

1 Wednesday, 26 August 2020

2 [Open session]

3 [The appellant entered court]

4 --- Upon commencing at 9.49 a.m.

5 JUDGE NYAMBE: [Via videolink] Thank you, Registrar.

6 Good morning, ladies and gentlemen. Before I go any further, I
7 would like to announce the revised schedule of breaks for today.

8 Due to the change in the cleaning protocol, the breaks will be
9 reduced to 40 minutes today instead of the one hour we had yesterday.

10 Secondly, I think I have an apology to make to co-counsel for the
11 Mladic Defence team. Inadvertently yesterday, I referred to him as
12 Mr. Lukic, who is the lead counsel and not present. Let the record show
13 that the co-counsel for Mr. Mladic, Mr. Ivetic, is the one representing
14 the appellant today.

15 That said, as I stated yesterday, only the person who is speaking
16 may have their microphone turned on. All others kindly keep your
17 microphones off until such time as you are invited to speak. Thank you
18 for your kind co-operation. We will now proceed.

19 Mr. Mladic, you can understand the proceedings in a language you
20 understand?

21 THE APPELLANT: [Interpretation] Yes, I can, Your Honour.

22 JUDGE NYAMBE: [Via videolink] And for the record, the appearances
23 for the Prosecution. Can you confirm?

24 MS. BAIG: Yes, Your Honour. Laurel Baig and Barbara Goy for the
25 Prosecution. We are joined by our case manager, Ms. Janet Stewart, and

1 today we'll be joined by our colleagues Katharine Marsden,
2 Mariya Yakusheva, and Marisa Bassett.

3 JUDGE NYAMBE: [Via videolink] Thank you. For the Defence for the
4 record, appearances, please --

5 MS. BAIG: Pardon me, Your Honour. I have to correct that for a
6 moment. It's Marie Davoise who will be joining us today.

7 JUDGE NYAMBE: [Via videolink] Very well.

8 Now for the Defence.

9 MR. IVETIC: Madam Presiding Judge, Your Honours. Appearing on
10 behalf of Mr. Mladic, co-counsel Dragan Ivetic, and legal consultant
11 Peta-Louise Bagott.

12 And no apologies are needed, Your Honour, for referring to me as
13 Mr. Lukic. It's understandable. Thank you.

14 JUDGE NYAMBE: [Via videolink] Thank you.

15 The Appeals Chamber will now continue to hear the Prosecution's
16 appeal.

17 Counsel for the Prosecution, you may start.

18 MS. BAIG: Thank you, Your Honours.

19 I'd like now to turn to Mladic's Ground 5 concerning Srebrenica.

20 Your Honours, in July 1995, Mladic used the Bosnian Serb forces
21 under his command to execute thousands of Bosnian Muslim men and boys and
22 to forcibly displace tens of thousands of women, children, and elderly
23 men from Srebrenica.

24 He did this as a member of a joint criminal enterprise, which
25 included Radovan Karadzic and a number of Mladic's subordinates. Their

1 purpose was to eliminate the Bosnian Muslims in Srebrenica. The JCE
2 initially included the commission of the crimes of persecution and
3 forcible transfer. And by the early morning of 12th of July, 1995,
4 genocide, extermination, and murder became part of the means to achieve
5 this objective. That's paragraph 5096.

6 None of Mladic's challenges show any error in the Chamber's sound
7 conclusions.

8 I'll begin my submissions with a brief overview of Mladic's key
9 role in the Srebrenica crimes, and I will then turn to Mladic's main
10 arguments about the forcible displacement operation and the murder
11 operation.

12 Starting with an overview.

13 Your Honours, the Trial Chamber convincingly concluded that
14 Mladic was instrumental to the crimes in Srebrenica. He commanded and
15 controlled the co-ordinated actions of the VRS and the police forces
16 subordinated to him, personally overseeing the implementation of this
17 critical operation.

18 And as with the take-overs in the other municipalities, the
19 Chamber found that the goal of the attack on Srebrenica was to make the
20 enclave disappear. To empty it. To make it Serb territory.
21 Paragraph 4975.

22 And on the 11th July 1995, after his forces had taken control of
23 the area, Mladic conducted a victory walk through the town, declaring it
24 Serb Srebrenica. After the fighting was over, he signalled the crimes
25 that were to come, announcing that now "the time has come to take revenge

1 on the Turks."

2 Mladic's forces directly attacked Bosnian Muslim civilians. They
3 shelled mosques and threw grenades into homes. They ordered the
4 civilians to leave, threatening them, forcing them out. As many as
5 15.000 Bosnian Muslims, mostly men, fled through the forest in an attempt
6 to reach Muslim-held territory in what is referred to as the column. The
7 rest of the population sought refuge at the UN compound in nearby
8 Potocari.

9 By the end of the day on 11th July, several thousand Bosnian
10 Muslims - mainly women, children, elderly, and injured men - were already
11 gathered inside the UN compound. And by the next morning, the displaced
12 population had swelled from 25- to 30.000. Trial judgement 2453.

13 They spent one or two nights in catastrophic conditions. Serb
14 forces continued shelling and firing in the surrounding areas. They
15 killed, mistreated, raped, and intimidated refugees, and the situation
16 was so desperate that some committed suicide.

17 On the 12th of July, Mladic supervised as his forces put the
18 women, children, and elderly onto buses for transport to Bosnian Muslim
19 territory. Some they had to force on board.

20 And it was Mladic who ordered the mobilisation of these buses.
21 He ordered the road to be open for the transfer, and he ultimately
22 ordered the transportation of the Bosnian Muslims out of Potocari. And
23 over the course of two days, Mladic's men forcibly transferred around
24 25.000 Bosnian Muslim civilians to Bosnian Muslim-held territory.

25 And as the civilian population was being loaded onto buses,

1 males, including boys as young as 12, were separated out, torn from their
2 terrified families, in Mladic's presence by soldiers under his command;
3 paragraph 5052.

4 Mladic's forces collected about a thousand Muslim men and boys in
5 a nearby building in Potocari referred to as the white house. They
6 confiscated their identity documents and personal belongings. And later,
7 these were piled up and burned. And pursuant to Mladic's orders, all
8 around the area units under his command focused on blocking the men who
9 had fled in the column from reaching ABiH-held territory, firing on them
10 with tanks and anti-aircraft guns, calling on them to surrender,
11 threatening their families, promising that they would not be harmed.

12 Some surrendered. Some were captured. Mladic's forces detained
13 the Bosnian men by the thousands in a football stadium, a meadow along
14 the sides of the main road.

15 And when Mladic travelled around the area on the 13th of July, he
16 spoke to thousands of Bosnian Muslim men being detained by his soldiers.
17 He offered them false assurances of exchange, knowing full well that the
18 plan was to kill them. And giving orders that furthered that plan,
19 ordering his subordinates to stop registering the names of the prisoners
20 in their custody, ordering their bussing to other locations where they
21 would then be murdered.

22 And over the next hours and days, Mladic's forces detained the
23 Bosnian Muslim prisoners from Potocari and from the column on buses, and
24 they crammed them into warehouses and schools and other makeshift
25 detention facilities in inhumane conditions, where many were severely

1 mistreated; paragraphs 2946 to 2961.

2 And in the meantime, starting already on the 12th of July, the
3 killings began. First, just a few. And then on a massive scale. A
4 scale not seen on European soil since the Second World War. Many of the
5 detainees were killed on the spot. 1.000 were killed where they were
6 detained in the Kravica warehouse on the night of the 13th of July. And
7 others were systematically moved to more and more remote areas, to
8 fields, to a military farm, to a dam. And there they were executed by
9 the handful, by the dozen, by the truck-load, by the hundreds, and
10 ultimately by the thousands by gunfire and grenade, without regard to
11 their civilian or military status, based only on their identity as
12 Bosnian Muslims.

13 Their bodies falling into holes or moved to hidden mass graves.
14 Heavy equipment used to hide their remains. And later, their bodies were
15 moved again. When some were found, some had their hands tied, some were
16 wearing blindfolds, and some are still missing.

17 Mladic was key to the success of this operation. Not only was he
18 present giving orders, supervising, and directing, he also played a
19 critical and high-level role in keeping the international community from
20 stopping these massacres. Mladic ordered the press to be excluded from
21 the area, not to conceal military activities, but to conceal the murders.
22 And he lied to the international media, including by selling staged video
23 footage of food distribution in Potocari to international media agencies.
24 That's paragraph 2438, 5047 of the judgement.

25 He lied to international authorities and officials. He didn't

1 investigate or punish any of his subordinates. And then in September and
2 October of 1995, when the international community identified some of the
3 mass graves, Mladic tried to cover up their genocidal slaughter by using
4 his forces to dig up the victims' bodies with heavy machinery, trucking
5 the bodies to more secret locations, and then reburying them, co-mingling
6 bodies from different graves and co-mingling body parts from different
7 victims in a gruesome attempt to hide their incriminating remains.

8 Mladic was in charge of the Srebrenica operation. Srebrenica was
9 Mladic's operation. And the Chamber was right to conclude that he was
10 criminally responsible for these crimes.

11 Let me now turn to Mladic's arguments about the persecutory
12 forcible transfer operation. His main contention is that this was a
13 humanitarian evacuation rather than a criminal displacement. This same
14 argument was considered and rejected by the Trial Chamber. And I'd like
15 to highlight today three reasons why Mladic's view is unreasonable.

16 First, he ignores that the forcible removal of the Bosnian Muslim
17 population of Srebrenica was part of the Bosnian Serb leadership's
18 long-term plan to remove Bosnian Muslims from Eastern Bosnia. Second, he
19 ignores the displacement was violent and coercive. And third, he ignores
20 that the displacement did not meet international law governing
21 humanitarian evacuations.

22 Starting with the long-term plan. Like the take-overs of many
23 other municipalities in the overarching JCE, which began in early 1992,
24 the Srebrenica take-over was devised with the intent to permanently
25 remove the Bosnian Muslim population living there. The Trial Chamber

1 reasonably concluded that the goal of the attack was to make the enclave
2 disappear, to empty it, and to make it Serb territory; paragraph 4975.

3 Of course, Mladic stated so explicitly in Directive 4, which was
4 issued in November 1992. And just to recall, directives are the highest
5 level of political military direction for the conduct of the war.

6 And in Directive 4, Mladic set the objective: To eliminate
7 Bosnian Muslim population from the Srebrenica enclave. In addition to
8 crushing the enemy forces, Mladic also set the goal of forcing the army
9 to leave the enclave "with the Muslim population." And I would refer you
10 to the finding at 2359 of the judgement.

11 His express intention was to inflict the heaviest possible losses
12 on the enemy so that they were forced to leave the area along with the
13 Muslim population. This is a criminal goal. And it was recognised as
14 criminal.

15 In 1993, when the United Nations Security Council set up the safe
16 area in Srebrenica, it condemned the deliberate actions of the Bosnian
17 Serbs to "force the evacuation of the civilian population from
18 Srebrenica ... as part of its abhorrent campaign of ethnic cleansing."

19 So ethnic cleansing by forcible displacement, preventing this
20 outcome, was the very reason why UN peacekeepers were sent to the area.
21 And I refer you to paragraph 2361 of the judgement.

22 By the spring of 1995, Mladic's soldiers had already forcibly
23 displaced many tens of thousands from the other municipalities.
24 Srebrenica was one of the only municipalities standing between Mladic and
25 his fellow JCE members' goal of an ethnically cleansed Serbian state that

1 included all of Eastern Bosnia. And the plan to achieve this critical
2 goal was set out in Directive 7 of March 1995.

3 This directive was drafted in Mladic's Main Staff and signed by
4 Karadzic, and the plan was to create a "unbearable situation of total
5 insecurity with no hope of further survival or life for the inhabitants
6 of Srebrenica" that would leave the Muslim population with no choice but
7 to leave the area. And I refer you to paragraph 2383 of the judgement.

8 Following this plan, Mladic further restricted humanitarian aid,
9 crippling both the population and the United Nations DutchBat forces that
10 were protecting the enclave; paragraph 2360.

11 Mladic argued yesterday, as he did at trial, that Directive 7/1
12 signed by Mladic replaced Directive 7. The Trial Chamber considered this
13 argument and reasonably rejected it in light of witness evidence to the
14 contrary, and in particular the evidence showing that the subsequent
15 orders, including orders issued by Mladic, referred to both Directive 7
16 and 7/1.

17 The Trial Chamber concluded that Directive 7/1 did not rescind or
18 amend the content of Directive 7 but merely translated it into military
19 operational tasks. And I refer you to paragraph 2385 and 2386 of the
20 trial judgement.

21 And one of the examples of military orders that refer to both
22 Directive 7 and 7/1 is the Krivaja 95 order, which my learned friend
23 referred to yesterday. This was the order to attack the Srebrenica
24 enclave.

25 Mladic claims that the Prosecution has conceded that this was a

1 permissible military order. But again, he's misstating the Prosecution's
2 position. From the beginning of the case, the Prosecution has maintained
3 that this order had both a legitimate military objective and a criminal
4 one. It was legitimate to seek to prevent the ABiH army from attacking
5 and to seek to sever contact between the two enclaves, but the order also
6 sets the task of creating the conditions for the elimination of the
7 enclaves. And on the face of that order, Mladic and the other JCE
8 members involved in the attacks intended to achieve the crime of removing
9 the Muslim population.

10 And this is why the Chamber found that the purpose of the attack
11 was to make the enclave disappear.

12 And then in early July 1995, Mladic's forces attacked and Mladic
13 led them to military victory over the town. And then he displaced or
14 killed all of the Bosnian Muslims living there.

15 And this brings me to my second point. Mladic's arguments,
16 claiming a humanitarian evacuation, ignore that the displacement
17 operation was violent and coercive. There was nothing humanitarian about
18 this operation. On the contrary, it was barbaric. Mladic claims that he
19 gave civilians a choice, but he conveniently ignores all of the Chamber's
20 findings about the force used to cleanse the Bosnian Muslims from the
21 territory, the fear created by the many years of ethnic cleansing, the
22 forces that created the terrifying and coercive conditions, the violence
23 used to separate the men and boys from their terrified families, and to
24 force the people onto buses.

25 And ultimately, Mladic's account ignores what happened to the men

1 who were separated or captured. Nearly all of them were killed. Only a
2 few managed to survive. Many were subjected to what the Chamber calls
3 appalling abuse before they were executed; paragraph 3298.

4 There can be no humanitarian explanation that is consistent with
5 the fact that thousands of Bosnian Muslims were executed.

6 The Trial Chamber was correct to conclude that the circumstances
7 were so coercive that there was no genuine choice whether to stay or go.

8 Turning to the legal requirements.

9 Mladic also ignores that the forced displacement did not meet any
10 of the criteria for a legal displacement under international law, as set
11 out, for example, in Article 49 of the Fourth Geneva Convention or
12 Article 17 of Additional Protocol II.

13 First, there was no imperative military reason for this
14 displacement. Second, the removal was not carried out for the security
15 of those involved. Hostilities had already ended before the people were
16 bussed out. The only remaining risk - the only remaining risk - was that
17 posed by Mladic's own forces. And the law does not permit Mladic to use
18 the coercive conditions that he created to justify the forcible removal
19 of the population. And I would refer you, for example, to the Prlic
20 appeals judgement at paragraph 495.

21 Third, the removal was not meant to be a temporary one --

22 THE REGISTRAR: Ms. Baig, could you kindly pause. We have lost
23 feed for the Presiding Judge. Thank you.

24 Madam Presiding Judge, can you hear and see us now?

25 JUDGE NYAMBE: [Via videolink] Yes, thank you. I'm able to hear

1 you now.

2 THE REGISTRAR: Thank you. Yes, then we can proceed now. Thank
3 you.

4 MS. BAIG: Madam Presiding Judge, should I just proceed where I
5 left off when I was informed that you were cut out?

6 JUDGE NYAMBE: [Via videolink] That would be nice.

7 MS. BAIG: Okay, thank you. I'll start with my third point.

8 The removal was not meant to be a temporary one. The VRS burned
9 down Bosnian Muslim homes and religious buildings, leaving nowhere to
10 return to. And it does not matter to this analysis that the UN was
11 involved in any aspect of this displacement. Mladic's claim that this
12 alleged co-ordination and co-operation wasn't given sufficient weight is
13 simply irrelevant.

14 The involvement of humanitarian actors does not make the illegal
15 displacement lawful. And I would refer you, for example, to the Stakic
16 appeals judgement at paragraph 286.

17 Nor does it undermine the Chamber's sound conclusions on Mladic's
18 intent. Mladic did meet with UN officials to discuss the removal of the
19 civilian population. Notably, he met with them three times at the
20 Hotel Fontana. But keep in mind, as the Trial Chamber did, that at this
21 point in time Mladic's forces had attacked the UN peacekeepers and their
22 bases. He had issued ultimatums to the UN to surrender weapons. And
23 Mladic's forces were detaining DutchBat peacekeepers. Mladic was
24 threatening to kill them if NATO air strikes continued.

25 The Chamber was well aware of this threatening context when it

1 considered Mladic's statements. At the Hotel Fontana meetings, this was
2 not harmless military language as Mladic argues. Nor does anything turn
3 on whether the Trial Chamber relied on Koster's account of an interaction
4 with Mladic or the related trial video that was discussed yesterday. The
5 difference in language is not material.

6 Ultimately, after allowing the UN to accompany one convoy,
7 Mladic's men stole DutchBat's jeeps, weapons, and equipment, making it
8 impossible for the UN to provide any further escorts; paragraph 2557 of
9 the judgement.

10 And the United Nations did not agree that the transfer was legal.
11 When, on the 17th of July, DutchBat Deputy Commander Franken was asked to
12 sign a prepared declaration that the so-called evacuation was in
13 accordance with international law, he added that the UN was only able to
14 observe the first convoy. And the circumstances of this declaration are
15 important. The UN, at that time, was still trying to secure the safety
16 of a small number of injured Bosnian Muslims.

17 Nor does it matter that the so-called representatives of the
18 Muslim population were involved in discussions. The law is clear:
19 Representatives, even democratically elected ones, cannot authorise
20 forcible transfer. But the so-called representatives involved in this
21 case were not really representing anyone. The Chamber found that they
22 were designated as representatives not by the Muslim population but by
23 the Serb side; paragraph 2476.

24 And even though they were not real representatives, Mladic warned
25 them that the fate of their people was in their hands, warning that

1 Bosnian Muslims could "live or vanish" and "either survive or disappear."
2 Paragraph 2477.

3 In any event, Your Honours, that some individuals purportedly
4 wanted to leave does not make the displacement a legal evacuation. The
5 circumstances show that the situation was so coercive that no one was in
6 any position to make a genuine choice. Mladic's statement, recorded on
7 film, suggesting that the displaced population had a choice, is disproved
8 by all of the surrounding circumstances. And the intercepted
9 evidence, where Mladic did not know that he was being recorded, is better
10 evidence of his true intent.

11 Mladic was clear in his private conversations, when he was
12 intercepted saying that all of the Bosnian Muslims should be removed,
13 including those who do not want to leave. That can be found at
14 paragraph 5004 of the judgement and paragraph 5128.

15 The victims did not have a genuine choice. The only reasonable
16 conclusion, based on the totality of the evidence, is that the
17 Bosnian Muslims of Srebrenica were forcibly displaced. This was a
18 criminal forcible transfer, not a legal evacuation on humanitarian
19 grounds, and Mladic has shown no error.

20 I'm turning now, Your Honours, to Mladic's arguments about the
21 murder operation. Mladic tries to distance himself from the murders in
22 different ways, and I intend to address four of them today.

23 First, concerning the JCE meeting. Second, his so-called alibi
24 evidence. Third, Nikolic's evidence. And fourth, the status of the
25 victims.

1 Your Honours, I'd just like to check before I proceed because
2 this first section is going to take longer than the four minutes
3 remaining in this session. Would you prefer that I begin, or would you
4 like me to stop here for the break?

5 JUDGE NYAMBE: [Via videolink] Well, if it's agreeable with you,
6 we can stop now and resume after 40 minutes to go into the longer
7 submission.

8 MS. BAIG: Thank you, Your Honours.

9 JUDGE NYAMBE: [Via videolink] We break now.

10 --- Recess taken at 10.26 a.m.

11 --- On resuming at 11.11 a.m.

12 THE REGISTRAR: Good morning, Madam Presiding Judge. Can you
13 hear and see us now?

14 JUDGE NYAMBE: [Via videolink] Yes, I can hear and see you.

15 THE REGISTRAR: Yes.

16 JUDGE NYAMBE: [Via videolink] We shall now continue hearing the
17 Prosecution's response to Mr. Mladic's appeal.

18 Madam Prosecutor, you have one hour and six minutes of time
19 allocated to your responses. You may proceed.

20 MS. BAIG: Thank you, Madam Presiding Judge.

21 Before the break, I set out a roadmap of four arguments that I'll
22 address in relation to the murder operation. Turning to the first.

23 Mladic claims that there was no common plan to execute the men
24 and boys because there was no evidence that he held a meeting during the
25 night of the 11th to 12th of July. But the Prosecution never claimed

1 that a specific meeting occurred, and the Trial Chamber never found that
2 such a meeting happened. Nothing turns on whether a specific meeting
3 took place. A JCE does not require a meeting or even an express
4 agreement. As the Chamber correctly recognised in paragraph 3561, it
5 only requires a common objective that amounts to or involves the
6 commission of a crime.

7 And what we know from the evidence is that by the morning of the
8 12th of July, the common objective included the plan to murder the
9 Bosnian Muslim males. We know from the evidence that by the morning of
10 12th of July, all of the relevant military and police leaders were
11 preparing for the murder operation.

12 Outside the Hotel Fontana on 12th of July at 10.00 a.m., just
13 prior to the third meeting, Momir Nikolic and JCE members
14 Lieutenant-Colonels Popovic and Kosoric were discussing where the men
15 should be executed. Not whether, just where. Popovic confirmed that all
16 the balijas should be killed. And the evidence proved that others in the
17 chain of command, such as Jankovic and Blagojevic, already knew of the
18 plan on 12th of July.

19 And inside the Hotel Fontana that morning, Mladic announced that
20 the men would be separated out from the rest of the civilian population.
21 Ostensibly to be screened for war crimes. A screening that never
22 systematically happened, that only served as a justification for their
23 separation. Any pretence that this separation was for screening was
24 quickly disproved.

25 Many of the boys and men taken into detention were too young or

1 too old to be realistically screened for war crimes. And you cannot
2 screen for war criminals if you confiscate and burn the detainee's
3 identity papers or if you order your soldiers to stop registering the
4 detainees.

5 And we know that the murder plan had been formed by the morning
6 of the 12th of July from the killings later that day in Potocari and from
7 the co-ordinated killings that started the next day and continued
8 thereafter, carried out by different military and police units all under
9 Mladic's command.

10 The Trial Chamber found that the murders were systematic, that
11 the men and boys were "slaughtered in carefully orchestrated mass
12 executions"; paragraph 3042. We know some of the details about this
13 co-ordination from the few survivors, the men who hid under dead bodies
14 pretending to be dead themselves and then lived to tell us what happened.

15 The sheer scale and logistics of the massive and systematic
16 killing operation prove that there was a plan that was managed from the
17 very highest levels, by Mladic himself. And Mladic's actions to shield
18 the crimes from detection show that he approved of the plan.

19 On the 13th of July, Mladic gave an order to keep the media out
20 of the area, to keep the media from knowing what was happening in
21 Srebrenica; paragraph 5117. And it's the timing of this order that makes
22 it remarkable. 13th of July, 1995, was two days after the military
23 take-over was complete. It was the day that the forcible transfers of
24 25.000 civilians were complete. And it was the day that the orchestrated
25 killing operation began.

1 That killing operation was the primary activity of the Serb
2 forces in Srebrenica from the 13th onward, and this is what Mladic
3 concealed from the media with this order. And he also actively lied to
4 the media and to international authorities to keep them away.

5 And Mladic's reaction to the atrocities counters any argument
6 that he was not involved in the plan. He praised his subordinates;
7 paragraph 4290. He never punished them for their actions;
8 paragraph 4968. And instead he devoted further VRS resources to cover up
9 his crimes.

10 And as I explained yesterday, in reaching its conclusion that the
11 JCE's objective had expanded to include the killings, at least by the
12 morning of the 12th of July, the Trial Chamber was entitled to rely on
13 evidence concerning events before and after the night of 11th and
14 12th of July. And I would again refer Your Honours to the cases I
15 mentioned yesterday, in Slobodan Milosevic and the Prlic appeals
16 judgement, amongst others.

17 Mladic cannot show error in the Chamber's conclusion that a
18 decision had been taken by the morning of the 12th of July to murder the
19 men and boys. And I would note here that the video recording of a
20 Chamber's staff member offering his personal views, which are not part of
21 the record, does not shed any further light on this topic.

22 Mladic's second claim is that he lost control of his forces when
23 he was in Belgrade from 14 to 16 July 1995. At most, a three-day period.
24 The Trial Chamber carefully considered this argument and persuasively
25 rejected it, devoting 25 paragraphs to this topic. Mladic calls this an

1 alibi, but the Chamber was correct to find that it was not.

2 As we've already mentioned, the murders started on the 12th, with
3 the large-scale organised murders on the 13th, while Mladic was in the
4 area and in contact with the prisoners before Mladic left for Belgrade on
5 the afternoon of the 14th. But whether he was in Srebrenica or Belgrade,
6 Mladic remained commander of the Main Staff, and the evidence proved that
7 even when he was in Belgrade, Mladic was still actively giving
8 instructions and issuing orders that were implemented and that he took
9 measures to insure their implementation: He continued to communicate
10 with his command staff, he continued to receive reports from the field,
11 he held meetings with Slobodan Milosevic and international authorities
12 concerning the events in Srebrenica and the situation of the captured men
13 and boys and the captured UN soldiers -- UN peacekeepers.

14 But more importantly, Mladic's leading role in and criminal
15 responsibility for the crimes in Srebrenica and in other components of
16 this case was not premised on his presence at each crime site. Mladic's
17 personal involvement in the Srebrenica crimes is revealing and
18 exceptional because it goes far beyond a normal command scenario and it
19 goes far beyond what is required for his criminal responsibility. And
20 his absence from Srebrenica for three days does nothing to diminish his
21 responsibility for these crimes, especially since the murders began while
22 he was in Srebrenica and continued after his return from Belgrade.
23 Mladic shows no error.

24 Turning to my third argument. Mladic shows no error in the
25 Chamber's careful treatment of Momir Nikolic's credibility. Nikolic was

1 a participant in the events, an accomplice witness. And following the
2 relevant jurisprudence, the Chamber approached Nikolic's evidence with
3 great caution, but it found it to be "generally credible and internally
4 consistent," at paragraph 5304.

5 The Chamber was entitled to do so. Mladic fails to show that no
6 reasonable trier of fact could have reached this conclusion. And the
7 Chamber did not err by considering an investigator's notes from a plea
8 bargain negotiation with Momir Nikolic. Remember, Your Honours, that it
9 was Mladic who called this investigator as a witness and it was Mladic
10 who tendered this witness for admission. It's Exhibit D1228. It was not
11 an ICTY Rule 92 bis or ter document admitted in lieu of oral testimony,
12 and it was admitted without any restrictions as to its use.

13 And remember that Mladic asked the Chamber to rely on the content
14 of this exhibit in his final trial brief - for example, at paragraph 2887
15 - and his closing arguments, transcript 44798. And he continues to ask
16 you to rely on this document for the truth of its contents in his appeals
17 brief at paragraph 632, footnote 772.

18 In any event, he fails to cite to any actual finding of the
19 Trial Chamber that rests on this evidence. Mladic fails to show that the
20 Trial Chamber erred in its cautious and careful assessment of Nikolic's
21 evidence.

22 Finally, Your Honours, the Trial Chamber properly evaluated the
23 status of the victims of the Srebrenica killings. The Defence has argued
24 that the Trial Chamber erred in finding that all of the victims were
25 civilians, but this misstates the Chamber's finding.

1 For Mladic's individual criminal responsibility for each of the
2 murder incidents, the Trial Chamber found that the victims were not
3 actively participating in the hostilities at the time of their death;
4 paragraph 3062. It did not find that all of the victims were civilians.
5 It even acknowledged that it was unclear whether some of the victims were
6 civilians or combatants. But for those incidents, it found that the
7 victims were detained by the Bosnian Serb forces at the time that they
8 were killed. So they were in technical terms hors de combat, or out of
9 combat, and persons who are hors de combat may not be legitimately
10 killed. Their killings are murder. And when there was any doubt, then
11 the Chamber excluded those deaths from the conviction, and I would refer
12 you, for example, to paragraph 2660 of the judgement where the Chamber
13 considered evidence of dead bodies along the column's path.

14 The Defence shows no error in the Trial Chamber's careful and
15 conservative approach to this issue.

16 To conclude on the murders, Your Honours, none of Mladic's
17 various arguments show any error in the Chamber's conclusions. To
18 succeed, he would have to convince Your Honours of an impossible
19 conspiracy involving a complete breakdown of the chain of command, where
20 rogue elements in the army and police and civilian authorities conducted
21 a highly complex, massive, co-ordinated killing operation without
22 Mladic's knowledge or involvement. But this hypothetical conspiracy
23 cannot explain the extensive and co-ordinated involvement of many
24 different military units and resources all under Mladic's overall
25 command, all reporting to Mladic. This includes the police forces that

1 were resubordinated to him for this important operation, and it also
2 includes what my learned friend has referred to as the security chain of
3 command, which the record proves was subordinated to Mladic.

4 His conspiracy claim cannot explain the repeated references in
5 the evidence to "the boss" supervising the crimes. The Trial Chamber
6 rightly concluded that these were references to Mladic; paragraph 5002.
7 It cannot explain his rallying cries for revenge, his threats that the
8 Muslims could vanish or disappear, or his bragging that they would have
9 disappeared long before if it had not been for the involvement of the
10 international community; paragraph 5128.

11 Conspiracy cannot explain that Mladic did nothing to punish the
12 direct perpetrators and their superiors who, under his control, conducted
13 the operation. It cannot explain Mladic's praise for his soldiers in the
14 conduct of this operation, even after the world understood that this was
15 a genocidal massacre. And it cannot explain Mladic's participation in
16 the concealment of these crimes by issuing orders to exclude the media or
17 lying to international representatives. Nor can it explain Mladic's
18 involvement in the coverup, devoting military resources to rebury the
19 bodies in order to hide the crimes.

20 Mladic cannot show any error in the Chamber's conclusions about
21 his leading role in and his responsibility for the murder operation.

22 Your Honours, based on the evidence showing his extensive
23 involvement, the Chamber correctly found that Mladic shared the intent
24 for the crimes and that his contribution was so instrumental that without
25 Mladic, the crimes in Srebrenica would not have been committed as they

1 were; paragraph 5098 of the judgement.

2 In conclusion, Your Honours, none of Mladic's arguments show any
3 error in the Chamber's analysis of Mladic's criminal responsibility in
4 Srebrenica. And for these reasons, and those set out in our brief,
5 Ground 5 should be dismissed.

6 And with that, Your Honours, I'd like to turn over the podium to
7 my colleague, Ms. Goy.

8 MS. GOY: Good morning, Your Honours. I will address Grounds 1,
9 2, and 9 of the Prosecution's response. For the remainder of the
10 grounds, we rely on our brief.

11 Starting with Ground 1. The indictment put Mladic on notice of
12 all charges. In relation to the crime base, it set out the material
13 facts: the locations, the timeframes, the victim groups, the perpetrator
14 groups, and the ways the crimes were committed.

15 The case law is clear. In cases of massive crimes, pleading
16 requirements for high-level accused who are not the physical perpetrators
17 are less specific in relation to the crime base. The ICTY Appeals
18 Chamber in Sainovic and in Krnojelac, amongst others, acknowledged this,
19 in light of the sheer scale of such crimes. I refer Your Honours to the
20 Sainovic appeal judgement, paragraph 233, and the Krnojelac appeal
21 judgement, paragraph 132.

22 And the indictment made clear that the charges against Mladic
23 were not limited to the incidents set out in the schedules A through G.
24 Each time it referred to schedules, the indictment used the word
25 "including."

1 In his appeal, Mladic does not challenge the indictment as a
2 whole or all incidents that are not listed in the schedules to the
3 indictment. Mladic seems to acknowledge that not being contained in a
4 schedule does not, as such, mean insufficient pleading. For instance,
5 Mladic does not challenge all incidents of plunder he was convicted of,
6 although none of them are listed in schedules.

7 Rather, his appeal is limited to 39 unscheduled incidents for
8 which he claims he was not put on notice.

9 These 39 challenged incidents form only a fraction of Mladic's
10 conviction on the relevant counts. Therefore, even if Mladic were to
11 succeed with this ground of appeal, the conviction on all counts would
12 stand and so would the sentence of life imprisonment.

13 In any event, Mladic's arguments under this ground of appeal
14 should be rejected.

15 Not only did the indictment put Mladic on notice of the material
16 facts. For all but three of the challenged incidents, he was put on
17 further notice through other pleadings. In particular, the Prosecution's
18 pre-trial brief and the Rule 65 ter summaries. These are the summaries
19 of what each witness on the Prosecution's witness list was expected to
20 testify about.

21 Your Honours will find the details in relation to every
22 challenged incident in the table in paragraph 20 of the Prosecution's
23 response brief. Any potential vagueness of the indictment was cured by
24 this additional information about these incidents.

25 Mladic himself acknowledges that notice can be provided through

1 an announcement in the summary of witness' evidence in the so-called
2 65 ter filings. Even on Mladic's own argument, many of the challenged
3 incidents were properly notified, since they were contained in the 65 ter
4 summaries. And I refer Your Honours to paragraph 15 of the Prosecution
5 response brief.

6 In her argument in court yesterday, my learned friend Ms. Bagott
7 made a distinction between the incidents that were specifically labelled
8 "unscheduled incidents" in the Rule 65 ter filings and those where this
9 term was not used.

10 The Defence seems to have withdrawn the appeal with regard to
11 incidents where the Rule 65 ter filings used the words "unscheduled
12 incidents," and I refer Your Honours to the transcript from yesterday,
13 pages 22 and 23. This withdrawal seems to cover at least the following
14 four incidents: Srebrenica incident (v) of the 18th of July, 1995. I
15 refer Your Honour to response brief footnote 68. Sniping incident (o) of
16 the 10th of December, 1994. I refer Your Honours to the response brief
17 footnote 106. And the two shelling incidents (i) and (k) on
18 Geteova Street of the 22nd and the 28th of June, 1995. And I refer
19 Your Honours to the 65 ter witness list at page 230, paragraphs 7 and 8.

20 So we understand from the submissions that Ms. Bagott made
21 yesterday that these incidents no longer form part of the appeal. And I
22 note here that in other filings the Prosecution also explicitly referred
23 to a number of challenged incidents as unscheduled incidents. I refer
24 Your Honours to the Prosecution motion for judicial notice of adjudicated
25 facts of the 9th of December, 2011, Annex C, pages 220 and following.

1 Your Honours will find the specific references in the table in
2 paragraph 20 of the Prosecution response brief. And to the Rule 92 bis
3 motion referred in footnote 80 of the Prosecution response brief.

4 But even when the filings did not use the words "unscheduled
5 incident," they put the accused on sufficient notice. Some incidents are
6 described in the Prosecution's pre-trial brief. Again, Your Honours can
7 find the references in the footnotes to the table in paragraph 20 of the
8 Prosecution response brief.

9 For others, the Rule 65 ter summaries themselves provided further
10 notice. From the enumerated paragraphs of the indictment, to which the
11 summaries refer, and from the text of the summaries it was clear that the
12 witness was not only going to testify about scheduled incidents. These
13 summaries indicate that the particular witness's evidence, in addition to
14 scheduled incidents, will also address other specific incidents not
15 covered by the schedules, even though the summaries did not explicitly
16 use the term "unscheduled incidents."

17 There is no requirement that the Prosecution uses the words
18 "unscheduled incidents" --

19 THE REGISTRAR: Ms. Goy, can you kindly pause? We lost one of
20 the Judges, so we'll try to reconnect. Thank you.

21 Madam Presiding Judge, I am informed that we have reconnected
22 with Judge N'gum.

23 JUDGE NYAMBE: [Via videolink] I can't hear you.

24 THE REGISTRAR: Madam Presiding Judge, I am informed that we have
25 now established connection with Judge N'gum, so we can proceed.

1 JUDGE NYAMBE: [Via videolink] Thank you.

2 Madam Prosecutor, you may proceed.

3 MS. GOY: Thank you very much.

4 I was saying before we were disconnected that there is no
5 requirement that the Prosecution uses the words "unscheduled incidents."
6 Even the Chamber's Rule 73 bis (D) decision of the 2nd of December, 2011,
7 to which the Defence refers to in its appeal brief, does not support this
8 proposition. It does not require to use the term "unscheduled incident."

9 But more importantly, as the disposition on page 4 shows, that
10 decision relates only to incidents which the Prosecution propose to
11 remove from the schedules, not those that were never included in the
12 schedules.

13 To sum up, even if the pleading in the indictment was too vague,
14 the table in paragraph 20 of the Prosecution's response brief shows that
15 Mladic was on notice of these challenged incidents. In any event, the
16 burden is on Mladic to show prejudice, and he has not done so. The
17 burden is on him because in general he failed to raise the question of
18 insufficient notice of these incidents in a timely manner.

19 The first time Mladic raised this point as a general matter was
20 six weeks before closing arguments in his motion alleging defects in the
21 form of the indictment of the 24th of October, 2016. And what
22 explanation does the Defence give why it did not raise this point
23 earlier, why it did not object every time the Prosecution was introducing
24 evidence that the Defence thought did not relate to the charges in the
25 indictment?

1 I'm waiting for a slide.

2 The Defence said that it "did not systematically respond to
3 evidence it considered, based on the Chamber's guidance, extraneous. It
4 is not the Defence's role to encourage the Prosecution to sharpen its
5 case and use its time effectively." That's from the Defence motion for
6 reconsideration of the 7th of December, 2016, paragraph 9.

7 This strategy is, of course, one that the Defence can choose, but
8 there is a serious risk involved. The risk is if the Defence does not
9 object to the admission of evidence that goes to an incident which the
10 Defence claims it is not sufficiently notified of through the indictment,
11 in case of conviction, the burden to show prejudice on appeal shifts to
12 the Defence. And I refer Your Honours to the Niyitegeka appeal judgement
13 of the ICTR, paragraphs 199 to 200.

14 To avoid the burden shifting to the Defence, the objection must
15 be timely. If the Defence does not object at the pre-trial stage through
16 a motion challenging the indictment, the Defence must challenge the
17 admissibility of evidence in a timely manner, such as at the time the
18 evidence is introduced or through a timely motion to strike the evidence.
19 Here, the Defence admits that it did not systematically object when the
20 evidence was introduced. Rather, it waited until six weeks before
21 closing argument before it filed its motion to challenge the indictment
22 on this basis.

23 The ICTR Appeals Chamber in Bagosora addressed this situation,
24 the situation where the notice objection is raised at trial but later
25 than at the time the evidence was adduced.

1 It held that in such a case the question is whether the objection
2 was so untimely as to consider that the burden to show prejudice has
3 shifted to the Defence. Factors to consider are whether the Defence has
4 provided a reasonable explanation for the failure to raise the objection
5 at the time the evidence was introduced, and whether the Defence has
6 shown that the objection was raised as soon as possible thereafter.
7 That's the Bagosora decision of the 18th of September, 2006,
8 paragraph 45.

9 Mladic did not have a reasonable explanation. He chose not to
10 object in a timely manner. His argument that he considered based on the
11 Chamber's guidance not to be charged with unscheduled incidents is
12 disingenuous. The Trial Chamber did not give guidance that the charges
13 were limited to scheduled incidents --

14 MR. IVETIC: Mr. Mladic has asked that he's been expecting for
15 some time now that the learned counsel on the other side would show what
16 she's talking about, which she has not done. He's talking about some
17 kind of slide. I don't know whether he's able to actually understand
18 what is being presented.

19 MS. GOY: If it would be helpful, we could maybe show the slide
20 again, with Your Honours' permission.

21 With Your Honours' permission, I would proceed with the argument.

22 MR. IVETIC: I think you can proceed. I mean, I note that it's
23 in English and my client doesn't read English.

24 MS. GOY: I have read the quote into the record, so the
25 transcript should -- but I am happy to read it again, if that is helpful.

1 The quote says:

2 "The Defence did not systematically respond to evidence it
3 considered, based on the Chamber's guidance, extraneous. It is not the
4 Defence's role to encourage the Prosecution to sharpen its case and use
5 its time effectively."

6 That's from the Defence motion for reconsideration of the
7 7th of December, 2016, paragraph 9.

8 The guidance Mladic is referring to in the quote is the Chamber's
9 Rule 73 bis (D) decision of the 2nd of December, 2011, the decision in
10 which the Trial Chamber adopted the Prosecution's proposal on the
11 reduction of the indictment.

12 This decision only reduced the number of scheduled incidents as
13 well as two municipalities altogether, but it did not limit the incidents
14 in the retained municipalities to scheduled incidents only. The
15 Trial Chamber itself confirmed this in a decision on the
16 23rd of February, 2017. It said the Rule 73 bis (D) decision "fixed the
17 number of scheduled incidents but did not affect other incidents within
18 the scope of the Indictment, which remained part of the Indictment as
19 charged." That's paragraph 11 of that decision.

20 And the trial record shows that throughout trial Mladic did not
21 believe that the charges were limited to the scheduled incidents, and I
22 would just like to highlight a few occasions.

23 On 16 December 2011, two weeks after the Rule 73 bis (D)
24 decision, the Prosecution filed the fourth amended indictment, which
25 implemented that decision. This fourth amended indictment retained the

1 word "including" whenever it referred to incidents in the schedules. The
2 word "including" shows that the indictment was not limited to those
3 schedules, and Mladic did not bring a preliminary motion to challenge
4 this fourth amended indictment at that time.

5 Mladic's conduct during trial further demonstrates that he knew
6 the charges were not limited to scheduled incidents. Mladic
7 cross-examined Prosecution witnesses on unscheduled incidents, and
8 Your Honours will find the reference in the table in paragraph 20 of the
9 Prosecution response brief.

10 And where Mladic challenged the inclusion of the unscheduled
11 sniping incidents in the Prosecution Sarajevo bar table motion, his
12 complaint was rejected. The Chamber noted that the indictment specifies
13 that the incidents and schedules (F) and (G) to the indictment are
14 illustrative examples of the acts of shelling and sniping underlying
15 these charges. That's the decision of the 28th of January, 2014,
16 paragraph 10.

17 And during the Defence case, Mladic asked his own witnesses about
18 unscheduled incidents. For example, he asked his own expert witness
19 Zorica Subotic to address unscheduled incident (g) Cobanija Street of the
20 16th of June, 1995. I refer Your Honour to transcript page 39546 and
21 following. Why would Mladic have done this if he did not think these
22 incidents form part of the charges against him?

23 And Mladic specifically defended against a number of challenged
24 incidents, as can be seen from the table in paragraph 20 of the
25 Prosecution response brief. This means Mladic was aware and was told

1 during trial that the indictment was not limited to scheduled incidents.
2 He therefore could have and should have objected at trial each time he
3 thought the Prosecution was introducing evidence in relation to events
4 not covered by the indictment. He did not do so. Therefore, the burden
5 to show prejudice is on him.

6 Mladic did not show such prejudice. He cannot. He was not
7 prejudiced. Ground 1 should be dismissed.

8 I'm turning to Ground 2.

9 Mladic fails to show error in the Trial Chamber's use of
10 adjudicated facts. ICTY, ICTR, and the Mechanism's jurisprudence have
11 carefully struck a balance between using adjudicated facts in the
12 interests of expediency and the procedural rights of the accused,
13 including the right to confront one's accuser. Generally, facts can be
14 proven solely through adjudicated facts, even those facts that relate
15 directly or indirectly to the guilt of an accused. This has been
16 recently confirmed by the Karadzic appeal judgement in paragraph 121.

17 To protect the rights of the accused, there are three important
18 limitations to the use of adjudicated facts: One, they cannot be relied
19 upon to establish acts, conduct, and mental state of the accused; two,
20 they can be rebutted; and three, taking judicial notice in any event
21 remains within the Trial Chamber's discretion.

22 The Trial Chamber in this case was mindful of these limitations,
23 and Mladic's attempts to show errors fail.

24 First, Mladic does not show error in the Trial Chamber's use of
25 adjudicated facts concerning the conduct of Mladic's proximate

1 subordinates. Second, he does not show that the Chamber applied the
2 wrong test when determining whether an adjudicated fact was rebutted.
3 And third, Mladic fails to show error in the Trial Chamber's treatment of
4 adjudicated fact 1476.

5 THE REGISTRAR: Ms. Goy, could you kindly pause? We've lost one
6 of the Judges again.

7 MS. GOY: Yes.

8 THE REGISTRAR: Madam Presiding Judge, we are ready to reconnect.
9 We can proceed.

10 JUDGE NYAMBE: [Via videolink] Proceed.

11 MS. GOY: Thank you.

12 I was just giving Your Honours the roadmaps of the three points I
13 was going to make, and maybe it's best that I just repeat this list.

14 So first Mladic does not show error in the Trial Chamber's use of
15 adjudicated facts concerning the conduct of Mladic's proximate
16 subordinates. Second, he does not show that the Chamber applied the
17 wrong test when determining whether an adjudicated fact was rebutted.
18 And third, Mladic fails to show error in the Trial Chamber's treatment of
19 adjudicated fact 1476 in relation to Srebrenica. I will address these
20 three points in turn.

21 Mladic criticises the Trial Chamber for having taken judicial
22 notice of adjudicated facts relating to the conduct of Mladic's proximate
23 subordinates as this would be, in his view, a short step to prove
24 Mladic's criminal responsibility. But he fails to show cogent reasons to
25 depart from established jurisprudence, that the only areas that are

1 excluded from the adjudicated fact regime are the acts, conduct, and
2 mental state of the accused. There is no reason to reconsider the
3 decision rendered by the ICTY Appeals Chamber in this case.

4 The relevant acts and conduct of the accused, which are excluded
5 from adjudicated facts in a JCE case like this one, are the accused's
6 personal contributions to the JCE.

7 The Mechanism Appeals Chamber in Karadzic recently addressed this
8 in a case where, as in this case, the physical perpetrators were used as
9 tools by the JCE members, including a high-level accused. It found the
10 Trial Chamber did not commit an error by taking judicial notice of the
11 existence of crimes committed by Karadzic's subordinates. It recalled
12 the distinction between facts going to the conduct of the physical
13 perpetrators and those going to the conduct of the accused himself.

14 It held that what is excluded from the adjudicated fact regime
15 are facts that showed that the accused engaged in the required actus
16 reus. The Karadzic Appeals Chamber, however, expressly acknowledged that
17 the Trial Chamber has discretion to take judicial notice of facts
18 relating to the conduct of other JCE members and the conduct of physical
19 perpetrators of crimes for which the accused is criminally responsible.
20 That's the Karadzic appeal judgement, paragraph 121 and 122.

21 Mladic fails to show that the Trial Chamber abused its discretion
22 in taking judicial notice of the conduct of other JCE members or physical
23 perpetrators who were his proximate subordinates. That other
24 Trial Chambers exercised their discretion differently does not show that
25 this Trial Chamber abused its discretion.

1 In particular, Mladic fails to show that this was a short step
2 for the Chamber to prove Mladic's contributions to the JCE. Mladic
3 argued in paragraph 91 of his appeal brief, and again before Your Honours
4 yesterday, that adjudicated facts regarding acts of his proximate
5 subordinates contributed to the Chamber's finding that he made a
6 significant contribution to the JCEs through his command and control of
7 the Serb forces. But he does not demonstrate that the short-step concern
8 arose in his case. He does not show that any adjudicated fact of conduct
9 of his proximate subordinates were used by the Trial Chamber to establish
10 Mladic's JCE contributions or his mens rea. His argument should be
11 dismissed.

12 Your Honours, I'm mindful of the time. And before turning to the
13 second part of the submissions on Ground 2, I wonder whether it's best to
14 break now.

15 JUDGE NYAMBE: [Via videolink] Yes, you have only two minutes to
16 the break time. I suppose it would be a good time to break, and we'll
17 resume at 1310 Zambian time. All rise.

18 --- Luncheon recess taken at 12.09 p.m.

19 --- On resuming at 1.13 p.m.

20 JUDGE NYAMBE: [Via videolink] Counsel for Mr. Mladic.

21 THE REGISTRAR: Madam Presiding Judge, good afternoon. Can you
22 hear and see us clearly?

23 JUDGE NYAMBE: [Via videolink] I can hear you. I am waiting --
24 yes.

25 THE REGISTRAR: Yes. We are ready to proceed from our end,

1 Judge.

2 JUDGE NYAMBE: [Via videolink] Yes, you may proceed.

3 MS. GOY: Thank you, Your Honour.

4 I will turn to the second part of my submissions on Ground 2.

5 The Trial Chamber's approach to rebuttal of adjudicated facts was
6 correct.

7 There is no dispute between the parties that an adjudicated fact
8 can be rebutted by presenting reliable and credible evidence
9 contradicting the adjudicated fact. That one way of presenting rebuttal
10 evidence is for the Defence to present contrary evidence during the
11 Defence case. And that Prosecution evidence can also rebut adjudicated
12 facts as recently confirmed in the Karadzic appeal judgement in
13 paragraph 129.

14 The test for rebuttal does not change depending on who brings the
15 evidence that supposedly rebuts the adjudicated fact. For rebuttal
16 through Prosecution evidence, this means if the Defence can point to
17 Prosecution evidence contradicting an adjudicated fact, and if that
18 Prosecution evidence is reliable and credible, the adjudicated fact is
19 rebutted.

20 The Trial Chamber applied this throughout the judgement and
21 found, in a number of instances, that Prosecution evidence did rebut
22 adjudicated facts. I am referring Your Honours, for example, to trial
23 judgement paragraphs 787, 829, 1156, and 1263.

24 But not every weakness in the Prosecution's evidence amounts to a
25 rebuttal of the adjudicated facts. The Defence's general statement that

1 rebuttal evidence comes in the form of identifying weaknesses in the
2 evidence presented by the Prosecution is not correct. Weaknesses in the
3 Prosecution evidence only amount to rebuttal if they contradict the
4 adjudicated fact.

5 We have explained in paragraph 33 of our response brief that the
6 Trial Chamber's reference to "clearly contradicting" and the way it
7 applied it is consistent with the approaches of other ICTY
8 Trial Chambers, which considered that evidence was not contradicting when
9 it was equivocal, inconclusive, not outright contradictory, or merely
10 stating that the adjudicated fact are not correct.

11 Moreover, that the Prosecution evidence is merely insufficient to
12 prove the point made by the adjudicated fact does not rebut the
13 adjudicated fact. This is because the Prosecution does not have to bring
14 evidence supporting the adjudicated fact. As the Karadzic Appeals
15 Chamber confirmed, adjudicated facts do not require corroboration. This
16 would undermine the judicial economy function of adjudicated facts. And
17 I refer Your Honours to the Karadzic appeal judgement, paragraph 452.

18 And in this case, the Trial Chamber explicitly limited the
19 Prosecution's ability to bring evidence that was duplicative of
20 adjudicated facts; trial judgement, paragraph 5258.

21 It therefore does not matter and does not rebut the adjudicated
22 fact if the Prosecution evidence in and of itself was insufficient to
23 prove the same point also made by the adjudicated fact.

24 Mladic does not show error in the Trial Chamber's approach to
25 rebuttal of adjudicated facts.

1 I would like to end my submissions on Ground 2 with a few words
2 in relation to one particular adjudicated fact, adjudicated fact 1476,
3 which my learned friend Mr. Ivetic emphasised in his submission in
4 relation to Srebrenica yesterday.

5 According to Srebrenica-related adjudicated fact 1476, between
6 7.000 and 8.000 Bosnian Muslim men were systematically murdered. The
7 Trial Chamber relied on this adjudicated fact in relation to the numbers
8 of victims of the Srebrenica operation in trial judgement paragraph 3007,
9 and to establish the chapeau elements of crimes against humanity by
10 referring to the overall situation in the enclave in trial judgement
11 paragraph 3042.

12 The Chamber did not rely on this adjudicated fact to establish
13 Mladic's individual criminal responsibility for killings in Srebrenica,
14 nor for his sentence. Contrary to Mladic's claims in his reply brief at
15 paragraph 35, the Prosecution did not concede that the Chamber relied on
16 it to establish Mladic's intent or his significant contributions to the
17 Srebrenica JCE.

18 For the Srebrenica killings of which Mladic was convicted, the
19 Chamber carefully considered the status of the victims. And in case of
20 doubt whether they were actively participating in hostilities at the time
21 of killing, it excluded them from the victim count as Ms. Baig has
22 explained this morning. And I refer Your Honours to the judgement
23 pages 1608 through 1610, which refer back to the detailed analysis in
24 chapter 7 of the judgement.

25 Since the Chamber did not rely on this adjudicated fact to

1 establish Mladic's individual criminal responsibility or for his
2 sentence, there was no need for the Chamber to analyse whether all of the
3 7- through 8.000 were not actively participating in hostilities, nor can
4 Mladic show prejudice by the lack of this analysis.

5 For the same reasons, Mladic cannot show prejudice by the
6 Chamber's denial of his motion to extend the Defence case to call a
7 witness in relation to this matter.

8 THE REGISTRAR: Ms. Goy, could you kindly pause. Thank you.
9 Madam Presiding Judge, can you hear and see us?

10 JUDGE NYAMBE: [Via videolink] I can hear you, but I cannot see
11 you or the courtroom.

12 THE REGISTRAR: Yes, we will establish a connection.

13 JUDGE NYAMBE: [Via videolink] Thank you.

14 THE REGISTRAR: Madam Presiding Judge, are you able to see us
15 now?

16 JUDGE NYAMBE: [Via videolink] Yes, indeed.

17 THE REGISTRAR: Thank you.

18 JUDGE NYAMBE: [Via videolink] You may proceed.

19 THE REGISTRAR: Thank you.

20 MS. GOY: Thank you, Your Honour. I will pick up where I left
21 off.

22 So since the Chamber did not rely on this adjudicated fact to
23 establish Mladic's individual criminal responsibility or for his
24 sentence, Mladic cannot show prejudice by the Chamber's denial of his
25 motion to extend the Defence case to call a witness in relation to this

1 matter, an argument Mladic makes in Ground 8.A of his appeal. This
2 adjudicated fact was also not rebutted.

3 In paragraph 3007 of the judgement, the Chamber found the number
4 of 7.000 to 8.000 is consistent with a smaller number of victims from the
5 incidents in schedule (e) of the indictment. The organised executions
6 and opportunistic killings listed in schedule (e) were never meant to
7 provide a complete account of victims of the Srebrenica operation. They
8 are not even a complete description of Mladic's individual criminal
9 responsibility, which is not limited to scheduled incidents.

10 There is, therefore, nothing inconsistent or contradictory
11 between the adjudicated fact that during the Srebrenica operation 7- to
12 8.000 Bosnian Muslim men were murdered and the smaller number of victims
13 in the incidents listed in schedule (e). Mladic fails to show error in
14 the Trial Chamber's treatment of adjudicated fact 1476.

15 Ground 2 should be dismissed.

16 Your Honours, let me end the Prosecution submission today with
17 Ground 9, sentencing.

18 Ratko Mladic is one of the worst war criminals who has ever faced
19 justice before an international tribunal. He is responsible for the
20 killing of thousands and the forced displacement of tens of thousands
21 Bosnian Muslims and Croats from their homes, for their mistreatment in a
22 system of detention camps, for grave sexual violence, and for destruction
23 throughout Bosnia and Herzegovina.

24 He carried out a campaign of shelling and sniping against the
25 civilian population of Sarajevo to spread terror. For over three and a

1 half years, the civilians faced extreme fear and did not feel safe
2 anywhere in the city.

3 He is responsible for genocide against the Bosnian Muslims of
4 Srebrenica, the killing of the men and boys, and the removal by force of
5 women, children, and elderly, and for taking UN personnel hostage.

6 In all of these crimes, Mladic was a key player whose role was
7 central or instrumental to the commission of those crimes. Mladic's
8 crimes not only affected the direct victims. His brutal legacy will
9 affect generations. Loved ones were separated, families displaced and
10 put through incredible hardship. They bear the pain of having their
11 relatives killed and abused. Communities have been shattered by the
12 atrocities committed by Mladic.

13 Considering the nature, scale, and brutality of these crimes and
14 Mladic's important role, life imprisonment is the only conceivable
15 punishment.

16 The crimes of this case are some of the gravest and the crime
17 base is one of the largest attributed to an accused at the ICTY,
18 comparable with a case against Bosnian Serb President Radovan Karadzic.
19 The Mechanism Appeals Chamber raised Karadzic's sentence from 40 years
20 imprisonment to life imprisonment because a 40-year sentence was so
21 unreasonable and plainly unjust that it constituted an abuse of the
22 Trial Chamber's discretion.

23 Life imprisonment was the only sentence that adequately reflected
24 the extraordinary gravity of Karadzic's crimes, their sheer scale, and
25 the systematic cruelty with which they were committed. That's the

1 Karadzic appeal judgement, paragraphs 773 and 776.

2 Mladic's crimes largely match the ones for which Karadzic was
3 convicted. For Mladic too, life imprisonment is the only conceivable
4 sentence. Nothing less than the maximum sentence is appropriate.

5 Indeed, other cases which dealt with only parts of the crime base
6 for which Mladic is responsible have also resulted in life sentences.
7 Mladic's subordinates - Popovic, Beara, and Tolimir - were sentenced to
8 life imprisonment for committing genocide in Srebrenica. Galic, another
9 one of Mladic's subordinates, received a life sentence for shelling and
10 sniping in Sarajevo during a shorter period than Mladic. All of them
11 were his subordinates, and all of their conduct is attributed to Mladic.

12 This not only shows that life imprisonment is the only adequate
13 sentence, but also that the gravity of Mladic's crimes far surpasses the
14 threshold for life imprisonment. The horrors he committed in each of the
15 three major components of this case call for a life sentence on their
16 own.

17 In our response brief, we have set out why the Trial Chamber did
18 not commit an error in its consideration of aggravating and mitigating
19 circumstances.

20 But even if the Chamber committed an error, in light of the
21 gravity of the crimes, no error in relation to these circumstances can
22 reduce the sentence below life imprisonment. Any other sentence would,
23 in the words of the Karadzic Appeals Chamber, be unreasonable and plainly
24 unjust.

25 Ground 9 should be dismissed.

1 For the remainder of the grounds, we rely on our response brief.

2 To conclude, Your Honours, Mladic's appeal should be dismissed in
3 its entirety and his life sentence should be upheld. This ends the
4 Prosecution response.

5 JUDGE NYAMBE: [Via videolink] Do the Defence want to start to
6 respond now, or we take a break and you respond after the break?

7 MR. IVETIC: I think, Your Honour, that is actually what we were
8 going to recommend, since we do have some of our reply in written form
9 and we'd like to print that out so that the translators and the court
10 reporter have an easier time following us. And I think we hopefully then
11 will even conclude earlier than the time allotted.

12 So taking a break now of, I don't know, 20 minutes or so should
13 allow us to print up copies of what we do have already prepared. Some of
14 it will be sua sponte, but we do have some prepared notes that will help
15 the translators. So I would ask for the break at this time.

16 JUDGE NYAMBE: [Via videolink] Very well. We adjourn and resume
17 40 minutes from now.

18 --- Recess taken at 1.33 p.m.

19 --- On resuming at 2.09 p.m.

20 JUDGE NYAMBE: [Via videolink] The appearances as usual, I
21 presume. And the Appeals Chamber will now hear Defence submissions
22 replying to the Prosecution's response.

23 MS. BAGOTT: Madam Presiding Judge, Your Honours, the appellant's
24 reply to the Prosecution's response will be dealt with as follows.

25 Mr. Ivetic will address Grounds 5 and 3. I will address

1 Grounds 1, 2, 4, and 9. I will then conclude the appeal on behalf of
2 Mr. Mladic.

3 I'll now defer to Mr. Ivetic.

4 MR. IVETIC: Thank you, Your Honours.

5 I again make reference to my objection and reservation of rights
6 from yesterday. My reply today is likewise limited in scope and subject
7 to the same - due to the inability to meaningfully prepare with my client
8 and take instruction from him as to these matters due to his diminished
9 capacity. I will not address all of the arguments, and refer you to our
10 detailed appeal brief and reply for the remainder.

11 I will start with Srebrenica. As to Srebrenica, the Prosecution
12 has resorted to merely reciting the precise Trial Chamber findings that
13 we have claimed are results of error and subject to our appeal. Thus,
14 they cannot act to prevent our meritorious appeal. Prosecution counsel
15 selectively cited and mis-cited to the facts, some of which are crucial
16 and which I will raise. Again, I stress we do not deny that others, like
17 Momir Nikolic and rogue elements of the parallel security professional
18 chain of command, engaged in crimes. But they do not have anything to do
19 with Mr. Mladic. I will only highlight certain key positions and
20 evaluate them to the extent possible.

21 Today we heard from the Prosecution that the Trial Chamber
22 convincingly concluded that Mr. Mladic was in command and control of
23 co-ordinated actions of police and VRS units during Krivaja 95. I must
24 correct the record here as a plethora of evidence, disregarded by both
25 the Chamber and Prosecution, shows that this is not the case.

1 General Krstic of the Drina Corps was in command and control of this
2 operation. I cite Momir Nikolic, transcript page 31355; Richard Butler,
3 transcript T16206; RM322; General Kovac, transcript page 41392 to -3;
4 General Skrbic, P14020; and two reports by General Krstic, D288 and 289.
5 These are just some examples. There's more, but I must move on to save
6 time.

7 The Prosecutor today again relied on erroneous trial judgement
8 paragraphs and repeated its claim that Mr. Mladic was in charge of the
9 bussing of civilians from Potocari. The Prosecution position at trial,
10 in its own documents and through its own witnesses, was that
11 Momir Nikolic was in charge of this. See P1145, page 45 to 49; and
12 Prosecution Witness RM264 at P1446, page 1 to 15.

13 I would be remiss if I did not note that Ms. Baig attempted to
14 rely on a statement of Mr. Mladic before the alleged existence of the JCE
15 to genocide, given to TV by Mr. Mladic. That is precisely the type of
16 error we have pointed to yesterday. Bravado on TV is not akin to acts on
17 the ground, and the language in the orders that Directive 1, Krivaja 95,
18 and Stupcanica as to Zepa, D290, plainly state that the troops are to
19 adhere to the law. Let me read you the Zepa order:

20 "The civilian Muslim population and UNPROFOR are not targets of
21 our operations. Collect them together and keep them under guard, but
22 crush and destroy armed Muslim groups."

23 That's not a crime.

24 I think we have rather clearly, articulately already referred in
25 detail to the Fontana meetings, and that the acts and language that were

1 there were consistent with legitimate military goals aimed at the armed
2 28th Division still on the loose in the area. The Prosecutor, in
3 multiple occasions today, spoke about this column of men and each time
4 claimed that it was a crime to blockade and engage in combat with this
5 armed formation.

6 This is contrary to their own expert, Richard Butler, who we
7 cited to many times yesterday, transcript page 16653. The Prosecution
8 are already abandoning ship and distancing themselves from the position
9 of chief Srebrenica Prosecutor Peter McCloskey at transcript page 486
10 about the legitimate nature of Krivaja 95. We urge you to read the
11 orders in question and not be swayed by the Prosecution scrambling for a
12 new or better argument.

13 By the way, today it was said that the Prosecution never said
14 there was a meeting to determine the JCE to commit genocide. That too is
15 running away from their earlier position set forth in their response at
16 paragraph 226 and 229, citing to the judgement in paragraphs 4926, 4952
17 to 4958, 5096, 5088, 5129 to 5131. These judgement paragraphs are
18 precisely where Jonas Nilsson's comments come into play, because the
19 judgement erroneously concluded a meeting did take place and that
20 genocide came from there. And if I were a prosecutor, I would run too
21 from such a position after hearing the embarrassing admission of
22 Mr. Nilsson of the paucity and lack of evidence that the Trial Chamber
23 erroneously relied upon.

24 And by the way, Prosecutor McCloskey, at transcript
25 page 44552 to -3, went into great detail talking about this meeting that

1 the Prosecution now is running from in its closing arguments. And it's
2 cited in their final trial brief at paragraph 1063 and at paragraph 1105.

3 How many times are they allowed to change their position as to
4 this meeting that from Mr. Nilsson we now see they don't know if it ever
5 happened? The Prosecution cannot run from their case, which has been
6 relied upon - erroneously - to evade a meritorious appeal.

7 By the way, the use of the Nilsson video -- as I said, it's in
8 relation to the paragraphs I've just cited. It's also consistent with
9 the past practice of the Tribunal when Tribunal officials speak in public
10 about their prior cases. I point to the Perisic appeals hearing of
11 30 October 2012, wherein a video of Chief Prosecutor Brammertz was used
12 in a similar vein; transcript pages 79 to 80 of that hearing.

13 The Prosecution tried to infer Mr. Mladic's intent -- criminal
14 intent, criminal conduct they called it, from evacuations in 1993.
15 Albeit beyond the temporal scope. But let's look at what this criminal
16 conduct was.

17 In 1993, Stoltenberg - again, not Mr. Mladic, but someone with
18 the UN - asked Karadzic if the Bosnian Serb side would agree to evacuate
19 Srebrenica civilians to Tuzla; P7359.

20 Karadzic issued an order for the VRS to provide protection to
21 civilians; D2036.

22 Mr. Mladic enabled, again, the United Nations to send empty
23 trucks to Srebrenica and offered buses. And he opened the corridor to
24 allow civilians to cross into Serb-held territory. That's at P2469.

25 Let's recall the witness, Dr. Simo Bilbija, who personally helped

1 as to this evacuation alongside the United Nations, at transcript
2 page 29301 to 29034, who said he was personally asked by Mr. Mladic,
3 which was unique, to assist. And his answer was:

4 "General Mladic sometimes, rarely, was in a position to issue
5 orders to me directly as" to "our work. He never missed the opportunity
6 to underline the following to us: That we should strictly behave in
7 accordance with the rules of our profession and that we should take good
8 care, if it has to do with the wounded of the other side or civilians,
9 et cetera, persons of a different religion and so on, that no one should
10 feel that they have not been given full treatment or full attention."

11 Question:

12 "And lastly, Doctor, this medevac operation from Srebrenica in
13 April of 1993, approximately how many persons were evacuated in the
14 course of that operation?"

15 Answer:

16 "The evacuation took place with two helicopters. A large number
17 of people boarded these helicopters. We knew that exactly then, I don't
18 know exactly, but I think ... 20 people could be taken in a single
19 helicopter. They took these people to Tuzla, and during that time we
20 would be waiting there and during the day I think there would be four
21 trips."

22 He testified Armija BiH wounded soldiers were also evacuated. So
23 again, the Prosecutor would have us believe that a UN-led evacuation is
24 criminal conduct by Mr. Mladic. But let's return to the 1995 evacuation.

25 The Prosecution chose to run from our actual arguments to embrace

1 the erred analysis of this under the laws of military necessity. That is
2 not what our argument was. The UN established that the sanitary and
3 other situations in Potocari and the heat and the number of people
4 created a potential humanitarian nightmare.

5 Mr. Boering, Colonel Boering from DutchBat, at transcript
6 page 10075 to 10076:

7 "And did you see that the population was willingly boarding the
8 buses, that due to the situation and the dire straits in which they were
9 in they wanted to board the buses as soon as possible? Did you observe
10 that as well?"

11 Answer:

12 "What I observed was that it was very hot at that point and a
13 large group of people had not had anything to eat or drink for quite a
14 while - they were in a hopeless situation - and the buses were a way of
15 being able to depart. So a group of people wanted to leave by bus,
16 hoping to be taken to a better place."

17 Question:

18 "Will you ... agree with me ... the number of population,
19 including women, children, and elderly, constituted a humanitarian risk
20 due to the conditions that surrounded them should they have stayed there
21 any day longer?"

22 Answer:

23 "Yes, that was" the "problem."

24 He then went on to confirm that nobody in the local commune was
25 in a position to provide enough medical or food care.

1 Van Duijn, transcript page 10380. I'll only read the bolded
2 section. This is his testimony:

3 "... there was no other solution there than to evacuate them
4 because, like I said before, there were -- there was a big possibility
5 that epidemics would break out, people had no food, no water, and the
6 temperature was very high. So from that moment on, there was no other
7 solution, that's correct."

8 General Nicolai at transcript page 10652 to 10653, and also the
9 same as P1165, paragraph 59. Again, I will only read the bolded part on
10 the next page:

11 "Directly after we stopped the air attacks we realised that the
12 civilian population would have to be evacuated from Srebrenica. There
13 was no food, enough medical care or even protection from the weather for
14 the people there. We had hoped to do this under the cover of the
15 UNPROFOR troops and even use UNPROFOR trucks if necessary."

16 I will stop right there. So per the Prosecution's position,
17 these acts considered by the UN are a crime. Surely, that's not true.

18 Going on further, transcript page 10654. This is still
19 General Nicolai. And I will start again with the answer which is bolded.

20 Answer:

21 "Yes. We didn't need General Mladic's advice to be able to
22 conclude that the situation of the refugees in" these "circumstances was
23 an untenable one."

24 This is what the Prosecution wants to call criminal conduct.
25 Then so be it. The UN is guilty of criminal conduct. It's an illogical

1 conclusion.

2 Today they tried to link Mr. Mladic's subordinates from the
3 Drina Corps and Zvornik Brigade, but this is not in accord with the
4 Prosecution's own forensic evidence. Particularly, Dean Manning,
5 transcript page 14205:

6 "First of all, am I correct that as part of the office of
7 Prosecutor investigations you had occasion to seize a certain number of
8 weapons from the VRS barracks of the Bratunac and Zvornik Brigades to
9 test fire them so as to see if they could be linked to any of the bullet
10 casings found at the various execution and burial sites?"

11 Answer:

12 "That's correct."

13 Transcript page 14206 to 14207. Again, for brevity, I will only
14 read the answer, which is highlighted in part, of Mr. Manning again.

15 Answer:

16 "Your Honours, I agree with that statement, and we are discussing
17 the same matter. To my knowledge, the test firing produced many hundreds
18 of shell casings. They were examined, and" the "results were negative."

19 And I just want to add that the forensic expert of the
20 Prosecution, Mr. Curtis, confirmed these results. I'd like to move on to
21 Kravica.

22 The Prosecutor today several times implied that the co-ordinated
23 killings began on 11 July 1995 while Mr. Mladic was still in Srebrenica.
24 This is also false. The Prosecution chief of investigations,
25 Erin Gallagher, testified that prior to Kravica there were no such

1 co-ordinated killings. And this is at -- I will read her testimony from
2 the transcript at pages T12245 to 12246.

3 "In terms of the investigation that you've been involved in and
4 your colleagues have been involved in, is there any concrete information
5 as to whether or not the burned hands incident, I'll call it, occurred
6 immediately prior to the executions or during the course of the
7 executions that happened on the 13th? Do you have any concrete
8 information either way?"

9 Answer:

10 "No. It's -- there's many, many, many statements out there
11 regarding that incident of the burned hands happened early on. There are
12 some that say it precipitated -- some that, yes, the executions had
13 started, the shooting had started already. It's -- and when I mean -- I
14 think it was early ... in the course of the execution or at the
15 beginning." But "I don't mean to say it's at the end."

16 THE REGISTRAR: Mr. Ivetic, could you kindly pause until we
17 re-establish connection. Thank you.

18 Madam Presiding Judge, we are ready to recommence. Thank you.

19 JUDGE NYAMBE: [Via videolink] Thank you.

20 MR. IVETIC: As I was saying --

21 JUDGE NYAMBE: [Via videolink] Mr. Ivetic, you may continue.

22 MR. IVETIC: Thank you, Your Honour.

23 As I was saying, this is again still the testimony of

24 Erin Gallagher:

25 "But it's clear it happened sometime early on but I don't know if

1 it was immediately -- if it was right before or right at the beginning of
2 when it started. There's many different statements."

3 And then at transcript page 12242, question:

4 "And was it part of your investigation that prior to the incident
5 where the individual tried to overpower and take the gun from this
6 person, that no one had been shot at this location?"

7 Answer:

8 "There was not a mass execution prior to this execution, not that
9 I'm aware of ..."

10 Her colleague, OTP investigator Blaszczyk confirmed that there
11 were no killings at the Kravica warehouse until the incident when a
12 Muslim grabbed the gun of a guard.

13 So let's talk about Kravica and what happened, and let's keep in
14 mind that it was the MUP at Kravica and what was this burned hands
15 incident. Indeed, Nedjo Jovicic, the driver for the MUP commander,
16 confirmed that the MUP were solely at Kravica. That's at transcript
17 page 33742 to -3. Gajic testified that he learned of an incident at
18 Kravica. That's T30319. Expert Butler stated he is unaware of any VRS
19 personnel at Kravica at the time of the killings. That's T16622.

20 Even Prosecution eyewitnesses presented evidence that can lead to
21 a reasonable conclusion that there were no prior orders to kill anyone at
22 Kravica. RM274, a survivor of the incident, described how water was
23 being provided to those detained at Sandici meadow to cool down. That is
24 at P3098, page 4. I'll skip ahead a bit to the next paragraph.

25 As further indication of no prior intent for foul play, RM274

1 reported that a civilian threw cigarettes into the warehouse in Kravica
2 for them. That's P3098, page 19. And that they brought water. That's
3 the same exhibit, page 21.

4 RM274 likewise described that the guards were consistently kind
5 towards the detainees in the beginning, again referencing cigarettes and
6 water being provided later. That's at page 24 of that same document. He
7 estimates this process continued this way 1.5 to 2 hours. Moving on to
8 the next paragraph.

9 RM274 reported that things only changed after an incident that
10 made the guards angry. He stated that shooting was heard from outside
11 the warehouse, and two angry guards came in and said they wanted to shoot
12 at the detainees, but a third guard stopped them, saying, "These people
13 are not to blame for anything." That is at page 21 of P3098. This is
14 the trigger incident where shooting went on for half an hour, for which
15 RM274 claims the guards were suddenly angry and were shooting into the
16 forest with a Praga, complaining that they had allowed Muslims to go
17 peacefully and that Muslims were now attacking them. This is P3098,
18 page 22 and 24.

19 MS. BAIG: Excuse me, Your Honours. Sorry to interrupt,
20 Mr. Ivetic.

21 Your Honours, it's our understanding that P3098 is an exhibit
22 that's under seal, and my case manager is checking, but we don't think
23 that there is a non-confidential version of that exhibit.

24 MR. IVETIC: And I don't think I've said anything that would lead
25 to anyone being able to determine the identity of that witness.

1 May I proceed?

2 JUDGE NYAMBE: [Via videolink] Madam Prosecutor, have you finished
3 your investigation?

4 MS. BAIG: Yes, Your Honour. We've just looked into it, and we
5 don't think that there's a serious witness protection issue here.

6 JUDGE NYAMBE: [Via videolink] Specifically?

7 MS. BAIG: We do not think that there's a serious witness
8 protection issue here. Thank you.

9 JUDGE NYAMBE: [Via videolink] Okay. You may proceed, Mr. Ivetic.

10 MR. IVETIC: Thank you.

11 RM274 recalls a wounded guard was brought in, and it was only
12 after that incident that the guards came in acting frightened and, in a
13 panic, started shooting at detainees in the warehouse. And that is at
14 pages 27 to 28 of his statement.

15 I will skip ahead and summarise the next page. So bear with me,
16 translators and court reporter. I will speak slowly.

17 So the burned hands incident, what was it? Several witnesses
18 from the Prosecution and Defence - RM374, Witness Pepic, RM268,
19 Witness Jovicic, and one more I believe -- yes, Jovicic is the last one -
20 talk about an incident at Kravica where one of the detainees grabbed a
21 rifle from the MUP guards, shooting at the guards, killing one of the
22 guards, and wounding one of the other guards. So there was a legitimate
23 exchange of fire.

24 After that, spontaneously, the MUP personnel there acted out of
25 revenge and committed a crime that was not preordered, not known until

1 after the fact. And now I'll skip to the next page, and the critical
2 part. Witness Jovicic, the driver of the MUP commander, testified that
3 after this incident, the MUP commander Borovcanin reported to the
4 civilian authorities and asked the civilian leader Deronjic to do
5 something about the situation. And that's at transcript page 1143 to
6 11424; and D976, paragraph 34.

7 Kravica is a horrible event and that's where the killings
8 started, but it transpired not due to any orders from Mr. Mladic, who was
9 already gone at that time. And as the Prosecution's expert
10 Reynaud Theunens mentioned, with the MUP that commit a crime, once the
11 civilian leadership has been informed, they are responsible for
12 discipline.

13 As to the post factum and the inability of Mr. Mladic to take
14 action against perpetrators, we have set that forth in our brief and we
15 stand on that.

16 So in the end, as to Srebrenica, the Prosecution wants to run
17 from its own Prosecutor, its own investigator, its own evidence to try to
18 support on erred judgement. They want to run mostly from the statements
19 of Mr. Nilsson in the video showing how Mr. Mladic was convicted on
20 implications. Surely justice and genocide require evidence that a
21 prosecutor cannot and should not run from.

22 The Defence does not run from the fact that crimes by rogue
23 revenge seekers, aided by Momir Nikolic and his lot, committed crimes,
24 then hid these crimes with legitimate casualties. But again, no link to
25 Mr. Mladic. Mr. Mladic is not a villain. He was someone who at all

1 times was trying to help the UN do the job it couldn't do in Srebrenica
2 at a humanitarian level.

3 Next, I would move to the OJCE.

4 At the transcript from yesterday at page 95, the Prosecutor said:

5 "In one of the most notorious camp massacres, VRS soldiers gassed
6 and then slaughtered 200 detainees with a single machine-gun while the
7 guards sang songs. And I'd refer you to paragraph 1121 of the trial
8 judgement."

9 If you look at that part of the judgement and if you look at the
10 evidence, you'll see that this refers to C.15.3, Keraterm, which, per the
11 evidence, was established by the Prijedor Crisis Staff, was managed by
12 the local police, and under their responsibility. I tell you to look at
13 P2900, P480, and D1041.

14 It was requested on 24 July 1992 that the VRS take over
15 management and operation of Keraterm from the civilian police. And that
16 is at D111. However, that didn't happen. In fact, the VRS reported any
17 suspicious crimes to the appropriate officials and cases were opened
18 against officers Zoran Zigic, Damir Dosen, among others. And that is at
19 D930, paragraph 24. These two people were later tried by this Tribunal
20 as high-level commanders of Keraterm.

21 As to this infamous killing that the Prosecutor cited to, the
22 room 3 massacre, it is clear that the police were in charge of that
23 authority. And in fact, Drljaca, the police chief, noted in his report
24 that the army refused to provide security at these centres. That's in
25 D1111, page 1. So this killing that the Prosecutor relied upon to point

1 to my client, Mr. Mladic, here is the only information that came to him,
2 and it's P161, and it's talking about this police detention centre:

3 "The prisoners at the collection centre in Prijedor located in
4 the Keraterm factory attempted a mass escape on the night of the 24th.
5 The attempt was thwarted and about 50 prisoners were killed in the
6 process."

7 So the knowledge, the intent of this massacre, as the Prosecutor
8 called it, was not ever made known to Mr. Mladic, nor could he do
9 anything about it since it was the MUP.

10 As to overarching JCE, I would also like to just say, as we've
11 said in our brief, at paragraph 26 of our appeal brief we state the legal
12 principle that the Trial Chamber's judgement must take the evidence as a
13 whole, whereas all elements of a charge must be made out to substantiate
14 the charge. You cannot stand back and hope one element fills a gap in
15 the other. The actus reus cannot supplement gaps in the mens rea because
16 they both require different evidence to prove their independent
17 requirements. And on this point, I would direct you to the ICTR case, I
18 will not attempt to pronounce the name, but it's known as the Military II
19 case, the appeals judgement, and it's from 2014.

20 A Trial Chamber is required to provide clear, reasoned findings
21 of fact as to each element of the crime charged. The Trial Chamber's
22 failure to provide a reasoned opinion amounts to an error of law which
23 allows the Appeals Chamber to consider the relevant evidence and factual
24 findings in order to determine whether a reasonable trier of fact could
25 have found beyond reasonable doubt that the requisite actus reus and

1 mens rea were established in relation to Nzuwonemeye and Sagahutu's
2 liability for ordering under Article 6(1) of the Statute.

3 I will not rehash what we have in our brief, but this is what
4 we're asking for the Appeals Chamber to do as to the overarching JCE.
5 And with that, I grant the floor to my colleague, Ms. Bagott, to give the
6 remainder of our submissions. Thank you.

7 MS. BAGOTT: Madam Presiding Judge, Your Honours, I'll start with
8 Ground 1.

9 The concession that the challenged incidents that have been
10 identified as "unscheduled incidents" should be withdrawn was made
11 because it was quite proper to do so. Therefore, my learned friend is
12 correct that orally those have been withdrawn from the Appeals Chamber's
13 consideration.

14 The appellant submits, however, that the others stand for the
15 reasons set out in the appellant's appeal brief at paragraph 48 and for
16 the reasons indicated by my oral submissions yesterday.

17 Notice.

18 My learned friend for the Prosecution responds by referring to
19 the inclusive language used in the indictment. The response goes no
20 further than the written response and in fact rehearses the arguments set
21 out therein. As the example I used yesterday, which went back to the
22 basics of an adversarial criminal trial, the inclusive language in an
23 indictment does not enable the Trial Chamber to convict on every
24 accusation it's heard.

25 My learned friend for the Prosecution indicated that the sheer

1 size of these trials removed the need for a fixed indictment in the
2 traditional sense and allowed some flexibility.

3 As a matter of fairness, this cannot be interpreted as meaning
4 that a Trial Chamber, in an adversarial trial, can convict on any and
5 every accusation it hears evidence on. To take this view would be to
6 invite the Trial Chamber into the arena of the parties and exercise an
7 investigatory function.

8 I ask this Chamber rhetorically: How is it fair to Mr. Mladic
9 that the Trial Chamber took the view that all the evidence it heard was
10 some sort of buffet from which it was entitled to stack its plate as high
11 as it wanted? The indictment and notice requirements are there for a
12 reason. They guard against this.

13 The Prosecution have failed to explain how the Defence was put on
14 notice of these unnamed, unscheduled incidents, being anything other than
15 mere accusations. If the Chamber considers the 65 ter witness list,
16 considers the pre-trial brief, and considers the witness statements, it
17 is clear that the accusations form part of the narrative and nothing
18 more. The appellant submits this is insufficient notice.

19 Objection.

20 The quote from the Defence motion for reconsideration has been
21 relied on to suggest that the Defence's failure to object to the
22 admission of evidence then now means on appeal that prejudice cannot be
23 alleged.

24 The Rule 73 bis (D) decision adopted a proposal on the reduction
25 of the indictment. That decision was to reduce the number of scheduled

1 incidents. The decision explicitly stated that evidence of the incidents
2 that had been removed could be led. However:

3 "The Chamber notes that the accused cannot be convicted with
4 respect to the crimes which have been removed pursuant to Rule 73 bis (D)
5 of the Rules"; paragraph 12.

6 Therefore, the quote relied on by my learned friend must be
7 placed in its proper context. It was a response to the admission of
8 evidence that the Trial Chamber said it could not, and would not, convict
9 on as the incidents had been removed from the indictment.

10 The question posed on the basis of the Bagosora decision was: Is
11 there a reasonable explanation for the failure to object at the material
12 time and as soon as possible thereafter? The answer is yes, in this
13 case.

14 The Defence were not put on notice that every accusation on the
15 record could be used against Mr. Mladic. The evidence may be admissible
16 as a matter of law, but that is a separate matter. Simply because
17 accusations enter into the record does not mean that they can be
18 transformed into unscheduled incidents by the Trial Chamber of its own
19 volition.

20 For this reason, the appellant submits that the Defence did not
21 have knowledge that the Trial Chamber could enter convictions on these
22 unnamed, unscheduled incidents.

23 Prejudice.

24 The Prosecution argues that there are a small number of incidents
25 complained of, and therefore it would not make a difference to the

1 overall convictions. It is argued that there is no prejudice. Upholding
2 any findings on an erroneous legal basis is unfair and harmful. It is
3 prejudicial. It is prejudicial because Mr. Mladic was found criminally
4 responsible for these incidents.

5 Be it 1 or 100, to hold an accused guilty of anything in breach
6 of fundamental due process norms is prejudicial.

7 To conclude the reply on Ground 1, the appellant refers the
8 Chamber to the appeal brief at paragraphs 41 to 60 and the reply at
9 paragraphs 8 to 15. The appellant invites the Chamber to reverse the
10 findings on the crimes identified.

11 Ground 2.

12 Proximate subordinates.

13 The Prosecution asserts that the appellant fails to show cogent
14 reasons, but accepts that there is a divergence in the way in which Trial
15 Chambers exercise their discretion.

16 The fact that there is a division between Trial Chambers that
17 follow the Karemera approach and consider that only facts that go to the
18 actions, conduct, or mental state of the accused should not be subject to
19 judicial notice, and then those that consider that in situations in which
20 it would be easy to infer that an accused knew or should have known about
21 the physical perpetrator's actions, based on the Prosecution's case, then
22 it would be unfair to take judicial notice of such facts.

23 Citing the Karadzic appeals judgement only serves to highlight
24 this fragmentation. How Chambers exercise their discretion must have a
25 degree of consistency. It should not be a judicial lottery as to whether

1 or not judicial notice of facts relating to the perpetrator's actions
2 that the Prosecution say are strongly linked to an accused are taken
3 judicial notice of.

4 This compounds the need for the issue to be revisited.

5 Contribution of Mr. Mladic proved through adjudicated facts.

6 The Prosecution allege that the appellant has not shown the
7 "short step" was used by the Trial Chamber to establish contribution or
8 mens rea.

9 The appellant refers to the Chamber back to the example provided
10 yesterday of the incident of the 23rd of July, 1995, at paragraph 2210 of
11 the judgement. The Trial Chamber found that Mr. Mladic used the SRK, as
12 his subordinates under his effective command and control, to contribute
13 to the JCEs and that the crimes were committed under his orders. That's
14 set out in the findings in section 9.3.10 of the judgement.

15 This demonstrates the short step the Trial Chamber took. The
16 example of the 23rd of July, 1995, shows that the Prosecution did not
17 have to prove the identity of the perpetrator, which was a core element
18 of its case on responsibility. The Trial Chamber relied on an
19 adjudicated fact.

20 The appellant submits that the further examples in paragraphs 107
21 and 108 of the appeal brief demonstrate that it is shown that the
22 Trial Chamber established Mr. Mladic's contribution and/or mens rea
23 through the use of adjudicated facts in the manner argued in the appeal
24 brief.

25 Approach to rebuttal evidence.

1 My learned friend repeats the arguments from the written
2 response. As they have been addressed in the reply at paragraphs 22 to
3 30, I refer the Chamber to these.

4 The examples that were provided from the judgement by my learned
5 friend do not underline the appellant's reply in this regard.

6 Adjudicated facts do not require corroboration.

7 The Prosecution asserts that this is the case. The Prosecution
8 argues that it "does not matter" that the Prosecution evidence was
9 insufficient to prove the same point. The appellant recalls
10 paragraphs 31 and 32 to the reply for this.

11 The use of adjudicated facts does not alleviate the Prosecution
12 of their burden of proof. If their own evidence cannot establish the
13 facts it seeks to rely on to prove its case, adjudicated facts should not
14 be used as a substitute. Judicial economy cannot be at the expense of
15 the basic principles of a criminal trial. The Prosecution must prove its
16 case beyond reasonable doubt.

17 Adjudicated fact 1476.

18 The appellant's written reply addresses my learned friend's
19 submissions on this at paragraphs 33 to 37. As the oral submissions made
20 do not go any further than those set out in the written response, I do
21 not propose to rehearse our reply in this regard.

22 Illustrative examples.

23 My learned friend for the Prosecution yesterday stated that the
24 provision of illustrative examples is insufficient to trigger a review of
25 the entire judgement.

1 The appellant submits that an error in the Trial Chamber's
2 methodology has been shown in relation to adjudicated facts. Flowing
3 from this, the appellant has provided examples where this erroneous
4 methodology was applied and the results therein. The appellant has not
5 just pointed to one or two. It has pointed to examples of this in each
6 schedule of the incidents annexed to the indictment and in the
7 unscheduled incidents.

8 The Chamber is directed not only to paragraphs 107 and 108, but
9 also in the specific grounds on the counts of the indictment these are
10 highlighted and reviewed to show how the Trial Chamber erred with worked
11 examples.

12 To conclude on Ground 2, the appellant invites the Chamber to
13 first articulate the correct legal standard; second, review the relevant
14 findings of fact; and finally, reverse the Trial Chamber's findings that
15 Mr. Mladic was responsible for the incidents infected by this error.

16 Ground 4.

17 My learned friend for the Prosecution yesterday --
18 Madam Presiding Judge, I've just had an indication that we're at a
19 convenient point for a break and perhaps we should take it now.

20 JUDGE NYAMBE: [Via videolink] Very well. We'll take a break for
21 40 minutes, and we will return at 1550.

22 --- Recess taken at 3.10 p.m.

23 --- On resuming at 3.56 p.m.

24 JUDGE NYAMBE: [Via videolink] The Appeals Chamber now will hear
25 the rest of the Defence reply, and you have 36 minutes left of your reply

1 time, Defence counsel.

2 MS. BAGOTT: I'm grateful, Madam Presiding Judge.

3 Ground 4.

4 My learned friend for the Prosecution argued that the Tribunal
5 does have jurisdiction over the crime of terror. She invites the Chamber
6 to find this on the basis of Galic and the fact that it was foreseeable
7 to Mr. Mladic that his conduct would lead to a conviction on terror.

8 I will take these points in turn.

9 The Prosecution rely on the Galic decision and the fact that this
10 was followed by subsequent cases to argue that the Chamber can be
11 satisfied that the criminalisation of terror formed part of customary
12 international law. My learned friend did not engage with the fact that
13 there is a lack of state practice, as identified in the appellant's
14 submissions. Rather, she stated that the appellant "ignores that the
15 Galic Appeals Chamber did not only rely on national laws"; transcript
16 page 107, lines 23 to 25.

17 In support of this, she cited a reference to terror in the 1919
18 report on the Commission of Responsibilities quoted in paragraph 93 of
19 the Galic appeal judgement.

20 When the quotes relied on by Galic are placed in their proper
21 context, it is clear that the commission was making broad statements
22 without coining legal definitions. Further, it is far from clear whether
23 the reference to "systematic terrorism" is conceptualised in a manner
24 corresponding to Article 51(2) of Additional Protocol I or Article 13(2)
25 of Additional Protocol II. And in this regard, I commend

1 Judge Schomburg's dissent to the Chamber at paragraph 14.

2 Importantly, of the states in the commission, the Galic Appeals
3 Chamber did not point to one that had criminalised terror in its domestic
4 legislation, thus undermining the assertion that the commission report
5 can in some way be taken as evidence of either state practice or
6 opinio juris.

7 With regards to state practice, there was no penalisation of the
8 terrorisation against a civilian population in either the Nuremberg or
9 the Tokyo Charters or the Control Council Law No. 10 on the Punishment of
10 Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity
11 in Germany.

12 The appellant submits the Prosecution has failed to undermine the
13 appellant's submissions about the absence of extensive and virtually
14 uniform state practice to show beyond any doubt that the criminalisation
15 of terror was part of customary international law at the time of the
16 indictment.

17 Further, the reliance on the fact that others have followed the
18 Galic Appeals Chamber decision does not remedy its defective legal
19 reasoning. In fact, it gives further impetus to review the decision to
20 correct the wrong turn that the law has taken as a result of Galic.

21 The appellant maintains that there are cogent reasons to depart
22 from the Galic Appeals Chamber's decision.

23 Foreseeability.

24 My learned friend raised the issue of foreseeability. However,
25 she allies the appellate's submissions in this regard. It is clear from

1 the appeal brief that the submissions on the fact that a custom
2 criminalising terror did not exist are distinct from those made about
3 foreseeability.

4 The issue of foreseeability is considered at paragraphs 350 to
5 372 of the appeal brief and paragraphs 70 to 71 of the reply.

6 If a custom is found not to exist, then the question of
7 foreseeability becomes moot. The two must be considered separately.

8 In response to the Prosecution's submissions on foreseeability,
9 as they fail to raise any new arguments orally, the appellant recalls and
10 relies on the detailed written submissions in the appeal brief and reply.
11 The appellant therefore invites the Trial Chamber to reverse the
12 conviction on Ground 9.

13 Count 9.

14 Turning finally to Ground 9. My learned friends' submissions
15 today are a rehearsal of the Prosecution's written response. As no new
16 points are raised, and the appellant has replied to these in the reply
17 brief at paragraphs 128 to 135, I will not address the Chamber on this
18 any further. The appellant reiterates and recalls its submissions made
19 at paragraphs 921 to 958 of the appeal brief.

20 The appellant submits that the imposition of a life sentence
21 should be reversed for the reasons set out.

22 To conclude Mr. Mladic's appeal, we make the following remarks.
23 The pursuit of a prosecution should never come at the expense of the
24 basic principles of the rule of law. The application of the black letter
25 of the law ensures that emotions and a desire to right socio-historical

1 wrongs do not determine judicial decisions.

2 The appellant submits that the deferential standard of review
3 does not require Your Honours to bend to the Trial Chamber's findings.
4 The burden on appeal of demonstrating errors of law and fact has been
5 discharged by the appellant. The errors have been clearly identified in
6 the appeal brief and the Prosecution has failed to undermine these.

7 The appeal is meritorious.

8 For the reasons set out in the appeal brief, the appellant
9 invites the Chamber to reverse the convictions entered by the
10 Trial Chamber on Counts 2 to 11 of the indictment and enter not guilty
11 verdicts on all counts.

12 Madam Presiding Judge, Your Honours, that concludes the appeal on
13 behalf of Mr. Mladic.

14 MR. IVETIC: I thank my colleague. And Your Honour, just one
15 correction for the record. In my haste, and I apologise to the
16 translators and to the court reporter, temporary transcript page 44,
17 line 22, when I said "P1145, page 45 to 49," I meant to say "P1445,
18 page 45 to 49." And with that correction, that is all. Thank you.

19 JUDGE NYAMBE: [Via videolink] Thank you. This concludes the
20 submission in relation to Mr. Mladic's appeal.

21 The Appeals Chamber will now hear the Prosecution appeal.
22 Counsel for the Prosecution, you have 30 minutes.

23 JUDGE IBANDA-NAHAMYA: Madam Presiding Judge, I have a question
24 before the Prosecution present their -- before they present their appeal.
25 And I needed one clarification from the Defence side. So you if you

1 allow me, I will put my questions. Thank you.

2 JUDGE NYAMBE: [Via videolink] Judge Nahamya.

3 JUDGE IBANDA-NAHAMYA: The clarification I am seeking from the
4 Defence is, there is an allegation about the Trial Chamber having made an
5 error in finding that the indictment detailed sufficient material facts,
6 such as the identity of victims, dates, locations, and perpetrators for
7 each incident, whether enumerated by schedule or not.

8 I would like Ms. Bagott to give me clearly just two instances of
9 this error. What exactly is the error?

10 Then secondly, did you bring this matter to the Trial Chamber on
11 scheduled incidents? If you did, did the Chamber give you any directions
12 on what to do concerning the scheduled incidents?

13 For the Prosecution, the Appeals Chamber in the Karadzic case
14 upheld the Trial Chamber's findings that there was no genocide in certain
15 municipalities in Bosnia and Herzegovina in 1992. What are the reasons
16 for this appeal, our Appeals Chamber, to deviate from this determination?
17 Thank you.

18 JUDGE NYAMBE: [Via videolink] Shall we start with -- okay, go
19 ahead.

20 JUDGE IBANDA-NAHAMYA: I think the Defence can give me their
21 response, and then the Prosecution before they start -- as they give
22 their part, they can also give me an answer to that. Thank you.

23 MS. BAGOTT: Your Honour, turning to the first question, which
24 was in relation to two clear incidents. The first of which, I would
25 direct Your Honour to cruel and inhumane treatment, incident (e)(iii).

1 Your Honour, please could I check my notes before I respond?
2 Sorry, I've written something down wrong, and perhaps it would assist,
3 given the nature of the question. Please can I ask, I appreciate that my
4 learned friend is ready to make her appeal, if I could respond to
5 Your Honour's question at the close of that?

6 JUDGE IBANDA-NAHAMYA: All right.

7 MS. BAGOTT: I'm grateful.

8 MS. BAIG: Madam Judge Nahamya. In the Karadzic case, of course,
9 there was different evidence and different findings of fact by the
10 Trial Chamber. The key difference in the conclusion -- there are two key
11 differences in the conclusion of the Karadzic Chamber on the facts of
12 that case.

13 The first difference was that they found a different formulation
14 of the joint criminal enterprise and the purpose of that joint criminal
15 enterprise and the crimes that formed part of that joint criminal
16 enterprise with regard to Karadzic's involvement. So there was a
17 different formulation where the JCE -- the means to achieve the JCE were
18 found to be JCE III crimes. So that's the first distinction.

19 And the second key distinction is that in that case the
20 Trial Chamber did not find, on the facts of that case, that any of the
21 principal perpetrators had destructive intent. It did not find that the
22 principal perpetrators had the intent to destroy the Bosnian Muslim
23 community in part.

24 So we have two key factual differences in the underlying factual
25 findings in that case.

1 And just to recall, Your Honours, that in this case, all of the
2 crimes that were committed in the municipalities - and by that I mean,
3 murder, extermination, persecution, deportation, and forcible transfer -
4 all of that was part of the means that was being used to achieve the
5 joint criminal enterprise purpose of claiming the Serb-claimed territory
6 and expelling the rest of the population from that territory. So that
7 was all inside the JCE I.

8 And in this case, the Trial Chamber found, on the facts of this
9 case, that the principal perpetrators, the local perpetrators who were
10 committing the crimes in those places, that they had intent to destroy
11 the Bosnian Muslim population in those parts.

12 JUDGE IBANDA-NAHAMYA: And the areas, the municipalities in that
13 case, do they correspond to the municipalities in this case where they
14 found there was no genocide? Do they directly?

15 MS. BAIG: Thank you, Judge. Some are the same municipalities.
16 So Prijedor, for example, is in both cases. But they are not identical.

17 JUDGE IBANDA-NAHAMYA: Are you ready to give me your answer?

18 MS. BAGOTT: Yes, Your Honour. I'm grateful for the time.

19 As set out in our written submissions and also orally, the
20 appellant's submissions do not relate to the fact that the indictment is
21 defective per se. The issue in this case is the fact that the
22 Trial Chamber of its own volition entered convictions on what were mere
23 accusations. They were not incidents listed in the schedule or were
24 unscheduled incidents.

25 Two examples of this that I would point Your Honour to is cruel

1 and inhumane treatment, incident (j)(ii). If Your Honour considers the
2 65 ter witness list, within a single paragraph referring to a scheduled
3 incident, the second sentence refers to something else. That incident,
4 which is in the first paragraph scheduled, the second sentence relates to
5 another accusation, and it was that accusation that the Trial Chamber
6 entered a finding on as an unnamed, unscheduled incident.

7 The same error occurs in shelling incident (d), which is the
8 14th of May, 1992. If Your Honour considers the 65 ter witness list,
9 again, the same issue arises. What occurs is that within the narrative
10 of the witness's evidence, at the top it gives an indication of what
11 they're being called to give evidence about, there is an accusation made.
12 However, that accusation is not specified as either a scheduled or
13 unscheduled incident.

14 Therefore, the appellant submits that falls into the third
15 category of unnamed, unscheduled incidents. And therefore, by entering a
16 conviction on that and holding Mr. Mladic responsible, the Trial Chamber
17 fell into discernible error.

18 JUDGE IBANDA-NAHAMYA: Presiding Judge, that's it.

19 JUDGE NYAMBE: [Via videolink] I can't hear anything.

20 JUDGE IBANDA-NAHAMYA: I have got the answers, so they may
21 proceed. Thank you.

22 JUDGE NYAMBE: [Via videolink] The Appeals Chamber will now hear
23 the Prosecution's appeal.

24 Prosecution, you may proceed.

25 MS. BAIG: Thank you, Madam Presiding Judge.

1 Today, Your Honours, we ask you to take the Trial Chamber's
2 genocide findings to their logical conclusion. But for critical legal
3 and factual errors in assessing genocidal intent, the Trial Chamber would
4 have convicted Mladic of genocide in the Count 1 municipalities. But the
5 Trial Chamber erred in finding that the parts of the group targeted for
6 destruction were not substantial enough to be counted as genocide.

7 And when it came to assessing Mladic's intent, the Trial Chamber
8 erred in applying a stricter legal test for leadership figures. Had the
9 Chamber not erred, the inescapable conclusion is that Mladic is guilty of
10 genocide not only in Srebrenica but also in the Count 1 municipalities:
11 In Prijedor, in Sanski Most, in Kotor Varos, in Foca, and in Vlasenica.

12 Yesterday, I gave you a brief overview of the crimes that were
13 committed in these municipalities. And today, I will focus on two errors
14 in the Trial Chamber's analysis.

15 I will first address the errors concerning the heightened
16 standard for leadership intent, which is Ground 2 of the Prosecution's
17 appeal. And then I will turn to the error in the Chamber's assessment of
18 the size or substantiality of the targeted group, the targeted parts of
19 the group, both in relation to the error set out in Ground 1 and to
20 remedy.

21 Let me begin with the erroneous heightened legal standard for
22 leaders. The Chamber incorrectly held that in the case of leadership
23 figures, the legal test for genocidal intent is stricter. This is a
24 clear error of law. And I say this because when the Trial Chamber
25 assessed the genocidal intent of the local perpetrators, it correctly

1 looked at the totality of the evidence. It analysed the circumstances of
2 the crimes to conclude that the local perpetrators had the intent to
3 destroy, in part, the Bosnian Muslim group as such.

4 But when it came to Mladic and the other leaders of the JCE, the
5 Trial Chamber held that the test is different. For Mladic and his fellow
6 JCE members, the Chamber held that circumstantial evidence is legally
7 insufficient to establish the mens rea.

8 And let me take you to these paragraphs of the judgement. Let me
9 first refer you to paragraph 3440, where the Trial Chamber set out the
10 legal test for intent in relation to the local perpetrators. And rather
11 than put up a slide, I'm going to read it out. In relevant part,
12 paragraph 3440 says:

13 "In relation to assessing the specific intent of the physical
14 perpetrators, the Trial Chamber recalls that, where direct evidence of
15 specific intent is absent, the specific intent may be inferred from the
16 surrounding facts and circumstances."

17 And the Chamber explains, at paragraph 3457, that the surrounding
18 facts and circumstances include the systemic targeting of the victims on
19 account of their membership in a group, as well as the repetition, the
20 pattern, the scale of the atrocities, and the perpetration of other
21 culpable acts against that group.

22 And with regard to the lower-level perpetrators, the
23 Trial Chamber was convinced by the evidence in this case that they
24 intended to destroy parts of the Bosnian Muslim group in the Count 1
25 municipalities.

1 Now, I'd ask Your Honours to compare this approach with
2 paragraph 4236, where the Chamber explains how the law or the approach is
3 different for the leadership. In the paragraph just before this, the
4 Trial Chamber finds that the leaders' statements and speeches were not
5 unambiguous indicators of intent. Then it says, at paragraph 4236:

6 "An inference that the Bosnian-Serb leadership sought to destroy
7 the protected groups in the Count 1 municipalities through the use of a
8 number of physical perpetrators as tools requires more. In the absence
9 of other evidence which would unambiguously support a finding of
10 genocidal intent, drawing an inference on the basis of prohibited acts of
11 physical perpetrators alone is insufficient."

12 In other words, Your Honours, while inferences from the
13 circumstantial evidence about the pattern of crimes may be drawn for the
14 local perpetrators, this same evidence is insufficient for the
15 leadership. For the leaders, the Chamber explicitly says that it
16 requires more. And this is a categorical statement of the law. The
17 Chamber does not say "in light of these facts in this case, no inference
18 is available." It states the law incorrectly when it says "drawing an
19 inference on the basis of prohibited acts of physical perpetrators alone
20 is insufficient."

21 That this is a stricter legal test is also clear from the
22 Chamber's discussion of the JCE members' statements and speeches in
23 paragraph 4235. The Chamber looks at these statements without connecting
24 them to the JCE members' direct involvement in the pattern of violent and
25 discriminatory crimes against the targeted group.

1 And this legal holding, this stricter leadership test, is
2 contrary to nearly two decades of jurisprudence on genocide from the ICTR
3 and ICTY. As the Rutaganda Appeals Chamber persuasively explained at
4 paragraph 525 of their judgement, unambiguous evidence of intent is rare,
5 including in genocide cases. And the quote from that case is:

6 "'[E]xplicit manifestations of criminal intent are [...] often
7 rare in the context of criminal trials.' In the absence of explicit,
8 direct proof, the *dolus specialis* may therefore be inferred from the
9 relevant facts and circumstances."

10 And this, Your Honours, was precisely the test that the Chamber
11 applied to the local perpetrators, and it erred when it applied a
12 different and higher test to Mladic and the leadership. No rationale can
13 be found in the trial judgement for treating the JCE members differently
14 from the local perpetrators.

15 It is not that the JCE members were more distant from the crimes,
16 because the local perpetrators who were found to have intent to destroy
17 included a number of mid-ranking officers, some of whom were just a rung
18 or two below Mladic. And it cannot be that the local perpetrators were
19 committing crimes directly while the leaders were indirect perpetrators,
20 because the local perpetrators who had the intent also included some
21 officials who were not found to have physically committed any of the
22 crimes themselves.

23 And this is why we refer to them as local perpetrators and not
24 physical perpetrators.

25 The Trial Chamber offers no explanation for the difference in its

1 approach. Your Honours, the effect of the Chamber's legal error is that
2 it will only be possible to convict leadership accused in those rare
3 situations where they unambiguously state their genocidal intent, because
4 according to this Trial Chamber, without this other unambiguous evidence,
5 the entire pattern of crimes that a leader unleashes on a population is
6 legally insufficient to prove genocidal intent.

7 And this cannot be correct. If nothing else, appellate
8 intervention is required so that future courts are not led into this same
9 error.

10 Your Honours, if the Chamber had applied the correct law, there
11 is only one reasonable conclusion that it could have reached: Mladic and
12 his fellow JCE members intended to destroy the Bosnian Muslim community
13 in the Count 1 municipalities.

14 The Trial Chamber found that Mladic and the other JCE members
15 used the local perpetrators as tools to commit the underlying acts of
16 genocide on a discriminatory basis against Bosnian Muslims. And based on
17 the circumstances of those crimes, crimes that were controlled by Mladic
18 and his fellow JCE members, the majority concluded that the local
19 perpetrators intended to physically destroy the protected group in each
20 of the five municipalities.

21 The Trial Chamber considered the intensity of the attacks on the
22 Bosnian Muslim communities over a short period of time, the thousands of
23 murders of Bosnian Muslims - executed in their homes, slaughtered by the
24 dozens or hundreds when the Bosnian Serb forces attacked Muslim villages,
25 the massacres as detention facilities, and prisoners killed by starvation

1 and beating and lack of medical care. And the Chamber also considered
2 the serious bodily and mental harm that further contributed to the
3 destruction of the protected group, the tortures and the beatings, the
4 rapes and other brutal sexual violence.

5 And for the survivors, the Trial Chamber found that the harm had
6 a long-lasting and devastating physical and mental impact that gravely
7 affected their ability to lead constructive lives; paragraph 3451.

8 And it properly considered the scale of other atrocities
9 committed against group members, finding at paragraph 3457 that it was
10 vast: The forced displacements, the persecutions, the destruction of
11 mosques and Muslim property, which served to erase every trace of the
12 Bosnian Muslim groups in these locations.

13 Your Honours, those very crimes are Mladic's crimes. They are
14 the JCE's crimes. Almost all of the named local perpetrators and units
15 were directly under Mladic's command and control, and the others were
16 under the control of the other members of the JCE.

17 The Trial Chamber found that Mladic and the other JCE members
18 used the local perpetrators to commit these underlying crimes, labelled,
19 of course, as war crimes and crimes against humanity, in order to further
20 the common criminal purpose of ethnic separation by whatever means. And
21 these same criminal acts were also the actus reus of genocide. The
22 Trial Chamber found that Mladic's contribution to their commission was
23 instrumental, that without Mladic these crimes would not have been
24 committed as they were; paragraphs 4612.

25 And recall that the way that these crimes were committed was

1 precisely the reason why the Trial Chamber found that the local
2 perpetrators, Mladic's tools, had the intent to destroy.

3 Your Honours, if the circumstances of the crimes prove the tools'
4 intent, how can they also not prove Mladic's intent? Especially since
5 the evidence against Mladic is much stronger than the case against the
6 local perpetrators. Mladic is guilty of the larger pattern of crimes in
7 all of the Count 1 municipalities, all at the same time. And all of
8 these acts fell within the joint criminal enterprise's common goal of
9 ethnic separation by whatever means.

10 Destroying Bosnian Muslim communities not only clears the
11 unwanted from that location, it also serves as a potent threat in support
12 of ethnic separation elsewhere.

13 And especially since Mladic and the other JCE members made
14 statements further evidencing their genocidal intent. Take, for example,
15 the speeches that the Trial Chamber found were inflammatory, caused fear,
16 and incited ethnic hatred, at paragraph 4235, the derogatory language in
17 the media where Mladic vilified Muslims as "the worst scum," and Mladic's
18 propaganda efforts drawing on historical animosities, encouraging crimes
19 against Bosnian Muslims in existential terms, warning his people that if
20 we do not eliminate them they will again seek to commit genocide against
21 us. And I would refer you, for example, to paragraph 4499 of the
22 judgement.

23 Mladic's statement are all the more striking in light of his
24 concern about hiding the crimes from international scrutiny. It was
25 Mladic who cautioned on the day he took command of the VRS that the plan

1 had to be guarded as "their deepest secret"; paragraph 3704.

2 And in January 1994 addressing the Assembly exactly one year
3 after the destructive campaign in the municipalities, Mladic was
4 explicit. He explained:

5 "My concern is not that they will create the state. My concern
6 is to have them vanish completely"; paragraph 4629.

7 This statement is an unambiguous and explicit manifestation of
8 genocidal intent, especially when you look at it in the context of the
9 Chamber's other factual findings: That Mladic sought to establish an
10 ethnically pure Serbian state by whatever means, along with other JCE
11 members who repeatedly threatened extreme violence to achieve their
12 shared ethnic separation objectives, including by repeatedly threatening
13 Bosnian Muslims with disappearance and extinction.

14 That Mladic intended, oversaw, and was instrumental to a violent
15 campaign of ethnically based persecution of Bosnian Muslims to force them
16 out of Serb-claimed territory. That his subordinates committed genocidal
17 acts over and over again, crimes that the Trial Chamber found Mladic
18 contributed to, intended, and was criminally responsible for.

19 And remember, Your Honours, that his call for Muslims to vanish
20 completely was made after he had been repeatedly warned by the
21 United Nations General Assembly to stop ethnic cleansing in the
22 municipalities, stating in unequivocal terms that this ethnic cleansing
23 was "a form of genocide." And I would refer Your Honours to trial
24 judgement paragraph 4633, and to Exhibits P2045 and -46.

25 In its proper context, it is difficult to imagine a more

1 unambiguous expression of genocidal intent than Mladic's statement, "My
2 concern is to have them vanish completely."

3 Your Honours, when all the evidence is weighed together, when his
4 words are assessed together with his deeds, as the law says it must be,
5 when the evidence is weighed as a whole, there is only one reasonable
6 conclusion left: That Mladic intended to physically destroy the Bosnian
7 Muslim communities in all of the Count 1 municipalities.

8 And this brings me to the final section of my submissions
9 concerning substantiality. This is the only consideration that stood in
10 the way of the Chamber's finding that genocide was committed by the local
11 perpetrators. The Chamber found that the local perpetrators intended to
12 destroy the Bosnian Muslim group as such in the five Count 1
13 municipalities, but then found that the targeted parts of the group were
14 too small. This was an error of fact. No reasonable trier of fact could
15 have reached this conclusion.

16 Your Honours, this is the first and only time that any
17 international court has found that perpetrators had the intent to destroy
18 a part of the group as such but then stopped short of convicting for
19 genocide on substantiality alone.

20 In Ground 1 of our appeals brief, we provide detailed arguments
21 as to why each of the targeted communities meets each of the factors in
22 the legal test for substantiality. We also address this in the remedy
23 section of our brief.

24 Today I'd like to focus on the purpose of the substantiality
25 requirement, because this is not an explicit requirement for genocide or

1 genocidal intent in either the Convention or the ICTY Statute. But it
2 has been read into the definition: If only a part of the group is
3 targeted for destruction, it must be a substantial part to be considered
4 genocide. The concern was to ensure that the label of genocide is not
5 applied to crimes that are too small.

6 As the Appeals Chamber in Krstic put it, this requirement guards
7 against the term "genocide" being imposed "lightly"; paragraph 37.

8 But the notion of a substantial part has always allowed for
9 crimes of limited geographic scope, and this is because genocide is not
10 limited to crimes on the horrific scale of the Holocaust or the Rwandan
11 genocide. The Convention's framers emphasised that, legally, the actus
12 reus includes more than mass killing, and the specific intent requirement
13 explicitly includes the intention to destroy the group, not just in whole
14 but also in part. And this is why the case law has always recognised
15 that genocide could be committed in a single municipality. I would refer
16 you, for example, to the 1995 Nikolic Rule 61 decision, and the Jelisic
17 appeals judgement, and to the many cases finding the crime of genocide in
18 the single municipality of Srebrenica.

19 And when considering a single municipality involving a part of
20 the group, the Court must determine whether the part is substantial.
21 According to the leading case, the Krstic appeals judgement, "the numeric
22 size of the targeted part of the group is the necessary and important
23 starting point, though not in all cases the ending point of the inquiry";
24 paragraph 12.

25 Krstic stands for the proposition that in some cases the sheer

1 numbers are enough to show substantiality. Other factors may include the
2 part's relative size, its prominence, the area of the perpetrator's
3 activity and control. And the Appeals Chamber emphasises that these are
4 neither exhaustive nor dispositive.

5 And recall that substantiality is only about intention. It is
6 not about how many group members are actually harmed by the conduct.
7 This is critical. The evaluation of substantiality is not about how many
8 people were harmed by the genocidal acts in each place. The question is,
9 did the destructive intent extend to a sufficiently large part of the
10 group or a sufficiently important part of the group to warrant the label
11 "genocide."

12 Your Honours, in this case, the numeric size of the targeted
13 group already meets the substantiality requirement. In all Count 1
14 municipalities, the perpetrators targeted communities of tens of
15 thousands of people. The smallest, Kotor Varos, had 11.000 group
16 members. The largest, Prijedor, had nearly 50.000. These are not
17 insignificant parts of the group. They are not so small that this would
18 be applying the term lightly.

19 Targeting tens of thousands of group members is in itself
20 substantial.

21 But Mladic wasn't involved in just one municipality. His
22 subordinates and other JCE tools were committing crimes with destructive
23 intent across five municipalities. And the Chamber found that
24 Colonel Basara, one of Mladic's VRS subordinates, targeted close to
25 80.000 group members across two municipalities; paragraph 3513 and 3524.

1 And in total, across all five municipalities, they targeted over
2 128.000 men, women, and children solely because of their group identity.

3 By any measure, this is not a small criminal intention. It is a
4 massive one. And it falls squarely within the definition of genocide on
5 the numbers alone. And the additional factors only further support this
6 conclusion, as we've set out in Ground 1 of our appeals brief.

7 The Trial Chamber found that the pattern of crimes committed in
8 the municipalities was more than crimes committed against individuals.
9 It was not only persecution targeting individuals because of their ethnic
10 characteristics. This pattern of crimes targeted the very existence of
11 the Bosnian Muslim group as such, and recognising this would not be
12 applying the term lightly.

13 Your Honours, to conclude, the Appeals Chamber in Krstic warns,
14 at paragraph 37, that where the requirements are met, as they are in this
15 case, "the law must not shy away from referring to the crime committed by
16 its proper name." And, Your Honours, here that is genocide.

17 And it is for these reasons and all the reasons set out in our
18 briefs that the Prosecution asks you to correct the Trial Chamber's
19 errors and enter a conviction on Count 1, genocide. Thank you.

20 JUDGE NYAMBE: [Via videolink] Thank you very much,
21 Ms. Prosecutor. We now take a break and resume to hear the Defence
22 response. We now adjourn for 40 minutes and resume to hear the Defence
23 response.

24 --- Recess taken at 4.46 p.m.

25 --- On resuming at 5.42 p.m.

1 JUDGE NYAMBE: [Via videolink] Thank you. The Appeals Chamber
2 will now hear Mr. Mladic's response.

3 Counsel for Mr. Mladic, you have 30 minutes.

4 MR. IVETIC: Your Honour, my colleague, Ms. Peta-Louise Bagott,
5 will be presenting on our behalf. Thank you.

6 MS. BAGOTT: Madam Presiding Judge, Your Honours, I will be
7 responding on behalf of Mr. Mladic to the Prosecution's appeal against
8 the Trial Chamber's acquittal on Count 1, genocide in the municipalities.

9 As set out in paragraph 4 of the written response, nothing in the
10 written response or the oral submissions should be taken as an admission
11 or concession for the purpose of Mr. Mladic's appeal against his
12 convictions and sentence.

13 As the appellant in this matter, the Prosecution bear the burden
14 to show that the Trial Chamber erred in law or that no reasonable trier
15 of fact could have reached the same factual conclusions.

16 As the Prosecution seeks to appeal an acquittal, it must prove
17 all reasonable doubt had been eliminated at trial such that the
18 Trial Chamber fell into error. It must satisfy this Chamber that the
19 evidence was so unambiguous that a reasonable Trial Chamber was obliged
20 to make the inferences it now asks you to draw.

21 The respondent submits that the Prosecution fails to meet the
22 appellate standard and demonstrate that the Trial Chamber fell into
23 discernible error in relation to its findings on: First, its approach to
24 the evidence on the substantiality of each of the Count 1 municipalities;
25 and second, its finding that Mr. Mladic and other JCE members did not

1 possess destructive intent.

2 The respondent asserts that the Prosecution fails to discharge
3 its burden to prove all reasonable doubt had been eliminated at trial.
4 The respondent invites the Chamber to dismiss the Prosecution's appeal in
5 its totality and uphold and affirm Mr. Mladic's acquittal on Count 1.

6 It is recalled that the written response was detailed and
7 comprehensively covered the Prosecution's submissions. My learned friend
8 today rehearses those. For that reason, my submissions will focus on the
9 core elements of the Prosecution's appeal. I will not rehearse what is
10 already in writing.

11 Ground 1(a), substantiality of each of the Count 1
12 municipalities.

13 Size. The respondent refers the Chamber to paragraphs 48 to 58
14 of its written response. The respondent asserts the Trial Chamber
15 reasonably concluded that the numerical size of the Bosnian Muslim
16 community in each of the Count 1 municipalities was not substantial.

17 The Prosecution disagrees with the conclusion made by the
18 Trial Chamber that it was not substantial. It does so without showing
19 how the Trial Chamber's conclusions were incorrect or unreasonable.

20 To start with the relevant jurisprudence is important. Where a
21 conviction for genocide relies on the intent to destroy a protected group
22 in part, the part must be a substantial part of that group. The targeted
23 part "must be significant enough to have an impact on the group as a
24 whole"; Krstic, paragraph 8.

25 The Trial Chamber methodically worked through the issue of

1 substantiality with regard for the applicable law and with a careful
2 consideration of the evidence; judgement, paragraphs 3526 to 3534.

3 The Prosecution in its appeal and today repeats failed trial
4 arguments. It expressly, the Trial Chamber, considered the physical
5 perpetrator's area of activity and control and found that they had
6 "limited geographical control or authority to carry out activities";
7 paragraph 3535.

8 Further, that "the Bosnian Muslims targeted in each individual
9 municipality formed a relatively small part of the Bosnian Muslim
10 population in the Bosnian Serb claimed territory or in BiH as a whole";
11 paragraph 3535.

12 While the Prosecution asserts the Trial Chamber erred in making
13 these findings, they fail to articulate the basis of that error. In
14 fact, they merely repeat their arguments about the size of the
15 municipalities and compare this finding to the size of Srebrenica. This
16 comparison alone does not demonstrate an error and fails to address the
17 elemental requirements of the crime.

18 The Trial Chamber's finding that they were not substantial in
19 size was reasonable, and the Prosecution has failed to demonstrate that
20 no reasonable trier of fact could have reached the same factual findings.

21 Prominence and emblematic nature.

22 The respondent refers the Chamber to paragraphs 59 and 81 of its
23 response.

24 The Trial Chamber found that the Prosecution had presented
25 "insufficient evidence indicating why the Bosnian Muslims in each of the

1 Count 1 municipalities had a specific significance or were emblematic in
2 relation to the protected group as a whole"; paragraph 3535.

3 The Prosecution argues that the Trial Chamber's "predicate
4 findings and the underlying evidence demonstrate to the contrary";
5 paragraph 11.

6 However, again the Prosecution repeats its arguments at trial
7 without demonstrating an error in the Trial Chamber's approach. For
8 example, the evidence the Prosecution cites to support the assertion that
9 the Count 1 communities were prominent and emblematic in nature are those
10 used at trial and the evidence is the same as cited on appeal. See, for
11 example, the Prosecution's final trial brief at paragraphs 387, 388, 389,
12 and compare with the appeal brief at paragraph 13.

13 This evidence --

14 THE REGISTRAR: Ms. Bagott, could you kindly pause. We have lost
15 Judge Kam.

16 MS. BAGOTT: Of course.

17 THE REGISTRAR: Madam Presiding Judge, we are good to go and
18 Judge Kam has now been reconnected. Thank you.

19 JUDGE NYAMBE: [Via videolink] You may proceed.

20 MS. BAGOTT: This evidence was considered by the Trial Chamber,
21 judgement paragraphs 3530, 3534, 3553, 3554, when reaching their
22 conclusions. Further, the Prosecution repeats the point that the
23 municipalities held immense strategic importance for the Bosnian Serb
24 leadership; Prosecution final trial brief paragraph 386, appeal brief
25 paragraph 14. Again, this was considered by the Trial Chamber,

1 paragraphs 3534, which reaching their conclusions.

2 In addition, the point that any conduct represented early steps
3 in the Bosnian Serb campaign towards an ethnically homogeneous state was
4 made at trial; Prosecution final trial brief, paragraph 390 to 392.
5 Again, this was considered by the Trial Chamber.

6 The respondent submits that the Prosecution is repeating failed
7 trial arguments without identifying any error in the Trial Chamber's
8 approach. The Prosecution simply disagrees with the findings. An appeal
9 is not a de novo trial. The appellate standard is not met simply because
10 the Prosecution want a different outcome.

11 Therefore, save for comparing the findings in relation to
12 Srebrenica at paragraphs 11, 12, and 14, the Prosecution fails to explain
13 why no reasonable trier of fact, based on the evidence, could reach the
14 same conclusion as the Trial Chamber did.

15 The respondent asserts that the Prosecution fails to demonstrate
16 that the findings of the Trial Chamber were incorrect or unreasonable in
17 relation to the Count 1 municipalities.

18 For this reason, Ground 1 should be dismissed.

19 Ground 2.

20 The Prosecution fails to discern an error in the Trial Chamber's
21 finding that Mr. Mladic and other JCE members did not possess destructive
22 intent.

23 The respondent submits that the Prosecution fails to meet the
24 high standard on appeal and eliminate all reasonable doubt such that this
25 Chamber could overturn the Trial Chamber's findings that he did not

1 possess destructive intent.

2 Ground 2(a).

3 The respondent asserts that the Trial Chamber did not apply a
4 heightened evidentiary threshold when assessing the destructive intent of
5 Mr. Mladic and the OJCE members. The respondent refers the Chamber to
6 paragraphs 88 and 143 of the response.

7 The jurisprudence makes it clear that "it is the genocidal intent
8 of" the accused "and other alleged JCE members, not the physical
9 perpetrators of the underlying genocidal acts, that is determinative for
10 the purpose of JCE I." Karadzic 98 bis appeal decision, paragraph 79.

11 The Trial Chamber expressly consider the Prosecution's arguments,
12 which it repeats on appeal, that "the number and nature of the crimes,
13 considered together, reflected an intent to destroy the group in part
14 rather than an intention to 'ethnically cleanse.'" That can be seen in
15 the judgement at paragraph 4235.

16 Again, the Trial Chamber worked through the evidence presented by
17 the Prosecution carefully and applied the correct legal standard. The
18 Prosecution fails to show an error in the Trial Chamber's conclusion
19 that:

20 "In the absence of other evidence which would unambiguously
21 support a finding of genocidal intent, drawing an inference on the basis
22 of prohibited acts of the physical perpetrators alone is insufficient."
23 Paragraph 4236.

24 The Prosecution fails to show that the Trial Chamber applied a
25 heightened standard in this regard.

1 In the Stakic appeals decision, the Appeals Chamber recalled:

2 "A Trial Chamber may only find an accused guilty of a crime if
3 the Prosecution has proved each element of that crime (as defined with
4 respect to the ... mode of liability) beyond a reasonable doubt."

5 THE REGISTRAR: Ms. Bagott, could you kindly pause. Thank you.

6 Madam Presiding Judge, we are ready to proceed. Thank you.

7 JUDGE NYAMBE: [Via videolink] Please proceed.

8 MS. BAGOTT: Continuing the quote:

9 "This standard applies whether the evidence evaluated is direct
10 or circumstantial. [3] Where the challenge on appeal is to an inference
11 drawn to establish a fact on which the conviction relies, the standard is
12 only satisfied if the inference drawn was the only reasonable one that
13 could have been drawn from the evidence presented. [4] In such
14 instances, the question for the Appeals Chamber is whether it was
15 reasonable for the Trial Chamber to exclude or ignore other inferences
16 that led to the conclusion that an element of that crime was not proven."

17 The respondent submits the Trial Chamber did not apply a
18 heightened standard. The Trial Chamber applied the correct standard in
19 accordance with the jurisprudence and the applicable law.

20 The approach the Trial Chamber took was to apply this law to
21 separate bodies of evidence relating to the physical perpetrators and
22 then separately Mr. Mladic and the OJCE members. The respondent submits
23 that the Prosecution fails to demonstrate an error in this regard.

24 The Trial Chamber specifically and explicitly applied the
25 standard to the evidence and found that the Prosecution's reliance on the

1 use of a number of physical perpetrators as tools was insufficient.

2 The Prosecution failed to discharge its burden of proof because
3 it failed to demonstrate that the genocidal intent was the only
4 reasonable inference that could be drawn from the evidence. Its
5 complaint on appeal does not demonstrate an error in the Trial Chamber's
6 findings nor evidence the application of a heightened standard.

7 Further, it fails to show an error in the Trial Chamber's finding
8 that genocide did not form part of the common purpose or the OJCE. The
9 Trial Chamber's finding was based on an assessment of "the entire trial
10 record" but still could not be satisfied that "the only reasonable
11 inference that could be drawn from the evidence" was that genocide formed
12 part of the objective of the OJCE; paragraph 4273.

13 The Trial Chamber carefully considered the evidence as that
14 reference to the judgement shows.

15 Again, it is not enough for the Prosecution to say it wanted a
16 different outcome. It has to demonstrate an error or prove that all
17 reasonable doubt had been eliminated. My learned friend repeats the
18 failed submissions at trial. The Prosecution fails to meet the appellate
19 standard and show how the Trial Chamber applied a heightened one.

20 As such, there is no reason for the Chamber to intervene.

21 2(b). The Prosecution fails to discern any error in the
22 Trial Chamber's findings.

23 The respondent refers the Chamber to paragraphs 144 and 187 of
24 the response.

25 Given the Prosecution's submissions made in this regard, it bears

1 repeating what the Appeals Chamber found in the Karadzic 98 bis decision:
2 It is the genocidal intent of the accused and the other alleged JCE
3 members, not the physical perpetrators of the underlying genocidal acts
4 that is determinative for the purpose of JCE I.

5 The Trial Chamber applied the correct legal standard when it
6 considered the evidence. It considered whether or not the only
7 reasonable inference that could be drawn was the one the Prosecution
8 invited. It weighed the Prosecution's evidence and found it wanting.
9 The Prosecution fails to discern any error in its approach. It fails to
10 show on appeal that the evidence was so unambiguous that a reasonable
11 Trial Chamber was obliged to infer that all reasonable doubt had been
12 eliminated.

13 On appeal, the Prosecution simply disagrees with the outcome.
14 For this reason, the respondent submits that Ground 2 should be
15 dismissed.

16 To conclude, the respondent refers the Chamber to paragraphs 190
17 and 343 of the response.

18 The respondent invites the Chamber to dismiss the Prosecution's
19 appeal, reject the remedies sought, and affirm and uphold Mr. Mladic's
20 acquittal on Count 1.

21 Finally, Madam Presiding Judge, Your Honours, I wish to address
22 the Court and the Chamber on JCE III.

23 The respondent invites the Chamber to revisit Tadic. Whether or
24 not the notion of JCE III has a legal basis in customary international
25 law is of general significance to the Tribunal, not only for legal

1 certainty but also for the Tribunal's legacy.

2 Concerns about the legal basis of JCE III have been consistently
3 raised in separate and dissenting opinions by Judges at this Tribunal as
4 well as in academic commentary.

5 Furthermore, the ECCC has distanced itself from it. The ICC has
6 distanced itself from it.

7 A wholesale review of the jurisprudence relied on in Tadic to
8 support its findings that JCE III has a basis in customary international
9 law has never been undertaken at this Tribunal since 1999, when the
10 decision was rendered.

11 It is recalled that unofficial translations of the Italian cases
12 were relied on by the Appeals Chamber. Official translations have never
13 been obtained by this Tribunal.

14 The legal foundations of JCE III have in many ways been shrouded
15 in secrecy.

16 The Prosecution argues that the respondent's challenge to JCE III
17 is much the same as those previously made and therefore should be
18 dismissed. It is not. No other submission arguing that there are cogent
19 reasons to depart from Tadic has provided a comprehensive analysis of all
20 the relevant jurisprudence in this regard. No other submission arguing
21 cogent reasons has ever gone through each and every case, not just the
22 summary provided in Tadic, and explained at length why there is no
23 support for the suggestion that a form of JCE III was applied in each.
24 And no other submission arguing cogent reasons has ever found and
25 translated the Italian cases into a language of this Court.

1 The respondent's submissions do not just say "overturn JCE III,"
2 they step the Chamber through why the legal basis of JCE III, as
3 articulated in Tadic, cannot withstand scrutiny. For the first time in
4 over 20 years, the respondent has placed before this Chamber everything
5 that the Tadic Appeals Chamber relied on, and translated it, to
6 demonstrate that liability for crimes not encompassed by the common
7 purpose did not exist in customary international law at the relevant time
8 of the indictment.

9 This Chamber has the opportunity to consider the foundations of
10 JCE III from scratch. JCE III has proved to be controversial during the
11 lifecycle of this Tribunal. This is the last opportunity for the
12 Appeals Chamber to confront it head on.

13 Genocide is a specific intent crime. JCE III enables an accused
14 to be held criminally responsible for genocide on the basis of foresight.
15 As the standard of mens rea is lowered, JCE III has often been dubbed the
16 Prosecution's darling as it has been used as a legal loop-hole to
17 facilitate convictions for genocide without the need to prove a specific
18 intent.

19 The respondent submits that after a careful analysis of the case
20 law, the very foundations on which JCE III was built in Tadic are called
21 into question. The Prosecution in reply states JCE III is "established
22 law" and relies on the fact that other Chambers have followed suit to
23 argue that this Chamber should, in effect, leave the matter alone.

24 In our submission, if the law has taken a wrong turn, then this
25 Chamber must correct it.

1 The respondent implores the Chamber to do what no one has done
2 since 1999: Review the legal basis that the Tadic Appeals Chamber
3 alleged supported the notion of JCE III.

4 What we invite this Chamber to do is go where no other
5 Appeals Chamber has, back to the beginning.

6 In the absence of a solid legal basis showing consistent and
7 virtually uniform state practice, showing that liabilities for crimes not
8 encompassed by common purpose existed in customary international law at
9 the relevant time of the indictment, JCE III cannot stand up to scrutiny.

10 It has been weighed, it has been measured, and it has been found
11 wanting.

12 Madam Presiding Judge, Your Honours, time is up for JCE III.

13 JUDGE NYAMBE: [Via videolink] I missed the last submission.
14 There was a lot of background noise.

15 Counsel, can you please repeat? Are you done?

16 MS. BAGOTT: Sorry, Madam Presiding Judge. I didn't see the
17 transcript. Yes, I am.

18 JUDGE NYAMBE: [Via videolink] You have concluded your
19 submissions?

20 MS. BAGOTT: I have, yes.

21 JUDGE NYAMBE: [Via videolink] Thank you very much.

22 The Appeals Chamber will now hear the Prosecution's reply.

23 Counsel, you have 15 minutes.

24 MS. BAIG: Thank you, Madam Presiding Judge.

25 Your Honours, I'm going to start where my learned colleague left

1 off, with joint criminal enterprise.

2 The Appeals Chamber has consistently found that joint criminal
3 enterprise III is a form of liability under customary international law,
4 including for specific intent crimes. And this is not the
5 Appeals Chamber's first chance or the chance to resolve the matter once
6 and for all. This matter has been resolved repeatedly, again and again
7 over the last 20 years, most recently in the Karadzic and Prlic appeals.

8 The Tadic Appeals Chamber properly analysed the World War II era
9 cases to find that JCE, including JCE III, existed as a form of liability
10 under customary international law, and the Appeals Chamber has repeatedly
11 confirmed that JCE is firmly established in custom.

12 Mladic claims that the Italian materials are new, because he
13 offers translations. But all of the arguments he makes on these
14 translations have been considered before. Not just in Tadic but also in
15 the Brdjanin and Karadzic appeals. Your Honours, if any documentary
16 source is really new in this case, it's the US Forces Manual for the
17 trial of war crimes, which further confirms that a JCE III concept was
18 applied by post-World War II courts. And this document is found in our
19 book of authorities and referred to at paragraph 46 of our reply brief.

20 And since Tadic expressly declined to rely on national systems as
21 a source of law, since they were too diverse, these national cases have
22 no impact on the reasoning in Tadic.

23 The jurisprudence is also long settled with regards to the
24 application of JCE III to specific intent crimes. The Brdjanin Appeals
25 Chamber unanimously held that conviction for genocide can be entered on

1 the basis of JCE III, and the Appeals Chamber has reaffirmed that JCE III
2 applies to genocide in Stakic and in Rwamakuba, and to the specific
3 intent crimes of torture and persecution in Stanasic and Zupljanin, and
4 Djordjevic.

5 There is also nothing new in Mladic's attempts to invoke
6 non-binding decisions from other international courts such as the ECCC.
7 Again, the Appeals Chamber has repeatedly confirmed that these decisions
8 did not demonstrate any mistake in the ICTY's approach. And I would
9 refer you, for example, to the Prlic appeals judgement, paragraph 590.

10 The argument that the application of JCE violates the principle
11 of nullum crimen sine lege has been consistently rejected by the
12 Appeals Chamber. Mladic has given this Chamber no cogent reasons to
13 overturn two decades of consistent jurisprudence, and this argument
14 should be dismissed.

15 Turning back to my learned colleague's submissions on Ground 1 of
16 our appeal.

17 Your Honours, it's the numbers that really demonstrate the error.
18 The outcome of the Trial Chamber's analysis is unreasonable in and of
19 itself. The question of substantiality is sometimes framed as asking
20 whether the destruction of the part would have an impact on the group as
21 a whole; Krstic appeals judgement, paragraph 8.

22 But this impact formulation cannot require the intention to
23 destroy the group as a whole because setting the bar that high would make
24 the "in part" language meaningless, and the destruction of a part of a
25 group measured in the tens of thousands is a crime of massive

1 proportions.

2 The destruction of any of the Bosnian Muslim communities of
3 entire municipalities forming distinct parts of the Bosnian Muslim group
4 would necessarily impact the Bosnian Muslim group as a whole. And when
5 you, Your Honours, when you add the two distinct parts of the group that
6 were targeted by Mladic's subordinate Basara, when you add those two
7 groups together in Sanski Most and Prijedor, based on the Chamber's own
8 findings, that is 80.000 people. A group of 80.000 group members.

9 Your Honours, I'm pausing for a moment just to give counsel a
10 chance to consult with his client.

11 MR. IVETIC: Apologies, Your Honour. There was a problem with
12 Mr. Mladic's screen. We have resolved it.

13 MS. BAIG: If I may continue.

14 When you look at --

15 JUDGE NYAMBE: [Via videolink] Yes.

16 MS. BAIG: When you look at the two distinct parts of the group
17 which were targeted by Basara, and you have 80.000 group members, why is
18 this not substantial? The Trial Chamber never looked at those two parts
19 together even though it found that Basara intended to destroy both parts
20 of the Bosnian Muslim group.

21 And when you consider all five municipalities together for the
22 JCE members' intent, it is simply impossible to imagine that the loss of
23 a part of the group comprising over 128.000 members would not have an
24 indelible impact on its whole. And that is why, on the numbers, that the
25 Prosecution says that this was an unreasonable finding by the

1 Trial Chamber.

2 Turning to Ground 2 of the Prosecution's appeal.

3 Your Honour, in Ground 2 we have alleged both a factual and a
4 legal error. And the legal error that I focused on today is that the
5 Trial Chamber applied the wrong legal test. And they exhibited that when
6 they said that the circumstantial evidence of the pattern of crimes of
7 the principal perpetrators under the control of the JCE members was
8 insufficient. That for the JCE members, for the leadership, they
9 required more.

10 And once the Prosecution has shown a legal error, if the
11 Appeals Chamber agrees that there's a legal error arising from the
12 application of the incorrect legal standard, then it is for the
13 Appeals Chamber to articulate the correct legal standard and review the
14 relevant factual findings of the Trial Chamber accordingly.

15 And I refer you to the standard of review on appeal as set out,
16 for example, in paragraph 16 of the Karadzic appeals judgement.

17 Your Honours, in the break I had a moment to consult with my
18 Karadzic appeals judgement so that I could better answer Judge Nahamya's
19 question from before the break, and I just wanted to confirm the two
20 distinctive factors between the Karadzic case and this case.

21 In this case, the genocidal acts of killing, extermination, cruel
22 and inhumane treatment amounting to serious bodily and mental harm, those
23 are found by the Trial Chamber to be within the common purpose of the
24 joint criminal enterprise. Whereas in the Karadzic case, only the
25 forcible transfer, deportation, unlawful detention, and restrictive

1 measures were part of the common purpose.

2 So we have a distinction in the nature of the crimes that were
3 inside the common criminal purpose.

4 And the second point is that in this case, many of the local
5 perpetrators were found to have destructive intent. And as I've
6 explained, the Trial Chamber only fell short of calling this genocide
7 because it found that the part they targeted was not substantial enough,
8 not big enough.

9 But as I explained in my submissions, this holding is erroneous
10 on the sheer numbers alone.

11 In the Karadzic case, nobody was found to have the intent to
12 destroy the group in whole or in part.

13 And to go back to the second question on the Karadzic indictment,
14 I have confirmed that four of the five municipalities are the same. The
15 Karadzic indictment had a larger list, as did our case originally, but
16 Kotor Varos was not in the Karadzic list. It had been removed. So four
17 of the five municipalities are the same.

18 Your Honours, to conclude. This is a case that calls for
19 appellate intervention to reverse Mladic's acquittal for Count 1 genocide
20 in the municipalities. If Your Honours do nothing, the risk is that the
21 Mladic case will stand for two dangerous precedents: First, that
22 targeting 128.000 people is not enough to be considered genocide; and
23 second, that senior officials enjoy a different legal standard than
24 principal perpetrators.

25 Both of these propositions are wrong in law. And if left

1 uncorrected, this will be the legacy of the ICTY and the Mechanism.
2 Your Honours, it is in your hands to correct these errors, and it is in
3 your hands to shape the world's understanding of these historic crimes,
4 and it is in your hands to convict Mladic for his role in the 1992
5 genocide of the Bosnian Muslims in the municipalities.

6 THE REGISTRAR: I'm sorry, could you kindly pause, Ms. Baig?

7 MS. BAIG: I can.

8 THE REGISTRAR: Thank you.

9 Madam Presiding Judge, can you hear and see us now?

10 JUDGE NYAMBE: [Via videolink] Yes.

11 Prosecution counsel, have you concluded or we are still going on?

12 MS. BAIG: Madam Presiding Judge, I've finished and the
13 conclusion is in the record on the transcript. I'm happy to say my final
14 words again, if that would assist you, but it is in the transcript.

15 JUDGE NYAMBE: [Via videolink] Very well.

16 The last item on the agenda for the hearing today is the optional
17 personal statement of Mr. Mladic, should he wish to make one.

18 Mr. Mladic, would you like to make a personal statement not
19 longer than ten minutes?

20 MR. IVETIC: Your Honour, my client has indicated that he does
21 wish to make a statement. Before he does so, I have to give a
22 precautionary information, as is my ethical duty, to remind everyone that
23 Mr. Mladic is a man who suffers from several medical ailments and
24 conditions. I do not know what medications he regularly takes or took
25 this morning. I do know he was scheduled to take medication at 6.00 in

1 the evening. But due to our schedule and sitting here now two days in a
2 row with this schedule, the packet for the 6.00 medication was not sent
3 here and he has not taken that medication.

4 Further, I have been unable to render assistance for him to
5 prepare meaningfully for this address to the Chamber. I have reasonable
6 suspicions as to his capacity, as I've set forth before. And therefore,
7 I would only -- I have doubts as to his understanding of the consequences
8 of these proceedings and his statements, but I would ask you to keep in
9 mind his medical condition and his potential incapacitated state and how
10 that illness may affect his speech.

11 But since the majority decision has ruled as it has, I have to
12 abide by my client's wish to give and allow him the opportunity to speak
13 if he so wishes. And so, therefore, I defer to Mr. Mladic on this
14 matter. Thank you.

15 JUDGE NYAMBE: [Via videolink] Thank you.

16 Mr. Mladic, would you like to make a personal statement? Are you
17 in a position to do so?

18 THE APPELLANT: [Interpretation] Distinguished Presiding Judge,
19 with all my troubles and worries, health-wise and otherwise, I do have
20 the wish and intent to address you. But I would kindly ask you not to
21 limit me to ten minutes but at least 30 minutes, because since the
22 16th of June, 1992, I had been pushed into war, and for every minute of
23 that war, I have something to say. Not for my own sake or for the sake
24 of my own, but in the name of our people and the huge number of my
25 associates and collaborators and the Serbian people who have been in the

1 crosswinds of the Balkans ever since. It is through the Balkans that all
2 the crusades, all the insurgencies, all the wars with Ottoman Turks, with
3 the Austrian Empire, with Hitler, have gone on. And the same applies to
4 this imperialistic period. I would like to have my say, if you allow me,
5 about all that.

6 With your leave, and I would appreciate it very much, if you give
7 me that leave, I would take 31 minutes.

8 Off the top of my head, because I am an eyewitness to all the
9 undesired and unfortunate events during the war, I was, and still am, a
10 target of the NATO alliance. And please don't take offence if I say that
11 this Tribunal, of which I have a very, very low opinion, is a child of
12 the Western powers that have been blowing the same horn ever since the
13 fall of the Berlin wall.

14 Despite the fact that the president of the United States has
15 said, lying, that the NATO alliance would not spread its borders up to
16 Russia.

17 So who is the real representative of the United States, the
18 president or this blond lady who has been showering me with satanic,
19 snakey, devilish words. I am none of the things that you called me.
20 Please let me have my chance to reply to the lady who has either
21 swallowed a snake or the NATO indictment against me. It is no use trying
22 to wash this child of the NATO alliance clean.

23 That is all for now, but I have much to say in continuation if
24 you give me permission.

25 JUDGE NYAMBE: [Via videolink] [Microphone not activated] ... and

1 some of it is already gone, so it better be sticking to a few points by
2 the end of the ten minutes. You may proceed.

3 THE APPELLANT: [Interpretation] I am now in a position to defend
4 not myself, because I'm not defending myself. I am a man who has been a
5 professional soldier all his life. I worked in peacetime and in war in
6 accordance with the laws of my country that was destroyed by the NATO
7 alliance.

8 Is Ratko Mladic to blame because he didn't allow the Ustasha
9 enemy to throw Serbian children into pits like they did during the
10 Second World War? Was the Trial Chamber who sentenced me to life
11 imprisonment correct? No, they're not. They're wrong. And why are they
12 wrong? Because they have a conflict of interest. They were defending
13 not the truth. They were defending the Netherlands and the DutchBat.

14 I was in Srebrenica, unlike all of you here. During my time from
15 9 July until 13 July when I signed the Krivaja document in Vlasenica, an
16 error was made there when it was dated 12 July.

17 I was followed by cameras throughout Srebrenica. I was shot at
18 by some straggler of the 28th Light Muslim Division of the BH Army, and
19 he missed me although he was firing at short range. I was holding a
20 Heckler at the time. And I said, "Stop shooting." He had missed me once
21 already. I didn't even try to shoot back. I didn't even allow my
22 security men to shoot him because he was wearing a vest of the
23 United Nations.

24 THE REGISTRAR: Mr. Mladic, can you pause for a second. I have
25 lost the connection to one of the Judges. Thank you.

1 THE APPELLANT: [Interpretation] I apologise.

2 THE REGISTRAR: Madam Presiding Judge, we're ready to proceed.
3 Thank you.

4 JUDGE NYAMBE: [Via videolink] Mr. Mladic, you may continue.

5 THE APPELLANT: [Interpretation] Thank you very much.

6 Srebrenica is the key to this trial. And what is Srebrenica?
7 Historically speaking, it was a town of the Nemanjici kingdom where lead
8 and gold were mined. Dragutin Nemanjic at the time of the tsars founded
9 many monasteries there.

10 But over time, things happened as they happened. As far as I
11 know, in the time of the Socialist Federal Republic of Yugoslavia, there
12 were no paramilitaries. They didn't exist. The army did not have a
13 presence there. And as an officer, I had never been to Srebrenica before
14 this last war. I'd never been to Zepa or Gorazde.

15 I'm asking all of you, and I'm asking myself, in 1993, I believe
16 it was towards the end of May, UN protected areas were established in
17 Sarajevo, in Bihac, in Srebrenica, Zepa, and in Gorazde, as that
18 Frenchman would say. And that's fine.

19 At that time, I signed with Halilovic, commander of the BH Army,
20 an agreement to honour these UNPAs, and that meant that Srebrenica was
21 supposed to be demilitarised, including an area of 3 kilometres around
22 it. Zepa, Gorazde, Bihac, and Sarajevo were to be demilitarised as well.

23 The war continued in Sarajevo. And after 1993, the 1st Corps of
24 the BH Army stayed there. Were they disarmed? No. And who's to blame?
25 Ratko Mladic. Generals Morillon, Janvier, Smith, Rose, took their turns

1 and nothing happened. I am not a saint, Madam Judge. I am a simple man.
2 I said that many times during the war.

3 Fate put me in a position to defend my country, the SFRY, that
4 you Western powers had devastated with the help of the Vatican and the
5 Western Mafia, Bush and Kinkel. Ratko Mladic was not the one who started
6 that war. He was not the one who made the plan to attack Yugoslavia.

7 JUDGE NYAMBE: [Via videolink] [Microphone not activated] ... and
8 I thank you for your statement. And I now --

9 THE APPELLANT: [Interpretation] I'm very sorry that you have
10 interrupted me. My time is only just coming. People will hear what
11 Ratko Mladic has to say. I am alive and I will live as long as our tribe
12 and our people live. Thank you.

13 And this indictment of yours has gone down the drain.

14 JUDGE NYAMBE: [Via videolink] Thank you, Mr. Mladic.

15 Is there anything further from the parties before we conclude?

16 MS. BAIG: Not from the Prosecution. Thank you, Madam Presiding
17 Judge.

18 JUDGE NYAMBE: [Via videolink] Thank you.

19 Defence, anything more?

20 MR. IVETIC: Nothing for the Defence, except to again make
21 reference to my reservation of rights, objection, and everything that I
22 said yesterday and today in that regard. Thank you.

23 JUDGE NYAMBE: [Via videolink] Thank you.

24 This concludes the hearing of the appeals in this case. Before
25 we adjourn, I would like to take this opportunity to thank the parties,

1 both parties, for their hard work in this case. Additionally, I would
2 like to express my gratitude to all staff at The Hague branch for
3 facilitating our hearing today and yesterday during this challenging
4 time.

5 I would like to also thank the interpreters for their excellent
6 assistance. And I would like to especially thank IT department at
7 The Hague branch for assistance rendered to me at this remote location to
8 be able to participate in the appeals hearing, without which that would
9 not have been possible.

10 The Appeals Chamber will render its judgement in due course. We
11 are now adjourned.

12 --- Whereupon the hearing adjourned at 6.46 p.m.

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