



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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

APPEALS CHAMBER

The Hague, 8 April 2015

Appeal Judgement Summary for Zdravko Tolimir

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

This appeal concerns the responsibility of Mr. Tolimir for crimes committed in the Srebrenica and Žepa enclaves, in Eastern Bosnia, in 1995. At the time Mr. Tolimir was an Assistant Commander and the Chief of the Sector for Intelligence and Security Affairs of the Main Staff of the Army of the Republika Srpska (“VRS”).

The Trial Chamber, Judge Nyambe dissenting, found that Tolimir participated in two joint criminal enterprises alleged in the Indictment--a joint criminal enterprise to murder the able-bodied men of Srebrenica and a joint criminal enterprise to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves. The Trial Chamber, Judge Nyambe dissenting, found Tolimir guilty pursuant to Article 7(1) of the Statute of the Tribunal of genocide, conspiracy to commit genocide, extermination, murder, persecutions, and inhumane acts through forcible transfer. The Trial Chamber, Judge Nyambe dissenting, sentenced Mr. Tolimir to life imprisonment.

Grounds of Appeal

Mr. Tolimir submits 25 grounds of appeal challenging his convictions and his sentence. He requests that the Appeals Chamber reverse all of his convictions, or, in the alternative, significantly reduce his sentence. The Appeals Chamber will now address each of Mr. Tolimir’s contentions.

A. Preliminary matters

In Grounds of Appeal One through Four, Mr. Tolimir challenges the Trial Chamber’s decision to take judicial notice of adjudicated facts and its evaluation of certain evidence. For reasons given in its Judgement, the Appeals Chamber, Judge Antonetti dissenting, finds that the Trial Chamber did not err in taking judicial notice of 523 adjudicated facts from other ICTY trial and appeal judgements and it did not err in its assessment of these facts. The Appeals Chamber, Judge Antonetti dissenting, dismisses Tolimir’s Ground of Appeal One.

Mr. Tolimir also challenges the Trial Chamber’s reliance on intercepted communications produced by the Bosnian Muslim side to the conflict. He submits that in reaching its conclusions on the intercepted communications the Trial Chamber made a number of errors which invalidate the Trial Judgement. For reasons set out in the Judgement, the Appeals Chamber finds that the Trial Chamber did not err in its assessment of the intercepted communications. The Appeals Chamber, therefore, dismisses Tolimir’s Ground of Appeal Two.

Under his Ground of Appeal Three Mr. Tolimir submits that the Trial Chamber erred in law by accepting Richard Buttler as an expert witness. He argues that the Prosecution failed to disclose his expert report as required by Rule 94bis of the Rules of Procedure and

www.icty.org

Follow the ICTY on [Facebook](#), [Twitter](#) and [YouTube](#)

Media Office/Communications Service

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands

Tel.: +31-70-512-8752; 512-5343; 512-5356

Evidence and that Butler's long-standing association with the Office of the Prosecutor should have led the Trial Chamber to characterise Butler as an OTP investigator giving evidence of his personal opinion. For reasons given in the written Judgement the Appeals Chamber finds that the Trial Chamber erred in considering that the Prosecution's notice of its intention to call Butler as an expert witness sufficed to meet the requirements of Rule 94bis. The Appeals Chamber also finds that the Trial Chamber erred in finding that Mr. Tolimir implicitly accepted Butler's expert status during the trial. The Appeals Chamber concludes, however, that these Trial Chamber's errors caused no prejudice to Mr. Tolimir or had any impact on his conviction. The Appeals Chamber, Judge Antonetti dissenting, further finds that for reasons given in the Judgement the Trial Chamber did not err in regarding Butler as an expert witness or in the manner in which it evaluated his evidence. The Appeals Chamber, Judge Antonetti dissenting, therefore dismisses Tolimir's Ground of Appeal Three.

Tolimir further challenges, under his Ground of Appeal Four, the Trial Chamber's assessment of the evidence of six Prosecution witnesses who are current or former Prosecution investigators. For reasons given in the Judgement the Appeals Chamber finds that the Trial Chamber applied the correct legal standard when assessing the evidence of these witnesses and that it acted within its discretion in determining the weight to be given to their evidence. Accordingly, the Appeals Chamber dismisses Tolimir's Ground of Appeal Four.

B. Crimes

In Grounds of Appeal Six through Thirteen Mr. Tolimir challenges some of the Trial Chamber's legal and factual findings regarding extermination as a crime against humanity, genocide, and forcible transfer.

Alleged errors in the calculation of the number of persons unlawfully killed by Bosnian Serb Forces

Under his Ground of Appeal Nine Tolimir makes a number of challenges to the Trial Chamber's calculation of the number of persons unlawfully killed by Bosnian Serb Forces after the fall of Srebrenica. First, he asserts that the Trial Chamber erred in law in calculating the number of persons killed in circumstances other than the incidents specified in the Indictment. Second, he asserts that the Trial Chamber committed methodological errors in calculating the total number of those killed. Third, he challenges the Trial Chamber's findings in calculating the number of victims unlawfully killed in four specific incidents.

The Trial Chamber found that at least 5,749 Bosnian Muslims were unlawfully killed by the Bosnian Serb Forces following the fall of Srebrenica. This number included those killed at the specific crime sites listed in paragraphs 21.1-22.4 of the Indictment and 779 individuals killed in circumstances not specified in the Indictment. The Appeals Chamber emphasizes that in reaching its judgement, a trial chamber can only convict an accused of crimes which are charged in the Indictment. Material facts not pleaded in the indictment cannot serve as a legitimate foundation for a conviction against the accused. In the present case the incidents charged in the Indictment are not mere examples of criminal conduct for which Tolimir is alleged to be responsible but an exhaustive list of specific allegations charged against him. The Appeals Chamber, therefore, finds that the Trial Chamber erred by finding that 779 persons were unlawfully killed by Bosnian Serb Forces in circumstances not specified in the Indictment and by relying on this higher number in support of its conclusions on Mr. Tolimir's convictions. The Appeals Chamber is not satisfied, however, that this error of law invalidates the Trial Judgement as Mr. Tolimir fails to show why his convictions should not stand on the basis of the number of individuals the Trial Chamber found were unlawfully killed in the specific circumstances in the Indictment.

With respect to Mr. Tolimir's contention that the Trial Chamber committed methodological errors in calculating the total number of those killed, the Appeals Chamber observes that the Trial Chamber reached its findings on the number of individuals killed in

the incidents specified in the Indictment by analysing a combination of evidence comprising witness testimony as to the circumstances of the killings, forensic evidence, and demographic data. For reasons detailed in the Judgement the Appeals Chamber rejects Mr. Tolimir's challenges to the Trial Chamber's findings that persons identified from Srebrenica-related mass graves were killed unlawfully. Similarly, for reasons given in the Judgement, the Appeals Chamber dismisses Mr. Tolimir's arguments challenging the reliability of the demographic and DNA-based evidence relied upon by the Trial Chamber.

The Appeals Chamber also finds that the Trial Chamber did not err in calculating the number of Bosnian Muslims killed at four incidents specified in the Indictment, as alleged by Mr. Tolimir. Accordingly, the Appeals Chamber dismisses Tolimir's Ground of Appeal Nine.

Extermination

Under Ground of Appeal Six Mr. Tolimir challenges his conviction for extermination. His principal argument is that the Trial Chamber erred in law by applying an incorrect legal standard concerning the mens rea for extermination as a crime against humanity arguing that the victims of this crime must have been targeted on the basis of their civilian status. Tolimir further submits that the Trial Chamber erred in finding that the killings of Mr. Mehmed Hajrić, Žepa's mayor and president of the War Presidency, Colonel Avdo Palić, commander of the ABiH Žepa Brigade based in Žepa, and Mr. Amir Imamović, the head of the Civil Protection Unit ("three Žepa leaders") were part of "a single murder operation" since they were killed in a period after the murder operation in Srebrenica.

The Appeals Chamber recalls that while the establishment of the actus reus of a crime against humanity requires that the crime occur as part of a widespread or systematic attack directed against a civilian population, the victims of the underlying crime do not have to be civilians. The Appeals Chamber thus rejects Mr. Tolimir's argument that the Trial Chamber applied an incorrect mens rea standard.

With regard to Tolimir's argument that the killings of the three Žepa leaders was not part of the one murder operation involving the mass killings of the men of Srebrenica, the Appeals Chamber recalls that the actus reus of the crime of extermination is "the act of killing on a large scale" and the mens rea is the intention to kill on a large-scale. The assessment of "large scale" is made on a case-by-case basis, taking into account the circumstances in which the killings occurred. While the actus reus of the crime of extermination may be established through an aggregation of separate incidents, the Appeals Chamber has held that "the element of killing on a large scale cannot be satisfied by a collective consideration of distinct events committed in different prefectures, in different circumstances, by different perpetrators, and over an extended period of time, i.e. a period of two months".

The Appeals Chamber observes that the Trial Chamber found that there are factors shared by the murders of the three Žepa leaders with the mass murders of the men and boys of Srebrenica. These are the fact that the murders occurred in the weeks following the fall of the two enclaves, the fact that the victims were all Bosnian Muslims, the violence of the killings, the general identity of the perpetrators of the killings as members of the Bosnian Serb Forces, and the link to the overall goal of the Bosnian Serb Forces of "ridding the enclaves of its Bosnian Muslim population". The Appeals Chamber notes, however, that the Trial Chamber found that the three Žepa leaders were killed in late August and September, therefore after the attack against the civilian population, which lasted until the end of July 1995 and included the military operations against both enclaves, the removal of thousands of civilians from Srebrenica and Žepa, and the killings of the Bosnian Muslim men from Srebrenica. At the time of the killing of the three Žepa leaders, both enclaves were empty and the civilian population had been transferred to ABiH-held territory. Further, the Appeals Chamber notes that the murder of the three Žepa leaders was charged in the Indictment and found by the Trial Chamber to be a foreseeable consequence of the JCE to Forcibly Remove, not the JCE to Murder. The Appeals Chamber additionally observes that prior to the killings, the three Žepa leaders were singled out from the other Bosnian Muslim

male prisoners who were not killed but were ultimately subject to a prisoner exchange arrangement. Consequently, the Appeals Chamber is not convinced that the killing of the three Žepa leaders was part of the same murder operation that had targeted the men and boys of Srebrenica. For these reasons, the Appeals Chamber upholds Ground of Appeal Six in part, to the extent that it concerns the killings of the three Žepa leaders, and dismisses the remainder of the ground.

Forcible transfer

Under his Ground of Appeal Thirteen Tolimir challenges the Trial Chamber's findings that the busing of Bosnian Muslims out of Potočari on 12 and 13 July 1995 and out of Žepa on 25-27 July 1995 constituted the crime of forcible transfer. He contends that the Trial Chamber erred in finding that the transfer of the population was forced since it was the Bosnian Muslim authorities in Sarajevo and Žepa that sought to evacuate the civilian population of Srebrenica and Žepa before the attacks on the two enclaves occurred. He also submits that the Trial Chamber failed to provide a reasoned opinion by not explaining that the civilian populations of Srebrenica and Žepa were displaced within a national border, arguing that since the border between the Republika Srpska and Bosnia and Herzegovina was a de jure or de facto border, the transfer of the populations across that border could not constitute the crime of forcible transfer.

In finding that the population transfers from the Srebrenica and Žepa enclaves were forced, the Trial Chamber cited the well-settled principle of international humanitarian law that "forced displacement is not justified in circumstances where the humanitarian crisis that caused the displacement is itself the result of the accused's unlawful activity". For reasons given in the Judgement, the Appeals Chamber finds no error in the Trial Chamber's assessment of the evidence and in its conclusion that the transfer of the population from the Srebrenica and Žepa enclaves was forced. The Appeals Chamber also finds that the Trial Chamber did not fail to provide a reasoned opinion, as submitted by Mr. Tolimir. The Trial Chamber reasonably found that the civilians were forcibly displaced to other areas of BiH, for example, Kladanj, which did not constitute an area across a de jure or de facto border. Although the Trial Chamber did not make an express finding that the civilian populations of Srebrenica and Žepa were displaced within national boundaries, it is clear that the Trial Chamber found that the civilian populations were transferred to areas within the national boundaries of BiH. For these reasons, the Appeals Chamber, Judge Antonetti dissenting, dismisses Ground of Appeal Thirteen.

Genocide

Under Grounds of Appeal Eight, Ten, Eleven, and Twelve, Mr. Tolimir makes a number of challenges to the Trial Chamber's legal and factual findings regarding the crime of genocide. The Trial Chamber found Mr. Tolimir guilty of genocide committed through the killings of the men from Srebrenica, through causing serious bodily or mental harm to the men from Srebrenica and the women, children and elderly from Srebrenica and Žepa, and through inflicting on the protected group conditions of life calculated to bring about their destruction. Mr. Tolimir first submits that the Trial Chamber erred in law in finding that the Bosnian Muslims of Eastern BiH qualified as part of a protected group under Article 4 of the Statute (Ground of Appeal Eight). Second, he argues that the Trial Chamber erred in law and fact in its analysis of the actus reus of genocide by: (i) misinterpreting serious mental harm as an underlying genocidal act and applying that erroneous interpretation to the facts of the case (Grounds of Appeal Seven in part and Ten in part); and (ii) misinterpreting the term "physical destruction" under Article 4(2)(c) of the Statute (Ground of Appeal Ten in part). Third, Mr. Tolimir submits that the Trial Chamber erred in law in its analysis of the mens rea required for genocide (Grounds of Appeal Seven in part, Eleven, and Twelve). For reasons set out in the Judgement, the Appeals Chamber finds no merits in Mr. Tolimir's contention that the Trial Chamber erred in law by failing to provide a reasoned opinion as to why the Bosnian Muslims qualified as a protected group under Article 4 of the Statute and why the Bosnian Muslims of Eastern BiH were a substantial part of that group. In reaching its conclusion on this point, the Trial Chamber referred to and applied by analogy the reasoning given in the Popović et al. Trial Judgement and in the Krstić Appeal Judgement as to why

the Bosnian Muslim population of Srebrenica, although a small percentage of the overall Muslim population of BiH, amounted to a substantial part of that group. The Trial Chamber thus held that the reasoning in other relevant cases equally applied to the population specified in the Indictment, namely the Bosnian Muslim population in the enclaves of Srebrenica, Žepa and Goračde. The Appeals Chamber finds no error with this approach. The Appeals Chamber, therefore, dismisses Tolimir's Ground of Appeal Eight.

The Appeals Chamber likewise finds no merit in Mr. Tolimir's arguments that the Trial Chamber erred in law and fact in finding that Bosnian Serb Forces inflicted serious bodily or mental harm, as defined in Article 4(2)(b) of the Statute, on the Bosnian Muslim males from Srebrenica. The Appeals Chamber recalls that "threats of death" and knowledge of impending death have been accepted as amounting to serious mental harm under Article 4 of the Statute. Further, there is nothing in the Statute or in the Genocide Convention that prevents a trial chamber from considering the harm suffered by a victim prior to death as a separate actus reus of genocide. Further, the Appeals Chamber finds no error in the Trial Chamber's conclusion that the forcible transfer of the Bosnian Muslim population out of Srebrenica amounted to infliction of serious mental harm and thus an act of genocide under Article 4(2)(b) of the Statute. Nothing in the Tribunal's jurisprudence or the Genocide Convention supports Mr. Tolimir's contention that forcible transfer may only constitute genocide if the displaced population is transferred to concentration camps or places of execution. Considering the Trial Chamber's findings regarding the painful separation process of the women, children and elderly from their male family members in Srebrenica, the fear and uncertainty as to their fate and the fate of their detained male relatives, and the appalling conditions of their journey to ABiH-held territories, the Appeals Chamber is satisfied that the Trial Chamber provided sufficient reasoning for its conclusion that the suffering of the women, children, and elderly forcibly transferred out of Srebrenica inflicted serious mental harm and thus constituted an act of genocide under Article 4(2)(b).

Further, for reasons set out in the Judgement the Appeals Chamber, Judge Antonetti dissenting, also dismisses Mr. Tolimir's contention that the Trial Chamber erred in law and fact in finding that the Bosnian Serb Forces who committed the underlying acts set out in Article 4(2)(a)-(c) had genocidal intent.

With respect to Mr. Tolimir's challenges to the Trial Chamber's findings regarding the serious bodily or mental harm inflicted on the Bosnian Muslim population forcibly transferred from Žepa, the Appeals Chamber recalls that serious mental harm results only from acts causing grave and long-term disadvantage to the ability of members of the protected group to lead a normal and constructive life and threatening the physical destruction of the group as such. The Appeals Chamber notes that, unlike the Bosnian Muslims forcibly transferred from Srebrenica, the Trial Chamber made no findings and cited no evidence as to the lasting impact of the forcible transfer operation on Žepa's population. The Appeals Chamber further recalls that acts falling under Article 4(2)(b) of the Statute require proof of a result, i.e., that serious mental harm was inflicted. The Appeals Chamber, Judge Sekule and Judge Güney dissenting, finds that, in the absence of findings or references to evidence of any long-term consequences of the forcible transfer operation on the Žepa population and the Bosnian Muslim population of Eastern BiH in general and of a link between the circumstances of the transfer operation in Žepa and the physical destruction of the protected group as a whole, no reasonable trier of fact could have found that the Bosnian Muslims forcibly transferred from Žepa suffered serious mental harm within the meaning of Article 4(2)(b) of the Statute. Accordingly, the Appeals Chamber, Judge Sekule and Judge Güney dissenting, grants Ground of Appeal 10 in part and reverses Tolimir's conviction for genocide through causing serious mental harm to the Bosnian Muslim population of Eastern BiH under Article 4(2)(b) of the Statute, to the extent that this conviction was based on the Bosnian Serb operations in Žepa. This conclusion does not amount to a conclusion that the Bosnian Muslims of Žepa were not the victims of genocide. The Appeals Chamber emphasizes that the only question addressed here is whether the Trial Chamber erred in finding that the forcible transfer operation in Žepa inflicted on the transferred Muslim population serious mental harm as this term is defined in Article 4(2)(b)

of the Statute. The Appeals Chamber recalls here its earlier conclusion that the Trial Chamber did not err in finding that the Bosnian Muslims of Žepa were within the targeted part of the protected group and were thus among the ultimate victims of the genocidal enterprise against the Muslims of Eastern BiH.

Tolimir further challenges the Trial Chamber's finding that the conditions resulting from the "combined effect" of the forcible transfer operations of the women and children and the killing of the Bosnian Muslim men were deliberately inflicted and calculated to lead to the physical destruction of the Bosnian Muslim population of Eastern BiH. The Appeals Chamber has not previously been called upon to address the issue of what acts qualify as the actus reus of genocide under Article 4(2)(c) of the Statute. However, it is satisfied that the legal principles stated by the Trial Chamber are consistent with the existing case law of the ICTY and the ICTR, as well as the letter and spirit of the Genocide Convention. The Appeals Chamber finds that the deliberate infliction on the protected group of conditions of life calculated to bring about its physical destruction in whole or in part covers methods of physical destruction, other than killing, whereby the perpetrator ultimately seeks the death of the members of the group. Such methods of destruction include deprivation of food, medical care, shelter or clothing, as well as lack of hygiene, systematic expulsion from homes, or exhaustion as a result of excessive work or physical exertion.

The Trial Chamber considered the "combined effect" of (i) the "forcible transfer operations" in relation to Srebrenica's Muslim women, children, and elderly from Potočari and Žepa's Muslim population and (ii) the killing of at least 5,749 Bosnian Muslim men from Srebrenica, to conclude that "these operations were aimed at destroying this Bosnian Muslim community and preventing reconstitution of the group in this area" (i.e. Eastern BiH). In the view of the Appeals Chamber, the Trial Chamber's aggregation of the killings and the forcible transfer operations under Article 4(2)(c) of the Statute was an error, as it contravened the very case law cited by the Trial Chamber. The Appeals Chamber recalls that Article 4(2)(c) of the Statute covers methods of destruction that do not immediately kill the members of the group, but ultimately seek their physical destruction. The Appeals Chamber, therefore, accepts Tolimir's argument that the Trial Chamber was legally barred from considering the combined effect of the killing and the forcible transfer operations under Article 4(2)(c) of the Statute.

The Appeals Chamber further notes that in its application of Article 4(2)(c) of the Statute the Trial Chamber considered the destruction of mosques in Srebrenica and Žepa as an additional act through which the Bosnian Serb Forces inflicted on the protected group conditions of life calculated to bring about its destruction. As the Trial Chamber itself acknowledged, acts amounting to "cultural genocide" are excluded from the scope of the Genocide Convention. The Trial Chamber, therefore, committed a legal error in considering the destruction of mosques in Srebrenica and Žepa under Article 4(2)(c) of the Statute. In light of the legal errors identified above, the Appeals Chamber will proceed to examine the factual findings of the Trial Chamber and the evidence on the record in order to determine whether the forcible transfer operations of the Muslim populations of Srebrenica and Žepa, excluding the killings of Srebrenica's males and the destruction of mosques in the enclaves, were conducted under such circumstances so as to impose on the protected group conditions of life meeting the threshold of Article 4(2)(c) of the Statute. In this regard, the Appeals Chamber recalls its holding in the Krstić case that a forcible transfer operation does not amount to physical destruction as such and the displacement of a protected group, either in whole or in part, does not constitute a genocidal act per se.

After carefully examining the relevant evidence, the Appeals Chamber is not convinced that the forcible transfer operations in Srebrenica and Žepa, viewed separately from the killings of Srebrenica's male population, were conducted under circumstances calculated to result in the total or partial physical destruction of the protected group, i.e. the Muslims of Eastern BiH. The trial record is devoid of evidence that the forcible transfers, if they are analysed separately from the killing operation and the destruction of mosques in Srebrenica and Žepa, were carried out with a view to the destruction of the group, as distinct from its

removal from the region. Although the Appeals Chamber is satisfied that there was a deliberate plan to expel the Bosnian Muslim women, children, and elderly from Srebrenica and the entire Muslim population from Žepa, the Appeals Chamber finds that it has not been established beyond reasonable doubt that such a policy of removal, implemented through the JCE to Forcibly Remove, was aimed at causing the physical destruction of these populations.

The Appeals Chamber emphasizes that this conclusion does not amount to a conclusion that the Bosnian Muslims of Žepa were not the victims of genocide. The Appeals Chamber has confirmed the Trial Chamber's finding that the Bosnian Muslims of Žepa are, along with the Muslims of Srebrenica and Eastern BiH in general, members of the protected group within the meaning of Article 4 of the Statute, and were thus among the ultimate victims of the genocidal enterprise against the Muslims of Eastern BiH.

Accordingly, the Appeals Chamber grants Mr. Tolimir's Ground of Appeal 10 in part, to the extent that it challenges the Trial Chamber's findings under Article 4(2)(c) of the Statute for infliction of conditions calculated to destroy the protected group, and reverses Tolimir's conviction for genocide under Article 4(2)(c) of the Statute.

Mr. Tolimir further challenges the Trial Chamber's conclusion that the Bosnian Serb Forces killed the three Žepa leaders with the intent of destroying the Muslim population of Eastern BiH as such.

The Appeals Chamber agrees with the Trial Chamber that the selective targeting of leading figures of a community may amount to genocide and may be indicative of genocidal intent. For a finding of genocide it suffices that the leaders were selected for the impact that their disappearance would have on the survival of the group as such. The Trial Chamber found that all three Žepa leaders were arrested and detained shortly after the completion of the forcible removal operation in Žepa at the end of July 1995 and that Hajrić and Imamović were killed sometime in late August 1995, while Palić was killed in early September 1995. It is clear from these findings that the killings did not precede or occur simultaneously with, but followed the forcible transfer of the Žepa population. The Appeals Chamber recalls that the character of the attack on the leadership must be viewed in the context of the fate or what happened to the rest of the group at the same time or in the wake of that attack.

The Trial Judgement contains no findings or reference to evidence as to the impact of the disappearance of the three Žepa leaders on the survival of the Bosnian Muslim population from Žepa. The Trial Chamber failed to explain how their detention and killings - committed weeks after the entire Žepa population had been forcibly transferred from the enclave - had any impact "on the survival of the group as such". In light of the fact that the forcible transfer operation of Žepa's Bosnian Muslims had been completed before the three Žepa leaders were detained and killed and in the absence of any findings as to whether or how the loss of these three prominent figures affected the ability of the Bosnian Muslims from Žepa to survive in the post-transfer period, the inference of genocidal intent was not the only reasonable inference that could be drawn from the record. The Appeals Chamber, therefore, finds that the Trial Chamber erred in holding that the three Žepa leaders were killed by the Bosnian Serb Forces with the specific intent of destroying part of the Bosnian Muslim population as such and grants Mr. Tolimir's Ground of Appeal Twelve.

C. Mr. Tolimir's criminal responsibility

In Grounds of Appeal Five and Fourteen through Twenty Mr. Tolimir contests the Trial Chamber's legal and factual findings concerning his responsibility for participation in the two joint criminal enterprises -- the Joint Criminal Enterprise to Murder and the Joint Criminal Enterprise to Forcibly Remove. Mr. Tolimir first challenges under Ground of Appeal Five the Trial Chamber's finding that JCE is a mode of liability under customary international law. For reasons set out in the Judgement, the Appeals Chamber, Judge Antonetti dissenting, finds no merits in Mr. Tolimir's submissions and dismisses his Ground of

Appeal Five. The Appeals Chamber, Judge Antonetti dissenting, also finds no merits in Mr. Tolimir's submissions that the Trial Chamber erred in law and fact in making findings on relevant VRS military principles and on his position as Assistant Commander and Chief of the Sector for Intelligence and Security Affairs. The Trial Chamber reasonably found that pursuant to the regular military chain of command, the security organs were directly subordinated to the commanders of those brigades or units for their day to day work and that the Chief of the Sector for Intelligence and Security Affairs directed, coordinated and supervised the work of subordinate security and intelligence organs with respect to matters associated with security or intelligence. The Appeals Chamber further confirms the Trial Chamber's findings in relation to Mr. Tolimir's powers and the information available to him. Therefore, the Appeals Chamber, Judge Antonetti dissenting, dismisses Mr. Tolimir's Ground of Appeal Fourteen.

JCE to Forcibly Remove

Under his Ground of Appeal Fifteen Mr. Tolimir challenges the Trial Chamber's conclusion that a JCE to Forcible Remove existed and its conclusions about his participation in it. Specifically, he argues that the Trial Chamber erred in: (i) finding that the RS leadership adopted objectives in May 1992 which evidenced a policy to 'get rid' of Muslim population of Eastern BiH, misinterpreting Directive 7 and its relationship with Directive 7/1 and consequent VRS military orders; (ii) finding that the VRS participated in the restrictions of UNPROFOR and humanitarian aid convoys; (iii) taking into consideration an attack on the Srebrenica enclave through a tunnel in the night of 23-24 June 1995; and (iv) finding that the enclaves' status as "safe areas" was inviolable under international law even though they were not fully demilitarised. For reasons set out in the Judgement, the Appeals Chamber, Judge Antonetti dissenting, finds no merits in Mr. Tolimir's submissions. Similarly, the Appeals Chamber, Judge Antonetti dissenting, finds no support for Mr. Tolimir's arguments that the Trial Chamber erred in fact and in law in finding that he significantly contributed to the JCE to Forcibly Remove.

JCE to Murder

With respect to his liability pursuant to the JCE to Murder, Tolimir first contends that the Trial Chamber erred in fact and law in finding that two killing incidents, namely the killings at Kravica Warehouse of 600-1,000 Bosnian Muslims on 13 and 14 July 1995 and the killings of six Bosnian Muslims from Srebrenica by the Scorpions Unit at a site near Trnovo, were executed to achieve the common purpose of the JCE to Murder.

For reasons set out in the Judgement, the Appeals Chamber, Judge Antonetti dissenting, finds no error in the Trial Chamber's findings that the killings at Kravica Warehouse were part of the common plan to murder and dismisses Mr. Tolimir's Ground of Appeal Nineteen. With respect to Mr. Tolimir's challenges to the Trial Chamber's conclusions regarding the killings of six Bosnian Muslims near Trnovo, the Appeals Chamber notes that the Trial Chamber did not explicitly find that there existed a link between the members of the Scorpions Unit who committed the Trnovo killings and a member of the JCE and that, therefore, the killings formed part of the JCE to Murder. The Trial Chamber only alluded to such a finding by concluding on the basis of the "evidence in its totality", including evidence of the Trnovo killings, that a common plan to murder the Bosnian Muslim males from Srebrenica existed. The Appeals Chamber finds that the Trial Chamber's failure to further elaborate on the required link between the perpetrators and a JCE member amounts to a failure to provide a reasoned opinion. In view of the Trial Chamber's error of law, the Appeals Chamber will consider whether the factual findings in the Trial Judgement on a whole would allow a reasonable trier of fact to establish a link between the Scorpions Unit and a member of the JCE to Murder.

The Appeals Chamber notes that even though the Trial Chamber found that the Scorpions Unit was acting at the relevant time under the direction of Bosnian Serb Forces, it failed to identify under whose direction or pursuant to whose orders they acted. The Appeals Chamber recalls that the Trial Chamber did not find that all the members of the Bosnian Serb Forces were also members of the JCE to Murder. While the evidence upon

which the Trial Chamber relied suggests that the six men were transported from the Srebrenica area to Trnovo by members of the Scorpions Unit where they were subsequently killed, the Appeals Chamber is not convinced that it was reasonable for the Trial Chamber to infer from these facts that the Scorpions Unit perpetrated the six killings in Trnovo in furtherance of the common plan of the JCE to Murder. The Appeals Chamber, therefore, grants Mr. Tolimir's Ground of Appeal Twenty.

Under his Ground of Appeal Sixteen Mr. Tolimir challenges the Trial Chamber's conclusions that he was aware of and intended the common plan to murder the able-bodied Bosnian Muslim men from the Srebrenica enclave. He also challenges the Trial Chamber's findings that he significantly contributed to this common plan. For reasons set out in detail in the Judgement the Appeals Chamber, Judge Antonetti dissenting, rejects Mr. Tolimir's arguments that the Trial Chamber's conclusion regarding his knowledge and contribution to the JCE was primarily based on his position as assistant commander and that the Trial Chamber incorrectly interpreted Prosecution and Defence exhibits relevant to his participation in the JCE to murder. The Appeals Chamber, Judge Antonetti dissenting, dismisses Mr. Tolimir's Ground of Appeal Sixteen.

JCE III

Under Grounds Seventeen and Eighteen of his appeal Mr. Tolimir challenges the Trial Chamber's findings on his responsibility pursuant to JCE III for persecutory acts, including opportunistic killings as a natural and foreseeable consequence of JCE to Forcibly Remove and JCE to Murder (Ground Seventeen) and for the killings of the three Žepa leaders as a natural and foreseeable consequence of the JCE to Forcibly Remove (Ground Eighteen). For reasons set out in the Judgement, the Appeals Chamber, Judge Antonetti dissenting, finds no merit in Mr. Tolimir's arguments and dismisses his Grounds of Appeal Seventeen and Eighteen.

Mr. Tolimir's responsibility in relation to counts

In Grounds of Appeal Twenty-One through Twenty-Three Mr. Tolimir challenges the Trial Chamber's findings regarding his responsibility in relation to genocide, conspiracy to commit genocide, and crimes against humanity. For reasons given in the Judgement the Appeals Chamber, Judge Antonetti dissenting, finds that the Trial Chamber did not err in finding that Mr. Tolimir possessed genocidal intent, and that he possessed the mens rea required for crimes against humanity. The Appeals Chamber, Judge Antonetti dissenting, also confirms the Trial Chamber's findings that Mr. Tolimir was criminally responsible for conspiracy to commit genocide on the basis of his significant contribution to the JCE to Murder. The Appeals Chamber, Judge Antonetti dissenting, therefore, dismisses Mr. Tolimir's Grounds of Appeal Twenty-One through Twenty-Three.

D. Cumulative convictions and sentencing

Finally, in Ground of Appeal Twenty-Four Mr. Tolimir contests the Trial Chamber's findings on his cumulative convictions and in Ground of Appeal Twenty-Five, its findings in relation to his sentence. For reasons set out in the Judgement the Appeals Chamber finds that the Trial Chamber did not err in law or in fact in applying the principles of cumulative convictions and dismisses Mr. Tolimir's Ground of Appeal Twenty-Four. The Appeals Chamber, Judge Antonetti dissenting, also finds that the Trial Chamber did not err in applying the principles of sentencing by imposing a sentence that is manifestly excessive and disproportionate.

I now turn to the impact of the Appeals Chamber's findings on the sentencing. In this context, the Appeals Chamber recalls that it reversed some of the convictions of Mr. Tolimir. The Appeals Chamber notes, however, that Mr. Tolimir's remaining convictions, in particular those for genocide committed through the killings of the men from Srebrenica and through the infliction of serious bodily or mental harm to the Bosnian Muslim population of Srebrenica are sustained. In light of these genocide convictions alone, the Appeals Chamber considers that Tolimir's responsibility does not warrant a revision of his sentence.

Disposition

I will now read out the full text of the disposition of the Appeals Chamber Judgement:
For the foregoing reasons, THE APPEALS CHAMBER,

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

NOTING the respective written submissions of the parties and the arguments they presented at the Appeal Hearing on 12 November 2014;

SITTING in open session;

GRANTS IN PART, Ground of Appeal 6 and **REVERSES** Tolimir's conviction for extermination as a crime against humanity, to the extent that it concerns the killings of the three Žepa leaders specified in paragraph 23.1 of the Indictment;

GRANTS IN PART, Judge Sekule and Judge Güney dissenting, Ground of Appeal 10 and **REVERSES** Tolimir's conviction for genocide committed through causing serious mental harm to the Bosnian Muslim population of Eastern BiH under Article 4(2)(b) of the Statute to the extent that this conviction was based on the forcible transfer of Bosnian Muslims from Žepa;

GRANTS IN PART Ground of Appeal 10 and **REVERSES** Tolimir's conviction for genocide through inflicting conditions of life calculated to destroy the Bosnian Muslim population of Eastern BiH under Article 4(2)(c) of the Statute;

GRANTS Ground of Appeal 12 and **REVERSES** his conviction for genocide (Count 1) to the extent that it concerns the killings of the three Žepa leaders specified in paragraph 23.1 of the Indictment;

GRANTS Ground of Appeal 20 and **REVERSES** Tolimir's conviction for genocide (Count 1), extermination as a crime against humanity (Count 3), and murder as a violation of the laws or customs of war (Count 5) to the extent they concern the killings of six Bosnian Muslim men near Trnovo specified in paragraph 21.16 of the Indictment;

DISMISSES, Judge Antonetti dissenting, Grounds of Appeal 1, 3, 5, 7, 11, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, and 25;

DISMISSES Tolimir's remaining grounds of appeal;

AFFIRMS the remainder of Tolimir's convictions under Counts 1, 2, 3, 5, 6, and 7;

AFFIRMS Tolimir's sentence of life-imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

RULES that this Judgement shall be enforced immediately pursuant to Rule 118 of the Rules;

ORDERS that in accordance with Rules 103(C) and 107 of the Rules, Tolimir is to remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he will serve his sentence.

Judge William H. Sekule appends a partly dissenting opinion.

Judge Mehmet Güney appends a partly dissenting opinion.

Judge Jean-Claude Antonetti appends a separate and partly dissenting opinion.

The hearing of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia stands adjourned.
