

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 29 November 2018

Original: English

IN THE APPEALS CHAMBER

Before: Judge Prisca Matimba Nyambe (Presiding)
Judge Seymour Panton
Judge Gberdao Gustave Kam
Judge Aminatta Lois Runeni N’gum
Judge Elizabeth Ibanda-Nahamya

Registrar: Mr. Olufemi Elias

Date: 29 November 2018

PROSECUTOR
v.
RATKO MLADIĆ

Public Redacted

**REPLY TO PROSECUTION’S RESPONSE BRIEF
ON BEHALF OF RATKO MLADIĆ**

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ABBREVIATIONS TABLE

Abbreviation	Full citation
16th Assembly Session	16th Session of the Bosnian-Serb Assembly on 12 May 1992.
ABiH	Army of Bosnia-Herzegovina
AF	Adjudicated Fact
AJ	Appeals Judgement
APs	Additional Protocols I and II to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I), and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
Art.	Article
BCS	Bosnian / Croat / Serb languages
BiH	Bosnia and Herzegovina
Ch.	Chapter
CIL	Customary International Law
Fn	Footnote
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
JCE(s)	Joint Criminal Enterprise(s)
OJCE	Overarching Joint Criminal Enterprise
MUP	Ministry of Internal Affairs (<i>Ministarstvo unutrašnjih poslova</i>)
P.	Page
Para(s).	Paragraph(s)
RPE	Rules of Procedure and Evidence, ICTY, IT/32/Rev.50
Rule(s)	Rules of Procedure and Evidence, ICTY, IT/32/Rev.50
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by UNSC Resolution 827 (1993)
SFRY	Socialist Federal Republic of Yugoslavia
SRK	Sarajevo Romanija Corps of the VRS (<i>Sarajevo-Romanija Korpus</i>)
T.	Trial transcript
The Tribunal	International Criminal Tribunal for the Former Yugoslavia
TJ	Trial Judgement
Trial Chamber	Trial Chamber I of the ICTY, Case No. IT-09-92

UN	United Nations
UNPROFOR	United Nations Protection Forces
VRS	Vojska Srpske Republike Bosne I Hercegovine, later Vojska Republike Srpske – Army of the Republika Srpska / Bosnian-Serb Republic

I. INTRODUCTION

1. A court's compliance with due process norms is a right afforded to every accused, no matter the crime alleged or convictions subject to appeal. This is essential to protect the rights of an accused during, and after, an adversarial trial. Central to the rule of law is the strict application of the burden and standard of proof, the presumption of innocence, and the principle of *in dubio pro reo*. Correctly identifying these fundamental principles is insufficient – it must be accompanied by a proper application of them in practice.
2. The deferential standard of review does not require the judges of the Appeals Chamber to yield to evidentiary deficiencies or conclusions made by the Trial Chamber that are inconsistent with these fundamental principles of fairness and the integrity of the judicial process. The desire to seek justice should never be at the expense of the basic principles of the rule of law. The application of the black letter of the law ensures that emotions and a desire to right socio-historical wrongs does not determine judicial decisions.
3. It is through this prism that the Appellant invites the Appeals Chamber to consider the Appeal Brief, Prosecution's Response and the Reply.¹

Overview

4. As set out in the Appellant's appeal against conviction and sentence, the Trial Chamber erred in convicting the Appellant of Counts 2-11² and imposing a life sentence³.
5. The Appellant invites the Appeals Chamber to dismiss the Prosecution's contention that the appeal lacks merit.⁴ The Prosecution mischaracterises the Appellant's submissions, responds to its own interpretation of the appeal grounds, while failing to engage with the substance of the appeal. The Appellant submits, the Prosecution fails to undermine any of the legal or factual errors identified in the appeal.

¹ *Contra* Prosecution-RB, para.1.

² Appellant-AB, Grounds 1-8.

³ Appellant-AB, Ground 9.

⁴ Prosecution-RB, paras.2-4.

6. The Appellant's Reply seeks to assist the Appeals Chamber to adjudicate the merits of the appeal. As such, the Appellant focuses on issues in the Response that require clarification. To avoid repetition, the Appellant recalls the relevant paragraphs from the appeal, and does not restate the submissions previously made unless necessary. To assist the Appeals Chamber, the Appellant has consolidated its reply on adjudicated facts in Ground 2. The Appellant submits, the illustrative examples provided are sufficient to warrant the intervention of the Appeals Chamber to review the Trial Chamber's approach throughout the Judgement.⁵

7. The Appellant affirms and maintains the grounds of appeal set out in the Appeal Brief, and invites the Appeals Chamber to grant the remedies requested in the appeal,⁶ and overturn his convictions for Count 2-11 and the life sentence.

⁵ Appellant-AB, para.9; *contra* Prosecution-RB, para.36, fn204.

⁶ Appellant-AB, paras.959-960.

II. GROUND ONE: THE TRIAL CHAMBER ERRED IN CONVICTING THE APPELLANT OF THE IMPUGNED INCIDENTS⁷

8. The Prosecution fails to respond to the Appellant's submission that the Trial Chamber considered the impugned incidents as part of its case *proprio motu*.⁸ The Prosecution fails to demonstrate that it directed the Trial Chamber to enter findings on the Appellant's responsibility for the impugned incidents as specific criminal acts.⁹
9. To the extent that the Prosecution alleges that the Trial Chamber can hold the Appellant criminally responsible for *any* criminal acts by virtue of the Indictment's incorporating language, this should be rejected.¹⁰
10. The Prosecution mischaracterises the Appellant's reliance on the Rule 73bis(D) Decision.¹¹ The decision provides guidance on the proper approach to notice.¹²
11. The Prosecution fails to show that it provided sufficient notice that it sought to establish the Appellant's criminal responsibility for the impugned incidents as separate criminal acts.¹³
12. The Appeals Chamber should reject the Prosecution's claims that:¹⁴
 - Notice that a witness will provide evidence related to a specific scheduled incident(s), constitutes notice that it *also* sought to prove the impugned incident(s) as separate criminal acts through the witness;¹⁵
 - Mere mention of the impugned incident in a witness summary or motion alone constitutes sufficient notice;¹⁶
 - Leading evidence of the impugned incident(s), in and of itself, provided adequate notice that it sought to establish the Appellant's criminal responsibility for all of these incidents;¹⁷

⁷ Murder incident (i), terror sniping incident (n), and terror sniping incident (o), are withdrawn.

⁸ Appellant-AB, paras.41, 48, 50, 59.

⁹ Appellant-AB, para.48; *Čelebići* AJ, paras.764-766; Prosecution-RB, paras.6-13.

¹⁰ *Contra* Prosecution-RB, paras.6-13, 23 fn164.

¹¹ Prosecution-RB, paras.8-11.

¹² Appellant-AB, paras.46-47.

¹³ *Contra* Prosecution-RB, paras.14-18, Table Incidents (pp.14-22); Appellant-AB, paras.48, 49.

¹⁴ *Contra* Prosecution-RB, paras.14-20, Table Incidents (pp.14-22); Appellant-AB, paras.48-59.

¹⁵ Table Incidents: 1-4, 6, 9-10, 12, 19, 22, 26, 29-31, 33-39.

¹⁶ *Ibid.*

¹⁷ Prosecution-RB, para.18, Table (pp.14-22).

- Taking the aforementioned together, it does not have to identify the impugned incident as specific and separate criminal acts or provide an explanation of their significance to the Prosecution's case;
- Reliance on adjudicated facts to establish the *legal elements* of a crime was sufficient notice that it sought findings of criminal responsibility for the impugned incidents as separate acts;¹⁸
- The presentation of general defences/cross-examination challenging the *element* of the crime constitutes evidence of notice that it sought to establish the Appellant's criminal responsibility of the impugned incidents as separate criminal acts;¹⁹
- Convictions can be entered for impugned incidents falling outside the dates specified in a Scheduled Incident.²⁰

13. As the Appellant only became aware that the Trial Chamber entered findings of criminal responsibility on the impugned incidents as specific criminal acts when the Judgement was rendered, the issue of waiver is not applicable.²¹
14. Contrary to the Prosecution's contention,²² the defects are not cured through general defences or cross-examination to undermine the evidence admitting to prove the *legal elements* of the crime.²³ The proper identification of specific criminal acts is required to enable the defence to prepare meaningfully, knowing the ambit of the Prosecution's case on criminal responsibility. The Prosecution fails to demonstrate that it provided adequate notice, such that the Trial Chamber could enter findings of criminal responsibility on the impugned incidents.²⁴

¹⁸ *Contra* Prosecution-RB, para.18; Table Incidents 5, 7, 11, 13-18, 23-25, 27; *Mladić* AF Motion, para.23; *Kupreskić* AJ, paras.321-323.

¹⁹ Prosecution-RB, para.19, Table Incidents 1, 3, 4, 9-11, 13-14, 25, 32, 39.

²⁰ Table Incidents 32.

²¹ *Contra* Prosecution-RB, para.21; Appellant-AB, paras.43, 45.

²² Prosecution-RB, paras.22-23.

²³ Appellant-AB, para.59.

²⁴ *Celebići* AJ, para.764-766; Appellant-AB, paras.48, 52-59.

III. GROUND TWO: THE TRIAL CHAMBER ERRED IN BOTH LAW AND FACT IN ITS APPROACH TO ADJUDICATED FACTS

15. The Appeals Chamber should dismiss the Prosecution’s submissions, which fails to undermine the legal and factual grounds of appeal brought by the Appellant.

A. THE APPELLANT HAS DEMONSTRATED COMPELLING REASONS TO REVISIT *KAREMERA* (2.A.1)

16. The Appellant has established compelling reasons in the interests of justice for the Appeals Chamber to revisit the law in relation to adjudicated facts.²⁵
17. The Prosecution mischaracterises the Appellant’s submissions on the relevance of the *Galić 92bis* Appeals Chamber decision.²⁶ It misunderstands the relevance of the *Milosević* Appeals Chamber decision.²⁷ The finding that the *actus reus* element supporting the responsibility of the accused would have to be proved by means other than judicial notice,²⁸ supports the Appellant’s submission.²⁹
18. The definition of ‘proximate subordinate’ proffered in *Galić*, and adopted by the Appellant, is not determined by rank, but whether they are “subordinates of the accused of whose conduct it would be easy to infer that he knew or had reason to know” about their conduct.³⁰ The Prosecution incorrectly claims that this is restricted to senior VRS officials.³¹
19. The Appeals Chamber should reject the Prosecution’s suggestion that the Appellant has failed to demonstrate an error.³²

²⁵ *Contra* Prosecution-RB, para.26; Appellant-AB, paras.66-92.

²⁶ Prosecution-RB, paras.27-28; Appellant-AB, paras.72-75.

²⁷ Prosecution-RB, para.29.

²⁸ Appellant-AB, para.82.

²⁹ Appellant-AB, paras.81-88.

³⁰ Appellant-AB, paras.62; 159-160, 163, 171.

³¹ Prosecution-RB, paras.30, 36, 47, 189 fn709.

³² *Contra* Prosecution-RB, para.31; Appellant-AB, paras.66-67, 89-92, fn132 (citing paras.107-108, 158-183, 498-526, 669-676).

B. THE APPELLANT HAS SHOWN THAT THE TRIAL CHAMBER APPLIED A HEIGHTENED EVIDENTIARY STANDARD (2.A.2)

The standard applied

20. The Prosecution incorrectly claims that the “unambiguous” requirement imposed was simply an explanation as to when evidence could be considered to have contradicted the fact.³³
21. Contrary to the Prosecution’s suggestion,³⁴ in the examples it cites the Trial Chamber considered that the rebuttal evidence produced was capable of *disproving* the adjudicated fact.³⁵ This substantiates the error.³⁶

Evidence supporting the heightened standard

22. The Prosecution alleges, the Appellant fails to explain that the Trial Chamber would have reached a different conclusion had the correct standard been applied.³⁷ The Appellant submits, this has been identified (a) through worked examples, (b) explanations of the erroneous methodology employed, and (c) other incidents containing the same error.³⁸ Should the Appeals Chamber require further clarification in this regard, the Appellant will provide a supplementary filing to assist both the Appeals Chamber and the Prosecution, or address this in the oral submissions. The Appellant invites the Appeals Chamber’s guidance on this issue.
23. The Prosecution ignores that that rebuttal evidence comes in two forms:
- Identifying weakness in the evidence presented by the Prosecution through, for instance, cross-examination, and/or
 - Presenting evidence during the Defence case.³⁹

³³ *Contra* Prosecution-RB, paras.32-35; Appellant-AB, paras.100-105.

³⁴ Prosecution-RB, para.35 (F.11 is considered below).

³⁵ B.1.4 (an eye-witness account, para.362); B.8.1 (Banja Luka Military court file, para.829); 8 November 1994 (UNPROFOR report, para.2182).

³⁶ Appellant-AB, paras.100-105.

³⁷ Prosecution-RB, paras.36, 46-48, 199, 281.

³⁸ Appellant-AB, paras.12, 100-113, 158-183, 498-526, 669-676.

³⁹ *Contra* Prosecution-RB, para.37; Appellant-AB, para.99.

24. This was accepted by the Trial Chamber.⁴⁰ As such, it was reasonable that one method would have been sufficient to reopen the debate and rebut the fact had the correct standard being applied.⁴¹
25. Rebuttal evidence was presented for incidents identified by the Prosecution in paragraph 37 of its Response and for B.16.2⁴² through the presentation of inconsistencies in, or deficiencies between, the Prosecution's evidence and the adjudicated facts.⁴³ This was sufficient to reopen the evidentiary debate⁴⁴ and had the correct standard been applied, to rebut the fact.⁴⁵
26. The Prosecution fails to undermine the Appellant's submissions in the incidents cited in footnote 209.⁴⁶
27. Had the correct standard been applied to the incidents identified in paragraph 38 of the Prosecution's Response, the rebuttal evidence presented either during the Prosecution's case and/or through Defence evidence would have been sufficient to reopen the evidentiary debate and rebut the fact.⁴⁷
28. For the incidents cited in paragraph 39, the Prosecution fails to engage with the fact that the Appellant not only relied on an expert witnesses' testimony, but also challenged the fact through the inconsistencies in the Prosecution's case.⁴⁸ As the Appellant could not *disprove* the adjudicated fact through either method,⁴⁹ the heightened evidentiary standard prevented him from reopening the debate.⁵⁰
29. With regards to paragraph 40, the Trial Chamber concluded that it did not have to consider the inconsistencies identified in the Prosecution's case because it relied on the unrebutted

⁴⁰ Fourth Decision on Adjudicated Facts, paras.19-20.

⁴¹ Appellant-AB, paras.99, 100-105, 514-515, 517.

⁴² Prosecution-RB, paras.49-50.

⁴³ *Contra* Prosecution-AB, para.37, fn208; Appellant-AB, paras.107 (fns154-155, 157-158, 160-163), 163-168. See also, Annex A: G.4, G.7, G.8, G.18 (Appellant-AB, paras.502-526).

⁴⁴ Appellant-AB, paras.99, 106.

⁴⁵ Appellant-AB, para.112; *Karadžić* TJ, para.28.

⁴⁶ Appellant-AB, paras.107-108, 111-112.

⁴⁷ Appellant-AB, paras.99, 103, 107 (fns159, 164, 173).

⁴⁸ Appellant-AB, paras.107-108 (fns165-169, 177-179), 502-506.

⁴⁹ Appellant-AB, paras.100-105.

⁵⁰ Appellant-AB, paras.107-111.

fact to either infer the identity of the perpetrators from the origin of fire,⁵¹ or for the origin of fire to infer the identity of the perpetrators.⁵² This demonstrates that a heightened standard was applied as cross-examination was insufficient to reopen the debate.

30. The Trial Chamber relied on adjudicated facts to establish that the Appellant's proximate subordinates were responsible for the crimes.⁵³

Lack of Prosecution evidence

31. The fact that the Prosecution produced evidence that was considered "insufficiently reliable to rebut the adjudicated fact" demonstrates an error.⁵⁴ This approach resulted in, as shown by the preceding paragraphs:

- the Defence being unable to reopen on the debate on the basis of inherent weaknesses in the Prosecution's evidence,
- the Prosecution's own evidence was insufficiently reliable to establish a fact indispensable for attributing criminal responsibility (i.e. the identity of the perpetrator/origin of fire) by contradicting it, and
- had a heightened evidentiary standard not been applied, the Prosecution's evidence would have been insufficiently reliable to re-establish the fact.⁵⁵

32. The use of adjudicated facts does not alleviate the Prosecution of their burden of proof.⁵⁶ By ignoring that evidence presented by the Prosecution on the point addressed by the fact was internally contradictory or inconsistent with the adjudicated fact, the Trial Chamber erred by using adjudicated facts as a substitute to prove facts indispensable to establish the Appellant's criminal responsibility for the incident.⁵⁷

⁵¹ Judgement, para.2111, fn9082.

⁵² Judgement, para.2007.

⁵³ Appellant-AB, paras.107-108, 158-183, 498-527.

⁵⁴ *Contra* Prosecution-RB, para.41; Appellant-AB, paras.110-111.

⁵⁵ Appellant-AB, paras.110-111 fn187, 158-183, 498-527.

⁵⁶ *Contra* Prosecution-RB, paras.202-203; *Karemera* Interlocutory Decision, para.50.

⁵⁷ *Contra* Prosecution-RB, para.48; Appellant-AB, paras.110-112.

AF1476 (5.E.3.1)

33. The Prosecution does not engage with the Appellant's submission that the Trial Chamber failed to give a reasoned opinion that, based on AF1476, *all* of the 7,000-8,000 victims of the killings in Srebrenica were not actively taking part in hostilities.⁵⁸ The Trial Chamber limited its analysis of the victims' military status to Schedule E and other incidents on the basis of the Prosecution's evidence,⁵⁹ which represents around half of AF1476's figure.
34. On the basis of the inconsistencies in the Prosecution's case with AF1476, in addition to rebuttal evidence, the debate should have been reopened to establish the status of the remaining victims to this extent and AF1476 rebutted.⁶⁰
35. Contrary to the Prosecution's suggestion,⁶¹ the Trial Chamber relied on the number of victims contained in AF1476 to establish:
- 7,000-8,000 Bosnian-Muslim men separated in Potočari and captured from the column were systematically murdered,⁶²
 - The Appellant intended to achieve the common objective through evidence that he was present when the VRS and MUP discussed the task of killing 8,000 Bosnian-Muslim men,⁶³
 - He tasked MUP with killing 8,000 Bosnian-Muslim men showed he possessed the specific intent to commit genocide,⁶⁴ and
 - Significantly contributed to the Srebrenica JCE.⁶⁵
36. As the Prosecution concedes,⁶⁶ for both intent and sentence the Trial Chamber relied on its findings in Chapters 7 and 8 where it established that 7,000-8,000 Bosnian-Muslim men were systematically murdered on the basis of AF1476.⁶⁷

⁵⁸ Prosecution-RB, paras.282-283; Appellant-AB, paras.669-672.

⁵⁹ Appellant-AB, paras.669-675; Prosecution-RB, para.284, fn1140.

⁶⁰ Appellant-AB, paras.673-675.

⁶¹ Prosecution-RB, paras.284-286.

⁶² Judgement, para.3007.

⁶³ Judgement, para.5128.

⁶⁴ Judgement, para.5130.

⁶⁵ Judgement, Chapter 9.7.

⁶⁶ Prosecution-RB, para.286.

⁶⁷ Judgement, para.5191.

37. The Appeals Chamber should reject the Prosecution's contention that the Trial Chamber limited its assessment of the Appellant's responsibility to the victims established on the Prosecution's evidence.⁶⁸

⁶⁸ Prosecution-RB, paras.285-286; Appellant-AB, para.676.

IV. GROUND THREE: THE TRIAL CHAMBER ERRED BY FINDING THAT AN OVERARCHING JCE EXISTED AND THAT THE APPELLANT PARTICIPATED IN IT

38. The Appellant asserts, the Prosecution's Response fails to engage with, or undermine, the legal and factual grounds of appeal set out in Ground 3. The Prosecution fails to undermine the legal and factual grounds of appeal brought by the Appellant.
39. The Prosecution mischaracterises the Appellant's submissions, including the underlying legal concepts that support them. Below, the Appellant addresses the most blatant inaccuracies.

A. THERE DID NOT EXIST A COMMON CRIMINAL OBJECTIVE OF WHICH THE APPELLANT WAS A PART (3.A.3)

40. The Prosecution does not engage directly with the Appellant's submissions that the Trial Chamber failed to afford certain evidence sufficient weight in its considerations.⁶⁹ Instead, the Prosecution simply points out that the Trial Chamber referenced the evidence.⁷⁰ This does not undermine the Appellant's submissions and should be dismissed.
41. To clarify, the Appellant relied on the applicable legal standard of the *Kvočka* Appeals Chamber: the presumption that the Trial Chamber has evaluated all the evidence, as long as there is no indication it has completely disregarded any particular piece.⁷¹ The Appellant provides examples where disregard occurred in the Judgement.⁷² The Prosecution's submission that the Appellant used the example provided by the *Kvočka* Appeals Chamber of what disregard *may* look like, does not invalidate that it was indeed, disregard.

⁶⁹ Appellant-AB, paras.186-269, 294-316.

⁷⁰ Prosecution-RB, paras.55, 61-62, 120, 122.

⁷¹ *Kvočka* AJ, para.23.

⁷² Appellant-AB, paras.55-100.

42. Contrary to the Prosecution's suggestion,⁷³ the Appellant demonstrates that the Trial Chamber erred by giving insufficient weight to certain evidence when finding the Appellant was a member and participant of the OJCE.⁷⁴

B. THE TRIAL CHAMBER ERRED BY FINDING THAT THE APPELLANT SIGNIFICANTLY CONTRIBUTED TO THE OJCE (3.B)

43. The Prosecution incorrectly asserts that evidence where the Appellant's subordinates knew of crimes and ordered perpetrators to be prosecuted and punished is irrelevant because they do not involve the Appellant personally.⁷⁵ The Prosecution repeats this argument when discussing the Appellant's protection of non-Serbs in the above section.⁷⁶
44. The Appellant submits that in the context of JCE, the Trial Chamber has made assumptions and drawn inferences based on the evidence and behaviour of the Appellant's subordinates to satisfy its findings on the guilt of the Appellant under this mode.⁷⁷ The Prosecution's submission on this point should be dismissed.
45. The Prosecution wrongly contends that the Trial Chamber did not find that the military justice system suffered from institutional issues that inhibited its functioning.⁷⁸ The Trial Chamber held in its findings that the military courts reported problems such as shortages of staff and materials and difficulties locating suspects and witnesses.⁷⁹ The Prosecution's assertion does not undermine the Appellant's submission.⁸⁰
46. The Prosecution incorrectly claims that the Appellant ignores relevant findings and submits that two isolated incidents are "findings about what actually happened".⁸¹ This is not persuasive and should be dismissed.

⁷³ Prosecution-RB, paras.53-67.

⁷⁴ Appellant-AB, paras.186-210.

⁷⁵ Prosecution-RB, para.86.

⁷⁶ Prosecution-RB, paras.56-57.

⁷⁷ Judgment, paras.3561, 4218-4239.

⁷⁸ Prosecution-RB, para.92.

⁷⁹ Judgement, para. 4114.

⁸⁰ Appellant-AB, paras.261-263.

⁸¹ Prosecution-RB, para.95.

47. Contrary to the Prosecution’s suggestions,⁸² the Appellant demonstrates that the Trial Chamber erred by failing to: give sufficient weight to evidence, provide reasoned opinions, or provide adequate consideration of probative evidence when finding the Appellant significantly contributed to the OJCE.⁸³

B.1 THE TRIAL CHAMBER ERRED BY FINDING THAT THE APPELLANT HAD THE
REQUISITE *MENS REA*

48. The Prosecution does not undermine the Appellant’s submissions that the Trial Chamber erred when finding the Appellant’s *mens rea* was satisfied beyond reasonable doubt.⁸⁴

C. THE TRIAL CHAMBER EMPLOYED A DEFECTIVE METHOD WHEN DETERMINING THE *MENS
REA* (3.B.6)

49. Contrary to the Prosecution’s claim, the Appellant correctly explains JCE liability, with the benefit of the full citation explaining that “the ICTY devised a group liability concept to prosecute and convict those involved in collective crimes”.⁸⁵
50. Further, the Prosecution have mischaracterised the Appellant’s explanation of JCE, where the common plan acts as a link between the perpetrators and non-perpetrators in the JCE liability concept.⁸⁶ The Prosecution have misinterpreted the word “link” to mean “an understanding or agreement” as required by the *Brđanin* Appeals Chamber.⁸⁷
51. The Prosecution incorrectly claims that the method of analysis required by the *Stanišić and Simatović* Appeals Chamber to determine an accused’s guilt under JCE is only indicative,⁸⁸ quoting the word “should”. This word is not found in the Appeals Chamber judgement.⁸⁹ The Appellant correctly quoted the Appeals Chamber’s findings that this method was “required”.⁹⁰

⁸² Prosecution-RB, paras.68-96.

⁸³ Appellant-AB, paras.211-269.

⁸⁴ Appellant-AB, paras.270-334.

⁸⁵ E.van Sliedregt, p.185.

⁸⁶ Appellant-AB, para.272.

⁸⁷ Prosecution-RB, para.101, fn.430; *Brđanin*, AJ, para.419.

⁸⁸ *Stanišić & Simatović* AJ, paras.82, 87.

⁸⁹ Prosecution-RB, para.102.

⁹⁰ Appellant-AB, para.286, fn.427.

52. Contrary to the Prosecution's assertion, the *Šainović* Trial Chamber provided a distinction between the inferences drawn of JCE *actus reus* and *mens rea* elements.⁹¹ For *actus reus*, the Trial Chamber examined Milutinović's participation, contributions, attendance at meetings with superiors, and observations of his contributions from others;⁹² his failure to raise certain issues at meetings; two speeches he delivered; and his general exhibition of loyalty to his superiors.⁹³
53. The *mens rea* analysis builds on this evidence to show the influence Milutinović wielded in those meetings through his words and conduct, the perceived intent behind his speeches, and inferences of his knowledge in relation to the crimes.⁹⁴
54. The Appellant highlights this distinction drawn by the *Šainović* Trial Chamber in its submissions.⁹⁵
55. Following this distinction, the Appellant provides examples where the Trial Chamber has erred by drawing *mens rea* inferences in the *actus reus* analysis.⁹⁶ The Prosecution does not engage nor dispute the Appellant's argument. Instead, it states the inferences found in the Trial Chamber's evidentiary summaries, which are not findings of *mens rea*.⁹⁷ This is irrelevant. The Appellant submits that when assessing the Appellant's *mens rea*, relevant inferences had already been drawn from the evidence, thereby indelibly tainting the evidence and the Trial Chamber's finding.⁹⁸
56. To clarify the Prosecution's allegation at footnote 428, references to paragraphs 4465, 4468 and 4486 of the Judgement are examples of the first and second defect.⁹⁹ They show *mens rea* inferences made by the Trial Chamber in the *actus reus* analysis, and that these *mens rea* inferences are being used to support the Trial Chamber's *actus reus* findings. This is in opposition to the required method.

⁹¹ Prosecution-RB, para.101.

⁹² *Šainović*, TJ, paras.142-143.

⁹³ *Šainović* TJ, para.275.

⁹⁴ *Šainović* TJ, para.276.

⁹⁵ Appellant-AB, paras.271-280.

⁹⁶ Appellant-AB, paras.281-285.

⁹⁷ Prosecution-RB, para.101.

⁹⁸ Appellant-AB, para.291.

⁹⁹ Appellant-AB, paras.286-290.

57. In addition, references to paragraphs 4627, 4629 and 4686 show pieces of evidence. The same conclusions are drawn from them by the Trial Chamber in both the *actus reus* and the *mens rea* analysis.¹⁰⁰ This is the error in the methodology employed by the Trial Chamber, as these inferences should only have been made in the *mens rea* analysis.
58. The Appeals Chamber should reject the Prosecution's suggestion that these examples do not identify an error.¹⁰¹
59. The Appeals Chamber should dismiss the contradictory argument put forward by the Prosecution in relation to the Trial Chamber's findings and evidentiary summaries.
60. In an attempt to disprove the Appellant's submissions on the Trial Chamber's erroneous methodology, the Prosecution claims that the examples cited are not valid because "they do not contain any findings on Mladić's JCE *mens rea*",¹⁰² and that they are simply the Trial Chamber cross-checking factual findings or evidential summaries.¹⁰³
61. The Appellant avers that the Trial Chamber's review of evidence is the contextual foundation from which they draw their inferences, which forms the basis of their findings. These considerations by the Trial Chamber cannot be considered exclusive.
62. The Prosecution's argument becomes circular at paragraph 122, where, to support a separate point, the Prosecution defines the Trial Chamber's evidential summaries as: "expressly considered by the Chamber, or falls squarely within their reasons".¹⁰⁴
63. This contradictory argument is made elsewhere in the Prosecution's response and should be dismissed.¹⁰⁵

¹⁰⁰ Judgement paras.4465, 4628, 4468, 4629.

¹⁰¹ Prosecution-RB, para.103.

¹⁰² Prosecution-RB, para.101, fn.428.

¹⁰³ Prosecution-RB, para.102.

¹⁰⁴ Prosecution-RB, para.122.

¹⁰⁵ Prosecution-RB, paras.61, 65.

D. DISREGARD OF DIRECT EVIDENCE IN THE *MENS REA* ANALYSIS (3.B.7)

64. The Prosecution incorrectly claims the Appellant asserts that direct evidence is inherently more probative than circumstantial evidence.¹⁰⁶ The Prosecution has mischaracterised the Appellant’s argument and thereby fails to engage with it.¹⁰⁷
65. The Appellant affirms and recalls paragraphs 28-31 and 297-298 of the Appellant’s Brief.¹⁰⁸ Based on these legal foundations, the Appellant submits, the Trial Chamber relied primarily on circumstantial evidence and did not provide the requisite level of analysis, given that direct and highly probative evidence existed in opposition. This lack of due consideration resulted in direct evidence being given insufficient weight in the Trial Chamber’s considerations.¹⁰⁹ The Prosecution has misinterpreted the Appellant’s submissions, thereby failing to disprove the identified error.
66. The Prosecution has failed to undermine the Appellant’s submission that his statements made, prior to his deemed membership of the OJCE, should not have been included as a factor in determining his *mens rea*.¹¹⁰ The Prosecution submit that the Trial Chamber relied on those statements “*and his later references*” together with other factors.¹¹¹ This does not address the Appellant’s point,¹¹² that the Chamber erred when including these statements in its considerations.

¹⁰⁶ Prosecution-RB, paras.104, 106.

¹⁰⁷ Prosecution-RB, paras.104-109.

¹⁰⁸ Appellant-AB, paras.28-31, 297-298.

¹⁰⁹ Appellant-AB, paras.299-300.

¹¹⁰ Appellant-AB, para.304.

¹¹¹ Prosecution-RB, para.107.

¹¹² Prosecution-RB, para.107, fn.447.

V. GROUND FOUR: THE TRIAL CHAMBER ERRED IN ITS FINDINGS RELATED TO SARAJEVO

A. JURISDICTION

A.1 THERE ARE COGENT REASONS TO REVISIT *GALIĆ* AND *MILOŠEVIĆ* (4.A.1.i)

67. The Prosecution alleges, the Appellant has failed to demonstrate cogent reasons to revisit *Galić* and *Milošević*.¹¹³ The Appellant recalls the submission that the *Galić* and *Milošević* Appeals Chambers did not consider the absence of a *widespread* or *representative* penalisation of terror in their findings.¹¹⁴ Considerations of this absence provide cogent reasons to depart from the previous findings of the Tribunal on its jurisdiction over the crime of terror.¹¹⁵

A.2 THE STATES PUT FORWARD BY THE PROSECUTION DID NOT CRIMINALISE TERROR (4.A.1.ii)

68. The Prosecution proffered six states not raised in the Appellant's Brief, to assert that the criminalisation of terror was widespread and representative during the indictment period.¹¹⁶ Of these States, it was noted by Judge Schomburg in his dissenting opinion in *Galić*, Ireland and Bangladesh, respectively, did not criminalise terror during the indictment period and did not reference the APs.¹¹⁷ Further, the Appellant notes, China criminalised terror only when undertaken against China, the former Yugoslavia did not penalise terror in a manner corresponding to the APs,¹¹⁸ and the United States has not ratified the APs and did not otherwise criminalise terror through legislation during the Indictment period.¹¹⁹

¹¹³ Prosecution-RB, paras.128, 132-133.

¹¹⁴ Appellant-AB, paras.340-349.

¹¹⁵ Appellant-AB, paras.340-349; *North-Sea Continental Shelf Cases*, para.73.

¹¹⁶ Prosecution-RB, para.134.

¹¹⁷ *Galić* AJ, Chapter.XXII, para.9.

¹¹⁸ *Galić* AJ, Chapter.XXII, para.13.

¹¹⁹ *Law Reports on Chinese Law*, p.152; *US Handbook*, para.6.2.5.

69. The submission by the Prosecution that terror was criminalised across the continents of Europe, Africa, Asia and North America should therefore be dismissed.¹²⁰

B. SPECIFICITY AND FORESEEABILITY: THE PROSECUTION ADVANCES NO SUBSTANTIVE ARGUMENT (4.A.2)

70. Contrary to the Prosecution’s assertions,¹²¹ the crime of terror was not defined with sufficient specificity for it to be accessible and foreseeable during the Indictment period, as required under the *nullum crimen sine lege* principle.¹²² The lack of definition is not ameliorated by the mere categorisation of the crime into an *actus reus*, *mens rea* and specific intent or its categorisation as CIL.¹²³
71. In response to the Prosecution’s assertion that the crime of ‘terror’ was foreseeable because it was criminalised in the former Yugoslavia,¹²⁴ the Appellant recalls paragraph 68 above, and notes that, in penalising terror, the Criminal Code of the former Yugoslavia did not adopt the language of the APs or attempt to define the concept of “terror” even after the former Yugoslavia ratified the APs.¹²⁵ As such, it was of little assistance to the definition or foreseeability of the crime as adopted by the Tribunal.

C. ‘DEFENDED CITY’: THE PROSECUTION OBFUSCATES THE CONCEPT OF SARAJEVO AS A LEGITIMATE MILITARY OBJECTIVE (4.A.3)

72. Contrary to the Prosecution’s assertions, the Appellant does not contend that Sarajevo in its entirety constituted a valid military *target* or that the categorisation of Sarajevo as “defended” allows a party to avoid their obligations of distinction.¹²⁶ Rather, it asserts that Sarajevo, as a defended city, constituted a valid military *objective*.¹²⁷ This submission was

¹²⁰ Prosecution-RB, para.134.

¹²¹ Prosecution-RB, paras.137-139.

¹²² Appellant-AB, paras.350-372.

¹²³ *Contra* Prosecution-RB, para.137.

¹²⁴ Prosecution-RB, para.139.

¹²⁵ *Galić* AJ, Chapter.XXII, para.13.

¹²⁶ Prosecution-RB, Section B “Sarajevo as a whole was not a legitimate military target (4.A.3)”, particularly paras.140-141, *contra* Appellant-AB, paras.373-397.

¹²⁷ Appellant-AB, paras.373-397.

not raised as a direct challenge to Art.3(c) of the Statute. Rather, it highlights the Trial Chamber's error in concluding there was no alternative interpretation reasonably available on the evidence other than that the Appellant acted to further a common criminal objective; namely, to spread terror amongst the civilian population of Sarajevo.¹²⁸

D. SARAJEVO JCE

D.1 THE PROSECUTION MISCONSTRUES THE APPLICABILITY OF THE STANDARD OF PROOF (4.A.4.I)

73. The Prosecution asserts, by reference to the *Mrkšić* Appeal Judgement,¹²⁹ the standard of beyond reasonable doubt does not apply to fragments of evidence. The Appellant notes, in that case, the Appeals Chamber held that the standard of proof "beyond reasonable doubt" should not be applied in a piecemeal approach.¹³⁰ The Appeals Chamber did not conclude that beyond reasonable doubt standard does not apply to fragments of evidence, but rather, that it must be applied to the complete body of evidence.¹³¹
74. The Appellant recalls the burden on the Prosecution to prove all predicate facts beyond all reasonable doubt, and that any doubt must be resolved in favour of the accused.¹³² The Prosecution's attempts to assert otherwise should be dismissed.

D.2. THE TRIAL CHAMBER ERRONEOUSLY CONSIDERED INCIDENTS FOR WHICH THE APPELLANT WAS CONVICTED IN ERROR (4.A.4.II)

75. The Appellant recognises that the Trial Chamber may rely on "any credible and reliable evidence available on the record".¹³³ However, it recalls, a JCE requires proof of, amongst other elements, a common objective which amounts to or involves the commission of a

¹²⁸ Appellant-AB, paras.378-397.

¹²⁹ Prosecution-RB, paras.146, 155, fn594 citing *Mrkšić* AJ, para.217.

¹³⁰ *Mrkšić* AJ, para.217; *contra* Prosecution-RB, paras.155-156.

¹³¹ *Mrkšić* AJ, paras.215-217.

¹³² Appellant-AB, paras.38-40.

¹³³ Prosecution-RB, para.162.

crime provided for in the Statute.¹³⁴ The Appellant reasserts that the Trial Chamber erred by relying on incidents for which the Appellant was convicted in error.¹³⁵ This error undermined the finding that a JCE existed and that the Appellant acted in furtherance of the common objective of this JCE.¹³⁶

76. The Appellant's Brief enumerates the errors made by the Trial Chamber when reaching its conclusions on the incidents.¹³⁷

E. SPECIFIC INTENT: THE PROSECUTION FAILS TO ADDRESS THE SUBSTANCE OF THE APPELLANT'S SUBMISSION (4.A.5)

77. The Prosecution merely reiterates evidence enumerated by the Trial Chamber.¹³⁸ Contrary to the Prosecution's assertions,¹³⁹ the Appellant does not claim that the Trial Chamber erred in concluding that the Appellant possessed the requisite specific intent because it did not conclude the same for the physical perpetrators.¹⁴⁰ The Appellant relies upon its arguments as articulated in the Brief.¹⁴¹

F. ERRORS IN THE FACTUAL FINDINGS ON THE SARAJEVO CRIME BASE

F.1 SCHEDULED INCIDENT G.1: *GOTOVINA* IS APPLICABLE TO THE PRESENT CASE (4.B.1)

78. The Prosecution asserts, the findings of the *Gotovina* Appeals Chamber are not applicable to the present case.¹⁴² The Appellant reiterates the parallels between *Gotovina* and the Scheduled Incident G.1. The Trial Chamber in both cases concluded, the attacks launched

¹³⁴ *Stanišić & Župljanin* AJ, para.67.

¹³⁵ Appellant-AB, paras.422-428.

¹³⁶ Appellant-AB, paras.438-441.

¹³⁷ Appellant-AB, paras.459-564.

¹³⁸ Prosecution-RB, paras.169-174.

¹³⁹ Prosecution-RB, para.169.

¹⁴⁰ Prosecution-RB, para.169.

¹⁴¹ Appellant-AB, paras.443-457.

¹⁴² Prosecution-RB, para.192.

by the belligerents were indiscriminate and unlawful. The Appellant alleges, the Trial Chamber in the present case erred in reaching this conclusion on the basis that it:

- Failed to exclude the possibility that attacks were launched at targets of opportunity;¹⁴³
- Misinterpreted the language of the orders made by the Appellant to fire at civilian areas of Sarajevo;¹⁴⁴
- Failed to consider that the spread of shelling could be plausibly explained by the scattered locations of fixed artillery targets;¹⁴⁵ and
- Failed to consider that the absence of an explicit order by the Appellant to engage in unlawful attacks indicated an alternative interpretation of the 16th Assembly Session.¹⁴⁶

79. The *Gotovina* Appeals Chamber explicitly considered these factors when concluding that the Trial Chamber erred in finding the relevant attacks were unlawful.¹⁴⁷ The Appeals Chamber should reject the Prosecution's request they disregard the relevance of *Gotovina*.

F.2 ADJUDICATED FACTS: THE APPELLANT SUFFICIENTLY IDENTIFIES THE ERRORS
(4.B.2.I)

80. The Appellant recalls, paragraph 22 above. Contrary to the Prosecution's contention,¹⁴⁸ the Appellant (a) identifies the errors,¹⁴⁹ (b) identifies the incidents infected by the errors¹⁵⁰ and (c) provides worked examples of the errors in practice¹⁵¹. The Appeals Chamber should reject the Prosecution's request to summarily dismiss the appeal against the Sarajevo crime-base.

¹⁴³ Appellant-AB, paras.489-490.

¹⁴⁴ Appellant-AB, paras.476-485.

¹⁴⁵ Appellant-AB, paras.487, 491-493.

¹⁴⁶ Appellant-AB, paras.409-421, 429-441.

¹⁴⁷ *Gotovina* AJ, paras.62-63, 65, 70-73, 77-78, 81.

¹⁴⁸ Prosecution-RB, para.199.

¹⁴⁹ Appellant-AB, paras.62-151, 459-564.

¹⁵⁰ Appellant-AB, paras.526, 540, 553, 558.

¹⁵¹ Appellant-AB, paras.503, 513, 521-522, 533-537, 546.

F.3 ADJUDICATED FACTS: THE TRIAL CHAMBER IMPERMISSIBLY RELIED ON ADJUDICATED FACTS (4.B.2.II)

81. The Appellant recalls paragraphs 20 to 32 above. Contrary to the submissions of the Prosecution,¹⁵² the use of adjudicated facts does not alleviate the Prosecution of their burden of proof.¹⁵³ The case law cited by the Prosecution states, at its origin, that the burden of persuasion does not shift from the Prosecution and the use of adjudicated facts must be balanced at all times with careful consideration of the accused's right to a fair trial.¹⁵⁴ Neither the *Karemera* nor the *Prlić* Appeals Chambers envisaged a situation where the Prosecution itself would present evidence which was "insufficiently reliable" to be consistent with the adjudicated fact.
82. In the absence of Prosecution evidence capable of proving a fact indispensable to a conviction, the use of adjudicated facts cannot be used as a substitution.¹⁵⁵

F.4 INTENT OF PERPETRATORS & ORIGIN OF FIRE: THE PROSECUTION MISCHARACTERISES THE TRIAL CHAMBER'S CONSIDERATIONS ON THE WILFUL INTENT OF THE PERPETRATORS AND ORIGIN OF FIRE (4.B.3 & 4.B.4)

83. The Prosecution suggests the Trial Chamber reasonably concluded Schedule Incidents G.6 and G.7 were wilfully directed at civilians not taking direct part in hostilities,¹⁵⁶ and that the SRK were responsible for fire originating from SRK-held territory.¹⁵⁷
84. The Appellant recalls paragraph 41 above, and reasserts that the Trial Chamber failed to provide reasoned opinions or draw specific conclusions for the specified incidents either its factual findings or within its analysis of the crimes of murder, unlawful attacks or terror.¹⁵⁸

¹⁵² Prosecution-RB, paras.202-203.

¹⁵³ Appellant-AB, para.98.

¹⁵⁴ *Karemera* Interlocutory Decision, paras.40, 42.

¹⁵⁵ Appellant-AB, paras.497-526.

¹⁵⁶ Prosecution-RB, paras.206-211.

¹⁵⁷ Prosecution-RB, paras.212-216.

¹⁵⁸ Appellant-AB, paras.528-554.

F.5 BURDEN OF PROOF: THE PROSECUTION MISAPPLIES THE BURDEN OF PROOF (4.B.5)

85. It is trite law that the burden of proof remains always with Prosecution. Contrary to the Prosecution's assertions,¹⁵⁹ the Appellant's submissions do not fail because he did not assert the presence of potential military or mobile targets, identify an alternative party as the belligerent, or demonstrate an alternative intention. The Prosecution must prove their case beyond reasonable doubt.

¹⁵⁹ Prosecution-RB, paras.185, 194, 210.

VI. GROUND FIVE: THE TRIAL CHAMBER ERRED IN FINDING THAT THE APPELLANT WAS A MEMBER OF THE SREBRENICA JCE AND RESPONSIBLE FOR THE CRIMES

86. The Prosecution fails to engage with, or undermine, the legal or factual grounds of appeal brought by the Appellant. The Appellant addresses the most blatant mischaracterisations in the Response.

A. THE TRIAL CHAMBER ERRED WHEN IT FOUND THE APPELLANT TO BE A MEMBER OF THE JCE AS TO FORCIBLE TRANSFER

87. The Prosecution does not engage directly with the Appellant’s submissions that the Trial Chamber gave insufficient weight to evidence of the Appellant’s coordination and cooperation with high-level UN members and civilian leadership to perform a humanitarian evacuation.¹⁶⁰ Instead, it recites the Trial Chamber’s findings out of context, without responding to the errors identified by the Appellant.¹⁶¹ The Prosecution’s assertions are not persuasive and should be dismissed.

88. The Prosecution instead incorrectly relies on evidence and findings out of context, to allege that the Appellant’s offers for civilians to stay were not genuine. The Prosecution relies on the Appellant’s ordering of buses before the third Fontana meeting as negating the genuine words at the meeting wherein a choice to stay was offered.¹⁶² This ignores, as explained in the Brief, that the decision for humanitarian evacuation had been made by the UN previously, and they sought the Appellant’s help in obtaining buses at the first and second Fontana meetings.¹⁶³ The Prosecution relies on Koster’s account of an exchange, which fails to address the incorrect contemporaneous translation as the source of his testimony and implies that the Appellant had illegitimate intent.¹⁶⁴ The Appellant’s words, as correctly recorded, were; “[i]t regards my order. I couldn't care less for your Commander. We will board everyone **who wants it**”; and “[a]nyone who **wishes to be transported** will be

¹⁶⁰ Appellant-AB, paras.575-583; *contra* Prosecution-RB, paras.220-224

¹⁶¹ Prosecution-RB, paras.220-224.

¹⁶² Prosecution-RB, para.224.

¹⁶³ Appellant-AB, para.578

¹⁶⁴ Prosecution-RB, para.224.

transported be the person small, big, old or young”.¹⁶⁵ This cannot support such a conclusion.

B. THE TRIAL CHAMBER ERRED WHEN IT FOUND THE APPELLANT TO BE A MEMBER OF THE JCE AS TO GENOCIDE, EXTERMINATION AND MURDER.

89. Contrary to the Prosecution’s assertion, the Prosecution alleged and the Trial Chamber found that the decision to kill as to the JCE for Genocide/Extermination was planned between 11-12 July.¹⁶⁶ As such, the Prosecution’s reference to statements prior to 12 July 1995 as evidencing *mens rea* and shared intent are inapplicable.¹⁶⁷
90. The Appellant’s shared intent cannot be established by his subsequent statements particularly at the 12 July Fontana meetings as suggested.¹⁶⁸ The Prosecution argument¹⁶⁹ misrepresents the Appellant’s submissions as improper, ignoring that they are based on the full extent of both defence and prosecution experts’ words which are not limited to a cease-fire and address precisely the words cited by the Prosecution as incriminating.¹⁷⁰
91. The Prosecution mischaracterises the Appellant’s arguments¹⁷¹ that Bursik’s notes (D1228) were introduced to show M.Nikolić’s unreliability as to the “hand gesture” as part of other evidence of M.Nikolić’s overall unreliability/self-contradictions.¹⁷² It fails to engage with Appellant’s other arguments as to failure to establish the Appellant’s role in any JCE via his conduct.¹⁷³
92. The Prosecution fails to undermine this ground of appeal.

¹⁶⁵ Appellant-AB, para.579, fn669 [emphasis added].

¹⁶⁶ Prosecution-RB, paras.226, 229; Judgement paras.4926, 4952-4958, 5096, 5088, 5129-5131.

¹⁶⁷ Prosecution-RB, paras.270, 272-278

¹⁶⁸ *Contra* Prosecution-RB, paras.273-274, 277; Appellant-AB, paras.595, 653-655

¹⁶⁹ Prosecution-RB para.274, fn1071.

¹⁷⁰ Butler (T.16831-16834); Kovač (T.41396-41399) (see Appellant-AB, paras.595, 653-655)

¹⁷¹ Prosecution-RB, paras.231-234.

¹⁷² Appellant-AB, paras.587-594.

¹⁷³ Appellant-AB, paras.595-598.

C. THE PROSECUTION'S RESPONSE FAILS TO UNDERMINE THE REMAINING APPEAL
GROUNDS

M.Nikolić

93. The Appeals Chamber should reject the Prosecution's assertion that the evidence of M.Nikolić is reliable.¹⁷⁴ The Appellant recalls paragraphs 585, 594, 618 and 632 of its Appeal Brief in this regard. The Prosecution misrepresents the Appellant's submissions as baseless, ignoring that clear contradictions in his evidence, and evidence of his unreliability, have been identified.¹⁷⁵

Command and Control

94. The Prosecution fails to undermine the Appellant's submission that the Trial Chamber erred in finding that the Appellant possessed effective command and control while in Belgrade.¹⁷⁶ It relies on interpretive leaps from unsafe evidence¹⁷⁷ instead of responding to the Appellant's submissions on the Trial Chamber's errors.¹⁷⁸ The Prosecution fails to undermine this ground of appeal

Krivaja'95

95. At trial, the Prosecution conceded that Krivaja'95 was a legitimate military operation.¹⁷⁹ The Prosecution now seeks to contradict not only this concession, but also its own military expert, to allege that it had a "criminal objective".¹⁸⁰ The Prosecution fails to engage directly with the Appellant's submissions,¹⁸¹ that he gave other legitimate military orders. Rather, it relies on isolated pieces of evidence that have been taken out of context.¹⁸²

¹⁷⁴ Prosecution-RB, paras.227, 230-234, 244, 263.

¹⁷⁵ Appellant-AB, paras.585, 594, 618, 632.

¹⁷⁶ Prosecution-RB, paras.236-240.

¹⁷⁷ Prosecution-RB, para.240.

¹⁷⁸ Appellant-AB, paras.609-612, 641.

¹⁷⁹ Appellant-AB, para.621 (as to Butler); also, Prosecutor McCloskey (T.486).

¹⁸⁰ Prosecution-RB, paras.250, 279.

¹⁸¹ Prosecution-RB, paras.246-252, 279-280.

¹⁸² Prosecution-RB, para.279.

96. The Appeals Chamber should reject the Prosecution's contention that issuing legitimate orders demonstrates evidence of contribution to the JCE.¹⁸³

[REDACTED]

97. The Prosecution mischaracterises the Appellant's submissions as to unpunished crimes.¹⁸⁴ [REDACTED].¹⁸⁵ [REDACTED]¹⁸⁶, [REDACTED],¹⁸⁷ [REDACTED].¹⁸⁸

MUP

98. Contrary to the Prosecution's assertion,¹⁸⁹ the Appellant has demonstrated that the Trial Chamber erred in finding that a superior-subordinate relationship existed between the Appellant and the MUP forces.¹⁹⁰ The Prosecution fails to respond to the Appellant's submissions that (a) he was not *de jure* or *de facto* superior to MUP and lacked effective control over other units during the Srebrenica operation,¹⁹¹ (b) the Trial Chamber failed to give sufficient weight/disregarded evidence of a lack of effective control over units conducting operation in Srebrenica, as to the Appellant's purported ability to prevent and punish, or to distinguish concepts of cooperation and re-subordination.¹⁹² Rather, it engages instead in a piecemeal assessment of Trial Chamber's findings.¹⁹³ The Appeals Chamber should reject the Prosecution's contention that the Appellant has failed to demonstrate errors in the Judgement's conclusions as to the Appellant's command and control over MUP forces.

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99. The Appellant recalls paragraphs 33 to 37 above.

¹⁸³ Prosecution-RB, paras.246-252, 279-280.

¹⁸⁴ Prosecution-RB, paras.241-247.

¹⁸⁵ Prosecution-RB, paras.265, 266.

¹⁸⁶ [REDACTED].

¹⁸⁷ [REDACTED].

¹⁸⁸ [REDACTED].

¹⁸⁹ Prosecution-RB, paras.241-245, 246-247

¹⁹⁰ Appellant-AB, paras.635-637.

¹⁹¹ Appellant-AB, paras.616-618, 635-637, 641.

¹⁹² Appellant-AB, paras.617, 618.

¹⁹³ Prosecution-RB, para.267, 268, 269.

VII. GROUND SIX: THE TRIAL CHAMBER ERRED IN CONVICTING THE APPELLANT FOR HOSTAGE-TAKING

100. The Appeals Chamber should reject the Prosecution's suggestion that the Appellant has failed to demonstrate compelling reasons to revisit *Tadić* and that the Trial Chamber erred in the weight it gave to exculpatory evidence.

A. JURISDICTION

101. The Prosecution does not engage directly with the Appellant's submission that beyond the criminalisation of the killing of hostages or taking of civilian hostages, no individual criminal responsibility was imputed through CIL during the Indictment period.¹⁹⁴ The Prosecution cites numerous authorities to support its contention that the crime had attained CIL status,¹⁹⁵ but fails to address the Appellant's submissions in paras.698-708 of the Brief regarding the deficiencies in the reasoning behind this. Further, the Prosecution's reliance on *Karadžić* Appeal Judgement is misguided, as the status of individual criminal responsibility for hostage taking in CIL was not challenged in *Karadžić*.¹⁹⁶

B. STATUS OF UN PERSONNEL

102. The Prosecution does engage directly with the Appellant's submission that the status of the UN Personnel was relevant to whether the Trial Chamber enjoyed jurisdiction over the alleged crimes.¹⁹⁷ The Prosecution's reliance on *Karadžić* is erroneous, as the arguments raised by the Appellant in this case¹⁹⁸ were not addressed in *Karadžić*.¹⁹⁹

¹⁹⁴ *Contra* Prosecution-RB, paras.304-306; Appellant-AB, paras.698-709.

¹⁹⁵ Prosecution-RB, paras.304-305.

¹⁹⁶ Prosecution-RB, para.304.

¹⁹⁷ Prosecution-RB, paras.301-303.

¹⁹⁸ Appellant-AB, paras.711-733.

¹⁹⁹ *Karadžić* Hostage-Taking AD, paras.9-14.

C. WEIGHTING OF EVIDENCE

103. Contrary to the Prosecution's allegation,²⁰⁰ the Appellant demonstrates that the Trial Chamber erred by relying on inconsistent evidence and failing to give sufficient weight to evidence which undermined the conclusion that the Appellant participated in a JCE.²⁰¹
104. By engaging in a piecemeal assessment of the Appellant's submissions,²⁰² the Prosecution mischaracterises the Appellant's submissions relating to his proactive actions and conduct to bring an end to the situation and fails to respond to them.²⁰³

²⁰⁰ Prosecution-RB, paras.308-314.

²⁰¹ Appellant-AB, paras.742-751.

²⁰² Prosecution-RB, paras.315-318.

²⁰³ Prosecution-RB, para.316.

VIII. GROUND SEVEN: THE TRIAL CHAMBER ERRED IN AGGRAVATING THE APPELLANT'S SENTENCE ON THE BASIS OF HIS SUPERIOR POSITION OF AUTHORITY

105. The Prosecution mischaracterises the Appellant's submissions, and fails to undermine Ground 7 of the Appeal.

106. The Appellant recalls, where both individual and superior responsibility are alleged under the same count, and the elements of both modes of liability are satisfied, a trial chamber should convict on the basis of Art.7(1) only and consider the accused's criminal responsibility as a superior an aggravating feature for sentence.²⁰⁴ The Trial Chamber followed this approach and entered convictions under Art.7(1) only and not Art.7(3), superior responsibility.²⁰⁵

107. The Trial Chamber found that by virtue of the Appellant's superior responsibility he abused his superior position of authority.²⁰⁶ Contrary to the Prosecution's contention,²⁰⁷ because the Trial Chamber relied on the Appellant's criminal responsibility as a superior as an aggravating feature,²⁰⁸ it had to find that the elements of Art.7(3) had been proved beyond reasonable doubt.²⁰⁹

²⁰⁴ Judgement, para.5166, fn17732.

²⁰⁵ Judgement, para.5166.

²⁰⁶ Judgement, paras.5166, 5193.

²⁰⁷ Prosecution-RB, paras.320-322.

²⁰⁸ Judgement, paras.5166; 5185; Appellant-AB, para.771.

²⁰⁹ Appellant-AB, paras.764, 771-777; Judgement, para.5185.

IX. GROUND EIGHT: THE APPELLANT’S RIGHT TO A FAIR TRIAL WAS VIOLATED

108. The Appellant asserts, the Prosecution fails to engage with, or undermine, the legal and factual grounds of appeal set out in Ground 8. It engages instead in a piecemeal assessment of the submissions raised, most of which the Prosecution mischaracterises.

A. THE APPELLANT HAS DEMONSTRATED THAT THE TRIAL CHAMBER ABUSED ITS DISCRETION (8.A)

[REDACTED]

109. Contrary to the Prosecution’s contention,²¹⁰ the Trial Chamber was notified that [REDACTED].²¹¹ To rebut AF1496, the Appellant advanced a positive case on alternative causes of death other than VRS criminal activity.²¹² The Appellant identifies the probative nature, and relevance of, [REDACTED] evidence in this regard to demonstrate that the Trial Chamber erred in its assessment that it had no apparent relevance to the adjudication of the case.²¹³ The impact of this on the Trial Chamber’s findings is identified.²¹⁴

110. Further, the Appellant recalls paragraphs 33 to 37 above with regards to paragraph 332 of the Response.

[REDACTED]

111. Contrary to the Prosecution’s assertion,²¹⁵ the Appellant identifies the probative nature and relevance of [REDACTED] evidence, as well as his personal knowledge and experience of the contents of the article on which it sought to rely, to demonstrate that the Trial Chamber

²¹⁰ Prosecution-RB, para.332.

²¹¹ Appellant-AB, para.785; [REDACTED]; [REDACTED].

²¹² Appellant-AB, paras.793, 797, fn1000 (both citing Appellant-AB, paras.673-675).

²¹³ *Contra* Prosecution-RB, para.333; Appellant-AB, paras.792-795, 796-799.

²¹⁴ Appellant-AB, paras.796-799.

²¹⁵ Prosecution-RB, para.334.

erred in this determination.²¹⁶ The impact of this on the Trial Chamber's findings is identified.²¹⁷

Closing the Defence case

112. The Prosecution incorrectly claims, in a footnote, that the Appellant did not put the Chamber on notice that he would seek reconsideration of the decision.²¹⁸ The Prosecution fails to undermine this legal ground of appeal.²¹⁹

B. THE PROSECUTION MISCHARACTERISE THE APPELLANT'S SUBMISSIONS (8.B)

Sitting-schedule

113. The Appellant's submission is that the Trial Chamber abused its discretion by conducting the trial in a manner that it was aware (a) could, and did, have a detrimental impact on his health and (b) could, and did, prevent the Appellant from effectively participating.²²⁰ The Prosecution mischaracterises and misunderstands the Appellant's submissions in 8(B.1) as one of fitness to stand trial.²²¹ As such, it fails to respond to the Appellant's submissions in 8(B.1).

114. Contrary to the Prosecution's assertion,²²² as the examples it cites in paragraph 339 of its Response show, this issue was raised by the Defence.²²³ Further, they were raised in the weekly medical reports from the UNDU medical staff.²²⁴ The Trial Chamber was aware of the impact the sitting schedule was having on the Appellant and failed to adapt the proceedings accordingly.

²¹⁶ Appellant-AB, paras.785, 794, 800-802; [REDACTED].

²¹⁷ Appellant-AB, paras. 800-802.

²¹⁸ Prosecution-RB, para.336, fn1324; see Appellant-AB, para.804 fn1014.

²¹⁹ Appellant-AB, paras.803-805, 807.

²²⁰ Appellant-AB, paras.830-840.

²²¹ Prosecution-RB, paras.325, 344, 337, 339-345.

²²² Prosecution-RB, para.342, fn1336.

²²³ See also [REDACTED]; [REDACTED].

²²⁴ Appellant-AB, paras.828, 833-835, 837-838.

115. The Appellant notes, disregarding serious indicators, such as medical evidence, that point to modifying the schedule to safeguard welfare and ensure full participation can *ipso facto* constitute an abuse of the Trial Chamber's discretion.²²⁵ The Appeals Chamber should reject the Prosecution's suggestion that examples of participation negate an abuse of discretion.²²⁶
116. The Prosecution's contention that the Appellant has failed to explain how the Trial Chamber abused its discretion in the 14 March 2014 decision is inaccurate.²²⁷ The Appellant recalls paragraphs 827-829 and 837-839 of its Brief. The Trial Chamber had ample medical evidence supporting the detrimental impact the schedule could, and did, have on the Appellant's health before the 14 March 2014 decision.²²⁸ As such, it abused its discretion by (a) denying the request, and/or (b) thereafter disregarding medical evidence that pointed to adaptations to the court proceedings to safeguard the Appellant's welfare and ensure full participation.²²⁹

Privileged communications

117. The Appeals Chamber should reject the Prosecution's suggestion that Rule 97 does not apply in public spaces.²³⁰ The Prosecution provide no legal basis for this contention.²³¹ Moreover, the Prosecution later concedes that at other times during the trial the Appellant's conversations with Counsel in the courtroom were confidential and, as such, protected by privilege.²³²
118. The Appellant notes, the Prosecution does not dispute, nor engage with, the conduct of Prosecution Counsel Ms. Marcus as set out in the Brief.²³³ This is not the situation envisaged by Rule 97(ii)²³⁴ or Judge Moloto²³⁵. The Appeals Chamber should reject the Prosecution's implied contention that the volume of the utterances absolves, or negates, the significance

²²⁵ [REDACTED]; Appellant-AB, paras.823, 828-829, 833-838.

²²⁶ Prosecution-RB, paras.344-345.

²²⁷ Prosecution-RB, paras.346-347.

²²⁸ Appellant-AB, paras.825, 833-836.

²²⁹ Appellant-AB, paras.837-839.

²³⁰ Prosecution-RB, paras.352-353.

²³¹ Prosecution-RB, para.352.

²³² Prosecution-RB, para.361, fn1386.

²³³ Appellant-AB, paras.853-855.

²³⁴ Appellant-AB, paras.853-855, 860-868.

²³⁵ Appellant-AB, paras.843, 850 fn1090.

of Prosecution Counsel Ms.Marcus's conduct with regards to the issue of voluntary disclosure.²³⁶

119. Contrary to the Prosecution's assertion,²³⁷ the Trial Chamber ruled that the Appellant had waived privilege *before* hearing the testimony of the witnesses or seeing the recordings.²³⁸ With regard to the suggestion that the Trial Chamber was aware that the witnesses were tasked to indiscriminately 'listen in' on the Appellant *before* the ruling, paragraphs 860-862 of the Brief are recalled.

120. Contrary to the Prosecution's contention,²³⁹ both Karall and Sokola testified that the comments were made while the Appellant addressed his Defence Counsel.²⁴⁰

121. The Prosecution incorrectly claims, the Appellant fails to show that the Trial Chamber erred in weighing Karall and Sokola's testimonies.²⁴¹ Paragraphs 860-868 of the Brief are recalled. Both witnesses acted under instructions from Prosecution Counsel Ms Marcus to indiscriminately 'listen in' and note *all* of the Appellant's communications during the break.²⁴²

122. The Prosecution does not undermine the Appellant's submission that the Trial Chamber failed to consider the impact of the Appellant's medical conditions on his volume of speech.²⁴³

123. With regard to the Trial Chamber's ruling on the ultimate uses of the comments,²⁴⁴ paragraph 851 of the Brief is recalled. The Trial Chamber explicitly stated that the witnesses were not there to establish *mens rea*.²⁴⁵

²³⁶ Prosecution-RB, paras.352, 355-357.

²³⁷ Prosecution-RB, para.355.

²³⁸ Appellant-AB, paras.857-859.

²³⁹ Prosecution-RB, para.358, fn1379.

²⁴⁰ See Appellant-AB, paras.854, 855.

²⁴¹ Prosecution-RB, para.359.

²⁴² See Appellant-AB, paras.853-855, 863, 866-868.

²⁴³ Prosecution-RB, para.361; see Appellant-AB, paras.869-871.

²⁴⁴ Prosecution-RB, para.362.

²⁴⁵ T.16589.

124. The Appellant recalls, the remedy sought is to reverse the findings on counts 2 to 11, to the extent of the error identified.²⁴⁶

C. THE PROSECUTION MISREPRESENTS THE APPELLANT’S SUBMISSIONS (8.D)

125. The Prosecution incorrectly claims that the Appellant fails to identify any unfairness and unreasonableness of the Trial Chamber’s reasoning.²⁴⁷ The Trial Chamber refused numerous applications to adjourn the proceedings or for additional time due to disclosure violations.²⁴⁸ The cumulative effect of the disclosure failings, was not cured by the 90 days granted by the Trial Chamber to cure a single aspect of this.²⁴⁹ The Trial Chamber abused its discretion by failing to ensure that the Defence had sufficient preparation time before the trial in light of the totality of the disclosure failings.²⁵⁰ As such, in combination with other grounds of appeal, the approach rendered the trial unfair.²⁵¹

D. THE PROSECUTION’S ARGUMENTS FAIL TO UNDERMINE THE LEGAL OR FACTUAL GROUNDS OF APPEAL BROUGHT BY THE APPELLANT, NOR THE REMEDY SOUGHT

126. The Appellant affirms and recalls paragraphs 882-916 of the Brief.²⁵²

127. Given that the majority of the trial Judges hold office at the Mechanism, it would not be impractical for the Appeals Chamber to remit the case and replace Judge Moloto.²⁵³

²⁴⁶ Appellant-AB, para.875; *contra* Prosecution-RB, para.363.

²⁴⁷ Appellant-AB, paras.879-880; *contra* Prosecution-RB, paras.365-367.

²⁴⁸ Second Adjournment Decision, paras.1-6.

²⁴⁹ Appellant-AB, para.879.

²⁵⁰ Appellant-AB, para.880.

²⁵¹ Appellant-AB, para.908.

²⁵² *Contra* Prosecution-RB, paras.370-373.

²⁵³ *Contra* Prosecution-RB, para.375.

X. GROUND NINE: THE TRIAL CHAMBER ERRED IN IMPOSING A LIFE SENTENCE

128. The Prosecution's arguments fail to undermine the legal and factual grounds of appeal brought by the Appellant in Ground 9.

A. THE APPELLANT HAS DEMONSTRATED THAT THE TRIAL CHAMBER ABUSED ITS DISCRETION BY (A) AGGRAVATING THE SENTENCE ON THE BASIS OF ART.7(3) AND (B) FAILING TO GIVE SUFFICIENT WEIGHT TO FACTORS IN MITIGATION (9.A-C)

129. The Appellant recalls paragraphs 105 to 107 above, with regards to Art.7(3).²⁵⁴

130. The Prosecution erroneously claims that the Appellant has failed to show that the Trial Chamber abused its discretion by giving insufficient weight to factors in mitigation.²⁵⁵ Paragraphs 921-931 of the Brief are recalled, identifying the error and the consequences of it.

131. The Appellant recalls paragraph 931 of the Brief and asserts that the Appeals Chamber should reject the Prosecution's suggestion that the mitigating factors are insufficient to reduce his life sentence.²⁵⁶

B. THE PROSECUTION'S RESPONSE SHOWS A MISUNDERSTANDING OF THE APPELLANT'S SUBMISSION THAT (A) THERE ARE COMPELLING REASONS TO REVISIT THE LEGALITY OF IMPOSING A LIFE SENTENCE AND (B) THE TRIAL CHAMBER ERRED IN LAW BY IMPOSING A LIFE SENTENCE (9.D)

132. The Appellant recalls, *Maktouf* is cited to conceptualise the application of *nulla poena sine lege* and *lex mitior* to changes in a sentencing regime.²⁵⁷ Further, the Trial Chamber's approach and reliance on the impugned authorities in the Judgement is the subject of appeal in 9(D), therefore this could not have been raised at trial.²⁵⁸

²⁵⁴ *Contra* Prosecution-RB, para.378.

²⁵⁵ Prosecution-RB, paras.379-385.

²⁵⁶ Prosecution-RB, para.386.

²⁵⁷ Appellant-AB, paras.932-934.

²⁵⁸ *Contra* Prosecution-RB, para.391; Appellant-AB, paras.932-933, 944-957.

133. The Appellant’s submission is not that the domestic law of the former Yugoslavia is binding on the Trial Chamber.²⁵⁹ The Appellant submits that (a) Art.24 incorporated this domestic sentencing practice at the international law; (b) the subsequent adoption of Rule 101(A) created another penal law within the same jurisdiction with a competing sentence to Art.24; (c) for this reason, imposing a life sentence violated the principles of *nulla poena sine lege* and *lex mitior*.²⁶⁰ The Prosecution fails to respond to this submission.²⁶¹
134. The Appeals Chamber should reject the Prosecution’s suggestion that the United States’ “understand[ing]” of the Tribunal’s sentencing powers is reflected in the text of Art.24.²⁶² It ignores the text of the provision absent any evidence of consensus on this. The statements made by the Secretary-General, in the Report to which the Statute was annexed, are more persuasive in this regard.²⁶³ Moreover, other representatives’ comments about the primacy of the Tribunal related to jurisdiction, not sentence.²⁶⁴
135. The Appellant recalls that under the sentencing regime applicable in the SFRY the maximum sentence of *imprisonment* was one of 20 years.²⁶⁵ The Appellant notes that the Prosecution cites *Čelebići* to support its contention that a life sentence was rooted in CIL,²⁶⁶ but fails to engage with the Appellant’s submissions in paragraphs 947-953 of the Brief regarding the deficiencies in the reasoning behind this.²⁶⁷

²⁵⁹ Prosecution-RB, paras.388, 390.

²⁶⁰ Appellant-AB, paras.944-957.

²⁶¹ Prosecution-RB, paras.388-391, 393 fn1468.

²⁶² *Contra* Prosecution-RB, para.389.

²⁶³ Appellant-AB, para.946.

²⁶⁴ *Contra* Prosecution-RB, para.389, fn1456.

²⁶⁵ Judgement, para.5208, fn17818; Appellant-AB, paras.955-957; *contra* Prosecution-RB, para.391.

²⁶⁶ Prosecution-RB, para.389.

²⁶⁷ See Prosecution-RB, paras.391 fn1461, 393 fns1467, 1468.

XI. RELIEF SOUGHT

136. The Appellant invites the Appeals Chamber to grant the remedies requested in paragraphs 959-960 of the Brief.

Word Count: 8,971.

RESPECTFULLY SUBMITTED BY:

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Dated this 29th day of November 2018

At The Hague, The Netherlands

JURISPRUDENCEMladić Case Documents

Abbreviation	Full citation
Appellant-AB	<i>Prosecutor v. Ratko Mladić</i> , MICT-13-56-A, Defence Appeal Brief on Behalf of Ratko Mladić, 6 August 2018.
Brief	<i>Prosecutor v. Ratko Mladić</i> , MICT-13-56-A, Defence Appeal Brief on Behalf of Ratko Mladić, 6 August 2018.
[REDACTED]	[REDACTED].
Fourth Decision on Adjudicated Facts	<i>Prosecutor v. Mladić</i> , IT-09-92-PT, Trial Chamber I, Fourth Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Concerning the Rebuttal Evidence Procedure, 02 May 2012.
Indictment	<i>Prosecutor v. Ratko Mladić</i> , IT-09-92-PT, Prosecution Submission on the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011.
Judgement	<i>Prosecutor v. Ratko Mladić</i> , IT-09-92-T, Trial Chamber I, Judgement, 22 November 2017.
[REDACTED]	[REDACTED].
Mladić AF Motion	<i>Prosecutor v. Ratko Mladić</i> , IT-09-92-PT, Prosecution Motion for Judicial Notice of Adjudicated Facts, 9 December 2011.
[REDACTED]	[REDACTED].
[REDACTED]	[REDACTED].
[REDACTED]	[REDACTED].
Prosecution-RB	<i>Prosecutor v. Ratko Mladić</i> , MICT-13-56-A, Prosecution Response Brief, 14 November 2018.
Reply	<i>Prosecutor v. Ratko Mladić</i> , MICT-13-56-A, Reply to Prosecution's Response Brief on behalf of Ratko Mladić, 29 November 2018.
Response	<i>Prosecutor v. Ratko Mladić</i> , MICT-13-56-A, Prosecution Response Brief, 14 November 2018.
[REDACTED]	[REDACTED].
Second Adjournment Decision	<i>Prosecutor v. Ratko Mladić</i> , IT-09-92-PT, Trial Chamber, Decision on Urgent Defence Motion of 14 May 2012 and Reasons for Decision on Two Defence Requests for Decision on Two Defence Requests for Adjournment of the Start of Trial 3 May 2012, 24 May 2012.
Table Incidents	<i>Prosecutor v. Ratko Mladić</i> , MICT-13-56-A, Prosecution Response Brief, 14 November 2018, table from pages 14 to 22.

ICTY Decisions and Judgements

Abbreviation	Full citation
<i>Brđanin</i> AJ	<i>Prosecutor v. Radoslav Brđanin</i> , IT-99-36-A, Appeals Chamber, Judgement, 3 April 2007.
<i>Čelebići</i> AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo</i> , IT-96-21-A, Appeals Chamber, Judgement, 20 February 2001.
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , IT-98-29-A, Appeals Chamber, Judgement, 30 November 2006.
<i>Gotovina</i> AJ	<i>Prosecutor v. Ante Gotovina & Mladen Markač</i> , IT-06-90-A, Appeals Chamber, Judgement, 16 November 2012.
<i>Karadžić</i> Hostage-Taking AD	<i>Prosecutor v. Radovan Karadžić</i> , IT-95-5/18-AR73.9, Appeals Chamber, Decision on Appeal from denial of Judgement of Acquittal for Hostage-Taking, 11 December 2012.
<i>Karadžić</i> TJ	<i>Prosecutor v. Radovan Karadžić</i> , IT-95-5/18-T, Trial Chamber, Public Redacted version of Judgement, 24 March 2016.
<i>Kupreškić</i> AJ	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipvoć, and Vladimir Šantić</i> , IT-95-16-A, Appeals Chamber, Judgement, 23 October 2001.
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočkam Mlađo Radić, Zoran Žigić, Dragoljub Prcać</i> , IT-98-30/1-A, Appeals Chamber, Judgement, 28 February 2005.
<i>Mrkšić</i> AJ	<i>Prosecutor v. Mile Mrkšić & Veselin Šljivančanin</i> , IT-95-13/1, Appeals Chamber, Judgement, 05 May 2009.
<i>Šainović</i> AJ	<i>Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić</i> , IT-05-87-A, Appeals Chamber, Judgement, 23 January 2014.
<i>Šainović</i> TJ	<i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić</i> , IT-05-87-T, Trial Chamber, Judgement, 26 February 2009.
<i>Stanišić & Simatović</i> AJ	<i>Prosecutor v. Jovica Stanišić & Franko Simatović</i> , IT-03-69-A, Appeals Chamber, Judgement, 09 December 2015.
<i>Stanišić & Župljanin</i> AJ	<i>Prosecutor v. Mićo Stanišić & Stojan Župljanin</i> , IT-08-91-A, Appeals Chamber, Judgement, 30 June 2016.

ICTR Citations and Decisions

Abbreviation	Full Citation
<i>Karemera</i> Interlocutory Decision	<i>Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse, Joseph Nzirorera</i> , ICTR-98-44-AR73(C), Appeals Chamber, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006.

ICJ Citations

Abbreviation	Full citation
<i>North-Sea Continental Shelf Cases</i>	<i>North-Sea Continental Shelf Cases (Federal Republic of Germany v. Netherlands; Federal Republic of Germany v. Denmark)</i> , ICJ, Judgement, Reports 1969, 20 February 1969. [Appellant Appeal Brief, Book of Authorities, section C, page 0606]

Articles

Abbreviation	Full citation
<i>E.van Sliedregt</i>	van Sliedregt, Elies “ <i>Joint criminal enterprise as a pathway to convicting individuals for genocide</i> ”, <i>Journal of International Criminal Justice</i> , 5.1 (2007). [Appellant Appeal Brief, Book of Authorities, section D, page 1567]

National Legislation and Documents

Abbreviation	Full citation
<i>Law Reports on Chinese Law</i>	<i>Law Reports of Trials of War Criminals, selected and prepared by the United Nations War Commission, United Nations War Commission, Annex “Chinese Law Concerning Trials of War Criminals”, Volume XIV, 1949.</i>
<i>US Handbook</i>	<i>US Naval Handbook, Annotated Supplemented to the Commander’s Handbook on the Law of Naval Operations, NWP 9 (Rev.A)/FMFM 1-10 (Washington, D.C., 1989). [Prosecution Response, Book of Authorities, item 13]</i>



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