



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-09-92-AR73.4

Date: 24 July 2014

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24 July 2014

77 MB.

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge William H. Sekule
Judge Bakhtiyar Tuzmukhamedov
Judge Koffi Kumelio A. Afande

Registrar: Mr. John Hocking

Decision: 24 July 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF DECISION ON DEFENCE
INTERLOCUTORY APPEAL FROM THE TRIAL CHAMBER
RULE 98 *BIS* DECISION**

Office of the Prosecutor:

Mr. Dermot Groome
Mr. Peter McCloskey
Ms. Camille Bibles

Counsel for the Accused:

Mr. Branko Lukić
Mr. Miodrag Stojanović

1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Appeals Chamber” and “Tribunal”, respectively) is seised of the confidential “Defence Interlocutory Appeal from the Trial Chamber Decision on the Defence’s Request for Acquittal Pursuant to Rule 98bis” filed by Ratko Mladić (“Mladić”) on 23 May 2014 (“Appeal”). On 5 June 2014, the Office of the Prosecutor (“Prosecution”) filed its Response.¹ Mladić did not file a reply.

I. BACKGROUND

2. On 15 April 2014, Trial Chamber I of the Tribunal (“Trial Chamber”) denied Mladić’s request for acquittal pursuant to Rule 98 bis of the Rules of Procedure and Evidence of the Tribunal (“Rules”).² On 22 April 2014, Mladić sought certification to appeal the Impugned Decision in relation to Counts 1 and 2 of the Indictment (genocide).³ On 6 May 2014, the Prosecution filed its response, opposing the request for certification of the Impugned Decision.⁴ The Trial Chamber granted Mladić certification to appeal the Impugned Decision on 16 May 2014.⁵

II. STANDARD OF REVIEW

3. The Rules and the Statute of the Tribunal (“Statute”) do not specify the standard by which the Appeals Chamber is to review the denial of a motion for acquittal under Rule 98 bis of the Rules. However, in previous rulings on interlocutory appeals from decisions on Rule 98 bis motions, the Appeals Chamber has reviewed trial chambers’ legal conclusions to determine whether the trial chamber committed errors of law.⁶ Accordingly, the Appeals Chamber will review, as relevant, the Impugned Decision to determine whether the Trial Chamber committed an “error on a question of law invalidating [its] decision”.⁷

¹ Prosecution Response to Defence Interlocutory Appeal from the Trial Chamber Decision on the Defence’s Request for Acquittal Pursuant to Rule 98bis, 5 June 2014 (confidential) (“Response”).

² *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, T. 15 April 2014 pp. 20918-20955 (“Impugned Decision”).

³ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Defense Motion for Certification to Appeal the Chamber’s Decision on the Defence’s Request for Acquittal Pursuant to Rule 98bis, 22 April 2014 (confidential) (“Motion for Certification”). See also *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Fourth Amended Indictment, 16 December 2011 (“Indictment”).

⁴ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Prosecution Response to Defence Motion for Certification to Appeal the Chamber’s Decision Pursuant to Rule 98bis, 6 May 2014 (confidential).

⁵ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Defence Motion for Certification to Appeal the Chamber’s Decision under Rule 98 bis, 16 May 2014 (“Decision on Certification”), para. 7.

⁶ See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.9, Decision on Appeal from Denial of Judgement of Acquittal for Hostage-Taking, 11 December 2012 (“Karadžić Decision”), para. 6; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal, 11 March 2005, para. 15.

⁷ Article 25(1) of the Statute. See also *Karadžić Decision*, para. 6, citing *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Judgement, 16 November 2012, para. 10.

III. DISCUSSION

A. Submissions

4. Mladić submits that the Trial Chamber erred in denying his motion for acquittal pursuant to Rule 98 *bis* of the Rules in relation to Counts 1 and 2 of the Indictment (genocide).⁸ With respect to the *actus reus*, Mladić asserts that the Trial Chamber failed to address his arguments that no evidence was presented to substantiate a general finding that genocide had been committed in the municipalities,⁹ and contends that the Trial Chamber ignored evidence which rebuts the Prosecution’s evidence.¹⁰ Moreover, Mladić alleges that the Trial Chamber erred in assessing the evidence in relation to the *actus reus* of genocide, specifically with respect to Prosecution Exhibit P201.¹¹ Finally, Mladić submits that the Trial Chamber erroneously relied on acts committed by the Skorpions group to uphold the charge of genocide.¹²

5. With respect to the *mens rea*, Mladić alleges that the Trial Chamber erroneously inferred his genocidal intent from the evidence “cited in the Impugned Decision” and ignored evidence to the contrary referenced by Mladić.¹³ According to Mladić, the Trial Chamber failed to provide a reasoned opinion¹⁴ and relied on evidence that was shown to be unreliable and incapable of belief, including that of Prosecution Witnesses RM255 and RM019.¹⁵ Mladić further submits that the Trial Chamber erroneously relied on Prosecution Witness David Harland’s testimony to support a finding that Mladić’s statements “amounted to a plan to commit genocide”, as the Trial Chamber ignored portions of the Witness’s testimony that suggest the contrary.¹⁶ Additionally, Mladić asserts that the Trial Chamber “erred by refusing to analyze the lack of evidence as to the destruction of religious sites”, which “formed a major part of the Prosecution’s Genocide charge”.¹⁷ Further, he argues that the Trial Chamber erroneously relied on a statement tendered pursuant to Rule 92 *quater* of the Rules to “support a conviction by itself”.¹⁸

6. Mladić also contends that the Prosecution relied on evidence which, he submits, is insufficient to establish both the *actus reus* of genocide and his genocidal intent, and which the

⁸ Appeal, p. 26. *See also* Appeal, para. 8.

⁹ Appeal, para. 39.

¹⁰ Appeal, paras 32, 37-39, 42-43, 53-56.

¹¹ Appeal, para. 34.

¹² Appeal, paras 54-55.

¹³ Appeal, paras 9, 12, 18, 45, 48, 50, 52.

¹⁴ Appeal, paras 8, 10, 23, 46, 51. *See also* Appeal, paras 32-34, 37.

¹⁵ Appeal, paras 11, 49, 58-59.

¹⁶ Appeal, para. 31.

¹⁷ Appeal, para. 28. *See also* Appeal, paras 29-30.

¹⁸ Appeal, para. 25.

Trial Chamber failed to address in the Impugned Decision.¹⁹ Mladić further alleges that the Trial Chamber failed to address his arguments, and properly assess the evidence, in relation to the third form of joint criminal enterprise.²⁰ Lastly, Mladić submits that trial chambers in other cases declined to find that genocide had been committed in the municipalities or that genocidal intent had been established on the basis of the same evidence.²¹

7. The Prosecution responds that the Trial Chamber correctly applied the standard set forth in Rule 98 *bis* of the Rules and that the Appeal should accordingly be dismissed.²² It contends, *inter alia*, that Mladić: (i) misconceives the Rule 98 *bis* standard;²³ (ii) fails to show that the evidence relied upon by the Trial Chamber is incapable of belief;²⁴ and (iii) offers his own interpretation of the evidence without demonstrating that no reasonable trier of fact could have reached the conclusions in the Impugned Decision.²⁵ The Prosecution further asserts that the Trial Chamber is not bound by the factual findings of trial chambers in other cases.²⁶ According to the Prosecution, “Mladić’s remaining arguments do not relate to the merits of the [Impugned] Decision on Counts 1 and 2.”²⁷ Lastly, the Prosecution submits that the Appeal exceeds the scope of Mladić’s request for certification, which concerned only his genocidal intent and the Trial Chamber’s reliance on Witnesses RM255 and RM019.²⁸

B. Analysis

8. As a preliminary matter, the Appeals Chamber notes that Mladić only sought certification to appeal the Impugned Decision insofar as it related to the Trial Chamber’s findings regarding his genocidal intent, and its reliance on Prosecution Witnesses RM255 and RM019.²⁹ However, the Trial Chamber granted Mladić certification to appeal “the Impugned Decision with respect to Counts 1 and 2 (Genocide)”.³⁰ In view of the fact that the Trial Chamber did not limit its Decision on Certification to genocidal intent only, the Appeals Chamber will consider the totality of the

¹⁹ Appeal, paras 15, 20-22, 24, 26, 29-30, 32-33, 36-38, 45-47, 49, 51, 53, 57. Mladić refers to, *inter alia*, his own notebooks and statements, Prosecution Witnesses Richard Dannatt, Joseph Kingori, Richard Butler, RM070, and RM511, Prosecution Exhibits P221, P441, P1975, P2243, P2875, and P3076, a report compiled by Andras Janos Riedlmayer, and statements made by Radovan Karadžić.

²⁰ Appeal, paras 60-64.

²¹ Appeal, paras 16-17, 19, 40-41. Specifically, Mladić asserts that trial chambers in other cases did not find genocidal intent on the basis of evidence related to the “Six Strategic Objectives”, and did not find that genocide had occurred in the municipalities referenced in the Indictment.

²² Response, para. 1. *See also* Response, paras 5-17, 19-21, 24-25, 27-29, 31, 40.

²³ Response, paras 2, 32.

²⁴ Response, paras 2, 34-36.

²⁵ Response, paras 2, 33.

²⁶ Response, paras 2, 38.

²⁷ Response, para. 3. *See also* Response, para. 39.

²⁸ Response, para. 4.

²⁹ *See* Motion for Certification, paras 3, 12-18, 20-25.

³⁰ Decision on Certification, para. 7.

Appeal, including Mladić's arguments related to the underlying acts of genocide and the Trial Chamber's failure to address his submissions regarding the extended form of joint criminal enterprise.³¹

9. Turning to the merits, the Appeals Chamber notes that the Trial Chamber correctly recalled the applicable law with respect to Rule 98 *bis* proceedings.³² The Appeals Chamber recalls in this respect that the test to be applied by the trial chamber at the Rule 98 *bis* stage is "whether there is evidence (if accepted) upon which a reasonable [trier] of fact *could* be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question",³³ and not whether an accused's guilt has been established beyond reasonable doubt.³⁴ Mladić alleges that the Trial Chamber failed to correctly apply the Rule 98 *bis* standard.³⁵ The Appeals Chamber regards these allegations to be allegations of an error of law.³⁶

10. With respect to Counts 1 and 2 of the Indictment, the Trial Chamber found that there was sufficient evidence, taken at its highest, upon which a reasonable trier of fact could find Mladić guilty of genocide pursuant to the basic form of joint criminal enterprise liability.³⁷ Specifically, Count 1 charges Mladić with genocide, *inter alia*, through his participation in a joint criminal enterprise to permanently remove the Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territories in Bosnia-Herzegovina through the commission of crimes set forth in the Indictment.³⁸ Count 2 charges Mladić with genocide, *inter alia*, through his participation in a joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica.³⁹

1. Actus Reus of Genocide (Counts 1 and 2)

11. Contrary to Mladić's contention,⁴⁰ the Trial Chamber expressly stated that there is evidence that acts of genocide took place in the municipalities during the Indictment period. Specifically, the Trial Chamber referred to evidence of: the killings of a number of individuals; crimes of detention

³¹ The Appeals Chamber notes that the Prosecution responded to Mladić's arguments and accordingly does not suffer any prejudice as a result of the Appeals Chamber's consideration of the Appeal in its entirety. See Response, paras 6-15, 37.

³² See T. 15 April 2014 pp. 20922-20923.

³³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR98bis.1, Judgement, 11 July 2013 ("Karadžić Judgement"), para. 9, citing *Prosecutor v. Zejnil Delalić, Zdravko Mucić et al*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 434 (emphasis in original). See also *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001 ("Jelisić Appeal Judgement"), para. 37.

³⁴ *Karadžić Judgement*, citing *Jelisić Appeal Judgement*, para. 56.

³⁵ See generally Appeal.

³⁶ See *supra*, para. 3, fn. 7. See also *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Judgement, 22 April 2008, paras 47-72 (dismissing Hadžihasanović's relevant grounds of appeal relating to the application of Rule 98 *bis* on legal bases).

³⁷ See T. 15 April 2014 pp. 20939, 20947-20948, 20954-20955.

³⁸ See Indictment, paras 35-39.

³⁹ See Indictment, paras 40-46.

⁴⁰ See Appeal, para. 39.

and cruel and inhumane treatment, including rape and other acts of sexual violence, causing serious bodily or mental harm; and conditions calculated to bring about the physical destruction of Bosnian Muslims and/or Bosnian Croats.⁴¹ Similarly, the Impugned Decision reflects that the Trial Chamber discussed various pieces of evidence that acts of genocide took place in Srebrenica during the Indictment period.⁴²

12. The Appeals Chamber recalls that trial chambers enjoy considerable discretion in explaining their reasoning in relation to both legal and factual issues.⁴³ The Appeals Chamber further recalls that a trial chamber is not required to refer to the testimony of every witness or every piece of evidence on the trial record in a rendered decision.⁴⁴ In this context, the Appeals Chamber considers Mladić's alternative interpretations of the evidence and references to other exhibits not explicitly relied upon by the Trial Chamber insufficient to invalidate the Impugned Decision.⁴⁵

13. Turning to Mladić's arguments regarding the assessment of evidence in relation to Count 1, the Appeals Chamber is not persuaded by Mladić's assertion that Prosecution Exhibit P201 only discusses the visit of the International Red Cross to the detention camps, and does not demonstrate that he personally exercised control over various detention camps, as the Trial Chamber inferred from this exhibit.⁴⁶ The Appeals Chamber finds that Mladić merely presents an alternative interpretation of the evidence without showing that no reasonable trier of fact could have found, taking the evidence at its highest, that he implemented measures to carry out the objective of the joint criminal enterprise as charged in Count 1. Mladić's arguments in this regard are accordingly dismissed.

14. Lastly, the Appeals Chamber is not convinced by Mladić's submission that the Trial Chamber erroneously relied on acts committed by the Skorpions group to uphold the charge of genocide.⁴⁷ A review of the Impugned Decision reflects that the Trial Chamber did not discuss the

⁴¹ See T. 15 April 2014 pp. 20930-20932, 20935-20939.

⁴² See T. 15 April 2014 pp. 20930, 20932-20935, 20939.

⁴³ *Karadžić* Judgement, para. 85, citing *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvočka et al.* Appeal Judgement"), paras 23-24; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement"), para. 380.

⁴⁴ Cf. *Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70-A, Judgement, 20 October 2010 ("*Rukundo* Appeal Judgement"), para. 102; *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Judgement, 18 March 2010 ("*Nchamihigo* Appeal Judgement"), para. 121; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009 ("*Karera* Appeal Judgement"), para. 20, citing *Kvočka et al.* Appeal Judgement, para. 23.

⁴⁵ Cf. *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009 ("*Krajišnik* Appeal Judgement"), para. 141.

⁴⁶ See Appeal, para. 34. See also T. 15 April 2014 p. 20945.

⁴⁷ See Appeal, paras 54-56.

acts committed by the Skorpions group in finding that there was evidence capable of supporting a conviction for genocide.⁴⁸ Mladić's arguments in this regard are therefore dismissed.

2. Genocidal Intent (Counts 1 and 2)

15. Turning to Mladić's submissions regarding his genocidal intent, the Appeals Chamber recalls that, in the absence of direct evidence, the *mens rea* of genocide can be established by circumstantial evidence.⁴⁹ When inferring genocidal intent from circumstantial evidence, relevant factors to be considered could include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, and the existence of a plan or policy.⁵⁰

16. The Impugned Decision reflects that the Trial Chamber referred to a number of pieces of evidence to infer that Mladić shared the intent to commit genocide pursuant to the basic form of joint criminal enterprise liability, as charged in Counts 1 and 2 of the Indictment. Specifically, when discussing Count 1, the Trial Chamber referred to, *inter alia*, intercepted telephone conversations, in which Mladić stated that: (i) he would "order the shelling of the entire Bihać"; (ii) "the whole of Bosnia will burn if I start to 'speak'"; and (iii) he would use heavy artillery weapons on a "densely populated area" if his demands to cease combat activities were not met.⁵¹ The Trial Chamber further referred both to witness testimony in support of its finding that Mladić knew of the crimes that were being committed and to a meeting recorded by international observers, which reflect that Mladić stated that "he would kill everyone in the eastern enclaves except for children", "unless 22 Serb prisoners of war in the Goražde pocket were returned."⁵² Lastly, the Trial Chamber referred to evidence adduced in relation to the crimes of detention and cruel and inhumane treatment, as evidence also providing "information on the perpetrators' genocidal intent",⁵³ which could be imputed to Mladić as an alleged member of the joint criminal enterprise.

17. With respect to Count 2, the Trial Chamber referred to, *inter alia*, video footage of Mladić walking through Srebrenica town with Serb forces, referring to "Serb Srebrenica" and stating "[w]e

⁴⁸ See generally Impugned Decision.

⁴⁹ *Karadžić* Judgement, para. 80, citing *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Judgement, 7 July 2006, para. 40. See also *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement, 26 May 2003, para. 525.

⁵⁰ *Karadžić* Judgement, para. 80, citing *Jelisić* Appeal Judgement, paras 47-48.

⁵¹ T. 15 April 2014 pp. 20946-20947.

⁵² T. 15 April 2014 p. 20946.

⁵³ T. 15 April 2014 p. 20939. See also T. 15 April 2014 pp. 20935-20936 (discussing evidence regarding the rape and beating of girls by Serb soldiers), 20936-20938 (discussing evidence of the inhumane treatment of prisoners detained in camps in the municipalities), 20941-20944 (discussing evidence regarding the promulgation of the Six Strategic Objectives, and regarding the resultant large-scale expulsion of the non-Serb population from the municipalities).

give this town to the Serb people as a gift”, and that “the time has come to take revenge on the Turks”.⁵⁴ The Trial Chamber further discussed evidence provided by Witness Momir Nikolić that, when he asked Mladić about the fate of the prisoners they encountered at a crossroad, Mladić smiled and made a sweeping gesture with his right hand from left to right approximately at the middle of his body.⁵⁵

18. The Appeals Chamber recalls that pursuant to Rule 98 *bis* of the Rules, the Prosecution’s evidence is assumed to be credible and is taken at its highest,⁵⁶ and that a judgement of acquittal shall be entered only if there is “no evidence capable of supporting a conviction”.⁵⁷ Based on the totality of the evidence discussed in relation to Counts 1 and 2, the Appeals Chamber considers that the Trial Chamber did not err in finding that a reasonable trier of fact could have concluded that, taken at its highest, there was sufficient evidence to infer that Mladić possessed genocidal intent. Mladić’s arguments in this regard are therefore dismissed.

19. The Appeals Chamber further is not persuaded by Mladić’s contention that the Trial Chamber failed to provide a reasoned opinion, in particular, by not addressing Mladić’s alternative interpretations of the evidence or additional exhibits.⁵⁸ The Appeals Chamber recalls that trial chambers enjoy considerable discretion in explaining their reasoning in relation to both legal and factual issues.⁵⁹ The Appeals Chamber further recalls that a trial chamber is not required to refer to the testimony of every witness or every piece of evidence on the trial record in a decision rendered.⁶⁰ The Appeals Chamber notes that the Trial Chamber expressly stated that it considered all the evidence on the record, but, in light of the “volume of evidence” before it, only referred to “a focused selection” of evidence it considered relevant for the purposes of deciding the motion for acquittal.⁶¹ As set out above, the Trial Chamber identified the evidence it considered relevant to the determination as to whether the Prosecution adduced sufficient evidence, taken at its highest, to infer Mladić’s genocidal intent.⁶² In this context, the Appeals Chamber dismisses Mladić’s arguments.⁶³

⁵⁴ T. 15 April 2014 p. 20953. According to a witness cited by the Trial Chamber, “Turks” was used to refer to Bosnian Muslims and was often considered a derogatory term. See T. 15 April 2014 p. 20953.

⁵⁵ T. 15 April 2014 pp. 20953-20954.

⁵⁶ *Karadžić* Judgement, para. 49; *Jelisić* Appeal Judgement, para. 55.

⁵⁷ Rule 98 *bis* of the Rules. See also *Karadžić* Judgement, para. 49.

⁵⁸ See *supra*, para. 5.

⁵⁹ *Karadžić* Judgement, para. 85, citing *Kvočka et al.* Appeal Judgement, paras 23-24; *Blaškić* Appeal Judgement, para. 380.

⁶⁰ Cf. *Rukundo* Appeal Judgement, para. 102; *Nchamihigo* Appeal Judgement, para. 121; *Karera* Appeal Judgement, para. 20, citing *Kvočka et al.* Appeal Judgement, para. 23.

⁶¹ T. 15 April 2014 p. 20929.

⁶² See *supra*, paras 16-17.

⁶³ Cf. *Krajišnik* Appeal Judgement, para. 141.

20. Turning to Mladić's submissions regarding Prosecution Witnesses RM255 and RM019, the Appeals Chamber is not convinced that the Trial Chamber erred in relying on their evidence in reaching the Impugned Decision. The Appeals Chamber recalls that pursuant to Rule 98 *bis* of the Rules, a trial chamber is required to "assume that the prosecution's evidence [is] entitled to credence unless incapable of belief" and "take the evidence at its highest".⁶⁴ In these circumstances, the Trial Chamber correctly considered that it would "not concern itself with issues of credibility or reliability unless a witness is so lacking in credibility and reliability that no reasonable Chamber could find him or her credible or reliable".⁶⁵

21. With respect to Prosecution Witness RM255, the Appeals Chamber is not persuaded by Mladić's submissions that the Witness's testimony is contradicted by other evidence on the record, and that the Prosecution indicated that the Witness "was not to be relied upon".⁶⁶ The Appeals Chamber notes that the Prosecution did not state that Witness RM255 was unreliable, but instead appeared to have indicated that it would not rely on his testimony to establish Mladić's presence at a crime scene.⁶⁷ A review of the Impugned Decision reflects that the Trial Chamber did not rely on Witness RM255's evidence concerning Mladić's presence at the crime scene.⁶⁸ Additionally, the Appeals Chamber considers Mladić's alternative interpretations of the evidence insufficient to demonstrate that Witness RM255 is so lacking in credibility or reliability that his testimony is incapable of belief.

22. Similarly, the Appeals Chamber is not persuaded by Mladić's assertion that Witness RM019 is incapable of belief, [REDACTED].⁶⁹ [REDACTED].⁷⁰ [REDACTED].⁷¹ In these circumstances, the Appeals Chamber considers that Mladić has failed to demonstrate that, taken at its highest, Witness RM019's evidence is incapable of belief. Mladić's submissions are therefore dismissed.

23. The Appeals Chamber is also not persuaded that the Trial Chamber erred by relying on Prosecution Witness David Harland's testimony in considering that Mladić's statements "amounted to a plan to commit genocide", as alleged by Mladić.⁷² The Appeals Chamber notes that the Trial Chamber referred to Witness Harland's testimony in concluding that there is evidence capable of

⁶⁴ *Jelisić Appeal Judgement*, para. 55.

⁶⁵ T. 15 April 2014 p. 20923.

⁶⁶ Appeal, paras 11, 58.

⁶⁷ See Response, para. 35, citing *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, T. 19 July 2012 pp. 1177-1180.

⁶⁸ See T. 15 April 2014 pp. 20934-20935.

⁶⁹ Appeal, para. 59, referring to *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Deputy Registrar's Submission Pursuant to Rule 33(B) of the Rules in Compliance with the Order Dated 6 December 2012, 22 January 2013 (confidential). See also Appeal, paras 11, 58.

⁷⁰ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, T. 6 December 2012 p. 5901 (closed session). See also Response, para. 36.

⁷¹ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Deputy Registrar's Submission Pursuant to Rule 33(B) of the Rules in Compliance with the Order Dated 6 December 2012, 22 January 2013 (confidential).

supporting a finding that Mladić possessed genocidal intent, but not that his statements amounted to a plan to commit genocide.⁷³ The Appeals Chamber accordingly considers Mladić's submission that the Trial Chamber "ignore[d]" Witness Harland's testimony that Mladić's words "weren't really statements of plans" to be without merit.⁷⁴

24. The Appeals Chamber further is not persuaded that the Trial Chamber erred by failing to "analyze the lack of evidence as to destruction of religious sites."⁷⁵ A review of the Impugned Decision reflects that the Trial Chamber did not consider it necessary to discuss the destruction of religious sites, which comprised "one of seven underlying acts of persecution for the municipalities part of the case".⁷⁶ The Appeals Chamber finds no error in this approach given that the Trial Chamber expressly considered other evidence, taken at its highest, to be capable of supporting the relevant counts.⁷⁷ Mladić's submissions in this regard are dismissed.

25. Turning to Mladić's contention that the Trial Chamber erroneously relied on a statement tendered pursuant to Rule 92 *quater* of the Rules to "support a conviction by itself",⁷⁸ the Appeals Chamber emphasises that the Trial Chamber did not "convict" Mladić of genocide, but established that a reasonable trier of fact, taking the Prosecution evidence at its highest, *could* be satisfied beyond reasonable doubt of Mladić's guilt.⁷⁹ Moreover, the Trial Chamber reached this conclusion after referring to other evidence, in addition to the Rule 92 *quater* statement.⁸⁰ In this context, the Appeals Chamber considers that the Trial Chamber, taking the evidence at its highest, correctly relied on the statement in support of its findings in the Impugned Decision.

3. Prosecution evidence not relied upon by the Trial Chamber

26. The Appeals Chamber considers that Mladić's challenges to Prosecution evidence, upon which the Trial Chamber did not rely in the Impugned Decision, are without merit.⁸¹ The Appeals Chamber recalls that a trial chamber is not required to refer to the testimony of every witness or every piece of evidence on the trial record in a decision rendered.⁸² The Appeals Chamber further recalls its finding that the Trial Chamber did not err in relying on the evidence discussed in the Impugned Decision, taken at its highest, to conclude that a reasonable trier of fact could find that

⁷² Appeal, para. 31.

⁷³ See T. 15 April 2014 p. 20946.

⁷⁴ Appeal, para. 31.

⁷⁵ Appeal, para. 28. See T. 15 April 2014 p. 20925.

⁷⁶ T. 15 April 2014 p. 20925.

⁷⁷ See *supra*, paras 11, 16-17, 19.

⁷⁸ Appeal, para. 25.

⁷⁹ See T. 15 April 2014 pp. 20954-20955.

⁸⁰ See *supra*, paras 16-17, 19. See also T. 15 April 2014 pp. 20941-20944.

⁸¹ See *supra*, para. 6, fn. 19.

9

underlying acts of genocide had been committed and that Mladić possessed genocidal intent.⁸³ Mladić's submissions regarding Prosecution evidence not relied upon by the Trial Chamber are accordingly dismissed.

4. Extended form of joint criminal enterprise liability

27. The Appeals Chamber is not convinced by Mladić's contention that the Trial Chamber was required to address his responsibility for Counts 1 and 2 pursuant to the extended form of joint criminal enterprise liability.⁸⁴ The Appeals Chamber recalls that the Trial Chamber found that there was sufficient evidence, taken at its highest, upon which a reasonable trier of fact could find Mladić guilty of genocide pursuant to the basic form of joint criminal enterprise.⁸⁵ Further, the Indictment reflects that Mladić's responsibility for genocide pursuant to the extended form of joint criminal enterprise liability is charged as an alternative to his responsibility pursuant to the basic form of joint criminal enterprise liability.⁸⁶ In this context, the Trial Chamber was not required to consider Mladić's responsibility for Counts 1 and 2 on the alternative basis of the extended form of joint criminal enterprise liability.

5. Factual findings by other trial chambers

28. Lastly, insofar as Mladić relies on factual findings by other trial chambers in support of his contention that the Trial Chamber erred in the Impugned Decision, the Appeals Chamber recalls that decisions of trial chambers have no binding force on each other.⁸⁷ In this respect, the Appeals Chamber underscores that factual findings made in a case before the Tribunal are binding only for the individual accused in that specific case.⁸⁸ Accordingly, Mladić's submissions in this regard are dismissed.

⁸² Cf. *Rukundo* Appeal Judgement, para. 102; *Nchamihigo* Appeal Judgement, para. 121; *Karera* Appeal Judgement, para. 20, citing *Kvočka et al.* Appeal Judgement, para. 23.

⁸³ See *supra*, paras 10, 16-17.

⁸⁴ See Appeal, paras 60-64.

⁸⁵ See T. 15 April 2014 pp. 20939, 20947-20948, 20954-20955.

⁸⁶ See Indictment, paras 39, 42.

⁸⁷ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Judgement, 4 December 2012, para. 260.


⁸⁸ See *Karadžić* Judgement, para. 94, citing *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Decision on Motion to Intervene and Statement of Interest by the Republic of Croatia, 8 February 2012, para. 12.

IV. DISPOSITION

29. For the foregoing reasons, the Appeals Chambers hereby **DISMISSES** the Appeal.

Done in English and French, the English text being authoritative.

Done this 24th day of July 2014,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding

[Seal of the Tribunal]