

MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-55-A

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron
Judge William Hussein Sekule
Judge Vagn Prusse Joensen
Judge Jose Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana

Registrar: Mr. John Hocking

Date Filed: 22 July 2016

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annex

RADOVAN KARADZIC'S NOTICE OF APPEAL

Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for Radovan Karadzic

Mr. Peter Robinson

Introduction

1. President Radovan Karadzic hereby appeals from the ICTY Trial Chamber's *Judgement* dated 24 March 2016. This Notice of Appeal is filed pursuant to Rule 133. There are 50 grounds of appeal.

Summary of Grounds

2. President Karadzic did not receive a fair trial. The Trial Chamber's failure to limit the scope of the amorphous indictment, and to ensure that the prosecution complied with its disclosure obligations (Ground 6), coupled with its taking judicial notice and admitting untested written evidence of huge swaths of the Prosecution's case before the trial even began (Grounds 7-9, 16, 31), violated the presumption of innocence, created an unmanageable trial, and made a fair trial impossible.

3. The Trial Chamber's double standard during the trial in granting prosecution requests, while denying similar requests when made by the defence (Grounds 10-15, 17-21), its failure to scrupulously respect President Karadzic's rights to self-representation and presence at trial (Grounds 1 and 2) and his right to an impartial tribunal (Ground 27), and its errors in the admission of evidence (Grounds 22-26), contributed to the lack of a fair trial.

4. In its judgement, the Trial Chamber's reliance on debatable inferences, instead of solid evidence, to conclude that President Karadzic shared the common purpose of four separate joint criminal enterprises, was an error that resulted in a miscarriage of justice (Grounds 28, 36-43, 45). Nowhere was this error more pronounced than in its finding, based upon its interpretation of a cryptic intercepted conversation, that President Karadzic shared the intent to kill the prisoners from Srebrenica and was therefore guilty of genocide. (Grounds 40-41).

5. The Trial Chamber also erred in failing to apply rules of the Law of Armed Conflict to the Sarajevo battleground, and to make required findings on the elements of the charged offences (Grounds 32-33, 35). Its conclusion that the Bosnian Serbs fired the shell that landed on the Markale marketplace in Sarajevo was erroneous (Ground 34). It also erred in convicting President Karadzic of crimes not charged in the indictment or for which he had insufficient notice (Grounds 3-5, 30), and an insufficient connection to those crimes (Ground 29).

6. The Trial Chamber also erred in its assessment of the crime of hostage taking (Grounds 44, 46) and in failing to consider mitigating circumstances when imposing sentence (Grounds 47-50).

7. President Karadzic is requesting an acquittal, or a new, and fair, trial.

Concluding Matters

8. Proceedings at the Tribunals are largely party-driven. The scope of the trial is determined by the prosecution's indictment. The scope of the appeal is determined by the appellant's grounds of appeal. The Appeals Chamber will find this appeal to be a unique one, in that President Karadzic has not raised a plethora of challenges to crime base findings, or to subsidiary findings relating to his responsibility. He has reserved for this appeal issues that, for the most part, go to the heart of his case and his right to a fair trial.

9. That is not to say that there were not many errors in those parts of the judgement. While having relieved the Appeals Chamber of the burden of directly addressing all of those errors, President Karadzic nevertheless requests that the Appeals Chamber consider the exercise of its *proprio motu* power to correct such errors as may be necessary and appropriate during the course of its review of this case.

10. For each error of law, it is contended that the error invalidated the decision. For each error of fact, it is contended that it occasioned a miscarriage of justice. For grounds 1-27, the relief sought is a judgement of acquittal, an order granting a new trial, or, alternatively, an order vacating relevant findings and convictions. For grounds 28-46, the relief sought is the entry of a judgment of acquittal, or, alternatively, an order vacating relevant findings and convictions. For grounds 47-50, the relief sought is a reduction in sentence. These contentions are not repeated in each ground for the sake of brevity. The decision, finding, or ruling that is challenged in each ground of appeal is denoted in the footnotes.

11. In the event of a prosecution appeal against any of the Trial Chamber's findings in his favour, President Karadzic reserves the right to amend this notice of appeal to raise other errors of law and fact in relation to those findings.

12. The grounds of appeal are as follows:

Grounds of Appeal

Fair Trial Issues

Right of Self-Representation

1. The Trial Chamber erred in law when requiring President Karadzic to be questioned by his Legal Advisor when he testified, in violation of his right to self-representation, and erred in failing to properly consider and/or give sufficient weight to the principle of proportionality when restricting the rights of the accused.¹

2. The Trial Chamber erred in law when conducting site visits in the absence of President Karadzic, and/or in gathering evidence and hearing submissions during the site visit in his absence, in violation of his right to self-representation and to be tried in his own presence.²

Inadequate Notice of Charges

3. The Trial Chamber erred in law when convicting President Karadzic on Count 4, when the indictment was defective for failing to specify which of the 83 separate killing incidents charged in the indictment were alleged to constitute extermination.³

4. The Trial Chamber erred in law when convicting President Karadzic on Count 7, when the indictment was defective for failing to specify which of the incidents of removal of the population were alleged to constitute deportation as opposed to forcible transfer.⁴

5. The Trial Chamber erred in law when convicting President Karadzic on Count 11, when the indictment was defective for failing to specify the operative threats to support the charge of hostage taking.⁵

¹ *Oral Decision* (27 January 2014), T45933-36; *Judgement*, paras. 3524, 4939, 5849, 5993, 6001-10

² *Decision on Site Visit* (28 January 2011); *Decision on Second Site Visit* (10 February 2012); *Judgement*, para. 3659, 3807, 3847, 3916, 3931, 3935, 3950, 3953, 4084, 4163, 4253, 4265, 4455, 4477-78, 4618-19, 4628, 4635, 5611-12, 5620, 5645, 5652, 5673, 5773, 6001-05, 6008-09

³ *Decision on Accused's Motion for Relief from Defects in the Indictment* (30 September 2014); *Judgement*, paras. 2460-61, 6003

⁴ *Decision on Accused's Motion for Relief from Defects in the Indictment* (30 September 2014); *Judgement*, para. 2466, 6006

⁵ *Decision on Accused's Motion for Relief from Defects in the Indictment* (30 September 2014); *Judgement*, para. 5961, 5993, 6010

Prosecution Disclosure Violations

6. The Trial Chamber erred in law when failing to limit the scope of the trial, thereby rendering the disclosure process unmanageable,⁶ failing to provide President Karadzic with a meaningful remedy for the prosecution's endemic disclosure violations,⁷ erroneously shifting the burden to President Karadzic to demonstrate prejudice,⁸ and/or in failing to give any or sufficient weight to the resultant prejudice,⁹ which rendered the trial unfair, and frustrated and obstructed the administration of justice.¹⁰

Judicial Notice of Adjudicated Facts

7. The Trial Chamber erred in law when taking judicial notice of an unreasonable, unprecedented and excessive number of adjudicated facts which was incompatible with the presumption of innocence, impermissibly shifted the burden of proof to the accused, and/or violated President Karadzic's right to adversarial proceedings,¹¹ and in applying

⁶ *Decision on Prosecution Motion to Amend the First Amended Indictment* (16 February 2009); *Decision on the Application of Rule 73 bis* (8 October 2009)

⁷ *Decision on Accused's Motion to Set Deadlines for Disclosure* (1 October 2009); *Decision on Accused's Motion to Set Deadlines for Disclosure* (1 October 2009); *Decision on Accused's Motion to Recall Eleven Sarajevo Witnesses* (5 October 2011); *Decision on Accused's Motion to Recall Twelve Municipalities Witnesses* (12 January 2012); *Decision on Accused's Motion for New Trial for Disclosure Violations* (3 September 2012); *Decision on Accused's Second Motion for New Trial for Disclosure Violations* (14 August 2014); *Decision on Accused's One Hundredth Disclosure Violation Motion* (13 July 2015); *Judgement*, paras. 3524, 4939, 5849, 5993, 6001-10

⁸ *Decision on Accused's Second Motion for New Trial for Disclosure Violations* (14 August 2014) at para. 15; *Decision on Accused's Seventh and Eighth Motions for Finding of Disclosure Violations and for Remedial Measures* (18 August 2010) at para. 17; *Decision on Accused's Eighty-Seventh Disclosure Violation Motion* (10 March 2014) at para. 14

⁹ *Decision on Accused's Ninety-Fifth Disclosure Violation Motion* (5 December 2014); *Decision on Accused's Third Motion to Re-Open Defence Case* (17 December 2014); *Decision on Accused's Seventh Motion to Re-Open Defence Case* (20 April 2015); *Decision on Accused's 107th Disclosure Violation Motion* (14 March 2016) at para. 15; *Judgement*, paras. 1262, 1264-68, 1319, 3524, 4023, 4721, 4939, 5066, 5170, 5736, 5773, 5849, 6001-09

¹⁰ *Decision on Motion on Modalities of Rule 66(A)(ii) Disclosure* (27 April 2009); *Judgement*, paras. 3524, 4939, 5849, 5993, 6001-10

¹¹ *Decision on First Prosecution Motion for Judicial Notice of Adjudicated Facts* (5 June 2009); *Decision on Third Prosecution Motion for Judicial Notice of Adjudicated Facts* (9 July 2009); *Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts* (9 October 2009); *Decision on Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts* (14 June 2014); *Decision on Fifth Prosecution Motion for Judicial Notice of Adjudicated Facts* (14 June 2010); *Judgement*, paras. 618, 620, 624, 630, 651, 653, 671, 767, 855, 857, 859-65, 868-69, 871-74, 876, 883, 889, 892-95, 902, 913, 915-17, 920, 922, 985, 1049, 1070-71, 1120, 1195, 1203, 1269, 1271, 1276, 1374, 1400, 1429, 1447, 1450, 1454-55, 1477, 1541, 1582, 1604, 1619, 1631, 1764, 1777-78, 1910, 1973, 2455-56, 2460-61, 2480-81, 2484, 2498, 2506, 2511, 2518, 2521, 2530, 2538, 2547, 2559, 2570, 2731, 3672, 4618-19, 4628, 4635, 5611-12, 5620, 5642, 5645, 5652, 5654, 5673 5951, 6001-10

an erroneous legal standard in relying on adjudicated facts despite having admitted contrary evidence.¹²

Admission of Written Evidence without Cross-Examination

8. The Trial Chamber erred in law when admitting written evidence of prosecution witnesses without cross-examination pursuant to Rule 92 *bis* without ensuring the defence had an opportunity to interview them, undermining the fairness of the proceedings and violating the principle of equality of arms.¹³

9. The Trial Chamber erred in law when refusing to compel prosecution witnesses whose written evidence had been admitted without cross-examination pursuant to Rule 92 *bis* to submit to an interview by the defence, undermining the fairness of the proceedings and violating the principle of equality of arms.¹⁴

10. The Trial Chamber erred in law and fact when refusing to compel the attendance of prosecution Rule 92 *bis* witness Ferid Spahic for examination by the defence, and then making findings adverse to President Karadzic on issues about which the witness had exculpatory information.¹⁵

11. The Trial Chamber erred in law and fact when refusing to admit the written evidence of four defence witnesses concerning Sarajevo events for whom it had denied

¹² *Judgement*, para. 27-28, 630, 857, 859-60, 862, 864-65, 876, 892, 895, 902, 913, 916, 922, 985, 1071, 1120, 1195, 1269, 1374, 1400, 1429, 1447, 1450, 1477, 1582, 1604, 1619, 1631, 1764, 1777-78, 1910, 2731, 3672

¹³ *Order Following Upon Rule 65 Meeting and Decision on Motions for Extension of Time* (18 June 2009), para. 4; *Judgement*, paras. 24, 649-55, 659-60, 801, 804, 808, 811, 813-17, 822, 853, 921-22, 953, 969-70, 1013-14, 1048, 1067-68, 1081-89, 1093, 1185-86, 1196, 1240, 1242, 1262, 1264-69, 1274, 1276, 1318-20, 1324-28, 1331-33, 1341-46, 1348-49, 1361, 1397, 1400, 1407, 1413-15, 1426, 1429, 1444-45, 1464, 1481, 1514-15, 1517-22, 1525-29, 1532-36, 1619, 1634, 1643-49, 1652-57, 1670-77, 1680-92, 1696-1715, 1760, 1762-64, 1780-81, 1799-1803, 1805, 1808-15, 1827-30, 1855-59, 1861, 1863-71, 1873-77, 1883, 1885, 1954-60, 1963-65, 1971, 1973, 2005-09, 2011, 2021-24, 2061, 2084-86, 2154-55, 2157-58, 2264, , 2455-56, 2460-61, 2480-81, 2484, 2498, 2506, 2511, 2518, 2521, 2530, 2538, 2547, 2559, 2570, 4618-19, 4628, 4635, 5004, 5200, 5203, 5205, 5387-91, 5481, 5486, , 5611-12, 5620, 5642, 5645, 5652, 5654, 5673 5951, 6001-10

¹⁴ *Decision on Accused's Motion to Compel Interviews: Sarajevo 92 bis Witnesses* (21 March 2011), para. 14; *Judgement* paras. 2455-56, 2460-61, 2480-81, 2484, 2498, 2506, 2511, 2518, 2521, 2530, 2538, 2547, 2559, 2570, 4618-19, 4628, 4635, 5611-12, 5620, 5642, 5645, 5652, 5654, 5673 5951, 6001-10

¹⁵ *Decision on Accused's Motion to call Witness Ferid Spahic for Cross Examination* (6 April 2011); *Judgement*, paras. 1081-89, 1093, 2455-56, 2460-61, 2480-81, 2484, 2498, 2506, 2511, 2518, 2521, 2530, 2538, 2547, 2559, 2570, 3236, 3524, 6002-07

protective measures, and then making findings adverse to President Karadzic on issues about which they had exculpatory information.¹⁶

12. The Trial Chamber erred in law and fact when refusing to admit the written evidence of ten defence witnesses concerning events in the municipalities, and in making findings adverse to President Karadzic on issues about which they had exculpatory information.¹⁷

13. The Trial Chamber erred in law and fact when refusing to admit the written evidence of defence witnesses Pero Rendic and Branko Basara pursuant to Rule 92 *bis* and instead applying the requirements of Rule 92 *quater*, and in making findings adverse to President Karadzic on issues about which they had exculpatory information.¹⁸

14. The Trial Chamber erred in law and fact when refusing to admit the written evidence of defence witness Borivoje Jakovljevic pursuant to Rule 92 *bis* or *quater* and then making findings adverse to President Karadzic on issues about which he had exculpatory information.¹⁹

15. The Trial Chamber erred in law when refusing to admit, pursuant to Rule 92 *quater*, the written evidence of Rajko Koprivica, a deceased defence witness, on the basis of factors relevant to the weight, and not the admissibility of the evidence, and then making findings adverse to President Karadzic on issues about which he had exculpatory information.²⁰

Cumulative Fair Trial Violations

16. In taking judicial notice of an excessive and unreasonable number of adjudicated facts and admitting into evidence an excessive and unreasonable number of

¹⁶ *Decision on Accused's Motion to Admit Statements Pursuant to Rule 92 bis (Sarajevo Component)*(6 November 2013); *Judgement*, paras. 4107-08, 4497, 4618-19, 4828, 4835, 4648, 4650, 6004-05, 6008-09

¹⁷ *Decision on Accused's Motions for Admission of Evidence Pursuant to Rule 92 bis* (18 March 2014); *Judgement*, paras. 927-28, 934, 1410, 1429-30, 1763-64, 1774, 1805, 1913, 2455-56, 2460-61, 2470, 2480-81, 2484, 2498, 2506, 2511, 2518, 2521, 2527, 2530, 2538, 2547, 2559, 2570, 2870-71, 2895, 2898, 3414-16, 3425, 6002-07

¹⁸ *Decision on Accused's Motion to Admit Testimony of Pero Rendic pursuant to Rule 92 bis* (6 February 2014); *Decision on Accused's Motion to Admit Testimony of Branko Basara pursuant to Rule 92 bis* (19 February 2014); *Judgement*, paras. 1774, 1924, 1960, 1965, 1969, 2024, 2455-56, 2460-61, 2480-81, 2484, 2498, 2506, 2511, 2518, 2521, 2530, 2538, 2547, 2559, 2570, 6002-07

¹⁹ *Decision on Accused's Motion to Admit Statements pursuant to Rule 92 bis (Srebrenica Component)*(29 November 2013); *Decision on Accused's Motion to Admit Testimony of Borislav Jakovljevic pursuant to Rule 92 quater* (25 February 2014); *Judgement*, paras. 5066, 5170, 5673, 5707, 5712, 5774, 5849, 6001

²⁰ *Decision on Accused's Motion for Admission of Statement of Rajko Koprivica pursuant to Rule 92 quater* (3 October 2012); *Judgement*, paras. 2362, 2438, 2455-56, 2460-61, 2480-81, 2484, 2498, 2506, 2511, 2518, 2521, 2530, 2538, 2547, 2559, 2570, 6002-07

statements of prosecution witnesses without cross examination, the Trial Chamber erred in law by violating the presumption of innocence, reversing the burden of proof, and rendering the trial unfair.²¹

Delayed Disclosure for Prosecution Witnesses

17. The Trial Chamber erred in law when granting disclosure of the identities and statements of prosecution witnesses beyond the date of the commencement of the trial, depriving President Karadzic of adequate time for preparation, and then in relying on the evidence of those witnesses to make findings adverse to the accused.²²

Inconsistent Treatment of Prosecution and Defence Witnesses

18. The Trial Chamber erred in law when denying President Karadzic his right to a public trial, when making adverse findings based on testimony of prosecution witnesses who benefitted from measures shielding their evidence from public scrutiny, and his right to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him, when erroneously applying inconsistent standards to the granting of protective measures to prosecution and defence witnesses,²³ and making findings adverse

²¹ *Decision on Motion for Stay of Proceedings* (8 April 2010); *Decision on First Prosecution Motion for Judicial Notice of Adjudicated Facts* (5 June 2009); *Decision on Third Prosecution Motion for Judicial Notice of Adjudicated Facts* (9 July 2009); *Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts* (9 October 2009); *Decision on Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts* (14 June 2014); *Decision on Fifth Prosecution Motion for Judicial Notice of Adjudicated Facts* (14 June 2010); *Decision on Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in lieu of Viva Voce Testimony pursuant to Rule 92 bis (Witnesses for Sarajevo Municipalities)* (15 October 2009); *Decision on Prosecution's Sixth Motion for Admission of Statements in lieu of Viva Voce Testimony pursuant to Rule 92 bis (Hostages Witnesses)* (2 November 2009); *Decision on Prosecution's First Motion for Admission of Statements and Transcripts of Evidence in lieu of Viva Voce Testimony pursuant to Rule 92 bis (Witnesses for Eleven Municipalities)* (10 November 2009); *Decision on Prosecution's Fifth Motion for Admission of Statements in lieu of Viva Voce Testimony pursuant to Rule 92 bis (Srebrenica Witnesses)* (21 December 2009); *Decision on Prosecution's Fourth Motion for Admission of Statements and Transcripts of Evidence in lieu of Viva Voce Testimony pursuant to Rule 92 bis (Sarajevo Seige Witnesses)* (21 March 2010); *Decision on Prosecution's Second Motion for Admission of Statements and Transcripts of Evidence in lieu of Viva Voce Testimony pursuant to Rule 92 bis (Witnesses ARK Municipalities)* (18 March 2010); *Judgement*, paras. 2455-56, 2460-61, 2480-81, 2484, 2498, 2506, 2511, 2518, 2521, 2530, 2538, 2547, 2559, 2570, 4618-19, 4628, 4635, 5611-12, 5620, 5642, 5645, 5652, 5654, 5673 5951, 6001-10

²² *Decision on Protective Measures for Witnesses* (30 October 2008), para. 21; *Decision on Prosecution's Motion for Delayed Disclosure for KDZ456, KDZ493, KDZ531, and KDZ532* (9 June 2009); *Decision on Accused's Motion for Modification of Protective Measures: Witnesses KDZ490 and KDZ492* (25 March 2010); *Decision on Accused's Sixty-Sixth Disclosure Violation Motion* (8 February 2012); *Judgement*, paras. 605, 607, 620, 622, 624, 629, 639, 659, 1713, 1923-24, 2027, 2031-32, 3412, 3416, 3425, 3524, 6002-07

²³ *Decision on the Prosecution Motion for Rule 70 Conditions for Three Witnesses* (30 November 2009) at para. 23 (confidential); *Decision on Prosecution's Second Motion for Rule 70 Conditions for [Redacted] Witnesses* (15 April 2010) (confidential); *Decision on Prosecution Motion for Rule 70 Conditions relating*

to the accused on issues about which defence witnesses who were denied protective measures had information.²⁴

Compulsion Mechanisms

Subpoenas

19. The Trial Chamber erred in law and fact when refusing to issue a subpoena for potential defence witnesses Dragos Milankovic, Milos Tomovic, Nikola Tomasevic, and Srdja Forca, and then making adverse findings on issues to which the witness could have testified.²⁵

Compulsion Order for General Mladic

20. Trial Chamber erred in law and fact when refusing to compel General Mladic to answer questions pursuant to Rule 90(E), or to receive a written statement he had requested to read out, and then making adverse findings in its final judgement on issues to which General Mladic could have testified.²⁶

Refusal to Assign Counsel to a Witness

21. The Trial Chamber erred in law and fact when refusing to assign counsel to defence witness and former ICTY detainee Predrag Banovic, resulting in Banovic's refusal to testify, and then making adverse findings in its final judgement on issues to which Mr. Banovic could have testified²⁷

to KDZ240 and KDZ314 (15 December 2009) (confidential); *Decision on Accused's Motion to Revoke Protective Measures for KDZ240* (28 June 2011) (confidential); *Decision on Accused's Motion for Protective Measures for Witnesses KW289, KW299, KW378, and KW543* (1 November 2012); *Decision on Accused's Motion for Video Link Testimony and Consideration of Protective Measures for Witness KW533* (9 November 2012); *Decision on Accused's Motion for Protective Measures for Witness KW492* (23 November 2012); *Decision on Accused's Motion for Protective Measures for Witness KW402* (8 January 2013); *Decision on Accused's Motion for Protective Measures for Witness KW392* (14 February 2013);

²⁴ *Judgement*, paras. 1467, 1867, 2700, 3340, 3524, 4850, 3623, 3685, 3985, 3992-93, 1070-71, 3862, 3877, 3890, 4054, 4107-09, 4232, 4249, 4251, 4253, 4497, 4513, 4600, 4232, 4497, 4513, 4580, 4583-84, 4605, 4618-19, 4628, 4635, 4656, 4698, 4701, 4745, 4755, 4806, 4850, 4852, 4869, 4939, 6001-09

²⁵ *Decision on Accused's Motion for Subpoena to Dragos Milankovic* (18 January 2013); *Decision on Accused's Motion for Subpoena to Milos Tomovic* (28 January 2013); *Decision on Defence Motion to Subpoena Nikola Tomasevic* (11 December 2013); *Decision on Defence Motion to Subpoena Srdan Forca* (18 December 2013); *Judgement*, paras. 927-28, 934, 3414, 3416, 3425, 4084-87, 4107-08, 4497, 4648, 4650

²⁶ *Oral Decision* (28 January 2014) at T46952-55; *Judgement*, paras. 3447, 3524, 4023, 4497, 4648, 4650, 4678, 4939, 5769, 5810, 5849, 5993, 6001-10

²⁷ *Oral Decision* (16 January 2014) at T45428-29; *Judgement*, para. 1805, 2455-56, 2460-61, 2484, 3524, 6002-05

Admission of Evidence

Intercepted Conversations

22. The Trial Chamber erred in law and fact when refusing to exclude, pursuant to Rule 95, evidence of telephone conversations that were illegally intercepted, and in relying on that evidence to make findings adverse to President Karadzic.²⁸

War Correspondent Privilege

23. The Trial Chamber erred in law when allowing war correspondents Aernout van Lynden, Martin Bell, Jeremy Bowen, Ed Vulliamy, and Robert Block to give evidence without a waiver of the war correspondent privilege by the holder of that privilege, and in relying on their evidence to make findings adverse to President Karadzic.²⁹

Parliamentary Privilege

24. The Trial Chamber erred in law when ruling that parliamentary privilege did not apply in international criminal proceedings (and/or in failing to give sufficient reasons for its ruling), and in relying on his privileged statements in the Bosnian Assembly and Republika Srpska Assembly to make findings adverse to President Karadzic.³⁰

Alleged *tu quoque* Evidence

25. The Trial Chamber erred in in law and fact when excluding evidence of crimes against Serbs as *tu quoque* evidence, and in finding, in the absence of such

²⁸ *Decision on the Accused's Motion to Exclude Intercepted Conversations* (30 September 2010); *Decision on Accused's Motion for Reconsideration of Chamber's Decision on Motion to Exclude Intercepted Conversations* (18 April 2012); *Decision on the Prosecution's Motion for Judicial Notice of Intercepts Related to the Sarajevo Component* (4 February 2011) at para. 21; *Decision on Prosecution's Second Bar Table Motion for the Admission of Intercepts* (25 May 2012) at para. 10; *Judgement*, paras. 844, 2641-49, 2658, 2677-81, 2683-89, 2691, 2693, 2696, 2699, 2708-12, 2716, 2720, 2774, 2780, 2821, 2905, 2907, 2910-13, 2915, 2917-18, 2925, 2933, 2943, 2955-56, 2958, 2968-69, 2971, 2994, 3005-08, 3010, 3012-15, 3021, 3169, 3259, 4673, 4895-99, 5474

²⁹ *Decision on Motion to Exclude Testimony of War Correspondents* (20 May 2009) at para. 3; *Decision on Accused's Motion to Exclude the Testimony of Aernout van Lynden* (17 May 2010) at para. 4; *Oral Decision* (13 December 2010) at T9749-40 re Martin Bell; *Oral Decision* (13 January 2011) at T10064 re Jeremy Bowen; *Oral Decision* (9 November 2011) at T21033 re Ed Vulliamy; *Oral Decision* (21 February 2012) at T24910 re Robert Block; *Judgement*, paras. 1035, 1640, 1786, 2703, 2797, 3386, 3657, 3996, 4032, 4045, 4514, 4532, 4534, 4568, 4599, 4662, 4753, 4849

³⁰ *Oral Decision* (7 November 2013) at T43150; *Judgement* paras. 46, 2596, 2600, 2654, 2668, 2670, 2672, 2692, 2697, 2707-08, 2710-11, 2715, 2755, 2768, 2770, 2772, 2777, 2787, 2789, 2802, 2804-05, 2809, 2811, 2816, 2828, 2710, 2839, 2845, 2855, 2858-62, 2882, 2887, 2895-97, 2899, 2901, 2932, 2945, 2963, 2978, 3042, 3063, 3069-70, 3091, 3096, 3376, 3378-81, 3412, 3425, 3485, 4661, 4663-64, 4666-67, 4718-19, 4735, 4902, 4911, 4919, 5791, 5830, 5989-90

evidence, that the Bosnian Serbs conduct in Sarajevo amounted to indiscriminate attacks against civilians and that they intended to inflict terror on the civilian population.³¹

Re-Opening Defence Case

26. The Trial Chamber erred in law and fact when declining to allow President Karadzic to re-open his defence case to hear the testimony of General Radivoje Miletic, and then making findings in the judgement on issues to which General Miletic's evidence was relevant.³²

Right to an Impartial Tribunal

27. The Trial Chamber erred in law and fact when a Judge failed to recuse himself from deliberating on the credibility of a witness with whom he had an association.³³

Municipalities Component Issues

JCE I

28. The Trial Chamber erred in law and fact when it relied on an insufficient evidentiary basis, drew unwarranted inferences that were unsupported by its own findings, and failed to give sufficient weight to relevant considerations, to conclude that there was a common plan to remove Bosnian Muslims and Bosnian Croats from Bosnian Serb areas through the commission of crimes from October 1991, particularly given the existence of a reasonable inference that was not foreclosed by Prosecution evidence.³⁴

JCE III

29. The Trial Chamber erred in law and fact when finding that President Karadzic was responsible for crimes of persecution, murder, and extermination under the third form of joint criminal enterprise based upon the erroneous legal standard of a *possibility* that such crimes *might* be committed.³⁵

³¹ *Oral Decision* (28 November 2012) at T30517-20 (Branislav Dukic); *Oral Decision* (30 November 2012) at T30687-88 (Goran Sikiras); *Oral Decision* (24 January 2013) T32696 (Milan Mandic); *Oral Decision* (12 February 2013) T33424-25 (Vitimir Banduka); *Oral Decision* (31 May 2013) T39083-84 (Nenad Kecmanovic); *Judgement*, paras. 4497, 4600, 4618-19, 4628, 4635, 4939, 6004-05, 6008-09

³² *Decision on Accused's Sixth Motion to Re-Open Defence Case* (24 February 2015); *Decision on Accused's Sixth bis Motion to Re-Open Defence Case* (7 May 2015); *Judgement*, paras. 5681, 5684, 5758, 5799, 5800, 5830, 5849, 6001-07

³³ Because the witness was a protected witness, and further details about the association may tend to reveal the witness' identity, those further details are set forth in Confidential Annex "A".

³⁴ *Judgement*, paras. 3376-78 3399, 3400-04, 3410, 3425, 3433, 3435-37, 3439-40, 3444-47, 3464-66, 3476, 3484, 3486-87 3492, 3496-97, 3501-05, 3524, 6002-07

³⁵ *Judgement*, paras. 3513-22, 3524, 6002-05.

Persecution

30. The Trial Chamber erred in law when convicting President Karadzic of conduct not charged in the indictment: forcible transfer of detained persons through prisoner exchanges, as persecution, when Count Three, paragraph 60(f), charged him only with “forcible transfer or deportation of Bosnian Muslims and Bosnian Croats from their homes within the Municipalities”.³⁶

Untested Evidence

31. The Trial Chamber erred in law and fact when convicting President Karadzic of several scheduled incidents based solely or in a decisive manner, on untested Rule 92 *bis* or *quater* evidence and/or adjudicated facts.³⁷

Sarajevo Component Issues

Shelling in Sarajevo

32. The Trial Chamber erred in law when using an erroneous standard of “recklessness” to satisfy the *mens rea* element for unlawful attacks on civilians through indiscriminate and/or disproportionate shelling in Sarajevo.³⁸

33. The Trial Chamber erred in law and fact when concluding that civilians in Sarajevo were the victims of indiscriminate or disproportionate attacks by shelling, by placing undue reliance on the consequences of the fire, failing to consider or give sufficient weight to the intention of the reasonable military commander, and applying an erroneous test for proportionality, thereby misapplying principles of the law of armed conflict.³⁹

34. A majority of the Trial Chamber erred in law and fact as to Scheduled Incident G8 when concluding that the Markale shell was fired from the SRK side of the confrontation line, through reliance on calculations of an angle of descent that were manifestly unreliable.⁴⁰

³⁶ *Judgement*, paras. 2470, 2480-81, 2521, 6002

³⁷ *Judgement*, paras. 1093, 1320, 1333, 1349, 1415, 1649, 1657, 1677, 1715, 1861, 1885, 2024, 2155, 2158, 5481 (Rule 92 *bis* or *quater*); 874, 913, 917, 1778, 1973 (adjudicated facts); 1069, 1071, 1328, 1515, 1522, 1536, 1692, 1815, 1871, 1877, 1960, 1965, 2011, 5205 (combination of the two), 2455-56, 2484, 6002-05

³⁸ *Judgement*, paras. 456-57, 4053-55, 4087, 4616, 4618-19, 4623, 4626, 4628, 4631, 4633, 4635, 6008-09

³⁹ *Judgement*, paras. 4053-55, 4087, 4497, 4543-44, 4597-98, 4618-19, 4623, 4628, 4633, 4635, 4836, 4856, 4861, 4866, 4909, 4939, 6008-09

⁴⁰ *Judgement*, paras. 4253, 4618-19, 4628, 4635, 6008-09

President Karadzic's individual responsibility for the Sarajevo JCE

35. The Trial Chamber erred in law and fact when failing to make a finding, beyond reasonable doubt, that the infliction of terror through acts of violence directed against the civilian population was President Karadzic's primary purpose, an essential ingredient to his *mens rea* for the crime of Acts of Violence the Primary Purpose of Which is to Spread Terror among the Civilian Population.⁴¹

36. The Trial Chamber erred in law and fact when finding that at a meeting between 20 and 28 May 1992, President Karadzic was informed of General Mladic's plans for a massive bombardment of Sarajevo and offered no objection, by an erroneous and unreasonable evaluation of the evidence, and failing to consider (or give a reasoned opinion as to) evidence favorable to President Karadzic.⁴²

37. The Trial Chamber erred in law and fact when it relied on an insufficient evidentiary basis, drew unwarranted inferences that were unsupported by its own findings, and failed to give sufficient weight to relevant considerations, to find that President Karadzic shared the common purpose of the Sarajevo JCE and had the intent to spread terror among the civilian population of Sarajevo through the campaign of sniping and shelling, particularly given the existence of a reasonable inference that was not foreclosed by Prosecution evidence.⁴³

Srebrenica Component Issues

President Karadzic's membership in JCE to Eliminate by Forcible Transfer

38. The Trial Chamber erred in law and fact when it relied on an insufficient evidentiary basis, drew unwarranted inferences that were unsupported by its own findings, and failed to give sufficient weight to relevant considerations, to find that President Karadzic shared the common purpose of eliminating the Bosnian Muslims in Srebrenica by removing the women, children, and elderly men, particularly given the existence of a reasonable inference that was not foreclosed by Prosecution evidence.⁴⁴

39. The Trial Chamber erred in law and fact when finding that President Karadzic was aware of the phrase in Directive 7 concerning unbearable conditions of life for the

⁴¹ *Judgement*, paras. 4928, 4939, 6008

⁴² *Judgement*, paras. 4023, 4721, 4939, 6004-05, 6008-09

⁴³ *Judgement*, paras. 4649-50, 4675-76, 4725, 4727, 4735-36, 4739, 4807, 4861, 4863, 4866-67 4885-86, 4891-92, 4922, 4928-39, 6008-09

⁴⁴ *Judgement*, para. 5800, 5810, 814, 5817, 5821 5849, 6001-02, 6006-07

inhabitants of Srebrenica, in the absence of a reasoned opinion and/or in failing to give sufficient weight to evidence favourable to the accused.⁴⁵

President Karadzic's membership in JCE to Eliminate by Killing

40. The Trial Chamber erred in law and fact when it relied on an insufficient evidentiary basis, drew unwarranted inferences that were unsupported by its own findings, and failed to give sufficient weight to relevant considerations, to find that President Karadzic knew of and agreed to the killing of Bosnian Muslim males from Srebrenica and shared the common purpose of eliminating them, particularly given the existence of a reasonable inference that was not foreclosed by Prosecution evidence.⁴⁶

President Karadzic's Responsibility for Genocide

41. The Trial Chamber erred in law and fact when it relied on an insufficient evidentiary basis, drew unwarranted inferences that were unsupported by its own findings, and failed to give sufficient weight to relevant considerations, to find that President Karadzic shared the intent that every able-bodied Bosnian Muslim male from Srebrenica be killed, particularly given the existence of a reasonable inference that was not foreclosed by Prosecution evidence.⁴⁷

President Karadzic's Superior Responsibility

42. The Trial Chamber erred in law and fact when it relied on an insufficient evidentiary basis, drew unwarranted inferences, and failed to either make key findings or provide a reasoned opinion for finding that President Karadzic had knowledge of killings and failed to take reasonable and necessary measures to prevent or punish.⁴⁸

43. The Trial Chamber erred in law and in fact when finding President Karadzic liable for genocide as a superior, given its failure to make a finding, beyond reasonable doubt, that he knew or had reason to know that these crimes were committed with genocidal intent, and/or failing to provide a reasoned opinion on this point.⁴⁹

⁴⁵ *Judgement*, paras. 4979, 5681, 5756, 5799, 5849, 6001-02, 6006-07

⁴⁶ *Judgement*, paras. 5805-14, 5818-21, 5823-24, 5849, 6001-06

⁴⁷ *Judgement*, paras. 5829-30, 5849, 6001

⁴⁸ *Judgement*, paras. 5843, 5845, 5848-49

⁴⁹ *Judgement*, paras. 5843, 5848-49

Hostage Taking Component Issues

44. The Trial Chamber erred in law when concluding that the *actus reus* of hostage taking did not include the element of unlawful detention in the case of threats of continued detention.⁵⁰

45. The Trial Chamber erred in law and fact when finding that President Karadzic was a member of the JCE for hostage taking, in the absence of a sufficient evidential basis to conclude that he intended or agreed that threats to kill or harm the detainees would be made, that the UN personnel were unlawfully detained, and/or since his threats of continued detention of lawfully detained prisoners did not constitute hostage taking.⁵¹

46. The Trial Chamber erred in law when concluding that the taking of UN personnel hostage could not be justified as a lawful reprisal.⁵²

Sentencing Issues

47. The Trial Chamber erred in law when finding that the motive behind President Karadzic's decision to step down and withdraw from public life as part of the Holbrooke Agreement was not relevant to a determination of sentence, and in declining to consider as a mitigating factor the infringement of his rights stemming from the violation of the agreement that he would not be prosecuted at the ICTY.⁵³

48. The Trial Chamber erred in law when failing to consider (or give a reasoned opinion as to its failure to consider) the infringement of President Karadzic's rights as a result of the prosecution's disclosure violations as a mitigating circumstance.⁵⁴

49. The Trial Chamber erred in law when failing to consider (or give a reasoned opinion for its failure to consider) President Karadzic's conduct during the war, including through the provision of assistance to victims or detainees and his prevention of the commission of crimes as a mitigating circumstance, and in taking into account irrelevant factors.⁵⁵

50. The Trial Chamber erred in law when failing to consider (or give a reasoned opinion for its failure to consider) President Karadzic's lack of training and preparation

⁵⁰ *Judgement*, paras. 468, 5945, 5951, 6010

⁵¹ *Judgement*, paras. 5943, 5961-62, 5969, 5972-73, 5993, 6010

⁵² *Judgement*, paras. 5943, 5949-50, 6010

⁵³ *Judgement*, para. 6057

⁵⁴ *Judgement*, para. 6063

⁵⁵ *Judgement*, para. 6064

for war and the difficulties he faced in exercising command as a mitigating circumstance, and in taking into account irrelevant factors.⁵⁶

Word count: 5845

Respectfully submitted,

A handwritten signature in cursive script that reads "Peter Robinson". The signature is written in a dark ink and is positioned below the typed name.

PETER ROBINSON

Counsel for Radovan Karadzic

⁵⁶ *Judgement*, para. 6064