goražde. There, they were instructed by the warden of the camp, Bojić, to work in the forest and to speed up because Mladić was coming. When Mladić noticed the detainees he asked who they were, Bojić responded that they were prisoners from Rogatica. Mladić asked him if they were loyal or captured, to which Bojić responded that they were loyal. Mladić then ordered the detainees to be lined up in front of him and said that, if they were willing to change their religion, they could stay.

Based on the foregoing, the Chamber is satisfied that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment the Accused participated in the joint criminal enterprise comprised of, inter alia, members of the Bosnian-Serb leadership, including Radovan Karadžić. The purpose of this JCE was to permanently remove the Bosnian Muslims and Bosnian Croats from Bosnian-Serb claimed territory in Bosnia and Herzegovina through the commission of crimes charged in the Indictment. The Accused shared the intent of the other members of the overarching JCE to carry out its objective through the commission of crimes. He also significantly contributed to it.

Under these circumstances, the Chamber finds that Counts 1, 3, and 5-6 stand.

The Chamber recalls that the defence did not specifically challenge the second joint criminal enterprise. The Chamber will further deal with counts 9 and 10 later in this decision.

The Chamber will now move on to the third joint criminal enterprise alleged in the Indictment, namely, the JCE to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and by forcibly removing the women, young children and some elderly men from the enclave, through the commission of crimes charged in Counts 2 through 8 of the Indictment. The implementation of this plan is alleged to have commenced as early as March of 1995, continuing until 1 November 1995. Alleged JCE members include, inter alia, Radovan Karadžić, and senior officers of the VRS and Bosnian-Serb MUP. The Accused is alleged to have contributed to achieve the objective of the JCE by, inter alia, commanding and controlling the VRS in furtherance of the objective. It is alleged, further, that he shared the intent for the commission of the charged crimes with other members of the JCE.

In relation to the objective of the said JCE, the Chamber recalls the evidence of Momir Nikolić who testified that from the moment the enclaves were set up, the VRS forces had the political goal to cause the forcible removal of the entire Muslim population from Srebrenica, Žepa, and Goražde to Muslim-held territory. The Chamber also considered Directive 7, in evidence as exhibit P1469, and discussed by the parties during their submissions. This directive is dated 8 March 1995, addressed to the commanders of the various Corps commands, and signed by the Supreme Commander Radovan Karadžić. It ordered, inter alia, that the Drina Corps carry out the "complete physical separation of Srebrenica and Žepa"... "as soon as possible, preventing even communication between individuals in the two enclaves"; and "by planned and well thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa". The Directive also stated "through the planned

and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of the UN protection force, hereinafter UNPROFOR, to the enclaves and the supply of material resources to the Muslim population, making them dependant on our goodwill, while at the same time avoiding condemnation by the international community and international public opinion.” . Directive 7 was referenced in a Drina Corps Command Order issued on 20 March 1995 signed by Milenko Živanović, and VRS Main Staff Directive 7/1 dated 31 March 1995, signed by Mladić. These are in evidence as exhibits P1468 and P1470, respectively. The Drina Corps Command Order incorporated, inter alia, Directive 7’s language with regard of the creation of unbearable circumstances for the inhabitants of the enclaves. Witness Manojlo Milovanović testified that somebody reading the reference to Directive 7 in Directive 7/1 would have to look back at Directive 7 in order to be able to fully implement it.

On 2 July 1995, the Drina Corps issued an order for Operation Krivaja 95, in evidence as exhibit P1465. This order formulated the task, pursuant to Directives 7 and 7/1, to carry out offensive activities with the objective of, inter alia, separating and reducing in size the Žepa and Srebrenica enclaves, and to create conditions for the elimination of the enclaves.

Several witnesses, including Momir Nikolić and Rupert Smith, testified that the VRS attack on Srebrenica started on 6 July 1995. Evert Rave testified that on 7 July 1995, the VRS fired into the safe area and targeted UN facilities, causing several civilian deaths. On 9 July 1995, in a message in evidence as P1466, General Tolimir reported that Karadžić had been informed of successful combat operations around Srebrenica by units of the Drina Corps enabling occupation of the enclave, and that Karadžić had agreed with, inter alia, the continuation of operations for the takeover of Srebrenica.

The Chamber received evidence from several witnesses that Srebrenica ultimately fell to the VRS on 11 July 1995.

Momir Nikolić testified that early in the morning of 12 July, in a conversation with Popović and Kosorić, Popović told him that all the women and children would be transferred to territory controlled by Muslim forces, which was either Kladanj or Tuzla. The witness asked what would happen to the able-bodied men, to which Popović responded that all the “balijas” should be killed. Witness RM-513 and Richard Butler testified that the term “balijas” was used in a derogatory fashion by Serb forces to refer to Muslims. Nikolić, Kosorić, and Popović then discussed possible execution sites.

The Chamber heard evidence of a meeting at around 8 p.m. on 13 July between Beara and Momir Nikolić in the centre of Bratunac. Beara told Momir Nikolić that the Muslim prisoners would be temporarily detained and then executed in Zvornik. In a subsequent meeting attended by Beara, Miroslav Deronjić, and Vasić, Deronjić and Beara had an argument about where to take the captured Bosnian Muslims. Momir Nikolić testified that on this occasion, Beara insisted that the prisoners remain in Bratunac, stating that he had received an order from his “boss” that the Muslims should stay there. Momir Nikolić understood Beara’s reference to his boss to refer to General Mladić, as all officers referred to Mladić as the boss. Deronjić opposed Beara’s proposal, stating that he did not want the Muslims detained and killed in Bratunac and that he had received an order from Karadžić that the Muslims should go to Zvornik.

The Chamber also considered the evidence of witnesses including Witness RM-322, Damjan Lazarević, and Cvijetin Ristanović of coordinated burial operations organized by the VRS following several executions alleged in the Indictment, involving, among others, the Zvornik Brigade Engineering Unit.

With respect to the requirement of a plurality of persons, the Chamber refers to the evidence set out above concerning the interaction and communications between various high-ranking VRS officers including Mladić, Tolimir, Beara, Kosorić, Krstić, and Popović. In addition, it notes the evidence of Momir Nikolić concerning the presence of MUP

commander Ljubiša Borovčanin in Potočari during the process of transportation of the Bosnian Muslims discussed earlier in this decision, as well as the involvement of Karadžić in respect of Directive 7.

Finally, the Chamber recalls the evidence referred to earlier in this decision with respect to the crime-base and considers that an inference can be drawn, together with the evidence set out here, that the alleged Srebrenica JCE existed and was implemented.

In relation to the Accused's contributions to this third JCE, the Chamber gave regard to the following evidence. In an excerpt of an intercepted conversation recording a voice which witness Ljubomir Obradović identified as that of the Accused, Mladić is recorded as stating, with reference to UNPROFOR and humanitarian convoys, that he would not have taken Srebrenica or Žepa if he had not starved them in the winter, adding that since February, he only let through one or two convoys. This conversation is in evidence as exhibit P1789. The Chamber also considers Obradović's testimony concerning exhibit P1788, a series of UNPROFOR requests to the Main Staff for convoy approval with the handwritten initials of the Accused accompanied by the word no, as evidence of Mladić's direct involvement in the restriction of supplies reaching the enclave.

The Chamber further notes the testimony of Momir Nikolić that General Krstić was in command of all units taking part in the Srebrenica operation, until General Mladić arrived and took over command. The Chamber also refers to exhibit P724, a report by MUP commander Ljubiša Borovčanin on the combat engagement of police forces in the period of 11 to 21 July 1995, which details that Borovčanin took orders from Mladić to engage police forces in, inter alia, Potočari.

Momir Nikolić testified, moreover, that during one of the meetings held at Hotel Fontana on the evening of 11 July 1995, Mladić threatened and intimidated the Dutch officers as well as Nesib Mandžić, a Bosnian Muslim, telling them that he wanted the Muslim army to surrender, that the future of Mandžić's people was in Mandžić's hands, and that they could choose to survive or disappear. This is recorded in video-footage, in evidence as exhibit P1147.

In relation to the Accused's intent, the Chamber refers to the following evidence in particular. Video footage in evidence as exhibit P1147 depicts Mladić walking through Srebrenica town on 11 July together with Serb forces stating, inter alia, [quote] "Here we are, on 11 July 1995, in Serb Srebrenica"; "we give this town to the Serb people as a gift"; "the time has come to take revenge on the Turks". Witness Reynaud Theunens testified that the word [quote] "Turks" was used to refer to Bosnian Muslims and was often considered a derogatory term.

Momir Nikolić testified that in the afternoon of 13 July, he met Mladić at the crossroads in Konjević Polje, where there were prisoners visibly present. Mladić exited his vehicle, approached a group of prisoners, and addressed them, stating that they should not worry and would soon be taken wherever they pleased. Returning to the vehicle, the witness asked Mladić what would really happen to the prisoners. Mladić responded by smiling and making a sweeping gesture with his right hand from left to right approximately at the middle of his body. Mladić then laughed and entered the vehicle.

The Defence submits, as examples, that Mladić's preference for a cessation of hostilities and his efforts to exchange Muslim with Serb prisoners negates any possibility that he intended to destroy the Muslims in Srebrenica. Based on the above cited evidence, the Chamber considers, however, that the evidence could lead a reasonable trier of fact to be satisfied that the Accused possessed the specific intent.

The Chamber considers that on the basis of the foregoing, there is sufficient evidence upon which, if accepted, a reasonable trier of fact could find beyond reasonable doubt that there existed a joint criminal enterprise, composed of a plurality of persons, including

Karadžić, Mladić, Tolimir, Borovčanin and other high-ranking VRS and MUP officers, the common purpose of which was to eliminate the Bosnian Muslims in Srebrenica through the commission of the crimes charged in the Indictment. The Chamber considers further that there is sufficient evidence in accordance with the aforementioned standard that Mladić participated in, and made a significant contribution to this JCE. The standard is equally met with respect to Mladić's intent for the JCE, namely, that he shared intent with other alleged JCE members, to commit the crimes charged in the Indictment.

Under these circumstances, the Chamber finds that Count 2 stands.

The Chamber recalls that the Defence did not specifically challenge the fourth joint criminal enterprise. The Chamber will further deal with count 11 now.

The Defence has not specifically challenged Counts 4 and 7-11 of the Indictment or the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute. The Chamber has carefully examined the evidence and is satisfied that there is sufficient evidence under the applicable legal standard at this stage of the proceedings for these counts to stand.

Accordingly, the Chamber considers that the Accused has a case to answer on all counts of the Indictment.

This concludes the Chamber's decision on the Defence's request for acquittal pursuant to Rule 98 *bis*.

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# JUDGEMENT SUMMARY

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

CHAMBERS

The Hague, 15 April 2014

## Rule 98 bis Judgement summary in the case of Ratko Mladić

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

The Chamber will now deliver its decision on the Defence's request for acquittal pursuant to Rule 98 bis.

The Chamber heard oral submissions from the Defence on 17 March 2014, and in response from the Prosecution on 18 March 2014. On 19 March 2014, both parties made further submissions. In reaching its decision, the Chamber has considered all submissions of the Defence and the Prosecution, as well as all evidence admitted by the time of hearing the submissions.

The Chamber will first give a brief summary of those submissions. Thereafter, it will address those submissions, give an overview of the Indictment, and then address the evidence related to all counts of the Indictment.

The Defence made four submissions under Rule 98 bis.

First, the Defence argues that the word "count" in the text of Rule 98 bis has been restrictively interpreted by Trial Chambers to mean that judgements for acquittals can only be entered in respect of entire counts and not individual charges or incidents. The Defence submits that the precise meaning of the wording of Rule 98 bis should be determined with recourse to the intention of the drafters and the object and purpose of the Rule. According to the Defence, the object and purpose of Rule 98 bis is to streamline the case by removing allegations that cannot be sustained, ensuring that the trial is expedited and that the Defence's resources are not laid to waste.

Secondly, the Defence requests that the charges concerning the Jadar River incident, which is Scheduled Incident E.1.1, the charges concerning the Širokača shelling incident of 28 May 1992, which is part of Scheduled Incident G.1, and all the charges relating to destruction of cultural monuments and sacred sites, set out in Schedule D, be dismissed.

Thirdly, the Defence submits that the Prosecution has not proffered any evidence capable of sustaining a conviction under Article 7 (3) of the Statute on crimes perpetrated by third party, or non-VRS, actors. In advancing this proposition, the Defence asserts that the Prosecution has failed to identify the subordinates over whom it alleges that the Accused exercised effective de jure or de facto control. In addition, the Defence contends that there is evidence which supports the claim that the Accused did not have effective control over armed groups other than the Bosnian-Serb Army, hereinafter VRS, in particular, over the Bosnian Serb Ministry of Interior, hereinafter MUP, forces, Arkan's Tigers, and the Skorpions.

Fourthly, the Defence makes a number of submissions with respect to genocide as charged under Counts 1 and 2, characterising the Prosecution's evidentiary basis as

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deficient in meeting the reduced burden of proof set by Rule 98 *bis*. In respect of Count 1, the Defence argues that in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice, hereinafter referred to as ICJ, decided to dismiss allegations of the crime of genocide in the municipalities on the ground that there existed insufficient evidence of the specific intent to destroy a protected group. The Defence also points to the Judgements in the cases of Stakić, Sikirica, Krajišnik, and Brđanin, which concluded similarly. Moreover, the Defence argues that even though the Chamber has received evidence of criminal acts directed against Bosnian Muslims and Bosnian Croats in the municipalities, the evidence on these crimes does not establish that they were committed with genocidal intent.

As regards Count 2, the Defence argues that according to the testimony of General Milovanović pertaining to military Directive 7.1, the Accused left out two crucial portions of Directive 7 when issuing Directive 7.1. The first of these two portions was Karadžić's instruction that complete physical separation of Srebrenica from Žepa should be carried out as soon as possible. The second related to the creation of an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa. The Defence submits that the Accused by leaving out these two instructions has shown that he did not share the common purpose to commit genocide in Srebrenica.

The Chamber now moves to the Prosecution's submissions.

Responding to the Defence's first three submissions, the Prosecution argues that the Defence has provided no sound reason as to why the Chamber should depart from the well-established practice of this Tribunal and look within each individual count and examine whether the Accused may be acquitted of a portion thereof. Moreover, the Prosecution submits that there is sufficient evidence to maintain the charges specifically challenged by the Defence.

The Prosecution sets out the evidence concerning each of the counts in the Indictment, especially in respect of Counts 1 and 2. As regards Count 1, the Prosecution submits that there is evidence indicating that in 1992, Bosnian Muslim and Bosnian Croat communities were targeted for destruction and that those that survived the ensuing destruction were forcibly displaced. According to the Prosecution, the combination of physically destructive acts and other acts targeting the foundation of the two protected communities, such as displacements and the destruction of property and cultural and religious sites, effectively led to their physical demise and their inability to reconstitute themselves. The Prosecution submits, moreover, that the fact that the ICJ did not declare that in 1992 genocide had occurred in Bosnia-Herzegovina is not relevant to the present proceedings as the ICJ made that determination on the basis of a different legal standard and a different body of evidence. Furthermore, the Prosecution argues that in all prior Tribunal cases at the Rule 98 *bis* stage, the genocide count for the municipalities has been upheld, whether by Trial Chambers or by the Appeals Chamber following an appeal.

With regard to Count 2, the Prosecution submits that Directive 7 and Directive 7.1 form an indivisible whole since Directive 7.1 expressly refers to Directive 7. The wording of the latter document therefore remains valid and important.

The Chamber will now set out the law applicable at this stage of the proceedings.

Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence provides as follows: "At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction." Under the case law of the Tribunal, the Chamber must examine whether there is evidence upon which a reasonable trier of fact could be satisfied beyond a reasonable doubt of the guilt of the accused. Thus, if a reasonable Chamber could be satisfied beyond a reasonable doubt of the guilt of an Accused on the basis of the evidence adduced in relation to a count, then the count must

stand. There must be sufficient evidence for each element of the alleged crimes, and for one of the modes of liability contained in the Indictment. The test would not be satisfied if there was no evidence. If the Prosecution has presented evidence, that evidence is entitled to credence unless incapable of belief. At this stage, the evidence should be taken at its highest for the Prosecution. The Chamber therefore will not concern itself with issues of credibility or reliability, unless a witness is so lacking in credibility and reliability that no reasonable Chamber could find him or her credible or reliable.

As a preliminary remark before addressing the submissions in substance, the Chamber notes one matter. During its Rule 98 *bis* submissions, the Defence objected to how the Indictment was pled, suggesting that the charges lack specificity. In particular, the Defence invited the Chamber to consider the “far-reaching consequences of including this many actors as sharing in the common purpose in light of the lack of specificity in the Indictment.” According to the Rules, motions challenging the Indictment are to be filed prior to the start of a case. On 13 October 2011, the Chamber decided upon such a motion and dismissed alleged Indictment defects, including those now raised again by the Defence. The Chamber will not revisit the issue.

The Chamber will now address the parties’ submissions.

In relation to the Defence’s first argument, the Chamber considers that Rule 98 *bis* as a procedural rule is a corollary of the right of an accused to be presumed innocent until proven guilty. There are various procedural avenues which give effect to this right, and they are not necessarily limited to the stage of the end of the Prosecution’s case. The Rule’s amendment in 2004 adjusting the scope of Rule 98 *bis* decisions was intended to streamline the proceedings in the interests of judicial economy. The amendment changed the procedure from a written to an oral one, and shifted the determination to be made to the counts rather than to individual charges in an Indictment. The Rule’s amendment did not affect an accused’s right to be presumed innocent until proven guilty. Effect will ultimately be given to this right in the final Judgement. The Hadžić Trial Chamber, in its Rule 98 *bis* decision issued on 20 February 2014, presented an extensive overview of the practice in this Tribunal in relation to the count-based approach of Rule 98 *bis*.

The Chamber further notes that a failure of the Prosecution to adduce any evidence or insufficient evidence on individual charges has an effect on the proceedings that will follow. For the purpose of preparing and presenting its evidence, the Defence will in effect be left with no case to answer in relation to those individual charges. The Defence is not forced to spend resources to challenge charges which it believes have not been supported by evidence. The Defence is not forced to present any evidence for that matter. The Prosecution has to establish beyond a reasonable doubt that the charges are proven. If according to the Defence the evidence does not prove the charges, it may decide to refrain from presenting evidence thereon. This may especially be the case in relation to charges where the Defence believes that the Prosecution has not even met the lower threshold applicable at this stage of the proceedings. For the foregoing reasons, the Chamber rejects the Defence’s first argument.

In its second argument, the Defence challenges a number of specific incidents: the Jadar river killings, the shelling of Širokača on 28 May 1992, and the incidents listed in Schedule D of the Indictment in relation to destruction of religious sites. The Jadar river killings incident is one out of 20 scheduled killing incidents in relation to Srebrenica alone. The Širokača shelling is not even specifically mentioned in Schedule G to the Indictment, but forms part of Scheduled Incident G.1, which charges shelling of the city of Sarajevo as of 28 May 1992. The destructions of religious sites are part of one of seven charged underlying acts of persecution for the Municipalities part of the case. The other part of this underlying act concerns the destruction of public and private property. Considering these very narrow challenges and in light of the Chamber’s analysis of Rule 98 *bis* and the Tribunal practice developed as set out earlier, the Chamber will not further consider these incidents in this decision.

The Defence further generally challenged the mode of liability under Article 7(3) of the Statute on the basis that the Prosecution has failed to establish that non-VRS persons or groups allegedly committing crimes were under the effective de jure or de facto control of the Accused. In addition, the Defence asserts that there is no evidence to suggest that the Accused issued any criminal orders to persons who are alleged to have been perpetrators of crimes and therefore liability under the ordering limb of Article 7(1) cannot be sustained for charges in the Indictment.

The Chamber refers to its position in relation to challenges to portions of a count set out earlier. In similar vein, considering that various modes of liability are charged in respect of all counts it is sufficient that there is evidence capable of supporting a conviction on the basis of one of the modes of liability. The Defence challenges in this respect are narrow given that they pertain to one element of the alleged superior responsibility of Mladić, the de jure or de facto control, under Article 7(3) and ordering under Article 7(1), and in relation to a small number of alleged perpetrator groups. For the foregoing reasons, the Chamber rejects the Defence's third argument.

The Chamber further considers that the Defence's challenges of specific crimes do not extend to a challenge of the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute of the Tribunal.

Notwithstanding the above, the Chamber considers that there is a duty under Rule 98 *bis* to assess whether there is evidence capable of supporting a conviction on every count of the Indictment, irrespective of whether the Defence explicitly challenged all counts.

For a better understanding, the Chamber will first provide a summary of relevant parts of the Indictment.

The Indictment covers eleven counts of crimes allegedly committed between March 1992 and 30 November 1995. The areas covered by the Indictment include Sarajevo, Srebrenica, Gorazde, and the following municipalities in Bosnia-Herzegovina, which are dealt with together in the Indictment: Banja Luka, Bijeljina, Foča, Ilidža, Kalinovik, Ključ, Kotor Varoš, Novi Grad, Pale, Prijedor, Rogatica, Sanski Most, Sokolac, Trnovo, and Vlasenica. Hereinafter, I will refer to the part of the Indictment covering these 15 municipalities as the "municipalities".

According to the Indictment, the Accused held various positions in the Yugoslav People's Army, hereinafter referred to as JNA, and later in the VRS and was the Commander of the Main Staff of the VRS as of 12 May 1992.

The first two counts charge genocide. The third count charges persecution as a crime against humanity. The fourth and fifth counts respectively charge extermination and murder as crimes against humanity. The sixth count charges murder as a violation of the laws or customs of war as recognized by common Article 3(1)(a) of the Geneva Conventions of 1949. The seventh and the eighth counts respectively charge deportation and the inhumane act of forcible transfer as crimes against humanity. The ninth and the tenth counts respectively charge terror and unlawful attacks on civilians as violations of the laws or customs of war. The final count charges taking of hostages as a violation of the laws or customs of war.

The Indictment alleges that the Accused and others participated in an overarching joint criminal enterprise, hereinafter referred to as JCE, the objective of which was the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia-Herzegovina. This objective was allegedly carried out by the commission of crimes charged in Counts 1, and 3 to 8. Alternatively, this objective was carried out by the commission of crimes charged in Counts 7 and 8, while the Accused willingly took the risk of the commission of crimes charged in Counts 1 to 6 as a foreseeable consequence of the implementation of the objective.

According to the Indictment, the Accused's participation in the JCE included commanding and controlling the VRS and other elements of the Serb forces and encouraging the commission of crimes by members thereof. It also included participating in the development of Bosnian Serb governmental policies and disseminating propaganda intended to advance the objective of the JCE, failing to take adequate measures to protect prisoners of war and detainees under his effective control, as well as directing the restriction of humanitarian aid to non-Bosnian Serb enclaves.

The Indictment further alleges that the Accused and others participated in three additional JCEs. The objective of the second JCE was to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling consisting of crimes charged in Counts 5, 6, 9, and 10. The objective of the third JCE was to eliminate the Bosnian Muslims in Srebrenica through crimes charged in Counts 2 to 8. The objective of the fourth JCE was to take United Nations personnel as hostages through the crime charged in Count 11. The Accused's participation in these three additional JCEs included various forms of participation in the overarching JCE.

The Indictment further charges the Accused with criminal responsibility for having planned, instigated, ordered and/or aided and abetted the crimes, as well as with criminal responsibility as a superior.

The Chamber will now address whether each count in the Indictment stands.

In its legal characterizations, the Chamber adopts and applies the Tribunal's consistent case law with respect to the definition of the elements of the crimes and modes of liability charged in this case. In this decision, the Chamber will address the law more specifically only when this is required to explain the Chamber's findings.

The volume of evidence before the Chamber and the character of the Rule 98 bis proceedings do not allow for a comprehensive discussion of the evidence in this decision. The Chamber has, however, considered the evidence in its entirety. The specific evidence that the Chamber will refer to in this decision is therefore a focussed selection of what the Chamber has considered to be relevant for the purposes of this decision.

In relation to the crimes charged, the Chamber verified whether the evidence addresses all the elements of each of the crimes. Similarly, it verified whether the evidence addresses all the requirements for criminal responsibility as charged against the Accused. Finally, in relation to each crime charged, the Chamber verified whether the evidence, taken at its highest for the Prosecution, could lead a reasonable trier of fact to conclude, beyond a reasonable doubt, both that the crime has been committed and that the Accused bears criminal responsibility for it.

Turning to the counts, in relation to Counts 1-3, 5, and 6 there is evidence of crimes taking place during the Indictment period in the municipalities and Srebrenica. The Chamber will start with murders in the municipalities part of the case and will focus on a few incidents in order to determine whether the counts stand.

In relation to Scheduled Incident B16.2, the Chamber heard from Witness RM-066 that on 30 September 1992 four Serb police officers sent by the chief of the Public Security Service, hereinafter SJB, in Vlasenica arrived at the Sušica camp. During the night, the Serb police officers called out three groups of detainees, each consisting of 30 or 40 persons, loaded them into a truck and transported them from the camp. The witness later learned from Ilija Janković, a police officer from the SJB Vlasenica, that the majority of these detainees - mainly Muslims from Vlasenica and surrounding villages - had been killed. The witness testified the camp was a joint operation between the VRS and the Bosnian-Serb MUP, in Vlasenica municipality.

In relation to Scheduled Incident B5.1, the Chamber received evidence that in July 1992, the KP Dom Foča detention warden Krnojelac reported that 469 prisoners had been brought to the KP Dom detention centre since the start of the war, 459 of whom were Bosnian Muslims. This is contained in exhibit P4019. Witnesses RM-063 and RM-046, who were detained at the KP Dom detention centre from April 1992 for a period of 6 months and more than a year respectively, testified that every night during their detention a number of detainees were taken out for beatings. Witness RM-063 testified that the beatings were carried out by a policeman called Dragoljub Obrenović and a number of KP Dom guards. According to Witness RM-063, detainees were very often taken to solitary cells, from which moans, screams, thuds, and shots could be heard. During a weekend in August 1992, Witness RM-063 saw approximately 200 detainees taken away in groups from the KP Dom. These detainees never returned.

In relation to Scheduled Incident B13.1, Witness Safet Tači, who was detained in Room 2 of Keraterm detention camp, testified that one day he saw a table with a machine gun and a portable spotlight being put up and directed at the door of Room 3, a small room where 180-200 detainees were squeezed in. Around midnight he heard machine-gun fire after the door of Room 3 had been opened and people started to stream out. The next day, the witness was ordered by a soldier to load the bodies inside and in front of the door of Room 3 onto a truck. The Chamber notes that according to one adjudicated fact, the machine-gun outside Room 3 had been placed there by Bosnian-Serb army personnel on 20 or 21 July 1992.

In relation to Scheduled Incident B.8.1, Witness RM-018 stated that on 31 May 1992, soldiers wearing JNA uniforms escorted him and around 70 other Muslim men from Častovići and Vojići, to a room in an elementary school in Velagići. At 11:30 p.m., soldiers cursed and beat the men and ordered them to form a line and face two armed soldiers. Soon after, those soldiers opened fire at them. The witness was able to hide under the bodies. The witness heard the soldiers discuss going to Lanište, where the Knin Corps was stationed, to get a loader and a truck to dispose of the bodies in the forest.

In relation to Scheduled Incident A3.3, Witness Dževad Džaferagić stated that on 10 July 1992 at about 5.30 a.m., he woke up to the sound of automatic gunfire. From his house, he saw a convoy of 50 to 60 men in civilian clothes being led to Ključ by eight or nine Serb soldiers wearing JNA uniforms. The witness saw Serb soldiers entering houses, removing men and beating them. From approximately 10 a.m., groups of Serb soldiers wearing JNA and camouflage uniforms escorted groups of seven or eight Muslim men to a stable from where he heard gunfire. At approximately 6 p.m., the witness saw a yellow excavator and a lorry arrive at the stable and several unidentified Serb soldiers loading bodies from the stable onto the excavator. During this process, one of the soldiers said [quote] "that is the way of the true Serb" . The Chamber heard evidence indicating that the attack had been planned and carried out by troops belonging to the VRS.

In relation to all of these incidents, the Chamber also received forensic material in support of the witness's evidence.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now turn to Srebrenica.

The Chamber heard the evidence of witness Drazen Erdemović, who testified that on the morning of 16 July 1995, he and seven other members of the VRS 10th Sabotage Detachment were ordered by their group commander, Brano Gojković, to go to the Zvornik Brigade headquarters. From there, they were escorted by a VRS lieutenant colonel and two members of the Drina Corps military police to Branjevo Military Farm. Upon arrival at the farm, Erdemović overheard Gojković talking with the lieutenant colonel about buses

arriving, and then Gojković told the witness and the other members of his unit that buses carrying civilians from Srebrenica would arrive and they were to execute these people.

Buses began arriving carrying Bosnian Muslim males aged between 17 and 65 and dressed in civilian clothing, and each bus had two armed Drina Corps military police escorts onboard. The Bosnian Muslims from the first bus were blindfolded and had their hands tied together. The detainees were led from the buses to the execution site where Erdemović and the other VRS soldiers were ordered by Gojković to open fire on them. Erdemović also testified that Gojković had ordered the bus drivers to kill at least one prisoner each so that they would not later testify about what had happened.

Later that day, as the last bus with Bosnian Muslim detainees arrived, a group of ten VRS soldiers from Bratunac joined the witness's unit at the execution site. These soldiers beat and cursed the detainees, forcing them to kneel and pray "in the Muslim manner." The VRS lieutenant-colonel who had earlier escorted the witness and members of his unit to the execution site arrived at the end of the executions and discussed the burial of the victims in the field. Erdemović testified that he and other VRS soldiers participated in the execution of between 1,000 to 1,200 Bosnian Muslim males dressed in civilian clothes who had been brought to the execution site by between 15 and 20 buses that day.

The Chamber also heard evidence from witnesses RM-346 and RM-255, who testified about surviving the Branjevo Farm executions. Both witnesses gave evidence that after being captured and detained by soldiers, they and other Bosnian Muslim detainees, some of whom were blindfolded with their hands tied behind their backs, were transported by bus to a field on 16 July 1995. Witness RM-346 testified that upon arrival Serb soldiers began cursing the detainees saying things like "Alija does not want you, step out", as the soldiers took the detainees off the buses in groups of ten. Witness RM-255 gave evidence that one of the soldiers asked if he wanted to declare himself as a Serb and then be released. In response to this, two of the detainees then said they were Serbian, but were not separated from the line. The detainees were led to an area where they were lined up between corpses that were already on the ground. They were ordered to turn their backs and to lie down, and then a group of ten soldiers began shooting the detainees. Having survived the executions, witnesses RM-255 and RM-346 lay motionless among the corpses listening to the process repeat itself throughout the day: the soldiers returning multiple times with groups of detainees, ordering the detainees to line up, shooting them, asking if anyone was still alive, and then killing anyone that responded. Witness RM-255 also gave evidence that on two occasions he heard that the soldiers were making statements about them committing genocide, once while he was being led to the execution site, and another time after his escape while he was hiding nearby.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now set out some evidence on rapes and cruel and inhumane treatment for the Municipalities part of the case.

The Chamber also heard evidence in relation to a large number of rapes committed at various locations in Foča Municipality. For the purposes of this decision, the Chamber will focus on the evidence it heard regarding Karaman's house as set out in Schedule C.6.2 of the Indictment. Witnesses RM-070 and RM-048 testified that around 3 August 1992 they and other girls were taken by one of Pero Elez's soldiers and the soldiers of Dragan Kunarac a.k.a. Žaga in Miljevina, Foča Municipality. Witness RM-070 testified that the youngest girl at Karaman's house was 12 years old. During the evenings, soldiers from Pero Elez's group raped one or more of the girls, and the soldiers would regularly beat the girls when they refused to follow orders. Witness RM-070 testified that Pero Elez raped all of the girls once or twice. Witness RM-048 testified that she learnt that Elez was the commander of a group of soldiers under the command of Marko Kovač, about whom the Chamber heard evidence that he was the Commander of a VRS brigade from May 1992 until the end of 1994. Around

mid-August 1992, Witness RM-048 was taken from Karaman's house to the house of a Serb soldier where she was held and raped, until she was released in July 1993. During this time, the soldier took the witness to a celebration where Mladić approached them asking the soldier whether the witness was his "Herzegovinian girl". Mladić then turned to the witness directly and asked her whether it was "better than in Alija's state". The witness testified that this made her believe that Mladić knew about girls that were kept as sexual slaves. According to Witness RM-048, there were no Muslim women or girls living freely in Foča at the time. The Chamber notes that one of Mladić's notebooks, exhibit P359, records the names of two young women the Bosnia-Herzegovina officials were looking for, and about whom witnesses have testified they were held in Foča as sexual slaves.

The Chamber heard a large amount of evidence regarding the cruel and inhumane treatment of persons detained in camps in the Municipalities. For the purposes of this decision, it will only focus on the Keraterm and Omarska camps in Prijedor Municipality, mentioned in Schedules C.15.2 and C.15.3 of the Indictment, and Manjača camp in Banja Luka Municipality, referred to in Schedule C.1.2.

In relation to the Keraterm Camp, Safet Tači testified regarding his detention in Room 2, which was approximately ten by twelve metres, very hot, unhygienic and filled with a large number of Croats and Muslims, many of them severely beaten. The witness testified that on one occasion, a man by the name of Duča entered Room 2, called on two detainees who were brothers and forced them to beat each other severely. According to the adjudicated facts, the Keraterm camp held up to 1,500 prisoners crowded into a number of large unlit rooms or halls, which got intensely hot in the summer as there were no windows or ventilation. Prisoners were kept locked in these rooms for days, crowded together. The detainees were allowed to go to the toilet only once a day. Infestations of lice appeared at the camp, and dysentery was rife. There was no medical care. Detainees suffered from malnutrition and starvation, and were beaten on arrival.

In relation to the Omarska Camp, Witness Nusret Sivac testified he was taken to Omarska camp on 20 June 1992. Upon his arrival, he and other prisoners were beaten severely by members of an intervention platoon, including Mrđa and Zoran Babić. On one occasion, all the detainees in the camp were beaten, from the early hours of the morning until late afternoon. The shift on duty, led by Mlado Radić, a.k.a. Krkan, set up a gauntlet of guards, assisted by guards from other shifts. The witness saw people screaming and falling down everywhere as the guards beat them with baseball bats and metal chains with balls attached to them. One guard struck the witness on his head using a metal chain and ball, after which he lost consciousness. According to the Adjudicated facts, sometimes 200 persons were held at the Omarska camp in a room of 40 square metres; and 300 prisoners were confined in one small room. Some prisoners spent the time crowded together in the lavatories. In the lavatories, prisoners were packed one on top of the other and they often had to lie on excrements. Many of the prisoners confined in the White House on the Omarska compound did not receive food during their time there; some prisoners lost 20 to 30 kilograms during their time at Omarska, others considerably more. Drinking water at Omarska was often denied to the prisoners for long periods, and the water given to the detainees was not fit for human consumption. Prisoners had to wait hours before being allowed to use the lavatories, and sometimes risked being beaten if they asked to use them. There were no effective washing facilities; skin diseases were prevalent, as were acute cases of diarrhoea and dysentery.

The Chamber also received a large number of detailed reports that were sent to VRS officials regarding the inhumane treatment in the camps. From as early as 22 June 1992, the operational team in charge of interrogating detainees at the Manjača Camp sent daily reports to 1st Krajina Corps Commander Talić regarding the treatment of prisoners in the Manjaca camp in Banja Luka. On 1 July, it was reported that "more than 95% of the prisoners are Muslims". The operational team urged Talić to remind the military Police Commander at the Camp that it "is not a torture house", that prisoners were "maltreated, beaten and humiliated to the extreme", that policemen at the camp beat the prisoners as

they pleased but that it was difficult to eradicate this behaviour as the security commander of the camp often said in front of the soldiers that the prisoners “should all be killed”. On 22 July 1992, a daily report mentioned that it was the first time that the operational team had witnessed that a group of detainees had been brought to the camp “intact, i.e. there are no traces of violence”.

The Chamber will now assess whether counts 1-3, 5, and 6 stand as far as the crime base evidence is concerned.

Specifically in relation to Counts 1 and 2, there is evidence that acts of genocide took place in the Municipalities and in Srebrenica during the Indictment period. The Chamber already addressed the killings of a number of individuals earlier. Killing is one of the charged underlying acts of genocide. The Chamber also refers to the evidence cited in relation to the crimes of detention and cruel and inhumane treatment, including rape and other acts of sexual violence as causing serious bodily or mental harm and conditions calculated to bring about the victims’ physical destruction. The evidence cited also provides information on the perpetrators’ genocidal intent.

The Chamber considers that the evidence before it, including the mentioned examples, addresses all the elements of the crime of genocide, the crimes of persecution and murder as a crime against humanity, and the crime of murder as a violation of the laws or customs of war.

The Chamber now turns to the responsibility of the Accused for these crimes.

The Chamber will examine the evidence with regard to the mode of liability of participation in a JCE. As set out in the case law of the Tribunal, the elements of this mode of liability are: a plurality of persons; a common objective which amounts to or involves the commission of a crime provided for in the Statute; and the participation of the accused in the objective’s implementation. The contribution of an accused need not have been substantial or necessary to the achievement of the common objective. However, it should at least be a significant contribution to the crimes forming part of the common objective. The mental element required is that the participants in the JCE shared the intent to achieve the common objective through the commission of the statutory crime or crimes.

The parties have agreed on many aspects of the Accused’s military background and role as alleged in the Indictment, which the Chamber will proceed to summarize. The Accused held various positions in the 9th Corps of the JNA and, on 30 December 1991, became its commander. On 10 May 1992, Mladić assumed the command of the Second Military District Headquarters of the JNA. On 12 May 1992, the VRS was formed. On 12 May 1992, the Bosnian-Serb Assembly in Banja Luka during its 16th session appointed Mladić as commander of the VRS Main Staff, as evidenced by the transcript of that session admitted as exhibit P431, and supported by evidence from expert witnesses Reynaud Theunens and Robert Donia. Mladić was in command of the VRS Main Staff until at least 8 November 1996.

The first joint criminal enterprise charged in the Indictment relates to the goal of permanently removing Bosnian Muslim and Bosnian Croat inhabitants from Serb-claimed territory of Bosnia-Herzegovina through the commission of crimes enumerated in Counts 1 and 3-8. Alleged JCE members include Radovan Karadžić, Slobodan Milošević, and Momčilo Krajišnik. The Indictment alleges that the Accused significantly contributed to achieving the objective of the JCE and shared the intent for the commission of the charged crimes with others who acted in concert with him.

In relation to the common plan and the plurality of persons of the overarching JCE, the Chamber heard evidence regarding the planned take-over of the municipalities which sought to establish separate Bosnian-Serb institutions and the creation of a Bosnian-Serb homogeneous state. It received evidence that throughout 1991 and early 1992 the Bosnian-Serb leadership, under the direction of Radovan Karadžić, began creating parallel Serb



civilian and military structures in the municipalities throughout Bosnia-Herzegovina. The Chamber refers in this respect to the evidence of Milan Babić. It notes that on 24 October 1991, the Bosnian-Serb leadership established a separate Bosnian-Serb Assembly and on or about 20 December 1991, Karadžić issued the so called Variant A and B instructions to municipality leaders for the creation of bodies not provided for in the existing legal order, including the Serbian Crisis Staffs.

The Chamber heard extensive evidence with regard to the promulgation of the six strategic objectives. On 6 May 1992, the Accused recorded a meeting in his notebook, exhibit P352, with Karadžić and a group of JNA generals. During this meeting, Karadžić emphasized the imperative of ethnic separation and articulated three other goals that subsequently became strategic goals two, three, and six of the so called six strategic goals. During a meeting on the following day, attended by the Accused, Momčilo Krajišnik stipulated the six strategic goals of the Bosnian-Serb leadership in express terms. On 12 May 1992, the six strategic objectives were publicly announced by Radovan Karadžić and adopted at the 16th Assembly Session of the Bosnian-Serb Republic on the same day. The Chamber refers to exhibit P431. At this same session, at which the Accused was also appointed as the VRS Main Staff commander, the Accused showed that he shared these objectives and appeared to have participated in creating them, stating that he had [quote]“read, mulled over for a long time and discussed within the most select circle of comrades whom we convened, the strategic goals that are of substance”.

The Chamber heard evidence about the relationship between Karadžić and the Accused. It notes the testimony of Witness Herbert Okun that Karadžić on at least two occasions between 1992 and 1993 explicitly told him that the Accused was under his control, adding on one occasion that “you know how the soldiers are. They don't like to be controlled by civilians, but we control them.”

Further, the Defence submitted that the Accused “always issued orders seeking to have perpetrators disarmed, arrested, investigated and prosecuted”.

The Chamber heard evidence that instructions were issued to VRS forces condemning the commission of crimes in the Municipalities, but that in practice the VRS soldiers were instructed to continue with their behaviour irrespective of whether it was criminal. The Chamber notes that on 12 June 1992, the VRS Main Staff issued instructions regarding the treatment of prisoners and the creation of detention camps. The Chamber refers in this respect to exhibits P377, P189, P3910, P3979, and the notebook of Mladić P353 at page 160. The Chamber also refers to the evidence of Witness RM-019, a member of the 11th Herzegovina Light Infantry Brigade from May 1992, who testified that at the end of May or in early June 1992, Zoran Vuković, the Battalion commander, read out a statement allegedly signed by Karadžić to a group of soldiers, including the witness. According to the statement, the soldiers were not to burn any more property or kill any more prisoners. Following the statement, Vuković asked each soldier to sign a paper to the effect that they had heard the statement. Vuković conveyed the best regards of the commander in Pale to the soldiers and told them they were doing a great job and should continue to do so. One of the soldiers asked Vuković why he wanted him to sign the statement if the killing and burning should continue, to which Vuković responded that the soldier should not think too much.

Witness RM-081 testified that he watched television coverage of the Assembly in Sarajevo where Karadžić announced that at some point Muslims will disappear from the face of the earth. He also testified that around September 1992 Sveto Veselinović, president of the Serbian Democratic Party in Rogatica and member of the War Commission of the Serbian Republic of Rogatica, told the witness that all Muslims would disappear from the territory. Veselinović disclosed to the witness that he had met with Karadžić in Pale, where it had been decided that one-third of Muslims would be killed, another one-third would be converted to the Orthodox religion, and the remaining one-third would leave.

The Chamber heard evidence that throughout the municipalities, the execution of the policy of the Bosnian Serb leadership resulted in large-scale expulsion of the non-Serb populations from the Municipalities. From the beginning of the conflict in April through August 1992, more than 30,000 Bosnian Muslims and Croats moved out of the municipality of Prijedor alone, either out of fear or due to unbearable circumstances. The Chamber also recalls its earlier findings regarding the large-scale killings in and around the detention camps throughout the municipalities. There is ample witness testimony and documentary evidence that persons detained at the detention camps in the Municipalities were placed there solely on the basis of their ethnicity. The Chamber refers in this respect to exhibit P3801, a report by the Bosnian-Serb MUP to Radovan Karadžić dated 17 July 1992 stating that “the Army, crisis staffs and war presidencies have requested that the Army round up or capture as many Muslims as possible”, who were to be placed in camps.

Based on the foregoing, the Chamber considers that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment there existed a joint criminal enterprise composed of, inter alia, members of the Bosnian Serb leadership and the VRS, including Radovan Karadžić and the Accused, the purpose of which was to permanently remove the Bosnian Muslims and/or Bosnian Croats from Bosnian-Serb claimed territories in Bosnia-Herzegovina through the commission of the crimes charged in the Indictment.

In relation to the Accused’s contributions to this JCE, there is evidence that the Accused, as Commander of the VRS Main Staff, implemented measures to carry out the strategic goals, as previously set out, to advance the objective of the joint criminal enterprise. The Chamber received evidence that throughout the Indictment period the Accused issued nine operational directives implementing the six strategic goals into orders for major VRS combat operations. The Chamber refers, for example, to the operational directives in evidence as exhibits P747, P1963, and P1968, as well as the report compiled by Reynaud Theunens.

Witness Pyers Tucker testified that the Accused told him that the prisons at Foča, Batković, and Kula were under his control. The Chamber also received documentary evidence indicating the Accused’s control over the detention camps. Particularly, it notes exhibit P201, a VRS order of August 1992, indicating that the Accused personally exercised direct military control over units in control of detention camps in Manjača, Trnopolje, Omarska, and Prijedor. Other evidence of direct involvement of the Main Staff in the detention camps is reflected in exhibits P2899, P4147, and P3687.

In relation to the Accused’s *mens rea*, the Chamber refers to Mladić’s involvement in the creation and promulgation of the six strategic goals in May 1992, as discussed earlier. The Chamber notes that there is evidence that the Accused throughout the period of the Indictment knew about the crimes committed in the municipalities. John Wilson testified that in December 1992 or January 1993, he spoke to Mladić in Geneva about a photograph circulating in the media of a malnourished man held at a Serb detention camp. The Chamber further recalls the evidence of Witness RM-048 who testified that Mladić knew that girls from Foča were kept by his troops as sexual slaves.

The Chamber notes the effect that the rapes had on the Bosnian Muslim women, and the testimony of a rape victim who stated that in her opinion, the Serbs “wanted to destroy, kill, destroy our spirit as much as they could because there is no cure for a woman who was raped”, adding that she would never recover.

The Chamber also refers to the evidence of David Harland, who testified that during the week ending on 3 November 1993 he attended a meeting where Mladić stated that unless all 22 Serb POWs in the Goražde pocket were returned, he would kill everyone in the eastern enclaves except for the children. Mladić’s words at this meeting were recorded by international observers in exhibits P4639 and D7.

The Chamber also received intercept evidence regarding the Accused's state of mind. In an intercepted telephone conversation of May 1992, Mladić warned Fikret Abdić that he would "order the shelling of the entire Bihać". Mladić stated that "the whole of Bosnia will burn if I start to 'speak'", and continued by saying "not just Sarajevo". In an intercepted conversation of 5 August 1992, Mladić threatened to use heavy artillery weapons on a "densely populated area" if his demands to cease combat activities were not met.

The Chamber also heard the evidence of Šefik Hurko, a Bosnian Muslim who was detained in the Rasadnik camp in Rogatica municipality from August 1992 through April 1994, who testified that sometime in April 1994, 10-15 detainees from the camp, including the witness, were brought to a place near Goražde. There, they were instructed by the warden of the camp, Bojić, to work in the forest and to speed up because Mladić was coming. When Mladić noticed the detainees he asked who they were, Bojić responded that they were prisoners from Rogatica. Mladić asked him if they were loyal or captured, to which Bojić responded that they were loyal. Mladić then ordered the detainees to be lined up in front of him and said that, if they were willing to change their religion, they could stay.

Based on the foregoing, the Chamber is satisfied that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment the Accused participated in the joint criminal enterprise comprised of, inter alia, members of the Bosnian-Serb leadership, including Radovan Karadžić. The purpose of this JCE was to permanently remove the Bosnian Muslims and Bosnian Croats from Bosnian-Serb claimed territory in Bosnia and Herzegovina through the commission of crimes charged in the Indictment. The Accused shared the intent of the other members of the overarching JCE to carry out its objective through the commission of crimes. He also significantly contributed to it.

Under these circumstances, the Chamber finds that Counts 1, 3, and 5-6 stand.

The Chamber recalls that the defence did not specifically challenge the second joint criminal enterprise. The Chamber will further deal with counts 9 and 10 later in this decision.

The Chamber will now move on to the third joint criminal enterprise alleged in the Indictment, namely, the JCE to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and by forcibly removing the women, young children and some elderly men from the enclave, through the commission of crimes charged in Counts 2 through 8 of the Indictment. The implementation of this plan is alleged to have commenced as early as March of 1995, continuing until 1 November 1995. Alleged JCE members include, inter alia, Radovan Karadžić, and senior officers of the VRS and Bosnian-Serb MUP. The Accused is alleged to have contributed to achieve the objective of the JCE by, inter alia, commanding and controlling the VRS in furtherance of the objective. It is alleged, further, that he shared the intent for the commission of the charged crimes with other members of the JCE.

In relation to the objective of the said JCE, the Chamber recalls the evidence of Momir Nikolić who testified that from the moment the enclaves were set up, the VRS forces had the political goal to cause the forcible removal of the entire Muslim population from Srebrenica, Žepa, and Goražde to Muslim-held territory. The Chamber also considered Directive 7, in evidence as exhibit P1469, and discussed by the parties during their submissions. This directive is dated 8 March 1995, addressed to the commanders of the various Corps commands, and signed by the Supreme Commander Radovan Karadžić. It ordered, inter alia, that the Drina Corps carry out the "complete physical separation of Srebrenica and Žepa"... "as soon as possible, preventing even communication between individuals in the two enclaves"; and "by planned and well thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa". The Directive also stated "through the planned

and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of the UN protection force, hereinafter UNPROFOR, to the enclaves and the supply of material resources to the Muslim population, making them dependant on our goodwill, while at the same time avoiding condemnation by the international community and international public opinion.” . Directive 7 was referenced in a Drina Corps Command Order issued on 20 March 1995 signed by Milenko Živanović, and VRS Main Staff Directive 7/1 dated 31 March 1995, signed by Mladić. These are in evidence as exhibits P1468 and P1470, respectively. The Drina Corps Command Order incorporated, inter alia, Directive 7’s language with regard of the creation of unbearable circumstances for the inhabitants of the enclaves. Witness Manojlo Milovanović testified that somebody reading the reference to Directive 7 in Directive 7/1 would have to look back at Directive 7 in order to be able to fully implement it.

On 2 July 1995, the Drina Corps issued an order for Operation Krivaja 95, in evidence as exhibit P1465. This order formulated the task, pursuant to Directives 7 and 7/1, to carry out offensive activities with the objective of, inter alia, separating and reducing in size the Žepa and Srebrenica enclaves, and to create conditions for the elimination of the enclaves.

Several witnesses, including Momir Nikolić and Rupert Smith, testified that the VRS attack on Srebrenica started on 6 July 1995. Evert Rave testified that on 7 July 1995, the VRS fired into the safe area and targeted UN facilities, causing several civilian deaths. On 9 July 1995, in a message in evidence as P1466, General Tolimir reported that Karadžić had been informed of successful combat operations around Srebrenica by units of the Drina Corps enabling occupation of the enclave, and that Karadžić had agreed with, inter alia, the continuation of operations for the takeover of Srebrenica.

The Chamber received evidence from several witnesses that Srebrenica ultimately fell to the VRS on 11 July 1995.

Momir Nikolić testified that early in the morning of 12 July, in a conversation with Popović and Kosorić, Popović told him that all the women and children would be transferred to territory controlled by Muslim forces, which was either Kladanj or Tuzla. The witness asked what would happen to the able-bodied men, to which Popović responded that all the “balijas” should be killed. Witness RM-513 and Richard Butler testified that the term “balijas” was used in a derogatory fashion by Serb forces to refer to Muslims. Nikolić, Kosorić, and Popović then discussed possible execution sites.

The Chamber heard evidence of a meeting at around 8 p.m. on 13 July between Beara and Momir Nikolić in the centre of Bratunac. Beara told Momir Nikolić that the Muslim prisoners would be temporarily detained and then executed in Zvornik. In a subsequent meeting attended by Beara, Miroslav Deronjić, and Vasić, Deronjić and Beara had an argument about where to take the captured Bosnian Muslims. Momir Nikolić testified that on this occasion, Beara insisted that the prisoners remain in Bratunac, stating that he had received an order from his “boss” that the Muslims should stay there. Momir Nikolić understood Beara’s reference to his boss to refer to General Mladić, as all officers referred to Mladić as the boss. Deronjić opposed Beara’s proposal, stating that he did not want the Muslims detained and killed in Bratunac and that he had received an order from Karadžić that the Muslims should go to Zvornik.

The Chamber also considered the evidence of witnesses including Witness RM-322, Damjan Lazarević, and Cvijetin Ristanović of coordinated burial operations organized by the VRS following several executions alleged in the Indictment, involving, among others, the Zvornik Brigade Engineering Unit.

With respect to the requirement of a plurality of persons, the Chamber refers to the evidence set out above concerning the interaction and communications between various high-ranking VRS officers including Mladić, Tolimir, Beara, Kosorić, Krstić, and Popović. In addition, it notes the evidence of Momir Nikolić concerning the presence of MUP

commander Ljubiša Borovčanin in Potočari during the process of transportation of the Bosnian Muslims discussed earlier in this decision, as well as the involvement of Karadžić in respect of Directive 7.

Finally, the Chamber recalls the evidence referred to earlier in this decision with respect to the crime-base and considers that an inference can be drawn, together with the evidence set out here, that the alleged Srebrenica JCE existed and was implemented.

In relation to the Accused's contributions to this third JCE, the Chamber gave regard to the following evidence. In an excerpt of an intercepted conversation recording a voice which witness Ljubomir Obradović identified as that of the Accused, Mladić is recorded as stating, with reference to UNPROFOR and humanitarian convoys, that he would not have taken Srebrenica or Žepa if he had not starved them in the winter, adding that since February, he only let through one or two convoys. This conversation is in evidence as exhibit P1789. The Chamber also considers Obradović's testimony concerning exhibit P1788, a series of UNPROFOR requests to the Main Staff for convoy approval with the handwritten initials of the Accused accompanied by the word no, as evidence of Mladić's direct involvement in the restriction of supplies reaching the enclave.

The Chamber further notes the testimony of Momir Nikolić that General Krstić was in command of all units taking part in the Srebrenica operation, until General Mladić arrived and took over command. The Chamber also refers to exhibit P724, a report by MUP commander Ljubiša Borovčanin on the combat engagement of police forces in the period of 11 to 21 July 1995, which details that Borovčanin took orders from Mladić to engage police forces in, inter alia, Potočari.

Momir Nikolić testified, moreover, that during one of the meetings held at Hotel Fontana on the evening of 11 July 1995, Mladić threatened and intimidated the Dutch officers as well as Nesib Mandžić, a Bosnian Muslim, telling them that he wanted the Muslim army to surrender, that the future of Mandžić's people was in Mandžić's hands, and that they could choose to survive or disappear. This is recorded in video-footage, in evidence as exhibit P1147.

In relation to the Accused's intent, the Chamber refers to the following evidence in particular. Video footage in evidence as exhibit P1147 depicts Mladić walking through Srebrenica town on 11 July together with Serb forces stating, inter alia, [quote] "Here we are, on 11 July 1995, in Serb Srebrenica"; "we give this town to the Serb people as a gift"; "the time has come to take revenge on the Turks". Witness Reynaud Theunens testified that the word [quote] "Turks" was used to refer to Bosnian Muslims and was often considered a derogatory term.

Momir Nikolić testified that in the afternoon of 13 July, he met Mladić at the crossroads in Konjević Polje, where there were prisoners visibly present. Mladić exited his vehicle, approached a group of prisoners, and addressed them, stating that they should not worry and would soon be taken wherever they pleased. Returning to the vehicle, the witness asked Mladić what would really happen to the prisoners. Mladić responded by smiling and making a sweeping gesture with his right hand from left to right approximately at the middle of his body. Mladić then laughed and entered the vehicle.

The Defence submits, as examples, that Mladić's preference for a cessation of hostilities and his efforts to exchange Muslim with Serb prisoners negates any possibility that he intended to destroy the Muslims in Srebrenica. Based on the above cited evidence, the Chamber considers, however, that the evidence could lead a reasonable trier of fact to be satisfied that the Accused possessed the specific intent.

The Chamber considers that on the basis of the foregoing, there is sufficient evidence upon which, if accepted, a reasonable trier of fact could find beyond reasonable doubt that there existed a joint criminal enterprise, composed of a plurality of persons, including

Karadžić, Mladić, Tolimir, Borovčanin and other high-ranking VRS and MUP officers, the common purpose of which was to eliminate the Bosnian Muslims in Srebrenica through the commission of the crimes charged in the Indictment. The Chamber considers further that there is sufficient evidence in accordance with the aforementioned standard that Mladić participated in, and made a significant contribution to this JCE. The standard is equally met with respect to Mladić's intent for the JCE, namely, that he shared intent with other alleged JCE members, to commit the crimes charged in the Indictment.

Under these circumstances, the Chamber finds that Count 2 stands.

The Chamber recalls that the Defence did not specifically challenge the fourth joint criminal enterprise. The Chamber will further deal with count 11 now.

The Defence has not specifically challenged Counts 4 and 7-11 of the Indictment or the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute. The Chamber has carefully examined the evidence and is satisfied that there is sufficient evidence under the applicable legal standard at this stage of the proceedings for these counts to stand.

Accordingly, the Chamber considers that the Accused has a case to answer on all counts of the Indictment.

This concludes the Chamber's decision on the Defence's request for acquittal pursuant to Rule 98 *bis*.

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l'ex-Yougoslavie

# JUDGEMENT SUMMARY

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

CHAMBERS

The Hague, 15 April 2014

## Rule 98 bis Judgement summary in the case of Ratko Mladić

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

The Chamber will now deliver its decision on the Defence's request for acquittal pursuant to Rule 98 bis.

The Chamber heard oral submissions from the Defence on 17 March 2014, and in response from the Prosecution on 18 March 2014. On 19 March 2014, both parties made further submissions. In reaching its decision, the Chamber has considered all submissions of the Defence and the Prosecution, as well as all evidence admitted by the time of hearing the submissions.

The Chamber will first give a brief summary of those submissions. Thereafter, it will address those submissions, give an overview of the Indictment, and then address the evidence related to all counts of the Indictment.

The Defence made four submissions under Rule 98 bis.

First, the Defence argues that the word "count" in the text of Rule 98 bis has been restrictively interpreted by Trial Chambers to mean that judgements for acquittals can only be entered in respect of entire counts and not individual charges or incidents. The Defence submits that the precise meaning of the wording of Rule 98 bis should be determined with recourse to the intention of the drafters and the object and purpose of the Rule. According to the Defence, the object and purpose of Rule 98 bis is to streamline the case by removing allegations that cannot be sustained, ensuring that the trial is expedited and that the Defence's resources are not laid to waste.

Secondly, the Defence requests that the charges concerning the Jadar River incident, which is Scheduled Incident E.1.1, the charges concerning the Širokača shelling incident of 28 May 1992, which is part of Scheduled Incident G.1, and all the charges relating to destruction of cultural monuments and sacred sites, set out in Schedule D, be dismissed.

Thirdly, the Defence submits that the Prosecution has not proffered any evidence capable of sustaining a conviction under Article 7 (3) of the Statute on crimes perpetrated by third party, or non-VRS, actors. In advancing this proposition, the Defence asserts that the Prosecution has failed to identify the subordinates over whom it alleges that the Accused exercised effective de jure or de facto control. In addition, the Defence contends that there is evidence which supports the claim that the Accused did not have effective control over armed groups other than the Bosnian-Serb Army, hereinafter VRS, in particular, over the Bosnian Serb Ministry of Interior, hereinafter MUP, forces, Arkan's Tigers, and the Skorpions.

Fourthly, the Defence makes a number of submissions with respect to genocide as charged under Counts 1 and 2, characterising the Prosecution's evidentiary basis as

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deficient in meeting the reduced burden of proof set by Rule 98 *bis*. In respect of Count 1, the Defence argues that in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice, hereinafter referred to as ICJ, decided to dismiss allegations of the crime of genocide in the municipalities on the ground that there existed insufficient evidence of the specific intent to destroy a protected group. The Defence also points to the Judgements in the cases of Stakić, Sikirica, Krajišnik, and Brđanin, which concluded similarly. Moreover, the Defence argues that even though the Chamber has received evidence of criminal acts directed against Bosnian Muslims and Bosnian Croats in the municipalities, the evidence on these crimes does not establish that they were committed with genocidal intent.

As regards Count 2, the Defence argues that according to the testimony of General Milovanović pertaining to military Directive 7.1, the Accused left out two crucial portions of Directive 7 when issuing Directive 7.1. The first of these two portions was Karadžić's instruction that complete physical separation of Srebrenica from Žepa should be carried out as soon as possible. The second related to the creation of an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa. The Defence submits that the Accused by leaving out these two instructions has shown that he did not share the common purpose to commit genocide in Srebrenica.

The Chamber now moves to the Prosecution's submissions.

Responding to the Defence's first three submissions, the Prosecution argues that the Defence has provided no sound reason as to why the Chamber should depart from the well-established practice of this Tribunal and look within each individual count and examine whether the Accused may be acquitted of a portion thereof. Moreover, the Prosecution submits that there is sufficient evidence to maintain the charges specifically challenged by the Defence.

The Prosecution sets out the evidence concerning each of the counts in the Indictment, especially in respect of Counts 1 and 2. As regards Count 1, the Prosecution submits that there is evidence indicating that in 1992, Bosnian Muslim and Bosnian Croat communities were targeted for destruction and that those that survived the ensuing destruction were forcibly displaced. According to the Prosecution, the combination of physically destructive acts and other acts targeting the foundation of the two protected communities, such as displacements and the destruction of property and cultural and religious sites, effectively led to their physical demise and their inability to reconstitute themselves. The Prosecution submits, moreover, that the fact that the ICJ did not declare that in 1992 genocide had occurred in Bosnia-Herzegovina is not relevant to the present proceedings as the ICJ made that determination on the basis of a different legal standard and a different body of evidence. Furthermore, the Prosecution argues that in all prior Tribunal cases at the Rule 98 *bis* stage, the genocide count for the municipalities has been upheld, whether by Trial Chambers or by the Appeals Chamber following an appeal.

With regard to Count 2, the Prosecution submits that Directive 7 and Directive 7.1 form an indivisible whole since Directive 7.1 expressly refers to Directive 7. The wording of the latter document therefore remains valid and important.

The Chamber will now set out the law applicable at this stage of the proceedings.

Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence provides as follows: "At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction." Under the case law of the Tribunal, the Chamber must examine whether there is evidence upon which a reasonable trier of fact could be satisfied beyond a reasonable doubt of the guilt of the accused. Thus, if a reasonable Chamber could be satisfied beyond a reasonable doubt of the guilt of an Accused on the basis of the evidence adduced in relation to a count, then the count must



stand. There must be sufficient evidence for each element of the alleged crimes, and for one of the modes of liability contained in the Indictment. The test would not be satisfied if there was no evidence. If the Prosecution has presented evidence, that evidence is entitled to credence unless incapable of belief. At this stage, the evidence should be taken at its highest for the Prosecution. The Chamber therefore will not concern itself with issues of credibility or reliability, unless a witness is so lacking in credibility and reliability that no reasonable Chamber could find him or her credible or reliable.

As a preliminary remark before addressing the submissions in substance, the Chamber notes one matter. During its Rule 98 *bis* submissions, the Defence objected to how the Indictment was pled, suggesting that the charges lack specificity. In particular, the Defence invited the Chamber to consider the “far-reaching consequences of including this many actors as sharing in the common purpose in light of the lack of specificity in the Indictment.” According to the Rules, motions challenging the Indictment are to be filed prior to the start of a case. On 13 October 2011, the Chamber decided upon such a motion and dismissed alleged Indictment defects, including those now raised again by the Defence. The Chamber will not revisit the issue.

The Chamber will now address the parties’ submissions.

In relation to the Defence’s first argument, the Chamber considers that Rule 98 *bis* as a procedural rule is a corollary of the right of an accused to be presumed innocent until proven guilty. There are various procedural avenues which give effect to this right, and they are not necessarily limited to the stage of the end of the Prosecution’s case. The Rule’s amendment in 2004 adjusting the scope of Rule 98 *bis* decisions was intended to streamline the proceedings in the interests of judicial economy. The amendment changed the procedure from a written to an oral one, and shifted the determination to be made to the counts rather than to individual charges in an Indictment. The Rule’s amendment did not affect an accused’s right to be presumed innocent until proven guilty. Effect will ultimately be given to this right in the final Judgement. The Hadžić Trial Chamber, in its Rule 98 *bis* decision issued on 20 February 2014, presented an extensive overview of the practice in this Tribunal in relation to the count-based approach of Rule 98 *bis*.

The Chamber further notes that a failure of the Prosecution to adduce any evidence or insufficient evidence on individual charges has an effect on the proceedings that will follow. For the purpose of preparing and presenting its evidence, the Defence will in effect be left with no case to answer in relation to those individual charges. The Defence is not forced to spend resources to challenge charges which it believes have not been supported by evidence. The Defence is not forced to present any evidence for that matter. The Prosecution has to establish beyond a reasonable doubt that the charges are proven. If according to the Defence the evidence does not prove the charges, it may decide to refrain from presenting evidence thereon. This may especially be the case in relation to charges where the Defence believes that the Prosecution has not even met the lower threshold applicable at this stage of the proceedings. For the foregoing reasons, the Chamber rejects the Defence’s first argument.

In its second argument, the Defence challenges a number of specific incidents: the Jadar river killings, the shelling of Širokača on 28 May 1992, and the incidents listed in Schedule D of the Indictment in relation to destruction of religious sites. The Jadar river killings incident is one out of 20 scheduled killing incidents in relation to Srebrenica alone. The Širokača shelling is not even specifically mentioned in Schedule G to the Indictment, but forms part of Scheduled Incident G.1, which charges shelling of the city of Sarajevo as of 28 May 1992. The destructions of religious sites are part of one of seven charged underlying acts of persecution for the Municipalities part of the case. The other part of this underlying act concerns the destruction of public and private property. Considering these very narrow challenges and in light of the Chamber’s analysis of Rule 98 *bis* and the Tribunal practice developed as set out earlier, the Chamber will not further consider these incidents in this decision.

The Defence further generally challenged the mode of liability under Article 7(3) of the Statute on the basis that the Prosecution has failed to establish that non-VRS persons or groups allegedly committing crimes were under the effective de jure or de facto control of the Accused. In addition, the Defence asserts that there is no evidence to suggest that the Accused issued any criminal orders to persons who are alleged to have been perpetrators of crimes and therefore liability under the ordering limb of Article 7(1) cannot be sustained for charges in the Indictment.

The Chamber refers to its position in relation to challenges to portions of a count set out earlier. In similar vein, considering that various modes of liability are charged in respect of all counts it is sufficient that there is evidence capable of supporting a conviction on the basis of one of the modes of liability. The Defence challenges in this respect are narrow given that they pertain to one element of the alleged superior responsibility of Mladić, the de jure or de facto control, under Article 7(3) and ordering under Article 7(1), and in relation to a small number of alleged perpetrator groups. For the foregoing reasons, the Chamber rejects the Defence's third argument.

The Chamber further considers that the Defence's challenges of specific crimes do not extend to a challenge of the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute of the Tribunal.

Notwithstanding the above, the Chamber considers that there is a duty under Rule 98 *bis* to assess whether there is evidence capable of supporting a conviction on every count of the Indictment, irrespective of whether the Defence explicitly challenged all counts.

For a better understanding, the Chamber will first provide a summary of relevant parts of the Indictment.

The Indictment covers eleven counts of crimes allegedly committed between March 1992 and 30 November 1995. The areas covered by the Indictment include Sarajevo, Srebrenica, Gorazde, and the following municipalities in Bosnia-Herzegovina, which are dealt with together in the Indictment: Banja Luka, Bijeljina, Foča, Ilidža, Kalinovik, Ključ, Kotor Varoš, Novi Grad, Pale, Prijedor, Rogatica, Sanski Most, Sokolac, Trnovo, and Vlasenica. Hereinafter, I will refer to the part of the Indictment covering these 15 municipalities as the "municipalities".

According to the Indictment, the Accused held various positions in the Yugoslav People's Army, hereinafter referred to as JNA, and later in the VRS and was the Commander of the Main Staff of the VRS as of 12 May 1992.

The first two counts charge genocide. The third count charges persecution as a crime against humanity. The fourth and fifth counts respectively charge extermination and murder as crimes against humanity. The sixth count charges murder as a violation of the laws or customs of war as recognized by common Article 3(1)(a) of the Geneva Conventions of 1949. The seventh and the eighth counts respectively charge deportation and the inhumane act of forcible transfer as crimes against humanity. The ninth and the tenth counts respectively charge terror and unlawful attacks on civilians as violations of the laws or customs of war. The final count charges taking of hostages as a violation of the laws or customs of war.

The Indictment alleges that the Accused and others participated in an overarching joint criminal enterprise, hereinafter referred to as JCE, the objective of which was the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia-Herzegovina. This objective was allegedly carried out by the commission of crimes charged in Counts 1, and 3 to 8. Alternatively, this objective was carried out by the commission of crimes charged in Counts 7 and 8, while the Accused willingly took the risk of the commission of crimes charged in Counts 1 to 6 as a foreseeable consequence of the implementation of the objective.

According to the Indictment, the Accused's participation in the JCE included commanding and controlling the VRS and other elements of the Serb forces and encouraging the commission of crimes by members thereof. It also included participating in the development of Bosnian Serb governmental policies and disseminating propaganda intended to advance the objective of the JCE, failing to take adequate measures to protect prisoners of war and detainees under his effective control, as well as directing the restriction of humanitarian aid to non-Bosnian Serb enclaves.

The Indictment further alleges that the Accused and others participated in three additional JCEs. The objective of the second JCE was to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling consisting of crimes charged in Counts 5, 6, 9, and 10. The objective of the third JCE was to eliminate the Bosnian Muslims in Srebrenica through crimes charged in Counts 2 to 8. The objective of the fourth JCE was to take United Nations personnel as hostages through the crime charged in Count 11. The Accused's participation in these three additional JCEs included various forms of participation in the overarching JCE.

The Indictment further charges the Accused with criminal responsibility for having planned, instigated, ordered and/or aided and abetted the crimes, as well as with criminal responsibility as a superior.

The Chamber will now address whether each count in the Indictment stands.

In its legal characterizations, the Chamber adopts and applies the Tribunal's consistent case law with respect to the definition of the elements of the crimes and modes of liability charged in this case. In this decision, the Chamber will address the law more specifically only when this is required to explain the Chamber's findings.

The volume of evidence before the Chamber and the character of the Rule 98 bis proceedings do not allow for a comprehensive discussion of the evidence in this decision. The Chamber has, however, considered the evidence in its entirety. The specific evidence that the Chamber will refer to in this decision is therefore a focussed selection of what the Chamber has considered to be relevant for the purposes of this decision.

In relation to the crimes charged, the Chamber verified whether the evidence addresses all the elements of each of the crimes. Similarly, it verified whether the evidence addresses all the requirements for criminal responsibility as charged against the Accused. Finally, in relation to each crime charged, the Chamber verified whether the evidence, taken at its highest for the Prosecution, could lead a reasonable trier of fact to conclude, beyond a reasonable doubt, both that the crime has been committed and that the Accused bears criminal responsibility for it.

Turning to the counts, in relation to Counts 1-3, 5, and 6 there is evidence of crimes taking place during the Indictment period in the municipalities and Srebrenica. The Chamber will start with murders in the municipalities part of the case and will focus on a few incidents in order to determine whether the counts stand.

In relation to Scheduled Incident B16.2, the Chamber heard from Witness RM-066 that on 30 September 1992 four Serb police officers sent by the chief of the Public Security Service, hereinafter SJB, in Vlasenica arrived at the Sušica camp. During the night, the Serb police officers called out three groups of detainees, each consisting of 30 or 40 persons, loaded them into a truck and transported them from the camp. The witness later learned from Ilija Janković, a police officer from the SJB Vlasenica, that the majority of these detainees - mainly Muslims from Vlasenica and surrounding villages - had been killed. The witness testified the camp was a joint operation between the VRS and the Bosnian-Serb MUP, in Vlasenica municipality.

In relation to Scheduled Incident B5.1, the Chamber received evidence that in July 1992, the KP Dom Foča detention warden Krnojelac reported that 469 prisoners had been brought to the KP Dom detention centre since the start of the war, 459 of whom were Bosnian Muslims. This is contained in exhibit P4019. Witnesses RM-063 and RM-046, who were detained at the KP Dom detention centre from April 1992 for a period of 6 months and more than a year respectively, testified that every night during their detention a number of detainees were taken out for beatings. Witness RM-063 testified that the beatings were carried out by a policeman called Dragoljub Obrenović and a number of KP Dom guards. According to Witness RM-063, detainees were very often taken to solitary cells, from which moans, screams, thuds, and shots could be heard. During a weekend in August 1992, Witness RM-063 saw approximately 200 detainees taken away in groups from the KP Dom. These detainees never returned.

In relation to Scheduled Incident B13.1, Witness Safet Tači, who was detained in Room 2 of Keraterm detention camp, testified that one day he saw a table with a machine gun and a portable spotlight being put up and directed at the door of Room 3, a small room where 180-200 detainees were squeezed in. Around midnight he heard machine-gun fire after the door of Room 3 had been opened and people started to stream out. The next day, the witness was ordered by a soldier to load the bodies inside and in front of the door of Room 3 onto a truck. The Chamber notes that according to one adjudicated fact, the machine-gun outside Room 3 had been placed there by Bosnian-Serb army personnel on 20 or 21 July 1992.

In relation to Scheduled Incident B.8.1, Witness RM-018 stated that on 31 May 1992, soldiers wearing JNA uniforms escorted him and around 70 other Muslim men from Častovići and Vojići, to a room in an elementary school in Velagići. At 11:30 p.m., soldiers cursed and beat the men and ordered them to form a line and face two armed soldiers. Soon after, those soldiers opened fire at them. The witness was able to hide under the bodies. The witness heard the soldiers discuss going to Lanište, where the Knin Corps was stationed, to get a loader and a truck to dispose of the bodies in the forest.

In relation to Scheduled Incident A3.3, Witness Dževad Džaferagić stated that on 10 July 1992 at about 5.30 a.m., he woke up to the sound of automatic gunfire. From his house, he saw a convoy of 50 to 60 men in civilian clothes being led to Ključ by eight or nine Serb soldiers wearing JNA uniforms. The witness saw Serb soldiers entering houses, removing men and beating them. From approximately 10 a.m., groups of Serb soldiers wearing JNA and camouflage uniforms escorted groups of seven or eight Muslim men to a stable from where he heard gunfire. At approximately 6 p.m., the witness saw a yellow excavator and a lorry arrive at the stable and several unidentified Serb soldiers loading bodies from the stable onto the excavator. During this process, one of the soldiers said [quote] "that is the way of the true Serb" . The Chamber heard evidence indicating that the attack had been planned and carried out by troops belonging to the VRS.

In relation to all of these incidents, the Chamber also received forensic material in support of the witness's evidence.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now turn to Srebrenica.

The Chamber heard the evidence of witness Drazen Erdemović, who testified that on the morning of 16 July 1995, he and seven other members of the VRS 10th Sabotage Detachment were ordered by their group commander, Brano Gojković, to go to the Zvornik Brigade headquarters. From there, they were escorted by a VRS lieutenant colonel and two members of the Drina Corps military police to Branjevo Military Farm. Upon arrival at the farm, Erdemović overheard Gojković talking with the lieutenant colonel about buses

arriving, and then Gojković told the witness and the other members of his unit that buses carrying civilians from Srebrenica would arrive and they were to execute these people.

Buses began arriving carrying Bosnian Muslim males aged between 17 and 65 and dressed in civilian clothing, and each bus had two armed Drina Corps military police escorts onboard. The Bosnian Muslims from the first bus were blindfolded and had their hands tied together. The detainees were led from the buses to the execution site where Erdemović and the other VRS soldiers were ordered by Gojković to open fire on them. Erdemović also testified that Gojković had ordered the bus drivers to kill at least one prisoner each so that they would not later testify about what had happened.

Later that day, as the last bus with Bosnian Muslim detainees arrived, a group of ten VRS soldiers from Bratunac joined the witness's unit at the execution site. These soldiers beat and cursed the detainees, forcing them to kneel and pray "in the Muslim manner." The VRS lieutenant-colonel who had earlier escorted the witness and members of his unit to the execution site arrived at the end of the executions and discussed the burial of the victims in the field. Erdemović testified that he and other VRS soldiers participated in the execution of between 1,000 to 1,200 Bosnian Muslim males dressed in civilian clothes who had been brought to the execution site by between 15 and 20 buses that day.

The Chamber also heard evidence from witnesses RM-346 and RM-255, who testified about surviving the Branjevo Farm executions. Both witnesses gave evidence that after being captured and detained by soldiers, they and other Bosnian Muslim detainees, some of whom were blindfolded with their hands tied behind their backs, were transported by bus to a field on 16 July 1995. Witness RM-346 testified that upon arrival Serb soldiers began cursing the detainees saying things like "Alija does not want you, step out", as the soldiers took the detainees off the buses in groups of ten. Witness RM-255 gave evidence that one of the soldiers asked if he wanted to declare himself as a Serb and then be released. In response to this, two of the detainees then said they were Serbian, but were not separated from the line. The detainees were led to an area where they were lined up between corpses that were already on the ground. They were ordered to turn their backs and to lie down, and then a group of ten soldiers began shooting the detainees. Having survived the executions, witnesses RM-255 and RM-346 lay motionless among the corpses listening to the process repeat itself throughout the day: the soldiers returning multiple times with groups of detainees, ordering the detainees to line up, shooting them, asking if anyone was still alive, and then killing anyone that responded. Witness RM-255 also gave evidence that on two occasions he heard that the soldiers were making statements about them committing genocide, once while he was being led to the execution site, and another time after his escape while he was hiding nearby.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now set out some evidence on rapes and cruel and inhumane treatment for the Municipalities part of the case.

The Chamber also heard evidence in relation to a large number of rapes committed at various locations in Foča Municipality. For the purposes of this decision, the Chamber will focus on the evidence it heard regarding Karaman's house as set out in Schedule C.6.2 of the Indictment. Witnesses RM-070 and RM-048 testified that around 3 August 1992 they and other girls were taken by one of Pero Elez's soldiers and the soldiers of Dragan Kunarac a.k.a. Žaga in Miljevina, Foča Municipality. Witness RM-070 testified that the youngest girl at Karaman's house was 12 years old. During the evenings, soldiers from Pero Elez's group raped one or more of the girls, and the soldiers would regularly beat the girls when they refused to follow orders. Witness RM-070 testified that Pero Elez raped all of the girls once or twice. Witness RM-048 testified that she learnt that Elez was the commander of a group of soldiers under the command of Marko Kovač, about whom the Chamber heard evidence that he was the Commander of a VRS brigade from May 1992 until the end of 1994. Around

mid-August 1992, Witness RM-048 was taken from Karaman's house to the house of a Serb soldier where she was held and raped, until she was released in July 1993. During this time, the soldier took the witness to a celebration where Mladić approached them asking the soldier whether the witness was his "Herzegovinian girl". Mladić then turned to the witness directly and asked her whether it was "better than in Alija's state". The witness testified that this made her believe that Mladić knew about girls that were kept as sexual slaves. According to Witness RM-048, there were no Muslim women or girls living freely in Foča at the time. The Chamber notes that one of Mladić's notebooks, exhibit P359, records the names of two young women the Bosnia-Herzegovina officials were looking for, and about whom witnesses have testified they were held in Foča as sexual slaves.

The Chamber heard a large amount of evidence regarding the cruel and inhumane treatment of persons detained in camps in the Municipalities. For the purposes of this decision, it will only focus on the Keraterm and Omarska camps in Prijedor Municipality, mentioned in Schedules C.15.2 and C.15.3 of the Indictment, and Manjača camp in Banja Luka Municipality, referred to in Schedule C.1.2.

In relation to the Keraterm Camp, Safet Tači testified regarding his detention in Room 2, which was approximately ten by twelve metres, very hot, unhygienic and filled with a large number of Croats and Muslims, many of them severely beaten. The witness testified that on one occasion, a man by the name of Duča entered Room 2, called on two detainees who were brothers and forced them to beat each other severely. According to the adjudicated facts, the Keraterm camp held up to 1,500 prisoners crowded into a number of large unlit rooms or halls, which got intensely hot in the summer as there were no windows or ventilation. Prisoners were kept locked in these rooms for days, crowded together. The detainees were allowed to go to the toilet only once a day. Infestations of lice appeared at the camp, and dysentery was rife. There was no medical care. Detainees suffered from malnutrition and starvation, and were beaten on arrival.

In relation to the Omarska Camp, Witness Nusret Sivac testified he was taken to Omarska camp on 20 June 1992. Upon his arrival, he and other prisoners were beaten severely by members of an intervention platoon, including Mrđa and Zoran Babić. On one occasion, all the detainees in the camp were beaten, from the early hours of the morning until late afternoon. The shift on duty, led by Mlado Radić, a.k.a. Krkan, set up a gauntlet of guards, assisted by guards from other shifts. The witness saw people screaming and falling down everywhere as the guards beat them with baseball bats and metal chains with balls attached to them. One guard struck the witness on his head using a metal chain and ball, after which he lost consciousness. According to the Adjudicated facts, sometimes 200 persons were held at the Omarska camp in a room of 40 square metres; and 300 prisoners were confined in one small room. Some prisoners spent the time crowded together in the lavatories. In the lavatories, prisoners were packed one on top of the other and they often had to lie on excrements. Many of the prisoners confined in the White House on the Omarska compound did not receive food during their time there; some prisoners lost 20 to 30 kilograms during their time at Omarska, others considerably more. Drinking water at Omarska was often denied to the prisoners for long periods, and the water given to the detainees was not fit for human consumption. Prisoners had to wait hours before being allowed to use the lavatories, and sometimes risked being beaten if they asked to use them. There were no effective washing facilities; skin diseases were prevalent, as were acute cases of diarrhoea and dysentery.

The Chamber also received a large number of detailed reports that were sent to VRS officials regarding the inhumane treatment in the camps. From as early as 22 June 1992, the operational team in charge of interrogating detainees at the Manjača Camp sent daily reports to 1st Krajina Corps Commander Talić regarding the treatment of prisoners in the Manjaca camp in Banja Luka. On 1 July, it was reported that "more than 95% of the prisoners are Muslims". The operational team urged Talić to remind the military Police Commander at the Camp that it "is not a torture house", that prisoners were "maltreated, beaten and humiliated to the extreme", that policemen at the camp beat the prisoners as

they pleased but that it was difficult to eradicate this behaviour as the security commander of the camp often said in front of the soldiers that the prisoners “should all be killed”. On 22 July 1992, a daily report mentioned that it was the first time that the operational team had witnessed that a group of detainees had been brought to the camp “intact, i.e. there are no traces of violence”.

The Chamber will now assess whether counts 1-3, 5, and 6 stand as far as the crime base evidence is concerned.

Specifically in relation to Counts 1 and 2, there is evidence that acts of genocide took place in the Municipalities and in Srebrenica during the Indictment period. The Chamber already addressed the killings of a number of individuals earlier. Killing is one of the charged underlying acts of genocide. The Chamber also refers to the evidence cited in relation to the crimes of detention and cruel and inhumane treatment, including rape and other acts of sexual violence as causing serious bodily or mental harm and conditions calculated to bring about the victims’ physical destruction. The evidence cited also provides information on the perpetrators’ genocidal intent.

The Chamber considers that the evidence before it, including the mentioned examples, addresses all the elements of the crime of genocide, the crimes of persecution and murder as a crime against humanity, and the crime of murder as a violation of the laws or customs of war.

The Chamber now turns to the responsibility of the Accused for these crimes.

The Chamber will examine the evidence with regard to the mode of liability of participation in a JCE. As set out in the case law of the Tribunal, the elements of this mode of liability are: a plurality of persons; a common objective which amounts to or involves the commission of a crime provided for in the Statute; and the participation of the accused in the objective’s implementation. The contribution of an accused need not have been substantial or necessary to the achievement of the common objective. However, it should at least be a significant contribution to the crimes forming part of the common objective. The mental element required is that the participants in the JCE shared the intent to achieve the common objective through the commission of the statutory crime or crimes.

The parties have agreed on many aspects of the Accused’s military background and role as alleged in the Indictment, which the Chamber will proceed to summarize. The Accused held various positions in the 9th Corps of the JNA and, on 30 December 1991, became its commander. On 10 May 1992, Mladić assumed the command of the Second Military District Headquarters of the JNA. On 12 May 1992, the VRS was formed. On 12 May 1992, the Bosnian-Serb Assembly in Banja Luka during its 16th session appointed Mladić as commander of the VRS Main Staff, as evidenced by the transcript of that session admitted as exhibit P431, and supported by evidence from expert witnesses Reynaud Theunens and Robert Donia. Mladić was in command of the VRS Main Staff until at least 8 November 1996.

The first joint criminal enterprise charged in the Indictment relates to the goal of permanently removing Bosnian Muslim and Bosnian Croat inhabitants from Serb-claimed territory of Bosnia-Herzegovina through the commission of crimes enumerated in Counts 1 and 3-8. Alleged JCE members include Radovan Karadžić, Slobodan Milošević, and Momčilo Krajišnik. The Indictment alleges that the Accused significantly contributed to achieving the objective of the JCE and shared the intent for the commission of the charged crimes with others who acted in concert with him.

In relation to the common plan and the plurality of persons of the overarching JCE, the Chamber heard evidence regarding the planned take-over of the municipalities which sought to establish separate Bosnian-Serb institutions and the creation of a Bosnian-Serb homogeneous state. It received evidence that throughout 1991 and early 1992 the Bosnian-Serb leadership, under the direction of Radovan Karadžić, began creating parallel Serb

civilian and military structures in the municipalities throughout Bosnia-Herzegovina. The Chamber refers in this respect to the evidence of Milan Babić. It notes that on 24 October 1991, the Bosnian-Serb leadership established a separate Bosnian-Serb Assembly and on or about 20 December 1991, Karadžić issued the so called Variant A and B instructions to municipality leaders for the creation of bodies not provided for in the existing legal order, including the Serbian Crisis Staffs.

The Chamber heard extensive evidence with regard to the promulgation of the six strategic objectives. On 6 May 1992, the Accused recorded a meeting in his notebook, exhibit P352, with Karadžić and a group of JNA generals. During this meeting, Karadžić emphasized the imperative of ethnic separation and articulated three other goals that subsequently became strategic goals two, three, and six of the so called six strategic goals. During a meeting on the following day, attended by the Accused, Momčilo Krajišnik stipulated the six strategic goals of the Bosnian-Serb leadership in express terms. On 12 May 1992, the six strategic objectives were publicly announced by Radovan Karadžić and adopted at the 16th Assembly Session of the Bosnian-Serb Republic on the same day. The Chamber refers to exhibit P431. At this same session, at which the Accused was also appointed as the VRS Main Staff commander, the Accused showed that he shared these objectives and appeared to have participated in creating them, stating that he had [quote]“read, mulled over for a long time and discussed within the most select circle of comrades whom we convened, the strategic goals that are of substance”.

The Chamber heard evidence about the relationship between Karadžić and the Accused. It notes the testimony of Witness Herbert Okun that Karadžić on at least two occasions between 1992 and 1993 explicitly told him that the Accused was under his control, adding on one occasion that “you know how the soldiers are. They don't like to be controlled by civilians, but we control them.”

Further, the Defence submitted that the Accused “always issued orders seeking to have perpetrators disarmed, arrested, investigated and prosecuted”.

The Chamber heard evidence that instructions were issued to VRS forces condemning the commission of crimes in the Municipalities, but that in practice the VRS soldiers were instructed to continue with their behaviour irrespective of whether it was criminal. The Chamber notes that on 12 June 1992, the VRS Main Staff issued instructions regarding the treatment of prisoners and the creation of detention camps. The Chamber refers in this respect to exhibits P377, P189, P3910, P3979, and the notebook of Mladić P353 at page 160. The Chamber also refers to the evidence of Witness RM-019, a member of the 11th Herzegovina Light Infantry Brigade from May 1992, who testified that at the end of May or in early June 1992, Zoran Vuković, the Battalion commander, read out a statement allegedly signed by Karadžić to a group of soldiers, including the witness. According to the statement, the soldiers were not to burn any more property or kill any more prisoners. Following the statement, Vuković asked each soldier to sign a paper to the effect that they had heard the statement. Vuković conveyed the best regards of the commander in Pale to the soldiers and told them they were doing a great job and should continue to do so. One of the soldiers asked Vuković why he wanted him to sign the statement if the killing and burning should continue, to which Vuković responded that the soldier should not think too much.

Witness RM-081 testified that he watched television coverage of the Assembly in Sarajevo where Karadžić announced that at some point Muslims will disappear from the face of the earth. He also testified that around September 1992 Sveto Veselinović, president of the Serbian Democratic Party in Rogatica and member of the War Commission of the Serbian Republic of Rogatica, told the witness that all Muslims would disappear from the territory. Veselinović disclosed to the witness that he had met with Karadžić in Pale, where it had been decided that one-third of Muslims would be killed, another one-third would be converted to the Orthodox religion, and the remaining one-third would leave.



The Chamber heard evidence that throughout the municipalities, the execution of the policy of the Bosnian Serb leadership resulted in large-scale expulsion of the non-Serb populations from the Municipalities. From the beginning of the conflict in April through August 1992, more than 30,000 Bosnian Muslims and Croats moved out of the municipality of Prijedor alone, either out of fear or due to unbearable circumstances. The Chamber also recalls its earlier findings regarding the large-scale killings in and around the detention camps throughout the municipalities. There is ample witness testimony and documentary evidence that persons detained at the detention camps in the Municipalities were placed there solely on the basis of their ethnicity. The Chamber refers in this respect to exhibit P3801, a report by the Bosnian-Serb MUP to Radovan Karadžić dated 17 July 1992 stating that “the Army, crisis staffs and war presidencies have requested that the Army round up or capture as many Muslims as possible”, who were to be placed in camps.

Based on the foregoing, the Chamber considers that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment there existed a joint criminal enterprise composed of, inter alia, members of the Bosnian Serb leadership and the VRS, including Radovan Karadžić and the Accused, the purpose of which was to permanently remove the Bosnian Muslims and/or Bosnian Croats from Bosnian-Serb claimed territories in Bosnia-Herzegovina through the commission of the crimes charged in the Indictment.

In relation to the Accused’s contributions to this JCE, there is evidence that the Accused, as Commander of the VRS Main Staff, implemented measures to carry out the strategic goals, as previously set out, to advance the objective of the joint criminal enterprise. The Chamber received evidence that throughout the Indictment period the Accused issued nine operational directives implementing the six strategic goals into orders for major VRS combat operations. The Chamber refers, for example, to the operational directives in evidence as exhibits P747, P1963, and P1968, as well as the report compiled by Reynaud Theunens.

Witness Pyers Tucker testified that the Accused told him that the prisons at Foča, Batković, and Kula were under his control. The Chamber also received documentary evidence indicating the Accused’s control over the detention camps. Particularly, it notes exhibit P201, a VRS order of August 1992, indicating that the Accused personally exercised direct military control over units in control of detention camps in Manjača, Trnopolje, Omarska, and Prijedor. Other evidence of direct involvement of the Main Staff in the detention camps is reflected in exhibits P2899, P4147, and P3687.

In relation to the Accused’s *mens rea*, the Chamber refers to Mladić’s involvement in the creation and promulgation of the six strategic goals in May 1992, as discussed earlier. The Chamber notes that there is evidence that the Accused throughout the period of the Indictment knew about the crimes committed in the municipalities. John Wilson testified that in December 1992 or January 1993, he spoke to Mladić in Geneva about a photograph circulating in the media of a malnourished man held at a Serb detention camp. The Chamber further recalls the evidence of Witness RM-048 who testified that Mladić knew that girls from Foča were kept by his troops as sexual slaves.

The Chamber notes the effect that the rapes had on the Bosnian Muslim women, and the testimony of a rape victim who stated that in her opinion, the Serbs “wanted to destroy, kill, destroy our spirit as much as they could because there is no cure for a woman who was raped”, adding that she would never recover.

The Chamber also refers to the evidence of David Harland, who testified that during the week ending on 3 November 1993 he attended a meeting where Mladić stated that unless all 22 Serb POWs in the Goražde pocket were returned, he would kill everyone in the eastern enclaves except for the children. Mladić’s words at this meeting were recorded by international observers in exhibits P4639 and D7.

The Chamber also received intercept evidence regarding the Accused's state of mind. In an intercepted telephone conversation of May 1992, Mladić warned Fikret Abdić that he would "order the shelling of the entire Bihać". Mladić stated that "the whole of Bosnia will burn if I start to 'speak'", and continued by saying "not just Sarajevo". In an intercepted conversation of 5 August 1992, Mladić threatened to use heavy artillery weapons on a "densely populated area" if his demands to cease combat activities were not met.

The Chamber also heard the evidence of Šefik Hurko, a Bosnian Muslim who was detained in the Rasadnik camp in Rogatica municipality from August 1992 through April 1994, who testified that sometime in April 1994, 10-15 detainees from the camp, including the witness, were brought to a place near Goražde. There, they were instructed by the warden of the camp, Bojić, to work in the forest and to speed up because Mladić was coming. When Mladić noticed the detainees he asked who they were, Bojić responded that they were prisoners from Rogatica. Mladić asked him if they were loyal or captured, to which Bojić responded that they were loyal. Mladić then ordered the detainees to be lined up in front of him and said that, if they were willing to change their religion, they could stay.

Based on the foregoing, the Chamber is satisfied that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment the Accused participated in the joint criminal enterprise comprised of, inter alia, members of the Bosnian-Serb leadership, including Radovan Karadžić. The purpose of this JCE was to permanently remove the Bosnian Muslims and Bosnian Croats from Bosnian-Serb claimed territory in Bosnia and Herzegovina through the commission of crimes charged in the Indictment. The Accused shared the intent of the other members of the overarching JCE to carry out its objective through the commission of crimes. He also significantly contributed to it.

Under these circumstances, the Chamber finds that Counts 1, 3, and 5-6 stand.

The Chamber recalls that the defence did not specifically challenge the second joint criminal enterprise. The Chamber will further deal with counts 9 and 10 later in this decision.

The Chamber will now move on to the third joint criminal enterprise alleged in the Indictment, namely, the JCE to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and by forcibly removing the women, young children and some elderly men from the enclave, through the commission of crimes charged in Counts 2 through 8 of the Indictment. The implementation of this plan is alleged to have commenced as early as March of 1995, continuing until 1 November 1995. Alleged JCE members include, inter alia, Radovan Karadžić, and senior officers of the VRS and Bosnian-Serb MUP. The Accused is alleged to have contributed to achieve the objective of the JCE by, inter alia, commanding and controlling the VRS in furtherance of the objective. It is alleged, further, that he shared the intent for the commission of the charged crimes with other members of the JCE.

In relation to the objective of the said JCE, the Chamber recalls the evidence of Momir Nikolić who testified that from the moment the enclaves were set up, the VRS forces had the political goal to cause the forcible removal of the entire Muslim population from Srebrenica, Žepa, and Goražde to Muslim-held territory. The Chamber also considered Directive 7, in evidence as exhibit P1469, and discussed by the parties during their submissions. This directive is dated 8 March 1995, addressed to the commanders of the various Corps commands, and signed by the Supreme Commander Radovan Karadžić. It ordered, inter alia, that the Drina Corps carry out the "complete physical separation of Srebrenica and Žepa"... "as soon as possible, preventing even communication between individuals in the two enclaves"; and "by planned and well thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa". The Directive also stated "through the planned

and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of the UN protection force, hereinafter UNPROFOR, to the enclaves and the supply of material resources to the Muslim population, making them dependant on our goodwill, while at the same time avoiding condemnation by the international community and international public opinion.” . Directive 7 was referenced in a Drina Corps Command Order issued on 20 March 1995 signed by Milenko Živanović, and VRS Main Staff Directive 7/1 dated 31 March 1995, signed by Mladić. These are in evidence as exhibits P1468 and P1470, respectively. The Drina Corps Command Order incorporated, inter alia, Directive 7’s language with regard of the creation of unbearable circumstances for the inhabitants of the enclaves. Witness Manojlo Milovanović testified that somebody reading the reference to Directive 7 in Directive 7/1 would have to look back at Directive 7 in order to be able to fully implement it.

On 2 July 1995, the Drina Corps issued an order for Operation Krivaja 95, in evidence as exhibit P1465. This order formulated the task, pursuant to Directives 7 and 7/1, to carry out offensive activities with the objective of, inter alia, separating and reducing in size the Žepa and Srebrenica enclaves, and to create conditions for the elimination of the enclaves.

Several witnesses, including Momir Nikolić and Rupert Smith, testified that the VRS attack on Srebrenica started on 6 July 1995. Evert Rave testified that on 7 July 1995, the VRS fired into the safe area and targeted UN facilities, causing several civilian deaths. On 9 July 1995, in a message in evidence as P1466, General Tolimir reported that Karadžić had been informed of successful combat operations around Srebrenica by units of the Drina Corps enabling occupation of the enclave, and that Karadžić had agreed with, inter alia, the continuation of operations for the takeover of Srebrenica.

The Chamber received evidence from several witnesses that Srebrenica ultimately fell to the VRS on 11 July 1995.

Momir Nikolić testified that early in the morning of 12 July, in a conversation with Popović and Kosorić, Popović told him that all the women and children would be transferred to territory controlled by Muslim forces, which was either Kladanj or Tuzla. The witness asked what would happen to the able-bodied men, to which Popović responded that all the “balijas” should be killed. Witness RM-513 and Richard Butler testified that the term “balijas” was used in a derogatory fashion by Serb forces to refer to Muslims. Nikolić, Kosorić, and Popović then discussed possible execution sites.

The Chamber heard evidence of a meeting at around 8 p.m. on 13 July between Beara and Momir Nikolić in the centre of Bratunac. Beara told Momir Nikolić that the Muslim prisoners would be temporarily detained and then executed in Zvornik. In a subsequent meeting attended by Beara, Miroslav Deronjić, and Vasić, Deronjić and Beara had an argument about where to take the captured Bosnian Muslims. Momir Nikolić testified that on this occasion, Beara insisted that the prisoners remain in Bratunac, stating that he had received an order from his “boss” that the Muslims should stay there. Momir Nikolić understood Beara’s reference to his boss to refer to General Mladić, as all officers referred to Mladić as the boss. Deronjić opposed Beara’s proposal, stating that he did not want the Muslims detained and killed in Bratunac and that he had received an order from Karadžić that the Muslims should go to Zvornik.

The Chamber also considered the evidence of witnesses including Witness RM-322, Damjan Lazarević, and Cvijetin Ristanović of coordinated burial operations organized by the VRS following several executions alleged in the Indictment, involving, among others, the Zvornik Brigade Engineering Unit.

With respect to the requirement of a plurality of persons, the Chamber refers to the evidence set out above concerning the interaction and communications between various high-ranking VRS officers including Mladić, Tolimir, Beara, Kosorić, Krstić, and Popović. In addition, it notes the evidence of Momir Nikolić concerning the presence of MUP

commander Ljubiša Borovčanin in Potočari during the process of transportation of the Bosnian Muslims discussed earlier in this decision, as well as the involvement of Karadžić in respect of Directive 7.

Finally, the Chamber recalls the evidence referred to earlier in this decision with respect to the crime-base and considers that an inference can be drawn, together with the evidence set out here, that the alleged Srebrenica JCE existed and was implemented.

In relation to the Accused's contributions to this third JCE, the Chamber gave regard to the following evidence. In an excerpt of an intercepted conversation recording a voice which witness Ljubomir Obradović identified as that of the Accused, Mladić is recorded as stating, with reference to UNPROFOR and humanitarian convoys, that he would not have taken Srebrenica or Žepa if he had not starved them in the winter, adding that since February, he only let through one or two convoys. This conversation is in evidence as exhibit P1789. The Chamber also considers Obradović's testimony concerning exhibit P1788, a series of UNPROFOR requests to the Main Staff for convoy approval with the handwritten initials of the Accused accompanied by the word no, as evidence of Mladić's direct involvement in the restriction of supplies reaching the enclave.

The Chamber further notes the testimony of Momir Nikolić that General Krstić was in command of all units taking part in the Srebrenica operation, until General Mladić arrived and took over command. The Chamber also refers to exhibit P724, a report by MUP commander Ljubiša Borovčanin on the combat engagement of police forces in the period of 11 to 21 July 1995, which details that Borovčanin took orders from Mladić to engage police forces in, inter alia, Potočari.

Momir Nikolić testified, moreover, that during one of the meetings held at Hotel Fontana on the evening of 11 July 1995, Mladić threatened and intimidated the Dutch officers as well as Nesib Mandžić, a Bosnian Muslim, telling them that he wanted the Muslim army to surrender, that the future of Mandžić's people was in Mandžić's hands, and that they could choose to survive or disappear. This is recorded in video-footage, in evidence as exhibit P1147.

In relation to the Accused's intent, the Chamber refers to the following evidence in particular. Video footage in evidence as exhibit P1147 depicts Mladić walking through Srebrenica town on 11 July together with Serb forces stating, inter alia, [quote] "Here we are, on 11 July 1995, in Serb Srebrenica"; "we give this town to the Serb people as a gift"; "the time has come to take revenge on the Turks". Witness Reynaud Theunens testified that the word [quote] "Turks" was used to refer to Bosnian Muslims and was often considered a derogatory term.

Momir Nikolić testified that in the afternoon of 13 July, he met Mladić at the crossroads in Konjević Polje, where there were prisoners visibly present. Mladić exited his vehicle, approached a group of prisoners, and addressed them, stating that they should not worry and would soon be taken wherever they pleased. Returning to the vehicle, the witness asked Mladić what would really happen to the prisoners. Mladić responded by smiling and making a sweeping gesture with his right hand from left to right approximately at the middle of his body. Mladić then laughed and entered the vehicle.

The Defence submits, as examples, that Mladić's preference for a cessation of hostilities and his efforts to exchange Muslim with Serb prisoners negates any possibility that he intended to destroy the Muslims in Srebrenica. Based on the above cited evidence, the Chamber considers, however, that the evidence could lead a reasonable trier of fact to be satisfied that the Accused possessed the specific intent.

The Chamber considers that on the basis of the foregoing, there is sufficient evidence upon which, if accepted, a reasonable trier of fact could find beyond reasonable doubt that there existed a joint criminal enterprise, composed of a plurality of persons, including

Karadžić, Mladić, Tolimir, Borovčanin and other high-ranking VRS and MUP officers, the common purpose of which was to eliminate the Bosnian Muslims in Srebrenica through the commission of the crimes charged in the Indictment. The Chamber considers further that there is sufficient evidence in accordance with the aforementioned standard that Mladić participated in, and made a significant contribution to this JCE. The standard is equally met with respect to Mladić's intent for the JCE, namely, that he shared intent with other alleged JCE members, to commit the crimes charged in the Indictment.

Under these circumstances, the Chamber finds that Count 2 stands.

The Chamber recalls that the Defence did not specifically challenge the fourth joint criminal enterprise. The Chamber will further deal with count 11 now.

The Defence has not specifically challenged Counts 4 and 7-11 of the Indictment or the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute. The Chamber has carefully examined the evidence and is satisfied that there is sufficient evidence under the applicable legal standard at this stage of the proceedings for these counts to stand.

Accordingly, the Chamber considers that the Accused has a case to answer on all counts of the Indictment.

This concludes the Chamber's decision on the Defence's request for acquittal pursuant to Rule 98 *bis*.

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Tribunal Pénal  
International pour  
l'ex-Yougoslavie

# JUDGEMENT SUMMARY

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

CHAMBERS

The Hague, 15 April 2014

## Rule 98 bis Judgement summary in the case of Ratko Mladić

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

The Chamber will now deliver its decision on the Defence's request for acquittal pursuant to Rule 98 bis.

The Chamber heard oral submissions from the Defence on 17 March 2014, and in response from the Prosecution on 18 March 2014. On 19 March 2014, both parties made further submissions. In reaching its decision, the Chamber has considered all submissions of the Defence and the Prosecution, as well as all evidence admitted by the time of hearing the submissions.

The Chamber will first give a brief summary of those submissions. Thereafter, it will address those submissions, give an overview of the Indictment, and then address the evidence related to all counts of the Indictment.

The Defence made four submissions under Rule 98 bis.

First, the Defence argues that the word "count" in the text of Rule 98 bis has been restrictively interpreted by Trial Chambers to mean that judgements for acquittals can only be entered in respect of entire counts and not individual charges or incidents. The Defence submits that the precise meaning of the wording of Rule 98 bis should be determined with recourse to the intention of the drafters and the object and purpose of the Rule. According to the Defence, the object and purpose of Rule 98 bis is to streamline the case by removing allegations that cannot be sustained, ensuring that the trial is expedited and that the Defence's resources are not laid to waste.

Secondly, the Defence requests that the charges concerning the Jadar River incident, which is Scheduled Incident E.1.1, the charges concerning the Širokača shelling incident of 28 May 1992, which is part of Scheduled Incident G.1, and all the charges relating to destruction of cultural monuments and sacred sites, set out in Schedule D, be dismissed.

Thirdly, the Defence submits that the Prosecution has not proffered any evidence capable of sustaining a conviction under Article 7 (3) of the Statute on crimes perpetrated by third party, or non-VRS, actors. In advancing this proposition, the Defence asserts that the Prosecution has failed to identify the subordinates over whom it alleges that the Accused exercised effective de jure or de facto control. In addition, the Defence contends that there is evidence which supports the claim that the Accused did not have effective control over armed groups other than the Bosnian-Serb Army, hereinafter VRS, in particular, over the Bosnian Serb Ministry of Interior, hereinafter MUP, forces, Arkan's Tigers, and the Skorpions.

Fourthly, the Defence makes a number of submissions with respect to genocide as charged under Counts 1 and 2, characterising the Prosecution's evidentiary basis as

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deficient in meeting the reduced burden of proof set by Rule 98 *bis*. In respect of Count 1, the Defence argues that in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice, hereinafter referred to as ICJ, decided to dismiss allegations of the crime of genocide in the municipalities on the ground that there existed insufficient evidence of the specific intent to destroy a protected group. The Defence also points to the Judgements in the cases of Stakić, Sikirica, Krajišnik, and Brđanin, which concluded similarly. Moreover, the Defence argues that even though the Chamber has received evidence of criminal acts directed against Bosnian Muslims and Bosnian Croats in the municipalities, the evidence on these crimes does not establish that they were committed with genocidal intent.

As regards Count 2, the Defence argues that according to the testimony of General Milovanović pertaining to military Directive 7.1, the Accused left out two crucial portions of Directive 7 when issuing Directive 7.1. The first of these two portions was Karadžić's instruction that complete physical separation of Srebrenica from Žepa should be carried out as soon as possible. The second related to the creation of an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa. The Defence submits that the Accused by leaving out these two instructions has shown that he did not share the common purpose to commit genocide in Srebrenica.

The Chamber now moves to the Prosecution's submissions.

Responding to the Defence's first three submissions, the Prosecution argues that the Defence has provided no sound reason as to why the Chamber should depart from the well-established practice of this Tribunal and look within each individual count and examine whether the Accused may be acquitted of a portion thereof. Moreover, the Prosecution submits that there is sufficient evidence to maintain the charges specifically challenged by the Defence.

The Prosecution sets out the evidence concerning each of the counts in the Indictment, especially in respect of Counts 1 and 2. As regards Count 1, the Prosecution submits that there is evidence indicating that in 1992, Bosnian Muslim and Bosnian Croat communities were targeted for destruction and that those that survived the ensuing destruction were forcibly displaced. According to the Prosecution, the combination of physically destructive acts and other acts targeting the foundation of the two protected communities, such as displacements and the destruction of property and cultural and religious sites, effectively led to their physical demise and their inability to reconstitute themselves. The Prosecution submits, moreover, that the fact that the ICJ did not declare that in 1992 genocide had occurred in Bosnia-Herzegovina is not relevant to the present proceedings as the ICJ made that determination on the basis of a different legal standard and a different body of evidence. Furthermore, the Prosecution argues that in all prior Tribunal cases at the Rule 98 *bis* stage, the genocide count for the municipalities has been upheld, whether by Trial Chambers or by the Appeals Chamber following an appeal.

With regard to Count 2, the Prosecution submits that Directive 7 and Directive 7.1 form an indivisible whole since Directive 7.1 expressly refers to Directive 7. The wording of the latter document therefore remains valid and important.

The Chamber will now set out the law applicable at this stage of the proceedings.

Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence provides as follows: "At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction." Under the case law of the Tribunal, the Chamber must examine whether there is evidence upon which a reasonable trier of fact could be satisfied beyond a reasonable doubt of the guilt of the accused. Thus, if a reasonable Chamber could be satisfied beyond a reasonable doubt of the guilt of an Accused on the basis of the evidence adduced in relation to a count, then the count must

stand. There must be sufficient evidence for each element of the alleged crimes, and for one of the modes of liability contained in the Indictment. The test would not be satisfied if there was no evidence. If the Prosecution has presented evidence, that evidence is entitled to credence unless incapable of belief. At this stage, the evidence should be taken at its highest for the Prosecution. The Chamber therefore will not concern itself with issues of credibility or reliability, unless a witness is so lacking in credibility and reliability that no reasonable Chamber could find him or her credible or reliable.

As a preliminary remark before addressing the submissions in substance, the Chamber notes one matter. During its Rule 98 *bis* submissions, the Defence objected to how the Indictment was pled, suggesting that the charges lack specificity. In particular, the Defence invited the Chamber to consider the “far-reaching consequences of including this many actors as sharing in the common purpose in light of the lack of specificity in the Indictment.” According to the Rules, motions challenging the Indictment are to be filed prior to the start of a case. On 13 October 2011, the Chamber decided upon such a motion and dismissed alleged Indictment defects, including those now raised again by the Defence. The Chamber will not revisit the issue.

The Chamber will now address the parties’ submissions.

In relation to the Defence’s first argument, the Chamber considers that Rule 98 *bis* as a procedural rule is a corollary of the right of an accused to be presumed innocent until proven guilty. There are various procedural avenues which give effect to this right, and they are not necessarily limited to the stage of the end of the Prosecution’s case. The Rule’s amendment in 2004 adjusting the scope of Rule 98 *bis* decisions was intended to streamline the proceedings in the interests of judicial economy. The amendment changed the procedure from a written to an oral one, and shifted the determination to be made to the counts rather than to individual charges in an Indictment. The Rule’s amendment did not affect an accused’s right to be presumed innocent until proven guilty. Effect will ultimately be given to this right in the final Judgement. The Hadžić Trial Chamber, in its Rule 98 *bis* decision issued on 20 February 2014, presented an extensive overview of the practice in this Tribunal in relation to the count-based approach of Rule 98 *bis*.

The Chamber further notes that a failure of the Prosecution to adduce any evidence or insufficient evidence on individual charges has an effect on the proceedings that will follow. For the purpose of preparing and presenting its evidence, the Defence will in effect be left with no case to answer in relation to those individual charges. The Defence is not forced to spend resources to challenge charges which it believes have not been supported by evidence. The Defence is not forced to present any evidence for that matter. The Prosecution has to establish beyond a reasonable doubt that the charges are proven. If according to the Defence the evidence does not prove the charges, it may decide to refrain from presenting evidence thereon. This may especially be the case in relation to charges where the Defence believes that the Prosecution has not even met the lower threshold applicable at this stage of the proceedings. For the foregoing reasons, the Chamber rejects the Defence’s first argument.

In its second argument, the Defence challenges a number of specific incidents: the Jadar river killings, the shelling of Širokača on 28 May 1992, and the incidents listed in Schedule D of the Indictment in relation to destruction of religious sites. The Jadar river killings incident is one out of 20 scheduled killing incidents in relation to Srebrenica alone. The Širokača shelling is not even specifically mentioned in Schedule G to the Indictment, but forms part of Scheduled Incident G.1, which charges shelling of the city of Sarajevo as of 28 May 1992. The destructions of religious sites are part of one of seven charged underlying acts of persecution for the Municipalities part of the case. The other part of this underlying act concerns the destruction of public and private property. Considering these very narrow challenges and in light of the Chamber’s analysis of Rule 98 *bis* and the Tribunal practice developed as set out earlier, the Chamber will not further consider these incidents in this decision.



The Defence further generally challenged the mode of liability under Article 7(3) of the Statute on the basis that the Prosecution has failed to establish that non-VRS persons or groups allegedly committing crimes were under the effective de jure or de facto control of the Accused. In addition, the Defence asserts that there is no evidence to suggest that the Accused issued any criminal orders to persons who are alleged to have been perpetrators of crimes and therefore liability under the ordering limb of Article 7(1) cannot be sustained for charges in the Indictment.

The Chamber refers to its position in relation to challenges to portions of a count set out earlier. In similar vein, considering that various modes of liability are charged in respect of all counts it is sufficient that there is evidence capable of supporting a conviction on the basis of one of the modes of liability. The Defence challenges in this respect are narrow given that they pertain to one element of the alleged superior responsibility of Mladić, the de jure or de facto control, under Article 7(3) and ordering under Article 7(1), and in relation to a small number of alleged perpetrator groups. For the foregoing reasons, the Chamber rejects the Defence's third argument.

The Chamber further considers that the Defence's challenges of specific crimes do not extend to a challenge of the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute of the Tribunal.

Notwithstanding the above, the Chamber considers that there is a duty under Rule 98 *bis* to assess whether there is evidence capable of supporting a conviction on every count of the Indictment, irrespective of whether the Defence explicitly challenged all counts.

For a better understanding, the Chamber will first provide a summary of relevant parts of the Indictment.

The Indictment covers eleven counts of crimes allegedly committed between March 1992 and 30 November 1995. The areas covered by the Indictment include Sarajevo, Srebrenica, Gorazde, and the following municipalities in Bosnia-Herzegovina, which are dealt with together in the Indictment: Banja Luka, Bijeljina, Foča, Ilidža, Kalinovik, Ključ, Kotor Varoš, Novi Grad, Pale, Prijedor, Rogatica, Sanski Most, Sokolac, Trnovo, and Vlasenica. Hereinafter, I will refer to the part of the Indictment covering these 15 municipalities as the "municipalities".

According to the Indictment, the Accused held various positions in the Yugoslav People's Army, hereinafter referred to as JNA, and later in the VRS and was the Commander of the Main Staff of the VRS as of 12 May 1992.

The first two counts charge genocide. The third count charges persecution as a crime against humanity. The fourth and fifth counts respectively charge extermination and murder as crimes against humanity. The sixth count charges murder as a violation of the laws or customs of war as recognized by common Article 3(1)(a) of the Geneva Conventions of 1949. The seventh and the eighth counts respectively charge deportation and the inhumane act of forcible transfer as crimes against humanity. The ninth and the tenth counts respectively charge terror and unlawful attacks on civilians as violations of the laws or customs of war. The final count charges taking of hostages as a violation of the laws or customs of war.

The Indictment alleges that the Accused and others participated in an overarching joint criminal enterprise, hereinafter referred to as JCE, the objective of which was the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia-Herzegovina. This objective was allegedly carried out by the commission of crimes charged in Counts 1, and 3 to 8. Alternatively, this objective was carried out by the commission of crimes charged in Counts 7 and 8, while the Accused willingly took the risk of the commission of crimes charged in Counts 1 to 6 as a foreseeable consequence of the implementation of the objective.

According to the Indictment, the Accused's participation in the JCE included commanding and controlling the VRS and other elements of the Serb forces and encouraging the commission of crimes by members thereof. It also included participating in the development of Bosnian Serb governmental policies and disseminating propaganda intended to advance the objective of the JCE, failing to take adequate measures to protect prisoners of war and detainees under his effective control, as well as directing the restriction of humanitarian aid to non-Bosnian Serb enclaves.

The Indictment further alleges that the Accused and others participated in three additional JCEs. The objective of the second JCE was to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling consisting of crimes charged in Counts 5, 6, 9, and 10. The objective of the third JCE was to eliminate the Bosnian Muslims in Srebrenica through crimes charged in Counts 2 to 8. The objective of the fourth JCE was to take United Nations personnel as hostages through the crime charged in Count 11. The Accused's participation in these three additional JCEs included various forms of participation in the overarching JCE.

The Indictment further charges the Accused with criminal responsibility for having planned, instigated, ordered and/or aided and abetted the crimes, as well as with criminal responsibility as a superior.

The Chamber will now address whether each count in the Indictment stands.

In its legal characterizations, the Chamber adopts and applies the Tribunal's consistent case law with respect to the definition of the elements of the crimes and modes of liability charged in this case. In this decision, the Chamber will address the law more specifically only when this is required to explain the Chamber's findings.

The volume of evidence before the Chamber and the character of the Rule 98 bis proceedings do not allow for a comprehensive discussion of the evidence in this decision. The Chamber has, however, considered the evidence in its entirety. The specific evidence that the Chamber will refer to in this decision is therefore a focussed selection of what the Chamber has considered to be relevant for the purposes of this decision.

In relation to the crimes charged, the Chamber verified whether the evidence addresses all the elements of each of the crimes. Similarly, it verified whether the evidence addresses all the requirements for criminal responsibility as charged against the Accused. Finally, in relation to each crime charged, the Chamber verified whether the evidence, taken at its highest for the Prosecution, could lead a reasonable trier of fact to conclude, beyond a reasonable doubt, both that the crime has been committed and that the Accused bears criminal responsibility for it.

Turning to the counts, in relation to Counts 1-3, 5, and 6 there is evidence of crimes taking place during the Indictment period in the municipalities and Srebrenica. The Chamber will start with murders in the municipalities part of the case and will focus on a few incidents in order to determine whether the counts stand.

In relation to Scheduled Incident B16.2, the Chamber heard from Witness RM-066 that on 30 September 1992 four Serb police officers sent by the chief of the Public Security Service, hereinafter SJB, in Vlasenica arrived at the Sušica camp. During the night, the Serb police officers called out three groups of detainees, each consisting of 30 or 40 persons, loaded them into a truck and transported them from the camp. The witness later learned from Ilija Janković, a police officer from the SJB Vlasenica, that the majority of these detainees - mainly Muslims from Vlasenica and surrounding villages - had been killed. The witness testified the camp was a joint operation between the VRS and the Bosnian-Serb MUP, in Vlasenica municipality.

In relation to Scheduled Incident B5.1, the Chamber received evidence that in July 1992, the KP Dom Foča detention warden Krnojelac reported that 469 prisoners had been brought to the KP Dom detention centre since the start of the war, 459 of whom were Bosnian Muslims. This is contained in exhibit P4019. Witnesses RM-063 and RM-046, who were detained at the KP Dom detention centre from April 1992 for a period of 6 months and more than a year respectively, testified that every night during their detention a number of detainees were taken out for beatings. Witness RM-063 testified that the beatings were carried out by a policeman called Dragoljub Obrenović and a number of KP Dom guards. According to Witness RM-063, detainees were very often taken to solitary cells, from which moans, screams, thuds, and shots could be heard. During a weekend in August 1992, Witness RM-063 saw approximately 200 detainees taken away in groups from the KP Dom. These detainees never returned.

In relation to Scheduled Incident B13.1, Witness Safet Tači, who was detained in Room 2 of Keraterm detention camp, testified that one day he saw a table with a machine gun and a portable spotlight being put up and directed at the door of Room 3, a small room where 180-200 detainees were squeezed in. Around midnight he heard machine-gun fire after the door of Room 3 had been opened and people started to stream out. The next day, the witness was ordered by a soldier to load the bodies inside and in front of the door of Room 3 onto a truck. The Chamber notes that according to one adjudicated fact, the machine-gun outside Room 3 had been placed there by Bosnian-Serb army personnel on 20 or 21 July 1992.

In relation to Scheduled Incident B.8.1, Witness RM-018 stated that on 31 May 1992, soldiers wearing JNA uniforms escorted him and around 70 other Muslim men from Častovići and Vojići, to a room in an elementary school in Velagići. At 11:30 p.m., soldiers cursed and beat the men and ordered them to form a line and face two armed soldiers. Soon after, those soldiers opened fire at them. The witness was able to hide under the bodies. The witness heard the soldiers discuss going to Lanište, where the Knin Corps was stationed, to get a loader and a truck to dispose of the bodies in the forest.

In relation to Scheduled Incident A3.3, Witness Dževad Džaferagić stated that on 10 July 1992 at about 5.30 a.m., he woke up to the sound of automatic gunfire. From his house, he saw a convoy of 50 to 60 men in civilian clothes being led to Ključ by eight or nine Serb soldiers wearing JNA uniforms. The witness saw Serb soldiers entering houses, removing men and beating them. From approximately 10 a.m., groups of Serb soldiers wearing JNA and camouflage uniforms escorted groups of seven or eight Muslim men to a stable from where he heard gunfire. At approximately 6 p.m., the witness saw a yellow excavator and a lorry arrive at the stable and several unidentified Serb soldiers loading bodies from the stable onto the excavator. During this process, one of the soldiers said [quote] "that is the way of the true Serb" . The Chamber heard evidence indicating that the attack had been planned and carried out by troops belonging to the VRS.

In relation to all of these incidents, the Chamber also received forensic material in support of the witness's evidence.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now turn to Srebrenica.

The Chamber heard the evidence of witness Drazen Erdemović, who testified that on the morning of 16 July 1995, he and seven other members of the VRS 10th Sabotage Detachment were ordered by their group commander, Brano Gojković, to go to the Zvornik Brigade headquarters. From there, they were escorted by a VRS lieutenant colonel and two members of the Drina Corps military police to Branjevo Military Farm. Upon arrival at the farm, Erdemović overheard Gojković talking with the lieutenant colonel about buses

arriving, and then Gojković told the witness and the other members of his unit that buses carrying civilians from Srebrenica would arrive and they were to execute these people.

Buses began arriving carrying Bosnian Muslim males aged between 17 and 65 and dressed in civilian clothing, and each bus had two armed Drina Corps military police escorts onboard. The Bosnian Muslims from the first bus were blindfolded and had their hands tied together. The detainees were led from the buses to the execution site where Erdemović and the other VRS soldiers were ordered by Gojković to open fire on them. Erdemović also testified that Gojković had ordered the bus drivers to kill at least one prisoner each so that they would not later testify about what had happened.

Later that day, as the last bus with Bosnian Muslim detainees arrived, a group of ten VRS soldiers from Bratunac joined the witness's unit at the execution site. These soldiers beat and cursed the detainees, forcing them to kneel and pray "in the Muslim manner." The VRS lieutenant-colonel who had earlier escorted the witness and members of his unit to the execution site arrived at the end of the executions and discussed the burial of the victims in the field. Erdemović testified that he and other VRS soldiers participated in the execution of between 1,000 to 1,200 Bosnian Muslim males dressed in civilian clothes who had been brought to the execution site by between 15 and 20 buses that day.

The Chamber also heard evidence from witnesses RM-346 and RM-255, who testified about surviving the Branjevo Farm executions. Both witnesses gave evidence that after being captured and detained by soldiers, they and other Bosnian Muslim detainees, some of whom were blindfolded with their hands tied behind their backs, were transported by bus to a field on 16 July 1995. Witness RM-346 testified that upon arrival Serb soldiers began cursing the detainees saying things like "Alija does not want you, step out", as the soldiers took the detainees off the buses in groups of ten. Witness RM-255 gave evidence that one of the soldiers asked if he wanted to declare himself as a Serb and then be released. In response to this, two of the detainees then said they were Serbian, but were not separated from the line. The detainees were led to an area where they were lined up between corpses that were already on the ground. They were ordered to turn their backs and to lie down, and then a group of ten soldiers began shooting the detainees. Having survived the executions, witnesses RM-255 and RM-346 lay motionless among the corpses listening to the process repeat itself throughout the day: the soldiers returning multiple times with groups of detainees, ordering the detainees to line up, shooting them, asking if anyone was still alive, and then killing anyone that responded. Witness RM-255 also gave evidence that on two occasions he heard that the soldiers were making statements about them committing genocide, once while he was being led to the execution site, and another time after his escape while he was hiding nearby.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now set out some evidence on rapes and cruel and inhumane treatment for the Municipalities part of the case.

The Chamber also heard evidence in relation to a large number of rapes committed at various locations in Foča Municipality. For the purposes of this decision, the Chamber will focus on the evidence it heard regarding Karaman's house as set out in Schedule C.6.2 of the Indictment. Witnesses RM-070 and RM-048 testified that around 3 August 1992 they and other girls were taken by one of Pero Elez's soldiers and the soldiers of Dragan Kunarac a.k.a. Žaga in Miljevina, Foča Municipality. Witness RM-070 testified that the youngest girl at Karaman's house was 12 years old. During the evenings, soldiers from Pero Elez's group raped one or more of the girls, and the soldiers would regularly beat the girls when they refused to follow orders. Witness RM-070 testified that Pero Elez raped all of the girls once or twice. Witness RM-048 testified that she learnt that Elez was the commander of a group of soldiers under the command of Marko Kovač, about whom the Chamber heard evidence that he was the Commander of a VRS brigade from May 1992 until the end of 1994. Around

mid-August 1992, Witness RM-048 was taken from Karaman's house to the house of a Serb soldier where she was held and raped, until she was released in July 1993. During this time, the soldier took the witness to a celebration where Mladić approached them asking the soldier whether the witness was his "Herzegovinian girl". Mladić then turned to the witness directly and asked her whether it was "better than in Alija's state". The witness testified that this made her believe that Mladić knew about girls that were kept as sexual slaves. According to Witness RM-048, there were no Muslim women or girls living freely in Foča at the time. The Chamber notes that one of Mladić's notebooks, exhibit P359, records the names of two young women the Bosnia-Herzegovina officials were looking for, and about whom witnesses have testified they were held in Foča as sexual slaves.

The Chamber heard a large amount of evidence regarding the cruel and inhumane treatment of persons detained in camps in the Municipalities. For the purposes of this decision, it will only focus on the Keraterm and Omarska camps in Prijedor Municipality, mentioned in Schedules C.15.2 and C.15.3 of the Indictment, and Manjača camp in Banja Luka Municipality, referred to in Schedule C.1.2.

In relation to the Keraterm Camp, Safet Tači testified regarding his detention in Room 2, which was approximately ten by twelve metres, very hot, unhygienic and filled with a large number of Croats and Muslims, many of them severely beaten. The witness testified that on one occasion, a man by the name of Duča entered Room 2, called on two detainees who were brothers and forced them to beat each other severely. According to the adjudicated facts, the Keraterm camp held up to 1,500 prisoners crowded into a number of large unlit rooms or halls, which got intensely hot in the summer as there were no windows or ventilation. Prisoners were kept locked in these rooms for days, crowded together. The detainees were allowed to go to the toilet only once a day. Infestations of lice appeared at the camp, and dysentery was rife. There was no medical care. Detainees suffered from malnutrition and starvation, and were beaten on arrival.

In relation to the Omarska Camp, Witness Nusret Sivac testified he was taken to Omarska camp on 20 June 1992. Upon his arrival, he and other prisoners were beaten severely by members of an intervention platoon, including Mrđa and Zoran Babić. On one occasion, all the detainees in the camp were beaten, from the early hours of the morning until late afternoon. The shift on duty, led by Mlado Radić, a.k.a. Krkan, set up a gauntlet of guards, assisted by guards from other shifts. The witness saw people screaming and falling down everywhere as the guards beat them with baseball bats and metal chains with balls attached to them. One guard struck the witness on his head using a metal chain and ball, after which he lost consciousness. According to the Adjudicated facts, sometimes 200 persons were held at the Omarska camp in a room of 40 square metres; and 300 prisoners were confined in one small room. Some prisoners spent the time crowded together in the lavatories. In the lavatories, prisoners were packed one on top of the other and they often had to lie on excrements. Many of the prisoners confined in the White House on the Omarska compound did not receive food during their time there; some prisoners lost 20 to 30 kilograms during their time at Omarska, others considerably more. Drinking water at Omarska was often denied to the prisoners for long periods, and the water given to the detainees was not fit for human consumption. Prisoners had to wait hours before being allowed to use the lavatories, and sometimes risked being beaten if they asked to use them. There were no effective washing facilities; skin diseases were prevalent, as were acute cases of diarrhoea and dysentery.

The Chamber also received a large number of detailed reports that were sent to VRS officials regarding the inhumane treatment in the camps. From as early as 22 June 1992, the operational team in charge of interrogating detainees at the Manjača Camp sent daily reports to 1st Krajina Corps Commander Talić regarding the treatment of prisoners in the Manjaca camp in Banja Luka. On 1 July, it was reported that "more than 95% of the prisoners are Muslims". The operational team urged Talić to remind the military Police Commander at the Camp that it "is not a torture house", that prisoners were "maltreated, beaten and humiliated to the extreme", that policemen at the camp beat the prisoners as

they pleased but that it was difficult to eradicate this behaviour as the security commander of the camp often said in front of the soldiers that the prisoners “should all be killed”. On 22 July 1992, a daily report mentioned that it was the first time that the operational team had witnessed that a group of detainees had been brought to the camp “intact, i.e. there are no traces of violence”.

The Chamber will now assess whether counts 1-3, 5, and 6 stand as far as the crime base evidence is concerned.

Specifically in relation to Counts 1 and 2, there is evidence that acts of genocide took place in the Municipalities and in Srebrenica during the Indictment period. The Chamber already addressed the killings of a number of individuals earlier. Killing is one of the charged underlying acts of genocide. The Chamber also refers to the evidence cited in relation to the crimes of detention and cruel and inhumane treatment, including rape and other acts of sexual violence as causing serious bodily or mental harm and conditions calculated to bring about the victims’ physical destruction. The evidence cited also provides information on the perpetrators’ genocidal intent.

The Chamber considers that the evidence before it, including the mentioned examples, addresses all the elements of the crime of genocide, the crimes of persecution and murder as a crime against humanity, and the crime of murder as a violation of the laws or customs of war.

The Chamber now turns to the responsibility of the Accused for these crimes.

The Chamber will examine the evidence with regard to the mode of liability of participation in a JCE. As set out in the case law of the Tribunal, the elements of this mode of liability are: a plurality of persons; a common objective which amounts to or involves the commission of a crime provided for in the Statute; and the participation of the accused in the objective’s implementation. The contribution of an accused need not have been substantial or necessary to the achievement of the common objective. However, it should at least be a significant contribution to the crimes forming part of the common objective. The mental element required is that the participants in the JCE shared the intent to achieve the common objective through the commission of the statutory crime or crimes.

The parties have agreed on many aspects of the Accused’s military background and role as alleged in the Indictment, which the Chamber will proceed to summarize. The Accused held various positions in the 9th Corps of the JNA and, on 30 December 1991, became its commander. On 10 May 1992, Mladić assumed the command of the Second Military District Headquarters of the JNA. On 12 May 1992, the VRS was formed. On 12 May 1992, the Bosnian-Serb Assembly in Banja Luka during its 16th session appointed Mladić as commander of the VRS Main Staff, as evidenced by the transcript of that session admitted as exhibit P431, and supported by evidence from expert witnesses Reynaud Theunens and Robert Donia. Mladić was in command of the VRS Main Staff until at least 8 November 1996.

The first joint criminal enterprise charged in the Indictment relates to the goal of permanently removing Bosnian Muslim and Bosnian Croat inhabitants from Serb-claimed territory of Bosnia-Herzegovina through the commission of crimes enumerated in Counts 1 and 3-8. Alleged JCE members include Radovan Karadžić, Slobodan Milošević, and Momčilo Krajišnik. The Indictment alleges that the Accused significantly contributed to achieving the objective of the JCE and shared the intent for the commission of the charged crimes with others who acted in concert with him.

In relation to the common plan and the plurality of persons of the overarching JCE, the Chamber heard evidence regarding the planned take-over of the municipalities which sought to establish separate Bosnian-Serb institutions and the creation of a Bosnian-Serb homogeneous state. It received evidence that throughout 1991 and early 1992 the Bosnian-Serb leadership, under the direction of Radovan Karadžić, began creating parallel Serb

civilian and military structures in the municipalities throughout Bosnia-Herzegovina. The Chamber refers in this respect to the evidence of Milan Babić. It notes that on 24 October 1991, the Bosnian-Serb leadership established a separate Bosnian-Serb Assembly and on or about 20 December 1991, Karadžić issued the so called Variant A and B instructions to municipality leaders for the creation of bodies not provided for in the existing legal order, including the Serbian Crisis Staffs.

The Chamber heard extensive evidence with regard to the promulgation of the six strategic objectives. On 6 May 1992, the Accused recorded a meeting in his notebook, exhibit P352, with Karadžić and a group of JNA generals. During this meeting, Karadžić emphasized the imperative of ethnic separation and articulated three other goals that subsequently became strategic goals two, three, and six of the so called six strategic goals. During a meeting on the following day, attended by the Accused, Momčilo Krajišnik stipulated the six strategic goals of the Bosnian-Serb leadership in express terms. On 12 May 1992, the six strategic objectives were publicly announced by Radovan Karadžić and adopted at the 16th Assembly Session of the Bosnian-Serb Republic on the same day. The Chamber refers to exhibit P431. At this same session, at which the Accused was also appointed as the VRS Main Staff commander, the Accused showed that he shared these objectives and appeared to have participated in creating them, stating that he had [quote]“read, mulled over for a long time and discussed within the most select circle of comrades whom we convened, the strategic goals that are of substance”.

The Chamber heard evidence about the relationship between Karadžić and the Accused. It notes the testimony of Witness Herbert Okun that Karadžić on at least two occasions between 1992 and 1993 explicitly told him that the Accused was under his control, adding on one occasion that “you know how the soldiers are. They don't like to be controlled by civilians, but we control them.”

Further, the Defence submitted that the Accused “always issued orders seeking to have perpetrators disarmed, arrested, investigated and prosecuted”.

The Chamber heard evidence that instructions were issued to VRS forces condemning the commission of crimes in the Municipalities, but that in practice the VRS soldiers were instructed to continue with their behaviour irrespective of whether it was criminal. The Chamber notes that on 12 June 1992, the VRS Main Staff issued instructions regarding the treatment of prisoners and the creation of detention camps. The Chamber refers in this respect to exhibits P377, P189, P3910, P3979, and the notebook of Mladić P353 at page 160. The Chamber also refers to the evidence of Witness RM-019, a member of the 11th Herzegovina Light Infantry Brigade from May 1992, who testified that at the end of May or in early June 1992, Zoran Vuković, the Battalion commander, read out a statement allegedly signed by Karadžić to a group of soldiers, including the witness. According to the statement, the soldiers were not to burn any more property or kill any more prisoners. Following the statement, Vuković asked each soldier to sign a paper to the effect that they had heard the statement. Vuković conveyed the best regards of the commander in Pale to the soldiers and told them they were doing a great job and should continue to do so. One of the soldiers asked Vuković why he wanted him to sign the statement if the killing and burning should continue, to which Vuković responded that the soldier should not think too much.

Witness RM-081 testified that he watched television coverage of the Assembly in Sarajevo where Karadžić announced that at some point Muslims will disappear from the face of the earth. He also testified that around September 1992 Sveto Veselinović, president of the Serbian Democratic Party in Rogatica and member of the War Commission of the Serbian Republic of Rogatica, told the witness that all Muslims would disappear from the territory. Veselinović disclosed to the witness that he had met with Karadžić in Pale, where it had been decided that one-third of Muslims would be killed, another one-third would be converted to the Orthodox religion, and the remaining one-third would leave.

The Chamber heard evidence that throughout the municipalities, the execution of the policy of the Bosnian Serb leadership resulted in large-scale expulsion of the non-Serb populations from the Municipalities. From the beginning of the conflict in April through August 1992, more than 30,000 Bosnian Muslims and Croats moved out of the municipality of Prijedor alone, either out of fear or due to unbearable circumstances. The Chamber also recalls its earlier findings regarding the large-scale killings in and around the detention camps throughout the municipalities. There is ample witness testimony and documentary evidence that persons detained at the detention camps in the Municipalities were placed there solely on the basis of their ethnicity. The Chamber refers in this respect to exhibit P3801, a report by the Bosnian-Serb MUP to Radovan Karadžić dated 17 July 1992 stating that “the Army, crisis staffs and war presidencies have requested that the Army round up or capture as many Muslims as possible”, who were to be placed in camps.

Based on the foregoing, the Chamber considers that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment there existed a joint criminal enterprise composed of, inter alia, members of the Bosnian Serb leadership and the VRS, including Radovan Karadžić and the Accused, the purpose of which was to permanently remove the Bosnian Muslims and/or Bosnian Croats from Bosnian-Serb claimed territories in Bosnia-Herzegovina through the commission of the crimes charged in the Indictment.

In relation to the Accused’s contributions to this JCE, there is evidence that the Accused, as Commander of the VRS Main Staff, implemented measures to carry out the strategic goals, as previously set out, to advance the objective of the joint criminal enterprise. The Chamber received evidence that throughout the Indictment period the Accused issued nine operational directives implementing the six strategic goals into orders for major VRS combat operations. The Chamber refers, for example, to the operational directives in evidence as exhibits P747, P1963, and P1968, as well as the report compiled by Reynaud Theunens.

Witness Pyers Tucker testified that the Accused told him that the prisons at Foča, Batković, and Kula were under his control. The Chamber also received documentary evidence indicating the Accused’s control over the detention camps. Particularly, it notes exhibit P201, a VRS order of August 1992, indicating that the Accused personally exercised direct military control over units in control of detention camps in Manjača, Trnopolje, Omarska, and Prijedor. Other evidence of direct involvement of the Main Staff in the detention camps is reflected in exhibits P2899, P4147, and P3687.

In relation to the Accused’s *mens rea*, the Chamber refers to Mladić’s involvement in the creation and promulgation of the six strategic goals in May 1992, as discussed earlier. The Chamber notes that there is evidence that the Accused throughout the period of the Indictment knew about the crimes committed in the municipalities. John Wilson testified that in December 1992 or January 1993, he spoke to Mladić in Geneva about a photograph circulating in the media of a malnourished man held at a Serb detention camp. The Chamber further recalls the evidence of Witness RM-048 who testified that Mladić knew that girls from Foča were kept by his troops as sexual slaves.

The Chamber notes the effect that the rapes had on the Bosnian Muslim women, and the testimony of a rape victim who stated that in her opinion, the Serbs “wanted to destroy, kill, destroy our spirit as much as they could because there is no cure for a woman who was raped”, adding that she would never recover.

The Chamber also refers to the evidence of David Harland, who testified that during the week ending on 3 November 1993 he attended a meeting where Mladić stated that unless all 22 Serb POWs in the Goražde pocket were returned, he would kill everyone in the eastern enclaves except for the children. Mladić’s words at this meeting were recorded by international observers in exhibits P4639 and D7.



The Chamber also received intercept evidence regarding the Accused's state of mind. In an intercepted telephone conversation of May 1992, Mladić warned Fikret Abdić that he would "order the shelling of the entire Bihać". Mladić stated that "the whole of Bosnia will burn if I start to 'speak'", and continued by saying "not just Sarajevo". In an intercepted conversation of 5 August 1992, Mladić threatened to use heavy artillery weapons on a "densely populated area" if his demands to cease combat activities were not met.

The Chamber also heard the evidence of Šefik Hurko, a Bosnian Muslim who was detained in the Rasadnik camp in Rogatica municipality from August 1992 through April 1994, who testified that sometime in April 1994, 10-15 detainees from the camp, including the witness, were brought to a place near Goražde. There, they were instructed by the warden of the camp, Bojić, to work in the forest and to speed up because Mladić was coming. When Mladić noticed the detainees he asked who they were, Bojić responded that they were prisoners from Rogatica. Mladić asked him if they were loyal or captured, to which Bojić responded that they were loyal. Mladić then ordered the detainees to be lined up in front of him and said that, if they were willing to change their religion, they could stay.

Based on the foregoing, the Chamber is satisfied that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment the Accused participated in the joint criminal enterprise comprised of, inter alia, members of the Bosnian-Serb leadership, including Radovan Karadžić. The purpose of this JCE was to permanently remove the Bosnian Muslims and Bosnian Croats from Bosnian-Serb claimed territory in Bosnia and Herzegovina through the commission of crimes charged in the Indictment. The Accused shared the intent of the other members of the overarching JCE to carry out its objective through the commission of crimes. He also significantly contributed to it.

Under these circumstances, the Chamber finds that Counts 1, 3, and 5-6 stand.

The Chamber recalls that the defence did not specifically challenge the second joint criminal enterprise. The Chamber will further deal with counts 9 and 10 later in this decision.

The Chamber will now move on to the third joint criminal enterprise alleged in the Indictment, namely, the JCE to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and by forcibly removing the women, young children and some elderly men from the enclave, through the commission of crimes charged in Counts 2 through 8 of the Indictment. The implementation of this plan is alleged to have commenced as early as March of 1995, continuing until 1 November 1995. Alleged JCE members include, inter alia, Radovan Karadžić, and senior officers of the VRS and Bosnian-Serb MUP. The Accused is alleged to have contributed to achieve the objective of the JCE by, inter alia, commanding and controlling the VRS in furtherance of the objective. It is alleged, further, that he shared the intent for the commission of the charged crimes with other members of the JCE.

In relation to the objective of the said JCE, the Chamber recalls the evidence of Momir Nikolić who testified that from the moment the enclaves were set up, the VRS forces had the political goal to cause the forcible removal of the entire Muslim population from Srebrenica, Žepa, and Goražde to Muslim-held territory. The Chamber also considered Directive 7, in evidence as exhibit P1469, and discussed by the parties during their submissions. This directive is dated 8 March 1995, addressed to the commanders of the various Corps commands, and signed by the Supreme Commander Radovan Karadžić. It ordered, inter alia, that the Drina Corps carry out the "complete physical separation of Srebrenica and Žepa"... "as soon as possible, preventing even communication between individuals in the two enclaves"; and "by planned and well thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa". The Directive also stated "through the planned

and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of the UN protection force, hereinafter UNPROFOR, to the enclaves and the supply of material resources to the Muslim population, making them dependant on our goodwill, while at the same time avoiding condemnation by the international community and international public opinion.” . Directive 7 was referenced in a Drina Corps Command Order issued on 20 March 1995 signed by Milenko Živanović, and VRS Main Staff Directive 7/1 dated 31 March 1995, signed by Mladić. These are in evidence as exhibits P1468 and P1470, respectively. The Drina Corps Command Order incorporated, inter alia, Directive 7’s language with regard of the creation of unbearable circumstances for the inhabitants of the enclaves. Witness Manojlo Milovanović testified that somebody reading the reference to Directive 7 in Directive 7/1 would have to look back at Directive 7 in order to be able to fully implement it.

On 2 July 1995, the Drina Corps issued an order for Operation Krivaja 95, in evidence as exhibit P1465. This order formulated the task, pursuant to Directives 7 and 7/1, to carry out offensive activities with the objective of, inter alia, separating and reducing in size the Žepa and Srebrenica enclaves, and to create conditions for the elimination of the enclaves.

Several witnesses, including Momir Nikolić and Rupert Smith, testified that the VRS attack on Srebrenica started on 6 July 1995. Evert Rave testified that on 7 July 1995, the VRS fired into the safe area and targeted UN facilities, causing several civilian deaths. On 9 July 1995, in a message in evidence as P1466, General Tolimir reported that Karadžić had been informed of successful combat operations around Srebrenica by units of the Drina Corps enabling occupation of the enclave, and that Karadžić had agreed with, inter alia, the continuation of operations for the takeover of Srebrenica.

The Chamber received evidence from several witnesses that Srebrenica ultimately fell to the VRS on 11 July 1995.

Momir Nikolić testified that early in the morning of 12 July, in a conversation with Popović and Kosorić, Popović told him that all the women and children would be transferred to territory controlled by Muslim forces, which was either Kladanj or Tuzla. The witness asked what would happen to the able-bodied men, to which Popović responded that all the “balijas” should be killed. Witness RM-513 and Richard Butler testified that the term “balijas” was used in a derogatory fashion by Serb forces to refer to Muslims. Nikolić, Kosorić, and Popović then discussed possible execution sites.

The Chamber heard evidence of a meeting at around 8 p.m. on 13 July between Beara and Momir Nikolić in the centre of Bratunac. Beara told Momir Nikolić that the Muslim prisoners would be temporarily detained and then executed in Zvornik. In a subsequent meeting attended by Beara, Miroslav Deronjić, and Vasić, Deronjić and Beara had an argument about where to take the captured Bosnian Muslims. Momir Nikolić testified that on this occasion, Beara insisted that the prisoners remain in Bratunac, stating that he had received an order from his “boss” that the Muslims should stay there. Momir Nikolić understood Beara’s reference to his boss to refer to General Mladić, as all officers referred to Mladić as the boss. Deronjić opposed Beara’s proposal, stating that he did not want the Muslims detained and killed in Bratunac and that he had received an order from Karadžić that the Muslims should go to Zvornik.

The Chamber also considered the evidence of witnesses including Witness RM-322, Damjan Lazarević, and Cvijetin Ristanović of coordinated burial operations organized by the VRS following several executions alleged in the Indictment, involving, among others, the Zvornik Brigade Engineering Unit.

With respect to the requirement of a plurality of persons, the Chamber refers to the evidence set out above concerning the interaction and communications between various high-ranking VRS officers including Mladić, Tolimir, Beara, Kosorić, Krstić, and Popović. In addition, it notes the evidence of Momir Nikolić concerning the presence of MUP

commander Ljubiša Borovčanin in Potočari during the process of transportation of the Bosnian Muslims discussed earlier in this decision, as well as the involvement of Karadžić in respect of Directive 7.

Finally, the Chamber recalls the evidence referred to earlier in this decision with respect to the crime-base and considers that an inference can be drawn, together with the evidence set out here, that the alleged Srebrenica JCE existed and was implemented.

In relation to the Accused's contributions to this third JCE, the Chamber gave regard to the following evidence. In an excerpt of an intercepted conversation recording a voice which witness Ljubomir Obradović identified as that of the Accused, Mladić is recorded as stating, with reference to UNPROFOR and humanitarian convoys, that he would not have taken Srebrenica or Žepa if he had not starved them in the winter, adding that since February, he only let through one or two convoys. This conversation is in evidence as exhibit P1789. The Chamber also considers Obradović's testimony concerning exhibit P1788, a series of UNPROFOR requests to the Main Staff for convoy approval with the handwritten initials of the Accused accompanied by the word no, as evidence of Mladić's direct involvement in the restriction of supplies reaching the enclave.

The Chamber further notes the testimony of Momir Nikolić that General Krstić was in command of all units taking part in the Srebrenica operation, until General Mladić arrived and took over command. The Chamber also refers to exhibit P724, a report by MUP commander Ljubiša Borovčanin on the combat engagement of police forces in the period of 11 to 21 July 1995, which details that Borovčanin took orders from Mladić to engage police forces in, inter alia, Potočari.

Momir Nikolić testified, moreover, that during one of the meetings held at Hotel Fontana on the evening of 11 July 1995, Mladić threatened and intimidated the Dutch officers as well as Nesib Mandžić, a Bosnian Muslim, telling them that he wanted the Muslim army to surrender, that the future of Mandžić's people was in Mandžić's hands, and that they could choose to survive or disappear. This is recorded in video-footage, in evidence as exhibit P1147.

In relation to the Accused's intent, the Chamber refers to the following evidence in particular. Video footage in evidence as exhibit P1147 depicts Mladić walking through Srebrenica town on 11 July together with Serb forces stating, inter alia, [quote] "Here we are, on 11 July 1995, in Serb Srebrenica"; "we give this town to the Serb people as a gift"; "the time has come to take revenge on the Turks". Witness Reynaud Theunens testified that the word [quote] "Turks" was used to refer to Bosnian Muslims and was often considered a derogatory term.

Momir Nikolić testified that in the afternoon of 13 July, he met Mladić at the crossroads in Konjević Polje, where there were prisoners visibly present. Mladić exited his vehicle, approached a group of prisoners, and addressed them, stating that they should not worry and would soon be taken wherever they pleased. Returning to the vehicle, the witness asked Mladić what would really happen to the prisoners. Mladić responded by smiling and making a sweeping gesture with his right hand from left to right approximately at the middle of his body. Mladić then laughed and entered the vehicle.

The Defence submits, as examples, that Mladić's preference for a cessation of hostilities and his efforts to exchange Muslim with Serb prisoners negates any possibility that he intended to destroy the Muslims in Srebrenica. Based on the above cited evidence, the Chamber considers, however, that the evidence could lead a reasonable trier of fact to be satisfied that the Accused possessed the specific intent.

The Chamber considers that on the basis of the foregoing, there is sufficient evidence upon which, if accepted, a reasonable trier of fact could find beyond reasonable doubt that there existed a joint criminal enterprise, composed of a plurality of persons, including

Karadžić, Mladić, Tolimir, Borovčanin and other high-ranking VRS and MUP officers, the common purpose of which was to eliminate the Bosnian Muslims in Srebrenica through the commission of the crimes charged in the Indictment. The Chamber considers further that there is sufficient evidence in accordance with the aforementioned standard that Mladić participated in, and made a significant contribution to this JCE. The standard is equally met with respect to Mladić's intent for the JCE, namely, that he shared intent with other alleged JCE members, to commit the crimes charged in the Indictment.

Under these circumstances, the Chamber finds that Count 2 stands.

The Chamber recalls that the Defence did not specifically challenge the fourth joint criminal enterprise. The Chamber will further deal with count 11 now.

The Defence has not specifically challenged Counts 4 and 7-11 of the Indictment or the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute. The Chamber has carefully examined the evidence and is satisfied that there is sufficient evidence under the applicable legal standard at this stage of the proceedings for these counts to stand.

Accordingly, the Chamber considers that the Accused has a case to answer on all counts of the Indictment.

This concludes the Chamber's decision on the Defence's request for acquittal pursuant to Rule 98 *bis*.

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# JUDGEMENT SUMMARY

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

CHAMBERS

The Hague, 15 April 2014

## Rule 98 bis Judgement summary in the case of Ratko Mladić

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

The Chamber will now deliver its decision on the Defence's request for acquittal pursuant to Rule 98 bis.

The Chamber heard oral submissions from the Defence on 17 March 2014, and in response from the Prosecution on 18 March 2014. On 19 March 2014, both parties made further submissions. In reaching its decision, the Chamber has considered all submissions of the Defence and the Prosecution, as well as all evidence admitted by the time of hearing the submissions.

The Chamber will first give a brief summary of those submissions. Thereafter, it will address those submissions, give an overview of the Indictment, and then address the evidence related to all counts of the Indictment.

The Defence made four submissions under Rule 98 bis.

First, the Defence argues that the word "count" in the text of Rule 98 bis has been restrictively interpreted by Trial Chambers to mean that judgements for acquittals can only be entered in respect of entire counts and not individual charges or incidents. The Defence submits that the precise meaning of the wording of Rule 98 bis should be determined with recourse to the intention of the drafters and the object and purpose of the Rule. According to the Defence, the object and purpose of Rule 98 bis is to streamline the case by removing allegations that cannot be sustained, ensuring that the trial is expedited and that the Defence's resources are not laid to waste.

Secondly, the Defence requests that the charges concerning the Jadar River incident, which is Scheduled Incident E.1.1, the charges concerning the Širokača shelling incident of 28 May 1992, which is part of Scheduled Incident G.1, and all the charges relating to destruction of cultural monuments and sacred sites, set out in Schedule D, be dismissed.

Thirdly, the Defence submits that the Prosecution has not proffered any evidence capable of sustaining a conviction under Article 7 (3) of the Statute on crimes perpetrated by third party, or non-VRS, actors. In advancing this proposition, the Defence asserts that the Prosecution has failed to identify the subordinates over whom it alleges that the Accused exercised effective de jure or de facto control. In addition, the Defence contends that there is evidence which supports the claim that the Accused did not have effective control over armed groups other than the Bosnian-Serb Army, hereinafter VRS, in particular, over the Bosnian Serb Ministry of Interior, hereinafter MUP, forces, Arkan's Tigers, and the Skorpions.

Fourthly, the Defence makes a number of submissions with respect to genocide as charged under Counts 1 and 2, characterising the Prosecution's evidentiary basis as

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deficient in meeting the reduced burden of proof set by Rule 98 *bis*. In respect of Count 1, the Defence argues that in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice, hereinafter referred to as ICJ, decided to dismiss allegations of the crime of genocide in the municipalities on the ground that there existed insufficient evidence of the specific intent to destroy a protected group. The Defence also points to the Judgements in the cases of Stakić, Sikirica, Krajišnik, and Brđanin, which concluded similarly. Moreover, the Defence argues that even though the Chamber has received evidence of criminal acts directed against Bosnian Muslims and Bosnian Croats in the municipalities, the evidence on these crimes does not establish that they were committed with genocidal intent.

As regards Count 2, the Defence argues that according to the testimony of General Milovanović pertaining to military Directive 7.1, the Accused left out two crucial portions of Directive 7 when issuing Directive 7.1. The first of these two portions was Karadžić's instruction that complete physical separation of Srebrenica from Žepa should be carried out as soon as possible. The second related to the creation of an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa. The Defence submits that the Accused by leaving out these two instructions has shown that he did not share the common purpose to commit genocide in Srebrenica.

The Chamber now moves to the Prosecution's submissions.

Responding to the Defence's first three submissions, the Prosecution argues that the Defence has provided no sound reason as to why the Chamber should depart from the well-established practice of this Tribunal and look within each individual count and examine whether the Accused may be acquitted of a portion thereof. Moreover, the Prosecution submits that there is sufficient evidence to maintain the charges specifically challenged by the Defence.

The Prosecution sets out the evidence concerning each of the counts in the Indictment, especially in respect of Counts 1 and 2. As regards Count 1, the Prosecution submits that there is evidence indicating that in 1992, Bosnian Muslim and Bosnian Croat communities were targeted for destruction and that those that survived the ensuing destruction were forcibly displaced. According to the Prosecution, the combination of physically destructive acts and other acts targeting the foundation of the two protected communities, such as displacements and the destruction of property and cultural and religious sites, effectively led to their physical demise and their inability to reconstitute themselves. The Prosecution submits, moreover, that the fact that the ICJ did not declare that in 1992 genocide had occurred in Bosnia-Herzegovina is not relevant to the present proceedings as the ICJ made that determination on the basis of a different legal standard and a different body of evidence. Furthermore, the Prosecution argues that in all prior Tribunal cases at the Rule 98 *bis* stage, the genocide count for the municipalities has been upheld, whether by Trial Chambers or by the Appeals Chamber following an appeal.

With regard to Count 2, the Prosecution submits that Directive 7 and Directive 7.1 form an indivisible whole since Directive 7.1 expressly refers to Directive 7. The wording of the latter document therefore remains valid and important.

The Chamber will now set out the law applicable at this stage of the proceedings.

Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence provides as follows: "At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction." Under the case law of the Tribunal, the Chamber must examine whether there is evidence upon which a reasonable trier of fact could be satisfied beyond a reasonable doubt of the guilt of the accused. Thus, if a reasonable Chamber could be satisfied beyond a reasonable doubt of the guilt of an Accused on the basis of the evidence adduced in relation to a count, then the count must

stand. There must be sufficient evidence for each element of the alleged crimes, and for one of the modes of liability contained in the Indictment. The test would not be satisfied if there was no evidence. If the Prosecution has presented evidence, that evidence is entitled to credence unless incapable of belief. At this stage, the evidence should be taken at its highest for the Prosecution. The Chamber therefore will not concern itself with issues of credibility or reliability, unless a witness is so lacking in credibility and reliability that no reasonable Chamber could find him or her credible or reliable.

As a preliminary remark before addressing the submissions in substance, the Chamber notes one matter. During its Rule 98 *bis* submissions, the Defence objected to how the Indictment was pled, suggesting that the charges lack specificity. In particular, the Defence invited the Chamber to consider the “far-reaching consequences of including this many actors as sharing in the common purpose in light of the lack of specificity in the Indictment.” According to the Rules, motions challenging the Indictment are to be filed prior to the start of a case. On 13 October 2011, the Chamber decided upon such a motion and dismissed alleged Indictment defects, including those now raised again by the Defence. The Chamber will not revisit the issue.

The Chamber will now address the parties’ submissions.

In relation to the Defence’s first argument, the Chamber considers that Rule 98 *bis* as a procedural rule is a corollary of the right of an accused to be presumed innocent until proven guilty. There are various procedural avenues which give effect to this right, and they are not necessarily limited to the stage of the end of the Prosecution’s case. The Rule’s amendment in 2004 adjusting the scope of Rule 98 *bis* decisions was intended to streamline the proceedings in the interests of judicial economy. The amendment changed the procedure from a written to an oral one, and shifted the determination to be made to the counts rather than to individual charges in an Indictment. The Rule’s amendment did not affect an accused’s right to be presumed innocent until proven guilty. Effect will ultimately be given to this right in the final Judgement. The Hadžić Trial Chamber, in its Rule 98 *bis* decision issued on 20 February 2014, presented an extensive overview of the practice in this Tribunal in relation to the count-based approach of Rule 98 *bis*.

The Chamber further notes that a failure of the Prosecution to adduce any evidence or insufficient evidence on individual charges has an effect on the proceedings that will follow. For the purpose of preparing and presenting its evidence, the Defence will in effect be left with no case to answer in relation to those individual charges. The Defence is not forced to spend resources to challenge charges which it believes have not been supported by evidence. The Defence is not forced to present any evidence for that matter. The Prosecution has to establish beyond a reasonable doubt that the charges are proven. If according to the Defence the evidence does not prove the charges, it may decide to refrain from presenting evidence thereon. This may especially be the case in relation to charges where the Defence believes that the Prosecution has not even met the lower threshold applicable at this stage of the proceedings. For the foregoing reasons, the Chamber rejects the Defence’s first argument.

In its second argument, the Defence challenges a number of specific incidents: the Jadar river killings, the shelling of Širokača on 28 May 1992, and the incidents listed in Schedule D of the Indictment in relation to destruction of religious sites. The Jadar river killings incident is one out of 20 scheduled killing incidents in relation to Srebrenica alone. The Širokača shelling is not even specifically mentioned in Schedule G to the Indictment, but forms part of Scheduled Incident G.1, which charges shelling of the city of Sarajevo as of 28 May 1992. The destructions of religious sites are part of one of seven charged underlying acts of persecution for the Municipalities part of the case. The other part of this underlying act concerns the destruction of public and private property. Considering these very narrow challenges and in light of the Chamber’s analysis of Rule 98 *bis* and the Tribunal practice developed as set out earlier, the Chamber will not further consider these incidents in this decision.

The Defence further generally challenged the mode of liability under Article 7(3) of the Statute on the basis that the Prosecution has failed to establish that non-VRS persons or groups allegedly committing crimes were under the effective de jure or de facto control of the Accused. In addition, the Defence asserts that there is no evidence to suggest that the Accused issued any criminal orders to persons who are alleged to have been perpetrators of crimes and therefore liability under the ordering limb of Article 7(1) cannot be sustained for charges in the Indictment.

The Chamber refers to its position in relation to challenges to portions of a count set out earlier. In similar vein, considering that various modes of liability are charged in respect of all counts it is sufficient that there is evidence capable of supporting a conviction on the basis of one of the modes of liability. The Defence challenges in this respect are narrow given that they pertain to one element of the alleged superior responsibility of Mladić, the de jure or de facto control, under Article 7(3) and ordering under Article 7(1), and in relation to a small number of alleged perpetrator groups. For the foregoing reasons, the Chamber rejects the Defence's third argument.

The Chamber further considers that the Defence's challenges of specific crimes do not extend to a challenge of the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute of the Tribunal.

Notwithstanding the above, the Chamber considers that there is a duty under Rule 98 *bis* to assess whether there is evidence capable of supporting a conviction on every count of the Indictment, irrespective of whether the Defence explicitly challenged all counts.

For a better understanding, the Chamber will first provide a summary of relevant parts of the Indictment.

The Indictment covers eleven counts of crimes allegedly committed between March 1992 and 30 November 1995. The areas covered by the Indictment include Sarajevo, Srebrenica, Gorazde, and the following municipalities in Bosnia-Herzegovina, which are dealt with together in the Indictment: Banja Luka, Bijeljina, Foča, Ilidža, Kalinovik, Ključ, Kotor Varoš, Novi Grad, Pale, Prijedor, Rogatica, Sanski Most, Sokolac, Trnovo, and Vlasenica. Hereinafter, I will refer to the part of the Indictment covering these 15 municipalities as the "municipalities".

According to the Indictment, the Accused held various positions in the Yugoslav People's Army, hereinafter referred to as JNA, and later in the VRS and was the Commander of the Main Staff of the VRS as of 12 May 1992.

The first two counts charge genocide. The third count charges persecution as a crime against humanity. The fourth and fifth counts respectively charge extermination and murder as crimes against humanity. The sixth count charges murder as a violation of the laws or customs of war as recognized by common Article 3(1)(a) of the Geneva Conventions of 1949. The seventh and the eighth counts respectively charge deportation and the inhumane act of forcible transfer as crimes against humanity. The ninth and the tenth counts respectively charge terror and unlawful attacks on civilians as violations of the laws or customs of war. The final count charges taking of hostages as a violation of the laws or customs of war.

The Indictment alleges that the Accused and others participated in an overarching joint criminal enterprise, hereinafter referred to as JCE, the objective of which was the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia-Herzegovina. This objective was allegedly carried out by the commission of crimes charged in Counts 1, and 3 to 8. Alternatively, this objective was carried out by the commission of crimes charged in Counts 7 and 8, while the Accused willingly took the risk of the commission of crimes charged in Counts 1 to 6 as a foreseeable consequence of the implementation of the objective.



According to the Indictment, the Accused's participation in the JCE included commanding and controlling the VRS and other elements of the Serb forces and encouraging the commission of crimes by members thereof. It also included participating in the development of Bosnian Serb governmental policies and disseminating propaganda intended to advance the objective of the JCE, failing to take adequate measures to protect prisoners of war and detainees under his effective control, as well as directing the restriction of humanitarian aid to non-Bosnian Serb enclaves.

The Indictment further alleges that the Accused and others participated in three additional JCEs. The objective of the second JCE was to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling consisting of crimes charged in Counts 5, 6, 9, and 10. The objective of the third JCE was to eliminate the Bosnian Muslims in Srebrenica through crimes charged in Counts 2 to 8. The objective of the fourth JCE was to take United Nations personnel as hostages through the crime charged in Count 11. The Accused's participation in these three additional JCEs included various forms of participation in the overarching JCE.

The Indictment further charges the Accused with criminal responsibility for having planned, instigated, ordered and/or aided and abetted the crimes, as well as with criminal responsibility as a superior.

The Chamber will now address whether each count in the Indictment stands.

In its legal characterizations, the Chamber adopts and applies the Tribunal's consistent case law with respect to the definition of the elements of the crimes and modes of liability charged in this case. In this decision, the Chamber will address the law more specifically only when this is required to explain the Chamber's findings.

The volume of evidence before the Chamber and the character of the Rule 98 bis proceedings do not allow for a comprehensive discussion of the evidence in this decision. The Chamber has, however, considered the evidence in its entirety. The specific evidence that the Chamber will refer to in this decision is therefore a focussed selection of what the Chamber has considered to be relevant for the purposes of this decision.

In relation to the crimes charged, the Chamber verified whether the evidence addresses all the elements of each of the crimes. Similarly, it verified whether the evidence addresses all the requirements for criminal responsibility as charged against the Accused. Finally, in relation to each crime charged, the Chamber verified whether the evidence, taken at its highest for the Prosecution, could lead a reasonable trier of fact to conclude, beyond a reasonable doubt, both that the crime has been committed and that the Accused bears criminal responsibility for it.

Turning to the counts, in relation to Counts 1-3, 5, and 6 there is evidence of crimes taking place during the Indictment period in the municipalities and Srebrenica. The Chamber will start with murders in the municipalities part of the case and will focus on a few incidents in order to determine whether the counts stand.

In relation to Scheduled Incident B16.2, the Chamber heard from Witness RM-066 that on 30 September 1992 four Serb police officers sent by the chief of the Public Security Service, hereinafter SJB, in Vlasenica arrived at the Sušica camp. During the night, the Serb police officers called out three groups of detainees, each consisting of 30 or 40 persons, loaded them into a truck and transported them from the camp. The witness later learned from Ilija Janković, a police officer from the SJB Vlasenica, that the majority of these detainees - mainly Muslims from Vlasenica and surrounding villages - had been killed. The witness testified the camp was a joint operation between the VRS and the Bosnian-Serb MUP, in Vlasenica municipality.

In relation to Scheduled Incident B5.1, the Chamber received evidence that in July 1992, the KP Dom Foča detention warden Krnojelac reported that 469 prisoners had been brought to the KP Dom detention centre since the start of the war, 459 of whom were Bosnian Muslims. This is contained in exhibit P4019. Witnesses RM-063 and RM-046, who were detained at the KP Dom detention centre from April 1992 for a period of 6 months and more than a year respectively, testified that every night during their detention a number of detainees were taken out for beatings. Witness RM-063 testified that the beatings were carried out by a policeman called Dragoljub Obrenović and a number of KP Dom guards. According to Witness RM-063, detainees were very often taken to solitary cells, from which moans, screams, thuds, and shots could be heard. During a weekend in August 1992, Witness RM-063 saw approximately 200 detainees taken away in groups from the KP Dom. These detainees never returned.

In relation to Scheduled Incident B13.1, Witness Safet Tači, who was detained in Room 2 of Keraterm detention camp, testified that one day he saw a table with a machine gun and a portable spotlight being put up and directed at the door of Room 3, a small room where 180-200 detainees were squeezed in. Around midnight he heard machine-gun fire after the door of Room 3 had been opened and people started to stream out. The next day, the witness was ordered by a soldier to load the bodies inside and in front of the door of Room 3 onto a truck. The Chamber notes that according to one adjudicated fact, the machine-gun outside Room 3 had been placed there by Bosnian-Serb army personnel on 20 or 21 July 1992.

In relation to Scheduled Incident B.8.1, Witness RM-018 stated that on 31 May 1992, soldiers wearing JNA uniforms escorted him and around 70 other Muslim men from Častovići and Vojići, to a room in an elementary school in Velagići. At 11:30 p.m., soldiers cursed and beat the men and ordered them to form a line and face two armed soldiers. Soon after, those soldiers opened fire at them. The witness was able to hide under the bodies. The witness heard the soldiers discuss going to Lanište, where the Knin Corps was stationed, to get a loader and a truck to dispose of the bodies in the forest.

In relation to Scheduled Incident A3.3, Witness Dževad Džaferagić stated that on 10 July 1992 at about 5.30 a.m., he woke up to the sound of automatic gunfire. From his house, he saw a convoy of 50 to 60 men in civilian clothes being led to Ključ by eight or nine Serb soldiers wearing JNA uniforms. The witness saw Serb soldiers entering houses, removing men and beating them. From approximately 10 a.m., groups of Serb soldiers wearing JNA and camouflage uniforms escorted groups of seven or eight Muslim men to a stable from where he heard gunfire. At approximately 6 p.m., the witness saw a yellow excavator and a lorry arrive at the stable and several unidentified Serb soldiers loading bodies from the stable onto the excavator. During this process, one of the soldiers said [quote] "that is the way of the true Serb" . The Chamber heard evidence indicating that the attack had been planned and carried out by troops belonging to the VRS.

In relation to all of these incidents, the Chamber also received forensic material in support of the witness's evidence.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now turn to Srebrenica.

The Chamber heard the evidence of witness Drazen Erdemović, who testified that on the morning of 16 July 1995, he and seven other members of the VRS 10th Sabotage Detachment were ordered by their group commander, Brano Gojković, to go to the Zvornik Brigade headquarters. From there, they were escorted by a VRS lieutenant colonel and two members of the Drina Corps military police to Branjevo Military Farm. Upon arrival at the farm, Erdemović overheard Gojković talking with the lieutenant colonel about buses

arriving, and then Gojković told the witness and the other members of his unit that buses carrying civilians from Srebrenica would arrive and they were to execute these people.

Buses began arriving carrying Bosnian Muslim males aged between 17 and 65 and dressed in civilian clothing, and each bus had two armed Drina Corps military police escorts onboard. The Bosnian Muslims from the first bus were blindfolded and had their hands tied together. The detainees were led from the buses to the execution site where Erdemović and the other VRS soldiers were ordered by Gojković to open fire on them. Erdemović also testified that Gojković had ordered the bus drivers to kill at least one prisoner each so that they would not later testify about what had happened.

Later that day, as the last bus with Bosnian Muslim detainees arrived, a group of ten VRS soldiers from Bratunac joined the witness's unit at the execution site. These soldiers beat and cursed the detainees, forcing them to kneel and pray "in the Muslim manner." The VRS lieutenant-colonel who had earlier escorted the witness and members of his unit to the execution site arrived at the end of the executions and discussed the burial of the victims in the field. Erdemović testified that he and other VRS soldiers participated in the execution of between 1,000 to 1,200 Bosnian Muslim males dressed in civilian clothes who had been brought to the execution site by between 15 and 20 buses that day.

The Chamber also heard evidence from witnesses RM-346 and RM-255, who testified about surviving the Branjevo Farm executions. Both witnesses gave evidence that after being captured and detained by soldiers, they and other Bosnian Muslim detainees, some of whom were blindfolded with their hands tied behind their backs, were transported by bus to a field on 16 July 1995. Witness RM-346 testified that upon arrival Serb soldiers began cursing the detainees saying things like "Alija does not want you, step out", as the soldiers took the detainees off the buses in groups of ten. Witness RM-255 gave evidence that one of the soldiers asked if he wanted to declare himself as a Serb and then be released. In response to this, two of the detainees then said they were Serbian, but were not separated from the line. The detainees were led to an area where they were lined up between corpses that were already on the ground. They were ordered to turn their backs and to lie down, and then a group of ten soldiers began shooting the detainees. Having survived the executions, witnesses RM-255 and RM-346 lay motionless among the corpses listening to the process repeat itself throughout the day: the soldiers returning multiple times with groups of detainees, ordering the detainees to line up, shooting them, asking if anyone was still alive, and then killing anyone that responded. Witness RM-255 also gave evidence that on two occasions he heard that the soldiers were making statements about them committing genocide, once while he was being led to the execution site, and another time after his escape while he was hiding nearby.

The Chamber will at a later stage make a determination whether the evidence is sufficient for certain counts to stand.

The Chamber will now set out some evidence on rapes and cruel and inhumane treatment for the Municipalities part of the case.

The Chamber also heard evidence in relation to a large number of rapes committed at various locations in Foča Municipality. For the purposes of this decision, the Chamber will focus on the evidence it heard regarding Karaman's house as set out in Schedule C.6.2 of the Indictment. Witnesses RM-070 and RM-048 testified that around 3 August 1992 they and other girls were taken by one of Pero Elez's soldiers and the soldiers of Dragan Kunarac a.k.a. Žaga in Miljevina, Foča Municipality. Witness RM-070 testified that the youngest girl at Karaman's house was 12 years old. During the evenings, soldiers from Pero Elez's group raped one or more of the girls, and the soldiers would regularly beat the girls when they refused to follow orders. Witness RM-070 testified that Pero Elez raped all of the girls once or twice. Witness RM-048 testified that she learnt that Elez was the commander of a group of soldiers under the command of Marko Kovač, about whom the Chamber heard evidence that he was the Commander of a VRS brigade from May 1992 until the end of 1994. Around

mid-August 1992, Witness RM-048 was taken from Karaman's house to the house of a Serb soldier where she was held and raped, until she was released in July 1993. During this time, the soldier took the witness to a celebration where Mladić approached them asking the soldier whether the witness was his "Herzegovinian girl". Mladić then turned to the witness directly and asked her whether it was "better than in Alija's state". The witness testified that this made her believe that Mladić knew about girls that were kept as sexual slaves. According to Witness RM-048, there were no Muslim women or girls living freely in Foča at the time. The Chamber notes that one of Mladić's notebooks, exhibit P359, records the names of two young women the Bosnia-Herzegovina officials were looking for, and about whom witnesses have testified they were held in Foča as sexual slaves.

The Chamber heard a large amount of evidence regarding the cruel and inhumane treatment of persons detained in camps in the Municipalities. For the purposes of this decision, it will only focus on the Keraterm and Omarska camps in Prijedor Municipality, mentioned in Schedules C.15.2 and C.15.3 of the Indictment, and Manjača camp in Banja Luka Municipality, referred to in Schedule C.1.2.

In relation to the Keraterm Camp, Safet Tači testified regarding his detention in Room 2, which was approximately ten by twelve metres, very hot, unhygienic and filled with a large number of Croats and Muslims, many of them severely beaten. The witness testified that on one occasion, a man by the name of Duča entered Room 2, called on two detainees who were brothers and forced them to beat each other severely. According to the adjudicated facts, the Keraterm camp held up to 1,500 prisoners crowded into a number of large unlit rooms or halls, which got intensely hot in the summer as there were no windows or ventilation. Prisoners were kept locked in these rooms for days, crowded together. The detainees were allowed to go to the toilet only once a day. Infestations of lice appeared at the camp, and dysentery was rife. There was no medical care. Detainees suffered from malnutrition and starvation, and were beaten on arrival.

In relation to the Omarska Camp, Witness Nusret Sivac testified he was taken to Omarska camp on 20 June 1992. Upon his arrival, he and other prisoners were beaten severely by members of an intervention platoon, including Mrđa and Zoran Babić. On one occasion, all the detainees in the camp were beaten, from the early hours of the morning until late afternoon. The shift on duty, led by Mlado Radić, a.k.a. Krkan, set up a gauntlet of guards, assisted by guards from other shifts. The witness saw people screaming and falling down everywhere as the guards beat them with baseball bats and metal chains with balls attached to them. One guard struck the witness on his head using a metal chain and ball, after which he lost consciousness. According to the Adjudicated facts, sometimes 200 persons were held at the Omarska camp in a room of 40 square metres; and 300 prisoners were confined in one small room. Some prisoners spent the time crowded together in the lavatories. In the lavatories, prisoners were packed one on top of the other and they often had to lie on excrements. Many of the prisoners confined in the White House on the Omarska compound did not receive food during their time there; some prisoners lost 20 to 30 kilograms during their time at Omarska, others considerably more. Drinking water at Omarska was often denied to the prisoners for long periods, and the water given to the detainees was not fit for human consumption. Prisoners had to wait hours before being allowed to use the lavatories, and sometimes risked being beaten if they asked to use them. There were no effective washing facilities; skin diseases were prevalent, as were acute cases of diarrhoea and dysentery.

The Chamber also received a large number of detailed reports that were sent to VRS officials regarding the inhumane treatment in the camps. From as early as 22 June 1992, the operational team in charge of interrogating detainees at the Manjača Camp sent daily reports to 1st Krajina Corps Commander Talić regarding the treatment of prisoners in the Manjaca camp in Banja Luka. On 1 July, it was reported that "more than 95% of the prisoners are Muslims". The operational team urged Talić to remind the military Police Commander at the Camp that it "is not a torture house", that prisoners were "maltreated, beaten and humiliated to the extreme", that policemen at the camp beat the prisoners as

they pleased but that it was difficult to eradicate this behaviour as the security commander of the camp often said in front of the soldiers that the prisoners “should all be killed”. On 22 July 1992, a daily report mentioned that it was the first time that the operational team had witnessed that a group of detainees had been brought to the camp “intact, i.e. there are no traces of violence”.

The Chamber will now assess whether counts 1-3, 5, and 6 stand as far as the crime base evidence is concerned.

Specifically in relation to Counts 1 and 2, there is evidence that acts of genocide took place in the Municipalities and in Srebrenica during the Indictment period. The Chamber already addressed the killings of a number of individuals earlier. Killing is one of the charged underlying acts of genocide. The Chamber also refers to the evidence cited in relation to the crimes of detention and cruel and inhumane treatment, including rape and other acts of sexual violence as causing serious bodily or mental harm and conditions calculated to bring about the victims’ physical destruction. The evidence cited also provides information on the perpetrators’ genocidal intent.

The Chamber considers that the evidence before it, including the mentioned examples, addresses all the elements of the crime of genocide, the crimes of persecution and murder as a crime against humanity, and the crime of murder as a violation of the laws or customs of war.

The Chamber now turns to the responsibility of the Accused for these crimes.

The Chamber will examine the evidence with regard to the mode of liability of participation in a JCE. As set out in the case law of the Tribunal, the elements of this mode of liability are: a plurality of persons; a common objective which amounts to or involves the commission of a crime provided for in the Statute; and the participation of the accused in the objective’s implementation. The contribution of an accused need not have been substantial or necessary to the achievement of the common objective. However, it should at least be a significant contribution to the crimes forming part of the common objective. The mental element required is that the participants in the JCE shared the intent to achieve the common objective through the commission of the statutory crime or crimes.

The parties have agreed on many aspects of the Accused’s military background and role as alleged in the Indictment, which the Chamber will proceed to summarize. The Accused held various positions in the 9th Corps of the JNA and, on 30 December 1991, became its commander. On 10 May 1992, Mladić assumed the command of the Second Military District Headquarters of the JNA. On 12 May 1992, the VRS was formed. On 12 May 1992, the Bosnian-Serb Assembly in Banja Luka during its 16th session appointed Mladić as commander of the VRS Main Staff, as evidenced by the transcript of that session admitted as exhibit P431, and supported by evidence from expert witnesses Reynaud Theunens and Robert Donia. Mladić was in command of the VRS Main Staff until at least 8 November 1996.

The first joint criminal enterprise charged in the Indictment relates to the goal of permanently removing Bosnian Muslim and Bosnian Croat inhabitants from Serb-claimed territory of Bosnia-Herzegovina through the commission of crimes enumerated in Counts 1 and 3-8. Alleged JCE members include Radovan Karadžić, Slobodan Milošević, and Momčilo Krajišnik. The Indictment alleges that the Accused significantly contributed to achieving the objective of the JCE and shared the intent for the commission of the charged crimes with others who acted in concert with him.

In relation to the common plan and the plurality of persons of the overarching JCE, the Chamber heard evidence regarding the planned take-over of the municipalities which sought to establish separate Bosnian-Serb institutions and the creation of a Bosnian-Serb homogeneous state. It received evidence that throughout 1991 and early 1992 the Bosnian-Serb leadership, under the direction of Radovan Karadžić, began creating parallel Serb

civilian and military structures in the municipalities throughout Bosnia-Herzegovina. The Chamber refers in this respect to the evidence of Milan Babić. It notes that on 24 October 1991, the Bosnian-Serb leadership established a separate Bosnian-Serb Assembly and on or about 20 December 1991, Karadžić issued the so called Variant A and B instructions to municipality leaders for the creation of bodies not provided for in the existing legal order, including the Serbian Crisis Staffs.

The Chamber heard extensive evidence with regard to the promulgation of the six strategic objectives. On 6 May 1992, the Accused recorded a meeting in his notebook, exhibit P352, with Karadžić and a group of JNA generals. During this meeting, Karadžić emphasized the imperative of ethnic separation and articulated three other goals that subsequently became strategic goals two, three, and six of the so called six strategic goals. During a meeting on the following day, attended by the Accused, Momčilo Krajišnik stipulated the six strategic goals of the Bosnian-Serb leadership in express terms. On 12 May 1992, the six strategic objectives were publicly announced by Radovan Karadžić and adopted at the 16th Assembly Session of the Bosnian-Serb Republic on the same day. The Chamber refers to exhibit P431. At this same session, at which the Accused was also appointed as the VRS Main Staff commander, the Accused showed that he shared these objectives and appeared to have participated in creating them, stating that he had [quote]“read, mulled over for a long time and discussed within the most select circle of comrades whom we convened, the strategic goals that are of substance”.

The Chamber heard evidence about the relationship between Karadžić and the Accused. It notes the testimony of Witness Herbert Okun that Karadžić on at least two occasions between 1992 and 1993 explicitly told him that the Accused was under his control, adding on one occasion that “you know how the soldiers are. They don't like to be controlled by civilians, but we control them.”

Further, the Defence submitted that the Accused “always issued orders seeking to have perpetrators disarmed, arrested, investigated and prosecuted”.

The Chamber heard evidence that instructions were issued to VRS forces condemning the commission of crimes in the Municipalities, but that in practice the VRS soldiers were instructed to continue with their behaviour irrespective of whether it was criminal. The Chamber notes that on 12 June 1992, the VRS Main Staff issued instructions regarding the treatment of prisoners and the creation of detention camps. The Chamber refers in this respect to exhibits P377, P189, P3910, P3979, and the notebook of Mladić P353 at page 160. The Chamber also refers to the evidence of Witness RM-019, a member of the 11th Herzegovina Light Infantry Brigade from May 1992, who testified that at the end of May or in early June 1992, Zoran Vuković, the Battalion commander, read out a statement allegedly signed by Karadžić to a group of soldiers, including the witness. According to the statement, the soldiers were not to burn any more property or kill any more prisoners. Following the statement, Vuković asked each soldier to sign a paper to the effect that they had heard the statement. Vuković conveyed the best regards of the commander in Pale to the soldiers and told them they were doing a great job and should continue to do so. One of the soldiers asked Vuković why he wanted him to sign the statement if the killing and burning should continue, to which Vuković responded that the soldier should not think too much.

Witness RM-081 testified that he watched television coverage of the Assembly in Sarajevo where Karadžić announced that at some point Muslims will disappear from the face of the earth. He also testified that around September 1992 Sveto Veselinović, president of the Serbian Democratic Party in Rogatica and member of the War Commission of the Serbian Republic of Rogatica, told the witness that all Muslims would disappear from the territory. Veselinović disclosed to the witness that he had met with Karadžić in Pale, where it had been decided that one-third of Muslims would be killed, another one-third would be converted to the Orthodox religion, and the remaining one-third would leave.

The Chamber heard evidence that throughout the municipalities, the execution of the policy of the Bosnian Serb leadership resulted in large-scale expulsion of the non-Serb populations from the Municipalities. From the beginning of the conflict in April through August 1992, more than 30,000 Bosnian Muslims and Croats moved out of the municipality of Prijedor alone, either out of fear or due to unbearable circumstances. The Chamber also recalls its earlier findings regarding the large-scale killings in and around the detention camps throughout the municipalities. There is ample witness testimony and documentary evidence that persons detained at the detention camps in the Municipalities were placed there solely on the basis of their ethnicity. The Chamber refers in this respect to exhibit P3801, a report by the Bosnian-Serb MUP to Radovan Karadžić dated 17 July 1992 stating that “the Army, crisis staffs and war presidencies have requested that the Army round up or capture as many Muslims as possible”, who were to be placed in camps.

Based on the foregoing, the Chamber considers that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment there existed a joint criminal enterprise composed of, inter alia, members of the Bosnian Serb leadership and the VRS, including Radovan Karadžić and the Accused, the purpose of which was to permanently remove the Bosnian Muslims and/or Bosnian Croats from Bosnian-Serb claimed territories in Bosnia-Herzegovina through the commission of the crimes charged in the Indictment.

In relation to the Accused’s contributions to this JCE, there is evidence that the Accused, as Commander of the VRS Main Staff, implemented measures to carry out the strategic goals, as previously set out, to advance the objective of the joint criminal enterprise. The Chamber received evidence that throughout the Indictment period the Accused issued nine operational directives implementing the six strategic goals into orders for major VRS combat operations. The Chamber refers, for example, to the operational directives in evidence as exhibits P747, P1963, and P1968, as well as the report compiled by Reynaud Theunens.

Witness Pyers Tucker testified that the Accused told him that the prisons at Foča, Batković, and Kula were under his control. The Chamber also received documentary evidence indicating the Accused’s control over the detention camps. Particularly, it notes exhibit P201, a VRS order of August 1992, indicating that the Accused personally exercised direct military control over units in control of detention camps in Manjača, Trnopolje, Omarska, and Prijedor. Other evidence of direct involvement of the Main Staff in the detention camps is reflected in exhibits P2899, P4147, and P3687.

In relation to the Accused’s *mens rea*, the Chamber refers to Mladić’s involvement in the creation and promulgation of the six strategic goals in May 1992, as discussed earlier. The Chamber notes that there is evidence that the Accused throughout the period of the Indictment knew about the crimes committed in the municipalities. John Wilson testified that in December 1992 or January 1993, he spoke to Mladić in Geneva about a photograph circulating in the media of a malnourished man held at a Serb detention camp. The Chamber further recalls the evidence of Witness RM-048 who testified that Mladić knew that girls from Foča were kept by his troops as sexual slaves.

The Chamber notes the effect that the rapes had on the Bosnian Muslim women, and the testimony of a rape victim who stated that in her opinion, the Serbs “wanted to destroy, kill, destroy our spirit as much as they could because there is no cure for a woman who was raped”, adding that she would never recover.

The Chamber also refers to the evidence of David Harland, who testified that during the week ending on 3 November 1993 he attended a meeting where Mladić stated that unless all 22 Serb POWs in the Goražde pocket were returned, he would kill everyone in the eastern enclaves except for the children. Mladić’s words at this meeting were recorded by international observers in exhibits P4639 and D7.

The Chamber also received intercept evidence regarding the Accused's state of mind. In an intercepted telephone conversation of May 1992, Mladić warned Fikret Abdić that he would "order the shelling of the entire Bihać". Mladić stated that "the whole of Bosnia will burn if I start to 'speak'", and continued by saying "not just Sarajevo". In an intercepted conversation of 5 August 1992, Mladić threatened to use heavy artillery weapons on a "densely populated area" if his demands to cease combat activities were not met.

The Chamber also heard the evidence of Šefik Hurko, a Bosnian Muslim who was detained in the Rasadnik camp in Rogatica municipality from August 1992 through April 1994, who testified that sometime in April 1994, 10-15 detainees from the camp, including the witness, were brought to a place near Goražde. There, they were instructed by the warden of the camp, Bojić, to work in the forest and to speed up because Mladić was coming. When Mladić noticed the detainees he asked who they were, Bojić responded that they were prisoners from Rogatica. Mladić asked him if they were loyal or captured, to which Bojić responded that they were loyal. Mladić then ordered the detainees to be lined up in front of him and said that, if they were willing to change their religion, they could stay.

Based on the foregoing, the Chamber is satisfied that there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt that during the period relevant to the Indictment the Accused participated in the joint criminal enterprise comprised of, inter alia, members of the Bosnian-Serb leadership, including Radovan Karadžić. The purpose of this JCE was to permanently remove the Bosnian Muslims and Bosnian Croats from Bosnian-Serb claimed territory in Bosnia and Herzegovina through the commission of crimes charged in the Indictment. The Accused shared the intent of the other members of the overarching JCE to carry out its objective through the commission of crimes. He also significantly contributed to it.

Under these circumstances, the Chamber finds that Counts 1, 3, and 5-6 stand.

The Chamber recalls that the defence did not specifically challenge the second joint criminal enterprise. The Chamber will further deal with counts 9 and 10 later in this decision.

The Chamber will now move on to the third joint criminal enterprise alleged in the Indictment, namely, the JCE to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and by forcibly removing the women, young children and some elderly men from the enclave, through the commission of crimes charged in Counts 2 through 8 of the Indictment. The implementation of this plan is alleged to have commenced as early as March of 1995, continuing until 1 November 1995. Alleged JCE members include, inter alia, Radovan Karadžić, and senior officers of the VRS and Bosnian-Serb MUP. The Accused is alleged to have contributed to achieve the objective of the JCE by, inter alia, commanding and controlling the VRS in furtherance of the objective. It is alleged, further, that he shared the intent for the commission of the charged crimes with other members of the JCE.

In relation to the objective of the said JCE, the Chamber recalls the evidence of Momir Nikolić who testified that from the moment the enclaves were set up, the VRS forces had the political goal to cause the forcible removal of the entire Muslim population from Srebrenica, Žepa, and Goražde to Muslim-held territory. The Chamber also considered Directive 7, in evidence as exhibit P1469, and discussed by the parties during their submissions. This directive is dated 8 March 1995, addressed to the commanders of the various Corps commands, and signed by the Supreme Commander Radovan Karadžić. It ordered, inter alia, that the Drina Corps carry out the "complete physical separation of Srebrenica and Žepa"... "as soon as possible, preventing even communication between individuals in the two enclaves"; and "by planned and well thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa". The Directive also stated "through the planned



and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of the UN protection force, hereinafter UNPROFOR, to the enclaves and the supply of material resources to the Muslim population, making them dependant on our goodwill, while at the same time avoiding condemnation by the international community and international public opinion.” . Directive 7 was referenced in a Drina Corps Command Order issued on 20 March 1995 signed by Milenko Živanović, and VRS Main Staff Directive 7/1 dated 31 March 1995, signed by Mladić. These are in evidence as exhibits P1468 and P1470, respectively. The Drina Corps Command Order incorporated, inter alia, Directive 7’s language with regard of the creation of unbearable circumstances for the inhabitants of the enclaves. Witness Manojlo Milovanović testified that somebody reading the reference to Directive 7 in Directive 7/1 would have to look back at Directive 7 in order to be able to fully implement it.

On 2 July 1995, the Drina Corps issued an order for Operation Krivaja 95, in evidence as exhibit P1465. This order formulated the task, pursuant to Directives 7 and 7/1, to carry out offensive activities with the objective of, inter alia, separating and reducing in size the Žepa and Srebrenica enclaves, and to create conditions for the elimination of the enclaves.

Several witnesses, including Momir Nikolić and Rupert Smith, testified that the VRS attack on Srebrenica started on 6 July 1995. Evert Rave testified that on 7 July 1995, the VRS fired into the safe area and targeted UN facilities, causing several civilian deaths. On 9 July 1995, in a message in evidence as P1466, General Tolimir reported that Karadžić had been informed of successful combat operations around Srebrenica by units of the Drina Corps enabling occupation of the enclave, and that Karadžić had agreed with, inter alia, the continuation of operations for the takeover of Srebrenica.

The Chamber received evidence from several witnesses that Srebrenica ultimately fell to the VRS on 11 July 1995.

Momir Nikolić testified that early in the morning of 12 July, in a conversation with Popović and Kosorić, Popović told him that all the women and children would be transferred to territory controlled by Muslim forces, which was either Kladanj or Tuzla. The witness asked what would happen to the able-bodied men, to which Popović responded that all the “balijas” should be killed. Witness RM-513 and Richard Butler testified that the term “balijas” was used in a derogatory fashion by Serb forces to refer to Muslims. Nikolić, Kosorić, and Popović then discussed possible execution sites.

The Chamber heard evidence of a meeting at around 8 p.m. on 13 July between Beara and Momir Nikolić in the centre of Bratunac. Beara told Momir Nikolić that the Muslim prisoners would be temporarily detained and then executed in Zvornik. In a subsequent meeting attended by Beara, Miroslav Deronjić, and Vasić, Deronjić and Beara had an argument about where to take the captured Bosnian Muslims. Momir Nikolić testified that on this occasion, Beara insisted that the prisoners remain in Bratunac, stating that he had received an order from his “boss” that the Muslims should stay there. Momir Nikolić understood Beara’s reference to his boss to refer to General Mladić, as all officers referred to Mladić as the boss. Deronjić opposed Beara’s proposal, stating that he did not want the Muslims detained and killed in Bratunac and that he had received an order from Karadžić that the Muslims should go to Zvornik.

The Chamber also considered the evidence of witnesses including Witness RM-322, Damjan Lazarević, and Cvijetin Ristanović of coordinated burial operations organized by the VRS following several executions alleged in the Indictment, involving, among others, the Zvornik Brigade Engineering Unit.

With respect to the requirement of a plurality of persons, the Chamber refers to the evidence set out above concerning the interaction and communications between various high-ranking VRS officers including Mladić, Tolimir, Beara, Kosorić, Krstić, and Popović. In addition, it notes the evidence of Momir Nikolić concerning the presence of MUP

commander Ljubiša Borovčanin in Potočari during the process of transportation of the Bosnian Muslims discussed earlier in this decision, as well as the involvement of Karadžić in respect of Directive 7.

Finally, the Chamber recalls the evidence referred to earlier in this decision with respect to the crime-base and considers that an inference can be drawn, together with the evidence set out here, that the alleged Srebrenica JCE existed and was implemented.

In relation to the Accused's contributions to this third JCE, the Chamber gave regard to the following evidence. In an excerpt of an intercepted conversation recording a voice which witness Ljubomir Obradović identified as that of the Accused, Mladić is recorded as stating, with reference to UNPROFOR and humanitarian convoys, that he would not have taken Srebrenica or Žepa if he had not starved them in the winter, adding that since February, he only let through one or two convoys. This conversation is in evidence as exhibit P1789. The Chamber also considers Obradović's testimony concerning exhibit P1788, a series of UNPROFOR requests to the Main Staff for convoy approval with the handwritten initials of the Accused accompanied by the word no, as evidence of Mladić's direct involvement in the restriction of supplies reaching the enclave.

The Chamber further notes the testimony of Momir Nikolić that General Krstić was in command of all units taking part in the Srebrenica operation, until General Mladić arrived and took over command. The Chamber also refers to exhibit P724, a report by MUP commander Ljubiša Borovčanin on the combat engagement of police forces in the period of 11 to 21 July 1995, which details that Borovčanin took orders from Mladić to engage police forces in, inter alia, Potočari.

Momir Nikolić testified, moreover, that during one of the meetings held at Hotel Fontana on the evening of 11 July 1995, Mladić threatened and intimidated the Dutch officers as well as Nesib Mandžić, a Bosnian Muslim, telling them that he wanted the Muslim army to surrender, that the future of Mandžić's people was in Mandžić's hands, and that they could choose to survive or disappear. This is recorded in video-footage, in evidence as exhibit P1147.

In relation to the Accused's intent, the Chamber refers to the following evidence in particular. Video footage in evidence as exhibit P1147 depicts Mladić walking through Srebrenica town on 11 July together with Serb forces stating, inter alia, [quote] "Here we are, on 11 July 1995, in Serb Srebrenica"; "we give this town to the Serb people as a gift"; "the time has come to take revenge on the Turks". Witness Reynaud Theunens testified that the word [quote] "Turks" was used to refer to Bosnian Muslims and was often considered a derogatory term.

Momir Nikolić testified that in the afternoon of 13 July, he met Mladić at the crossroads in Konjević Polje, where there were prisoners visibly present. Mladić exited his vehicle, approached a group of prisoners, and addressed them, stating that they should not worry and would soon be taken wherever they pleased. Returning to the vehicle, the witness asked Mladić what would really happen to the prisoners. Mladić responded by smiling and making a sweeping gesture with his right hand from left to right approximately at the middle of his body. Mladić then laughed and entered the vehicle.

The Defence submits, as examples, that Mladić's preference for a cessation of hostilities and his efforts to exchange Muslim with Serb prisoners negates any possibility that he intended to destroy the Muslims in Srebrenica. Based on the above cited evidence, the Chamber considers, however, that the evidence could lead a reasonable trier of fact to be satisfied that the Accused possessed the specific intent.

The Chamber considers that on the basis of the foregoing, there is sufficient evidence upon which, if accepted, a reasonable trier of fact could find beyond reasonable doubt that there existed a joint criminal enterprise, composed of a plurality of persons, including

Karadžić, Mladić, Tolimir, Borovčanin and other high-ranking VRS and MUP officers, the common purpose of which was to eliminate the Bosnian Muslims in Srebrenica through the commission of the crimes charged in the Indictment. The Chamber considers further that there is sufficient evidence in accordance with the aforementioned standard that Mladić participated in, and made a significant contribution to this JCE. The standard is equally met with respect to Mladić's intent for the JCE, namely, that he shared intent with other alleged JCE members, to commit the crimes charged in the Indictment.

Under these circumstances, the Chamber finds that Count 2 stands.

The Chamber recalls that the Defence did not specifically challenge the fourth joint criminal enterprise. The Chamber will further deal with count 11 now.

The Defence has not specifically challenged Counts 4 and 7-11 of the Indictment or the general elements and jurisdictional requirements that must be proven under Articles 3 and 5 of the Statute. The Chamber has carefully examined the evidence and is satisfied that there is sufficient evidence under the applicable legal standard at this stage of the proceedings for these counts to stand.

Accordingly, the Chamber considers that the Accused has a case to answer on all counts of the Indictment.

This concludes the Chamber's decision on the Defence's request for acquittal pursuant to Rule 98 *bis*.

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