Monday, 23 April 2018

[Appeals Hearing]

[Open session]

[The appellant entered court]

--- Upon commencing at 9.39 a.m.

JUDGE MERON: Please be seated.

Before starting I would like to apologise to all present for the delay, and I would like to make it very clear that tomorrow we will start at 9.30 sharp.

Registrar, will you please call the case.

THE REGISTRAR: Thank you. Good morning, Your Honours. This is the case MICT-13-55-A, the Prosecutor versus Radovan Karadzic.

JUDGE MERON: Thank you. Mr. Karadzic, can you follow the proceedings in a language you understand?

THE APPELLANT: [Microphone not activated] I do hope I will number 6, should be. Yeah, I can.

JUDGE MERON: Thank you. Let me now ask for the appearances of the parties. The Prosecution.

MS. GUSTAFSON: Good morning, Mr. President, Your Honours. For the Prosecution, Katrina Gustafson, Laurel Baig, Barbara Goy, and Iain Reid. Thank you.

JUDGE MERON: Thank you, Ms. Gustafson.

Counsel for Mr. Karadzic.

MR. ROBINSON: Good morning, Mr. President. I'm going to ask President Karadzic to introduce our team.

MR. KARADZIC: [Interpretation] Good morning, Your Excellencies. Good morning to everyone in the courtroom. My main counsel is here, Peter Robinson, and then also we have Kate Gibson, Goran Petronjevic, from Belgrade, and Marko Sladojevic who worked with me throughout the whole case.

JUDGE MERON: Thank you, Mr. Karadzic.

Mr. Karadzic and the Prosecution have both filed appeals against the judgement issued on 24 March 2016 by the Trial Chamber of the ICTY. In accordance with the Scheduling Order issued on 27 February 2018, the Appeals Chamber will hear today and tomorrow Mr. Karadzic's and the Prosecution's respective appeals against the Trial Judgement.

The case concerns the criminal responsibility of Mr. Radovan Karadzic, who: (i) was a founding member of the Serbian Democratic Party and served as its president from 12 July 1990 to 19 July 1996; (ii) was president of the National Security Council of the Serbian Republic of Bosnia and Herzegovina, which was created on 27 March 1992 and held sessions until around May 1992; (iii) was elected as president of the Presidency of the Serbian Republic of Bosnia and Herzegovina on 12 May 1992; and (iv) from 17 December 1992, was present of the Republika Srpska and Supreme Commander of its armed forces.

The Trial Chamber convicted Mr. Karadzic pursuant to Articles 7(1) and 7(3) of the ICTY Statute of genocide, crimes against humanity, and violations of the laws or customs of war.

In particular, the Trial Chamber concluded that Mr. Karadzic participated in a joint criminal enterprise to permanently remove Bosnian

Muslims and Bosnian Croats from Bosnian Serb-claimed territory in municipalities throughout Bosnia and Herzegovina between October 1991 and 30 November 1995, and found him guilty, under the first form of joint criminal enterprise, of persecution, deportation, and other inhumane acts, forcible transfer, as crimes against humanity. The Trial Chamber also convicted him, under the third form of joint criminal enterprise, for persecution, extermination, and murder as crimes against humanity, as well as murder as a violation of the laws or customs of war.

The Trial Chamber further found that from late May 1992 until October 1995, Mr. Karadzic participated in a joint criminal enterprise to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling, and convicted him, under the first form of joint criminal enterprise, of murder as a crime against humanity, and of murder, terror, and unlawful attacks on civilians as violations of the laws or customs of war.

The Trial Chamber also concluded that Mr. Karadzic participated in a joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica in 1995, and found him guilty, under the first form of joint criminal enterprise, of genocide, persecution, extermination and other inhumane acts, forcible transfer, as crimes against humanity and murder as a violation of the laws or customs of war. The Trial Chamber also convicted Mr. Karadzic as a superior under Article 7(3) of the ICTY Statute for persecution and extermination as crimes against humanity, and for murder as a violation of the laws or customs of war.

Finally, the Trial Chamber concluded that, between 25 May and

18 June 1995, Mr. Karadzic participated in a joint criminal enterprise with the purpose of taking United Nations personnel hostage in order to compel NATO to abstain from conducting air strikes against Bosnian Serb targets, and convicted him, under the first form of joint criminal enterprise, of the crime of taking hostages as a violation of the laws or customs of war.

The Trial Chamber sentenced Mr. Karadzic to 40 years imprisonment.

Mr. Karadzic advances 50 grounds of appeal. He requests that the Appeals Chamber vacate each of his convictions and enter a judgement of acquittal or, alternatively, order a new trial or a reduction of sentence. The Prosecution responds that Mr. Karadzic's appeal should be dismissed in its entirety.

The Prosecution advances four grounds of appeal. The first three concern alleged errors relating to the Trial Chamber's failure to convict Mr. Karadzic under the first form of joint criminal enterprise in relation to all crimes resulting from the removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in municipalities throughout Bosnia and Herzegovina between October 1991 and 30 November 1995 and for not convicting him of genocide on this basis.

In its last ground of appeal, the Prosecution alleges that the Trial Chamber abused its discretion by imposing a sentence of 40 years of imprisonment instead of life imprisonment. Mr. Karadzic responds that the Prosecution's appeal should be dismissed in its entirety.

I will now summarise the manner in which we proceed.

On 27 February 2018, the Appeals Chamber granted Mr. Karadzic's request to participate in this hearing alongside his counsel and co-counsel by addressing grounds, 28, 34, 36 to 39, and 45 of his appeal. It is for this reason that Mr. Karadzic is seated in the second row.

I would like to remind both parties that the appeal process is not a trial de novo and the parties must refrain from repeating their case as presented at trial. The arguments must be limited to alleged errors of law which invalidate the Trial Judgement or alleged errors of fact which occasion a miscarriage of justice.

Throughout the hearing, the parties may argue the grounds of appeal in any order they consider suitable for their presentations. The parties shall present their submissions in a precise, clear, and concise manner and should also provide precise references to materials supporting their oral arguments. The Judges, of course, may interrupt the parties at any time to ask questions, or they may ask questions following each party's submissions or at the end of the hearings.

The Appeals Chamber is familiar with the briefs, and I would therefore urge the parties not to repeat them verbatim or to summarise extensively the written arguments.

I would also like to remind Mr. Karadzic and his counsel for the parties to be particularly careful not reveal any confidential information, including information that could identify a protected witness.

As set out in the Scheduling the Order, this hearing will proceed as follows.

Today we shall first hear the submissions in support of Mr. Karadzic's appeal for 1 hour and 30 minutes. After a pause of 30 minutes, we shall continue to hear the submissions in support of Mr. Karadzic's appeal for another hour and 30 minutes. Then after a pause of one hour, the Prosecution will respond for one hour and 30 minutes. After another pause of 30 minutes, the Prosecution will continue its response for another hour and 30 minutes.

Tomorrow, starting at 9.30 a.m., Mr. Karadzic or his counsel will have 1 hour and 30 minutes to reply to the Prosecution's response. Then after a pause of 30 minutes, we shall hear the appeal submissions of the Prosecution for 30 minutes. Directly following this, counsel for Mr. Karadzic will respond for 30 minutes. Subsequently, the Prosecution will have 15 minutes to reply. Finally, Mr. Karadzic will have ten minutes for an option personal address.

Now I would like to invite Mr. Karadzic or his counsel to present his appeal. You have 1 hour and 30 minutes for this presentation.

MR. ROBINSON: Thank you, Mr. President.

We're here today to ask you to overturn Radovan Karadzic's conviction and to order a new trial.

It was 73 years ago in 1945 when American Justice Robert Jackson stood before a panel of judges in Nuremberg pleading his case before the very first international criminal tribunal. Since then, international criminal tribunals have been created for conflicts in the former Yugoslavia, Rwanda, East Timor, Sierra Leone, Lebanon, and Cambodia. Plans for internationalised tribunals are underway for Central African

Republic, South Sudan, and Kosovo. And the permanent International Criminal Court, with over 120 countries as members, sits just a few kilometres from here in The Hague. Other conflicts, such as those in Syria, Yemen, and Myanmar, cry out for international justice.

Much has changed since Justice Jackson pled his case before the judges at Nuremberg, but some universal values have remained the same and none more important than the right to a fair trial. As Justice Jackson so eloquently said when the Nuremberg trial opened:

"We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well."

So today in 2018 as I stand before you pleading the case of Radovan Karadzic, international justice is at a cross-roads. Suffering and impunity continue to exist, because powerful countries do not trust international criminal justice for themselves and their allies. To make international justice universal, international prosecutors have to put on scrupulously fair trials, and judges like you must be willing to call them to account when they fail.

It was the 31st of July 2008 when President Karadzic made his initial appearance in this courtroom. Today, almost a decade later, amazingly he is more hopeful than he was on that day that he will obtain justice.

Over the past ten years, President Karadzic has fully engaged with the legal process here in The Hague. He followed the rules, showed

respect for the Judges, and despite many adverse rulings during the trial, came to regard the Judges, and even the members of the Office of the Prosecutor, as people of good will. That is why he was so shocked and disappointed by the Prosecution's violations of his rights during the trial, and that the Trial Chamber not only let them get away with it but supplied by inference in its judgement what the Prosecution failed to prove by evidence.

It's a tribute to Radovan Karadzic's character that he stands before you today once again respectful and full of hope. His endless optimism, his love for his people, his intellectual power and curiosity, his tremendous energy and capacity for work, and even his great sense of humour have kept him fighting for justice at full speed for the last ten years, despite being locked in the United Nations Detention Unit.

And so for the next three-hours I, my co-counsel Kate Gibson, and President Karadzic himself will passionately plead with you to overturn his wrongful convictions.

Kate Gibson will address you for the remainder of this first session and show you how the trial went wrong and became an unwieldily, out of control mega-trial, begun with a presumption of guilt based on untested adjudicated facts and written statements, permeated by the Prosecution's disclosure violations, and concluded with a violation of President Karadzic's right to testify in his own behalf.

In the next session, I will return and take about 20 minutes to demonstrate step by step how the Trial Chamber's finding that President Karadzic shared the common purpose of executing the prisoners

from Srebrenica was unsafe, unsound, and most importantly untrue.

Finally, President Karadzic himself will demolish the factual foundations of the Trial Chamber's judgement that claimed that there was an overarching joint criminal enterprise to create a homogenous Serb state in Bosnia, and that President Karadzic favoured and approved the shelling and sniping of civilians in Sarajevo.

We will not have time today to address all of our 50 grounds of appeal, but we remain ready during this hearing to answer any questions that you may have on any of those grounds.

What we are asking you to do in this case will not be popular in the short-term, but it will advance the cause of justice long after we are gone. It is our privilege to represent Radovan Karadzic during this hearing and to make our modest but important contribution to international criminal justice.

Thank you.

JUDGE MERON: Ms. Gibson.

MS. GIBSON: Thank you, Mr. President, Your Honours.

President Karadzic has raised 26 grounds of appeal which challenge the fairness of the proceedings against him. And as you are aware, the remedy that he is seeking is that the Appeals Chamber order a new trial.

I'll address you this morning on what we consider to be are the most compelling examples of what went wrong in this trial and when and why. And the why is particularly important in this case, because there's a pattern or a theme that runs through all of the fair trial violations

raised on appeal.

There's a reason why the Trial Chamber took these shortcuts and made these decisions and committed these errors and consistently restricted the fundamental rights that have been afforded to all other accused at the ICTY, and the reason is - consistently - that it was led into these errors as a result of requests from the Office of the Prosecutor.

To move straight to an example, there's one error in this case that really stands alone, that is so fundamental, so manifest that alone it warrants a retrial. And without question, it's an error that begins and ends with the Prosecution.

President Karadzic was required in this case to choose between representing himself or testifying in his own Defence. And by being put in that position, President Karadzic's right to self-representation was violated, because at the first Status Conference in the Milosevic case His Honour Judge May said the accused has a right to counsel but he also has a right not to have counsel. And that's right.

And, in fact, the drafters of the Statute placed this right to self-representation in Article 21, and so on a structural par with other fundamental rights of the accused, like the right to silence or the right to have notice of the charges. The Appeals Chamber has called self-representation an indispensable cornerstone of justice.

It might be unpopular, it might be inconvenient, but it's part of the statutory framework of this court. It's also part of a fair trial that an accused has the right to testify in his own defence, and the

Prosecution, in the Blagojevic case, has argued that the right to appear as a witness in one's own defence, without question, is central to the right to a fair trial, because the testimony of an accused is critical to an overall analysis of the evidence in a case.

So it is profoundly surprising that this Trial Chamber would have put the accused in the position of choosing between those two rights: Give up the right to represent yourself or don't testify. How did this happen in this case, in a case so late in the ICTY's history? It happened because the Office of the Prosecutor told the Trial Chamber: This is what you should do. President Karadzic said: I want to testify and I want to testify in narrative form. After which, the Prosecution filed six pages of reasons as to why he shouldn't be allowed to. They said: Well, it's not how the other witnesses were questioned, we've always done a question and answer format in this case, it would be unstructured, it would be inefficient, you would lose control of the proceedings, you shouldn't let him do it.

Nowhere in their filing did the Prosecution acknowledge that in imposing counsel on President Karadzic for the purposes of his testimony they would be restricting a fundamental right of the accused. And by framing the issue in these terms, what's easier, what's more convenient, the Prosecution led the Trial Chamber down the wrong path. And a few days later, in a short oral decision, the Trial Chamber adopted the Prosecution agencies reasons and said: Yes, you're right, we've always done question and answer, this will be more efficient, it means we keep control of the proceedings, and they imposed counsel on Karadzic for the

purposes of his testimony.

And so what happened next? On the 20th of February 2014, from transcript 247435 onwards, the Bench and the parties were discussing how the questioning by President Karadzic's legal advisor would work: Could the legal advisor consult with President Karadzic during his testimony, were there any restrictions on that, on what topics, could President Karadzic tell his legal advisor don't ask me certain questions, how would that work. And you can see from the transcript that midway through this discussion, President Karadzic says: I'm not going to testify. I've decided not to testify.

President Karadzic was representing himself. Faced with the choice between giving up that right or choosing not to testify, he chose not to testify. And putting him in that position, backing him into that corner was an error. And for us, that's it. This was no longer a fair trial.

Think about it another way. What if President Karadzic had been represented by counsel and the Trial Chamber said: Actually, for your testimony, we think it's going to be more efficient and easier to control if you testify in narrative form. So for the purposes of your testimony, we're depriving you of the right to counsel and you must testify as a self-represented accused?

What happened to President Karadzic is no less serious. This was a fundamental mistake. The Blagojevic case, in which the Prosecution argued so forcefully in favour of the right of an accused to represent himself, is useful for our purposes because in that case the accused had

fallen out with his counsel, they'd had some kind of disagreement, and Blagojevic wanted to testify but he didn't want to be questioned by this counsel. And the Trial Chamber said: No, you testify with your counsel asking you questions or don't testify at all. And he didn't.

And on appeal, he argued that this had violated his right to testify in his own defence, and the Appeals Chamber said: No, the reason you didn't testify is because you were refusing to communicate with you're assigned counsel.

But what's interesting for our purposes is the dissent of His Honour Judge Shahabuddeen, who said: The Trial Chamber was wrong to prevent the accused from testifying in narrative form and it then violated his right to a fair trial with convicting him without him having been given an opportunity to be heard. And His Honour wrote that to require the acceptance of counsel is to imprison a man in his privileges and call it the constitution.

But unlike Blagojevic, President Karadzic had asserted his right to self-representation. This wasn't the case of an accused who said I don't like my counsel. This was an accused who said I want to represent myself. And that can't just be taken away, and it can't be taken away simply because it's easier or more convenient.

The Prosecution argues in response that this was just a formalistic impairment of the right of the accused to represent himself. But the Appeals Chamber has been clear. Before this right can be restricted in any way, a Trial Chamber is required to do several things: It's required, firstly, to balance the restriction against whether or not

there's a sufficiently important objective at stake; it's required to consider principles of proportionality and make sure that any restriction is carefully calibrated; and it's required to go no further than is necessary to accomplish that objective.

In the Milosevic case, for example, counsel was only imposed after substantial and persistent obstruction to the trial proceedings and after Trial Chamber concluded that the trial might not conclude if it didn't impose counsel. There was nothing like that in this case. Our Trial Chamber weighed nothing. Calibrated nothing. And it certainly wasn't a harmless error, because it meant that the Trial Chamber didn't hear from the accused in a case where so much turned on what President Karadzic knew and when he was convicted, without the Trial Chamber having heard his side of the story.

So the Prosecution moves to its next line of attack, saying that President Karadzic's decision not to testify had nothing to do with the imposition of counsel. He decided to testify for unrelated reasons. What unrelated reasons? Does the Prosecution know something that we don't? The Prosecution isn't in the position to submit to this Appeals Chamber that it knows why President Karadzic took the decision not to testify.

And look at the context in which he says I'm not going to do this, I'm not going to testify. Certainly on its face there's a clear link between the imposition of counsel and his decision. The Prosecution's arguments don't stand up. This was a significant mistake that it led the Trial Chamber to make. It's the kind of mistake that

results in a re-trial.

And our focus on this error shouldn't give the impression that this was the only time that President Karadzic's right to self-representation was violated. The entire site visit was held in his absence, and this was supposed to be a non-evidentiary site visit, and the Trial Chamber said that it wouldn't hear any submissions from the parties. But again, the Prosecution led the Trial Chamber into error, because once on the ground in Sarajevo, the Prosecution started to make submissions and, in fact, gave evidence about how particular sites had changed since the war. And then in Srebrenica, the Prosecution at each of the locations gave a sort of mini-closing argument as to what had happened in each of those places and characterised its evidence and discussed its exhibits. And the Prosecution now argues on appeal: Well, President Karadzic's legal advisor was there, and he saw what was happening, and he could have raised concerns. But the person to be raising concerns was the self-represented accused, but he couldn't because he wasn't there because the site visit had been held over his objections in his absence. The Trial Chamber violated President Karadzic's right to self-representation by forcing him to choose that right at the expense of his right to testify, and putting everything else aside, this warrants a re-trial.

But, of course, there were further problems in this case that had nothing to do with the fact that President Karadzic was representing him. These problems had to do with its size. This case was unmanageable. This trial was unmanageable. And again, just like the violation of the

accused's right to self-representation, the problem was caused by the Prosecution.

Instead of putting together a strategic and limited case that the parties and the Bench could handle, the Prosecution chose to charge President Karadzic for hundreds of events, spanning a five-year period throughout all of Bosnia. And it was a surprising choice because the warning signs were there. By the time President Karadzic was arrested in July 2008, the Milosevic trial had happened, and you had these former ICTY Judges and ICTY legal officers who had been open in saying that this mega-trial against Milosevic had been a mistake. It had been a mistake to join the three indictments relating to Bosnia and Croatia and Kosovo. And they urged the Prosecution to exercise restraint, simplify prosecutorial strategy, recognise that these mega-indictments are counter-productive.

But this advice was ignored and in September 2008 the Prosecution presented the Trial Chamber with this new amorphous indictment that joined four huge events and spanned the entire war. And President Karadzic told the Trial Chamber: Don't do it. Don't approve the indictment in this form. It will lead to the most complex and wide-ranging trial in history. It will take years and years and years, and I want to bring a Defence on the facts, and I can't do it on an indictment of this size. And he urged the Trial Chamber to proceed on just one of the four components of the case and to reserve its judgement on the other three. The Trial Chamber declined and opened the floodgates for what was to be an absolute deluge of material that had been generated

over past two decades at the ICTY, millions and millions of pages of documents that could be linked in some way to the charges in this case.

The Prosecution on appeal criticises the appellant for his use of numbers and figures and says that in our briefs we're often just recounting empty statistics, but in fact numbers are appealing to us because they are what they are, they stand alone, and they immediately paint a picture of the size of the problem that we're talking about.

So to give Your Honours some statistics, in pre-trial the Prosecution disclosed more than 1.2 million pages of material; after the Trial Chamber began, the Prosecution disclosed more than 550.000 more pages of material under Rule 68; the Prosecution disclosed 388 witness statements after the deadline for the disclosure of witness statements; the Prosecution was found to have breached its disclosure obligations 82 times; the Trial Chamber took judicial notice of 2.379 facts that had been adjudicated in other cases.

These figures are incredible. How does someone even start to read and digest and analyse 1.2 million pages of evidence? What does one do with hundreds of thousands of pages of exculpatory evidence that land in the middle of the trial? And it's not surprising that the Prosecution completely lost control of disclosure. There are no case managers on earth who be could across that volume of material and deliver meaningful disclosure on that scale. And they couldn't.

And the Prosecution's disclosure violations led to delay after delay. Prosecution witnesses came and went months or years before their prior statements were located and given to President Karadzic. And the

Trial Chamber said to the Prosecution: This is your fault. The size of this case is of your own making, which is partly true but partly untrue. Because as we've set out in detail in ground 6 of our appeal, the Trial Chamber had the chance to force the Prosecution to make this a manageable trial.

In October 2009, the Trial Chamber said it was gravely concerned about the scope of the Prosecution's case and its effect on a fair trial, and it asked the Prosecution to identify some charges or sites or incidents that could be reasonably dropped. And then it said it was disappointed when the Prosecution only dropped a handful, but it still didn't force the Prosecution to do a better job to reduce the size of its case, because, in fact, disclosure violations were only the tip of the iceberg.

The Trial Chamber was understandably rushing to try and get through all of these allegations in a reasonable number of years, and so took judicial notice of so many adjudicated facts and admitted so many untested witness statements that, in effect, the burden shifted to the Defence. Without even having heard a witness, President Karadzic faced a mountain of adjudicated and accepted evidence that was so high it was always going to be impossible to jump over.

Separately, cumulatively, these violations mean that this trial was unfair, because the fairness of a trial is a delicate balance. Even when the judges are of highest calibre, even when the institution is inherently fair, the balance can tip very, very quickly. And it tipped in this case, and President Karadzic is now arguing in front of the

Appeals Chamber that the only remedy for the fundamental mistake of proceeding on an unmanageable indictment is a new and fair trial.

So what happened? What went wrong after this mega-indictment was approved? Starting firstly with ground 6 and the disclosure violations in this case.

Vitomir Zepinic was the deputy minister of the interior in 1991 and 1992. He was on the Prosecution's list of witnesses in this case, which meant that under Rule 66(A)(ii) his prior statements were required to have been disclosed by the 9th of May 2009. The Prosecution then dropped him as a witness and he was called by the Defence and he testified in February 2013.

In December 2013, the Prosecution disclosed the notes of an interview between Mr. Zepinic and the Prosecution's chief investigator that had taken place in September 1996. In this interview, Mr. Zepinic said that the Bosnian government intelligence services had shelled their own civilians in a market-place explosion in Sarajevo because they needed something to provoke hatred. Mr. Zepinic had been in the police department on morning of the blast and had been shown intelligence by a police officer that an SDS member who was named had put the explosive device in a bakery and that television cameras were waiting on standby to record the explosion.

And so this interview, disclosed six years after the deadline, supported the Defence theory that the Bosnian government had been shelling its own people in order to trigger international intervention. President Karadzic didn't elicit this testimony from Mr. Zepinic when he

testified, because he hadn't been given the interview and he didn't know that the witness had this knowledge. President Karadzic called 225 witnesses in this case. Mr. Zepinic was one of the very few that the Trial Chamber found to be credible. This is a disclosure violation, unequivocal, and it's one 79 disclosure violations listed in annex D to our appeal brief. 79 times the Prosecution's loss of control over disclosure meant that President Karadzic missed the chance to confront witnesses with relevant evidence or to elicit relevant evidence.

What's important about this is not just that it happened and not even that it happened on an unprecedented scale. What's important is how the Trial Chamber, and then the Prosecution, responded to these ongoing and fundamental and manifest disclosure mistakes. For its part, the Trial Chamber was aware of the scope of the problem. And in February 2011, it raised its deep concern about the volume of potentially exculpatory material being disclosed and the impact that this had on President Karadzic's preparations.

Recognizing the problem is one thing. The first thing. But there was a disconnect between the Trial Chamber's concern and its actions. There are many meaningful remedies available to a Trial Chamber in this situation, and President Karadzic asked for them: The exclusion of evidence, the recalling of witnesses, hearing evidence, having an evidentiary hearing, giving the Defence access to the Prosecution's databases, forcing the Prosecution to reduce the scope of its case to a size that it can handle. None of these were put in place. Instead, the Trial Chamber's remedies were limited to setting new disclosure deadlines

or ordering the Prosecution to explain why it hadn't disclosed, or when things got really bad, ordering the Prosecution to produce monthly disclosure reports. These remedies had no impact on the Prosecution's case. No impact on the presentation of its evidence. No impact on the Prosecutors personally. And in effect, it created this culture of impunity because Prosecution started to realise that nothing was going to happen: Here's another exculpatory witness statement that we didn't look for in time. What's going to happen to us? Nothing. At worse, we'll have to explain it.

In a cost-benefit analysis, why would you, as the Prosecution, dedicate more time and resources to getting on top of your disclosure violations when there is no incentive to do it because there is no consequence if you don't? And as the scope of the disclosure violations became apparent, the Prosecution finally revealed in October 2010 that, yes, we certify that we were trial-ready a year ago, but we didn't consider that the disclosure of Rule 68 material was subject to that. And, in fact, we're only looking for exculpatory proximate to the witness's testimony.

This should never have been allowed to happen. The Prosecution should have disclosing this material from the moment President Karadzic was transferred to the custody of Tribunal in July 2008.

There's always been an institutional reluctance at the tribunals to allow Prosecution lawyers to come and work in the Defence teams and vice versa. And that's a shame, because what's happened at the tribunals is that Defence lawyers certainly don't appreciate what's involved in the

disclosure of millions of documents, and Prosecution lawyers have no conception of how impossible it becomes, how impossible it is when you're part of a Defence team of four or two lawyers, trying to keep your head above water and comply with your duties to the client and your duties to the Court, when you're facing repeated document dumps of tens of thousands of pages of exculpatory material during the trial. How impossible it is to formulate a Defence strategy pre-trial when you've got no idea what the Prosecution's evidence and you haven't been shown what the exculpatory evidence is.

And with a self-represented accused, the problem is even worse. And now we're in a position where the Prosecution of the ICTY is arguing on appeal that there was no prejudice in this case because the 550.000 pages of additional Rule 68 material that was disclosed during the trial was of little or no relevance to Karadzic's Defence and often duplicative of material already in his possession.

But he still had to read them. They weren't disclosed under a cover letter that said: Don't worry, most of these are irrelevant or duplicative. The Prosecution should be unequivocally disabused of the notion that the content of documents is in any way relevant to a remedy when we're talking about disclosure violations in this volume.

This trial was unmanageable. The Trial Chamber, firstly, allowed Prosecution to proceed on an unmanageable indictment, and then created a culture of impunity that meant that the Prosecution never dedicated the resources that needed to get on top of this process. This was a fatal combination and it made the trial unfair, and this impunity will only end

when a remedy is imposed that impacts the Prosecution, a remedy like a re-trial.

Moving then to ground 7, which concerns the Trial Chamber's taking of judicial notice of adjudicated facts. Again, a direct consequence of the Prosecution's insistence that it needed an evidential foundation of 2.379 facts from other cases in order to present at trial.

When you work within the ICTY, the ICTR system for a while, it's easy to forget how extraordinary Rule 94(B) really is. And it's extraordinary, first of all, because it doesn't exist anywhere else. As Judge Kwon said, it's a new creation of international criminal procedure that does not exist in either common or civil law systems. And the drafters of this rule and the people who apply this rule have never hidden the fact that its goal is about efficiency. This has nothing to do with the fairness of trials, it has nothing to do with the even-handed presentation of evidence. The ICTR Appeals Chamber in Karemera said Rule 94(B) is about judicial economy.

But what happens, really, what happens when a chamber takes judicial notice of an adjudicated fact from another case? The Trial Chamber, for example, takes judicial notice of the fact that 120 non-Serbs were killed by Serb forces on the 5th of August 1992 in Hrastova Glavica. What's the impact of that on the parties? What actually happens, putting aside all the language about burden of persuasion and burden of production. What is the impact?

Firstly, the Prosecution is relieved of its burden for proving the actus reus of the crimes for that event; and secondly, the Defence

now has the onus to elicit evidence to rebut that fact. The burden shifts. That's clear. Unless the Defence gets up and goes out and investigates and finds evidence and presents evidence to contradict the fact that 120 non-Serbs were killed in Hrastova Glavica that fact is a fact in this case. The burden shifts.

The real problem is that the Trial Chamber that made the initial finding about the 120 deaths may not have heard any evidence to the contrary. That's the real danger here. And the Appeals Chamber was alive to that risk when it limited judicial notice of adjudicated facts to those other than those going to the acts and conduct of the accused. The Appeals Chamber said: You can't take judicial notice of facts that go to the acts and conduct of the accused, because defendants in other cases where these facts are coming from have less incentive to contest those facts and might even choose to allow the blame to fall on someone else.

And of course that's right. If I'm being tried in one courtroom, my focus is not going to be on finding and presenting solid evidence to exculpate someone else who is being tried down the hall. But actually, the concern of the Appeals Chamber applies to all facts, particularly if I'm a civilian authority and my Defence strategy is to blame the military. Not only am I not going to be contesting the military's involvement in certain crimes, I'm probably going to be doing the opposite. And that's what happened to President Karadzic.

The Trial Chamber took judicial notice of over 900 facts from the Brdjanin and Krajisnik cases, and in those cases the Defence teams were

concentrating on arguing on that it had been the military and not the civilian authorities that committed the crimes. So this mountain of 900 adjudicated facts is the very definition of one-sided evidence. And, in fact, President Karadzic got the worst of both worlds because of his unique position as having been charged with responsibility for both the civilian and the military organs, because the Trial Chamber also took judicial notice of hundreds of facts from the trials of military used, like General Galic, who was arguing that, no, it was the civilian authorities that were responsible for the crimes.

So President Karadzic's trial was flooded with hundreds of facts that would not necessarily have been contested by the Defence teams in other cases and, in fact, were likely to not have been. And that's what happens in reality. And that's one of the reasons that President Karadzic has used this ground of appeal to bring a constitutional challenge to the process of taking judicial notice of adjudicated facts. There's a reason why this doesn't happen anywhere else in the world. As a practice, it's unusual and dangerous.

And, of course, the counterargument is: Well, the accused still has the right to bring evidence to rebut those facts. It's not as if once they're in the record they're final. If the accused wants to challenge them, he can. Yes, he can, if there are 10 or 20 facts or 162 facts, as there were in the Dragomir Milosevic case. When there are 2.379 adjudicated facts, no one could reasonably stand up in this courtroom and submit: If the accused wants to challenge them, he can.

Think about it. You're a Defence investigator. You're in the

field. You have been asked to find evidence to contradict the fact that 120 non-Serbs were killed in Hrastova Glavica. And once you've done that, you can tick it off your list, and you've got 2.378 to go. And that's just the adjudicated facts. That's not even the Prosecution's evidence.

And, yes, some of these will be background facts, and some of them the accused might not contest, but he still has to go through that process and check their veracity and make that call. The volume was overwhelming. Fact after fact, 900 from here, 200 from here, 400 from here. Throughout 2009 and 2010, the pile of adjudicated facts just kept rising. President Karadzic never had any hope of getting on top of them. He was starting from too far behind. The Prosecution had too much of a head start.

And then to compound this unfairness, the Trial Chamber in the judgement did what no other chamber has done before or since: If the Defence did manage to bring evidence to contradict an adjudicated fact, the Trial Chamber then weighed the Defence evidence against the fact and in almost all occasions preferred the fact. But that skips a step. You can't weigh an evidence against a fact. You can weigh evidence against evidence.

Once President Karadzic had brought that evidence, that reopened the evidentiary debate into that fact, and the next step was for the Prosecution to bring evidence in support of it. That's what the case law says. And so the Trial Chamber's application of Rule 94(B) actually exacerbated the error in this case.

And anyone who tries to argue that procedures like Rule 94(B) are in the interests of the accused because it means the trials are quicker is badly misinformed. What's in the interests of an accused is to proceed on an indictment that's manageable, not unmanageable; that won't require admitting 2.000 facts from other cases just to lay the evidential foundation; that won't require giving the Prosecution this kind of a head start in order to present its case.

What happens when you add these adjudicated facts to 148 witness statements that were admitted under Rule 92 bis? 148 Prosecution witnesses weren't cross-examined in this trial. Their evidence went into the record untested and was presumed to be true, which brings me to ground 16 of President Karadzic's appeal and the shifting of the burden of proof.

No other accused at the ICTY - or, in fact, any other court - has been required to rebut so many facts presumed to be true. In a normal adversarial criminal trial, the Prosecution and the Defence starts with an empty evidential record, a blank canvass. The first Prosecution exhibit is Prosecution Exhibit 1. The Prosecution bears the burden of introducing evidence, eliciting evidence to present its case.

In this trial, the Prosecution started from a position where thousands of facts and hundreds of pages of inculpatory witness statements were already in the record, presumed to be true. Facts about Serbs removing non-Serbs, attacking Muslim areas, executing detainees, beating civilians. The Prosecution didn't have to prove its crime base. And it's trite to stand here in one of the last appeals before this

institution banging the drum about equality of arms, but this is an equality of arms issue because the admission of these thousands of facts and hundreds of pages of inculpatory statements did two things: First, it relieved the burden on Prosecution, which is better resourced, of spending resources to prove those facts; and then, it put the burden back on the Defence to spends its smaller amount of resources finding evidence to contradict those facts. And in the meantime, the Prosecution is free to use the resources that it's saved and dedicated them to other trial issues.

So in the inequality gets larger. The gap between the parties gets larger, and that's the reality. And the Prosecution says that judicial notice and Rule 92 bis statements are well established trial procedures and have been held to be consistent with fair trial rights. Even if that's right, surely there must be a point at which the volume of untested evidence is so great that it makes the trial unfair. There must be a tipping point at which the burden shift is so significant that the process is no longer consistent with fair trial rights.

In Stanisic and Simatovic, the Trial Chamber considered whether the large number of adjudicated facts would make the trial unmanageable for the accused. And if you're wondering what the large number of adjudicated facts in that case was, it was 392 in a case involving two accused. But this reasoning acknowledges that there would be a number. There would be a threshold at which the volume of adjudicated facts makes this trial unmanageable.

What if the Trial Chamber had admitted 10.000 adjudicated facts?

What if 50 per cent of the Prosecution's evidence was untested, 75 per cent of its evidence? There must be a point at which you can't just keep repeating these are well-established trial procedures. As with any well-established trial procedure, it can be implemented in a way that isn't fair.

And the unfairness in this case is demonstrated very well by one of the Prosecution's own arguments in response. The Prosecution says at paragraph 143 of its response brief that: Well, anyway, we had this massive body of documentary and testimonial evidence, so in any event President Karadzic's Defence was always going to have to be massive, so these 2.000 facts and these 148 witness statements, they don't make a difference. They don't mean the trial was unfair.

That's an extraordinary submission. The Prosecution is saying our case was so big that 2.379 adjudicated facts and 148 witness statements were just a drop in the bucket. The fact that the accused now has to rebut all these facts doesn't make a difference because of how enormous our case was to start with.

JUDGE MERON: Ms. Gibson, sorry. Could I ask you a question here: Did the Trial Chamber rely on this large number of adjudicated facts to enter convictions?

MS. GIBSON: Thank you very much, President Meron.

In fact, that is the second prong of the unfairness in this case. Our submission in ground 31 of our appeal is that the record was just so flooded with these untested witness statements and adjudicated facts that they did, indeed, make their way into the judgement. And in fact, we've

pointed to 36 convictions for Scheduled Incidents that rely solely or in significant part only on untested evidence. And we've argued in ground 31 of our brief that the Appeals Chamber should overturn these 36 convictions for having been improperly based on untested evidence.

JUDGE MERON: So this is the basic prejudice that you allege?

MS. GIBSON: The prejudice really exists in two parts. The first part is the convictions that relied upon untested evidence, but the second and the more global prejudice was that President Karadzic had to spend resources rebutting this volume of adjudicated facts that I'm describing under this ground.

JUDGE MERON: Thank you, Ms. Gibson.

MS. GIBSON: Thank you, Your Honour.

Without appellate intervention in this case, there will be no limits on the admission of untested evidence at this Tribunal. If this was okay, then everything will be okay. And the Defence isn't blind to the pressure that was put on the organs of this institution to speed up trials, because that's why these measures like Rule 94(B) were put in place. And undeniably they make the trials faster, but it's now gone too far. The pendulum has swung too far in terms of balancing efficiency and fairness. It should be firmly brought back.

I'll move then quickly to a different topic concerning General Mladic and the Trial Chamber's error in refusing to compel his testimony in this case. That is a subject of ground 20 of our appeal.

Much of this case in the end turned on what President Karadzic knew and when. He was convicted of genocide on the basis of information

he had apparently been given and the timing of that information. Out of anyone involved in these events, General Mladic was best placed to know if President Karadzic, for example, had been told about executions in Srebrenica. And the Trial Chamber agreed with that and subpoenaed him.

So General Mladic came to court, he sat in the witness box, President Karadzic asked his first question, General Mladic refused to testimony on the grounds of incrimination, and that was that.

The Trial Chamber had the ability to compel General Mladic to answer the question and it didn't. And this, we say, was an error. The Trial Chamber was wrong to ascribe more weight to General Mladic's rights as an accused than President Karadzic's right to defend the case, because Rule 90(E) exists for this very purpose. When a witness says, "I can't answer because it will incriminate me," the Trial Chamber can compel that witness to answer because Rule 90(E) says this answer can't be used against the witness.

And because of this rule, Mladic was protected, and the Trial Chamber should have compelled him to answer. This wasn't peripheral evidence. This was evidence that went to the heart of the convictions for the municipalities, for Sarajevo, for Srebrenica. The Prosecution says that this ground of appeal is based on the false premise that General Mladic would have been protected by Rule 90(E). The Prosecution says, and I quote:

"Compelling Mladic to answer would have involved concrete risks to his right not to incriminate himself, notwithstanding Rule 90(E)."

Two months prior, the Appeals Chamber had confirmed in the

Karadzic case that Rule 90(E) does protect the testimony of a witness who is also an accused. The Appeals Chamber looked at this question in detail in respect of Tolimir's testimony and said: Rule 90(E) works.

Why is the Prosecution saying that it doesn't? Because according to the Prosecution, it couldn't guarantee that the Mladic trial team wouldn't have access to this testimony. The Prosecution says no matter how hard we try, even if we create a Chinese wall between Mladic trial team and the Karadzic trial team, we can't guarantee that the information won't be indirectly revealed. We are too highly integrated as an office. The Prosecution is holding the Rule 90(E) procedure hostage. Its position is: We can't comply with it. We're too highly integrated. Too bad for the accused.

In other cases when the Prosecution was trying to elicit evidence for its own advantage, it was absolutely clear that it could construct firm Chinese walls within the office. But now when it's an accused who is trying to elicit evidence for his advantage, the situation is apparently different. If it's true that the Prosecution can't comply with the confines of Rule 90(E), then it should reorganise itself so it can.

The rights of an accused can't depend on the level of integration of the Office of the Prosecutor, nor is it for the Prosecution to justify the Trial Chamber's failure to compel this evidence just because the witness in question was General Mladic, who the Prosecution says would have just given self-serving evidence, he wouldn't have been believed, and he would have been of little or no use to Karadzic.

The Trial Chamber would never have issued a subpoena for a witness who would be of little or no use to an accused. President Karadzic wanted to ask General Mladic: Did you ever tell me about executions in Srebrenica? Did we make a plan to terrorise the civilian population of Sarajevo? This was central evidence. This was the man who had this information. Whatever the answer, whatever the weight that was subsequently ascribed to it, President Karadzic had the right to get it. The Trial Chamber's failure to compel it was an error. And, unfortunately, it was an error which was compounded by the Trial Chamber's refusal to hear the evidence of General Mladic's deputy, General Miletic, which is the subject of ground 26 of our appeal.

Like General Mladic, the Trial Chamber had issued a subpoena for General Miletic's testimony. He then fell ill, and the testimony was vacated. The subpoena was vacated. By the time that he'd recovered, the Defence case had closed, and the Defence team asked the Trial Chamber to reopen the Defence case for two days to hear the evidence of this witness. The Prosecution opposed the reopening of the Defence case. The Trial Chamber agreed and made reference to the delay that it would cause. The Trial Judgement was rendered 12 months later.

General Miletic was patently an important witness. The Trial Chamber said that he was when it issued the original subpoena, and the Prosecution said that he was when it asked for him to be heard viva voce. And that was right.

And to give you just a few quick examples. The Trial Chamber found that by signing Directive 7, President Karadzic demonstrated the

intent for forcible transfer in Srebrenica. General Miletic drafted Directive 7 and he was prepared to testify that the draft included no such plan. The Trial Chamber found that President Karadzic restricted humanitarian aid to Srebrenica. General Miletic was involved in the convoy approvals and, in fact, signed seven notifications for humanitarian convoys in May and June 1995. The Trial Chamber found that President Karadzic closed the corridor for the column to leave Srebrenica and relied on this to convict him of genocide. General Miletic monitored the corridor, monitored the column, personally denied the request to open the corridor, and then opened an investigation into what had actually happened.

Trying to say now that this evidence isn't probative is not a serious submission. No reasonable Trial Chamber would have weighed this evidence against a delay in judgement drafting and decided not to hear it, and we invite the Appeals Chamber to look at the combined effect of these errors.

The three people on the planet who knew most about President Karadzic's involvement in Srebrenica were President Karadzic, General Mladic, and General Miletic. President Karadzic didn't testify after he was forced to choose between testifying and giving up his right to represent himself. General Mladic was subpoenaed and in the witness box and the Trial Chamber chose not to compel his testimony. General Miletic was ready to testify and the Trial Chamber chose not to hear his testimony.

President Karadzic was convicted of genocide with this huge gap

in the evidence. A trial chamber's findings are only as good as evidence it hears. Other Trial Chambers at the ICTY have bent over backwards to accommodate evidence of this relevance and probity. Our Trial Chamber wouldn't wait for two days. This was an error. It should be rectified through the ordering of a new and fair trial at which the testimony of President Karadzic, General Miletic, and General Mladic can be heard.

Turning then to a different subject and ground 23 of our brief, which deals with the privilege of war correspondents. President Karadzic's position throughout this case has been that the qualified privilege of war correspondents is not held by the individual journalist but the news agency for who they work or worked, and so a journalist can't waive that privilege. It must be waived by the news organisation itself.

Five retired war correspondents testified in the Prosecution in this case. Before each of them testified, President Karadzic objected on the grounds that the news agency in question hadn't waived the privilege that attached to their testimony. The Trial Chamber said: No, it's a matter for journalist whether they want to testify or not. This was an error.

In the United States this question has been litigated, and the US Court of Appeals has held that the privilege protecting journalists in their news-gathering functions is held by the news agency. In that case, it was CBS.

What about the international courts? In May 2015 at the Special Tribunal for Lebanon, the prosecution asked for a summons to be granted

in respect of a Reuters journalist who had been in Beirut at the time of President Hariri's assassination. The first thing that happened was that Reuters engaged lawyers in the UK who opposed the prosecution summons on the grounds of privilege. And then when Trial Chamber issued the summons, it was the chief counsel of Reuters News, together with these British lawyers, who filed the request for appeal. The news agency had the right to insist on the privilege of the news gathered by that journalist.

And this makes sense because as Reuters noted in its STL filings, news organisations, which depend on their journalists being trusted for neutrality in all sides of a conflict, may be reluctant to co-operate. And you can imagine: Why if a former BBC journalist, for example, decides to give evidence against a particular accused, it's easy to imagine that this could lead to the perception in the field that BBC journalists are not neutral observers. And, at best, this could make their job more difficult. At worse, it could expose them to reprisals.

The choice shouldn't rest with the individual but with the organisation that's responsible for the journalists that remain. It wasn't the right of these five retired war correspondents to testify in this way. The Trial Chamber was wrong to let the Prosecution skip over this step when there was a larger issue at stake, and their testimony was essential to the convictions for Sarajevo and the municipalities. The remedy is to order a new and fair trial at which this evidence is excluded, absent a waiver from the news organisation involved.

President Karadzic has raised a second ground of appeal about

privilege, and this time parliamentary privilege, which is the subject of ground 24 of his brief. Parliamentary privilege is recognised in most states. Common civil jurisdictions from Argentina to Ukraine recognised that statements made parliament cannot be used against someone in a civil action or criminal prosecution, and this wide-spread acceptance of this privilege is unsurprising because the rationale behind it is a good one: It's important that people can speak freely in parliament. It means your political opponents can be offended by what you say, but they can't use the judiciary to silence you.

President Karadzic addressed the Bosnian Serb Assembly as the SDS party president, and he addressed the Republika Srpska Assembly as the Republika Srpska president. The statements that he made in those sessions are relied upon throughout the Trial Chamber's findings on the existence of an overarching JCE and his role within that JCE and the fact that he had genocidal intent. These speeches form a big part of this judgement, and the Trial Chamber held: While immunities and privileges may protect parliamentary is statements in domestic proceedings, this does not apply in international criminal proceedings. So that's what ground 24 really comes down to: Should parliamentary privilege apply in international proceedings?

And it's hard to think of why not. Privileges don't just disappear just because we're in front of an international court. This is an evidentiary privilege, just like legal professional privilege or war correspondents privilege or doctor-patient privilege. All of which have been recognised by the international courts. What could be the

justification for ignoring parliamentary privilege in an international setting?

The Trial Chamber didn't offer one. The Prosecution has hasn't offered one. And in fact, it would undermine the purpose of the privilege in the many states that recognise it that a parliamentarian should be able to speak freely without fear of prosecution if that parliamentarian could then be prosecuted at an international level for what he or she said.

Now, the Prosecution has argued that the Appeals Chamber isn't entitled to decide this point because President Karadzic didn't raise it at trial, and, in fact, President Karadzic admitted and relied on statements from these assemblies that are in his favour, and because the Trial Chamber's ruling was made in relation to Mr. Krajisnik.

Just a few points in response. The fact that the ruling was made in respect of Mr. Krajisnik's statements doesn't mean that it wasn't a ruling of general application in this case. Clearly it was.

Secondly, privilege can be asserted at any time. The discretion lies with the holder of the privilege. President Karadzic is now asserting it.

And, of course, the Appeals Chamber has the discretion to entertain this point. There are many examples of the Appeals Chamber deciding issues that hadn't been raised at trial, particularly in the case of a self-represented accused.

And this is an important question: Can a person's statements in parliament be used against him in an international trial? It's very

likely to come up again, and it's in the interests of all us to have an answer.

And I can assure you, Mr. President, that I am entering the homestretch of these arguments. I see that it's come up to 11.00. I probably have less than ten minutes to go, so I'm at your discretion if I should take the pause now or continue.

[Trial Chamber and Legal Officer confer]

JUDGE MERON: I suggest you continue.

MS. GIBSON: Thank you.

Turning lastly then to ground 29 and the impact, if any, of the Supreme Court of the United Kingdom's in the Queen v Jogee on JCE III at the ICTY. And this ground of appeal has gotten more interesting as the appeal has gone on, not least because Your Honours have admitted an amicus curiae brief from the counsel who argued this case in front of the UK Supreme Court. So we have several lines of argument running in parallel and a significant body of submissions from the parties.

The arguments are well known to all of us. But as an overview, what happened in Jogee? Previously in the UK, an accused who was part of a plan to commit an offence could be liable for additional crimes if he foresaw that the principal might commit those crimes as a possible consequence of the criminal plan and then kept participating. So, in essence, JCE III.

In Jogee, the UK Supreme Court held that this standard had been wrong, that common law courts had been wrong to treat foreseeability as a legal standard for the mens rea of an accused in that situation.

Foreseeability just a factual consideration. Not the legal standard. It was a factual consideration from which an accused's intent could be inferred.

And this meant, in effect, that the position in the UK reverted to what it had been 30 years earlier before the jurisprudence took what the Supreme Court called a wrong turn. The accused needed to have tacitly agreed to the principle committing these additional crimes if the occasion arose. Foreseeability no longer enough. The mere possibility of crimes no longer enough.

And this judgement was huge news in the UK, but it didn't just come out of nowhere. For 30 years, barristers and commentators and practitioners had been arguing that hold an accused liable for murder or for any other offence merely on the foresight of a risk is fundamentally unjust, and the discomfort arose from the fact that suspects were being convicted on the basis that they foresaw that a principal might do something but without any specificity. Liability was being imposed on the basis of a possible outcome or the risk of a possible outcome rather than an established criminal fault standard like knowledge or recklessness or intent, and so the standard had created almost an endless liability because, really, almost anyone can foresee a possible outcome of someone else's behaviour, but that can't be enough to make you liable for it.

So Jogee was seen as an important correction to allow for liability of accused only when there is sufficient evidence to make that link.

So what does this mean for us in this case in this court? Firstly, we have to acknowledge that JCE III at the ICTY has been resilient in the face of nearly two decades of onslaught from Defence counsel and academics and commentators. The arguments against JCE III are well known. I don't intend to repeat them today. But JCE III has withstood this attack and has been affirmed and reaffirmed in the jurisprudence of this Tribunal.

We are not asking the Appeals Chamber to throw out JCE III on the basis that it's incompatible with principles of personal culpability or because it's ultra vires or because it's unfair. We are simply saying that one national judicial system, whose cases helped inform the formulation of JCE III in the Tadic case, has identified one aspect of its application as having had been wrong. And in our view, that provides the impetus to revisit this specific aspect of the JCE III doctrine in this court. Not to throw out JCE III but to correct this misalignment in one aspect of this law. And not because the Appeals Chamber is bound to follow shifts in national law and not because of the link between English joint enterprise and JCE III, but because it's right. Because JCE III is now out of step with everything, and adjusting the mens rea standard would allow this Court to make the same correction, even in the last days of its operation.

And those were the grounds that we wanted to address in this morning's session. Again, we have only discussed some of President Karadzic's concerns. The other fair trial grounds are in our brief. You have them. We don't intend to raise them. But we have tried

this morning to demonstrate a pattern of the Prosecution leading the Trial Chamber into error: Framing the case in this way that was never going to be manageable, refusing to make it smaller, insisting on a huge amount of untested evidence, and mismanaging disclosure to the point that it overwhelmed all of the players in this story. But most significantly, telling the Trial Chamber that it could trample President Karadzic's right to represent himself because this would be more efficient, easier for everyone.

The Prosecution should be part of safe-guarding the fairness of these trials. The Prosecution should want these trials to be fair and should guide a Trial Chamber to make the decisions that are compatible with the rights of the accused. The Prosecution in this case did the opposite, and the result was an unfair trial that stands so far apart from other cases at the ICTY that a re-trial is warranted.

Thank you, Mr. President, Your Honours.

JUDGE MERON: You still have, I believe, till 11.25. I'm sure you would want to use your time.

MR. ROBINSON: We certainly would, Mr. President, and I'm going to turn to ground 40 which is part of our appeal. I'm just going to need to have our PowerPoint show up here.

[Trial Chamber confers]

[Trial Chamber and Registrar confer]

[Trial Chamber and Legal Officer confer]

JUDGE MERON: If I could just return for one split second to Ms. Gibson.

You have raised arguments regarding privileges with journalists, arguing, if I understand, that the news organisation may raise and do routinely raise claims of privilege. In the case now being discussed, the news organisation did not raise objections or appear in any way, so how do you apply it?

MS. GIBSON: The error that we identified on appeal was that the Trial Chamber should have asked the Prosecution to ensure that the news agencies had been given an opportunity to waive the privilege prior to the war correspondent taking the stand, and in fact that was raised before each war correspondent testified and the Trial Chamber dismissed it. So the Trial Chamber took a different position and said, no, the privilege rests with the individual itself.

So we're arguing on appeal that that was a legal error and it led to an unfairness in this case because it's not clear whether these news agencies would have allowed the journalists to testify because of the considerations of neutrality that were raised by Reuters more recently at the STL.

JUDGE MERON: But the news organisations had an opportunity to make this claim of privilege, didn't they?

MS. GIBSON: That we can't be clear about. It is certainly President Karadzic did he what he thought he could do in that situation, which was to raise the issue. Whether the individual journalists went back to, I think it was Sky News and BBC, and said: I've been asked to testify as a Prosecution witness. Should I talk to the in-house counsel? Can I do this? That is not something we're clear about. For all we

know, the new agencies might have found out after the fact.

JUDGE MERON: Thank you.

Mr. Robinson.

MR. ROBINSON: Thank you, Mr. President.

In ground 40 the Defence has challenged the Trial Chamber's finding that President Karadzic shared the common purpose of executing prisoners from Srebrenica. That finding was the foundation for his genocide conviction.

The basis for this finding is contained in paragraph 5814 of the judgement. It says that:

"He agreed to and embraced ... the killing of the able-bodied men and boys as demonstrated by his conversation with Deronjic on the evening of 13 July as well as his subsequent actions."

So there are two elements to this finding: There is the Karadzic-Deronjic conversation, and his subsequent actions.

Miroslav Deronjic was the president of the SDS party in the neighbouring municipality of Bratunac and the person who President Karadzic had appointed civilian commissioner after the fall of Srebrenica two days earlier.

Let's look first at the text of the Karadzic-Deronjic conversation. There is an intermediary relaying the conversation between President Karadzic and Deronjic because there was no direct telephone line between Bratunac where Deronjic was and Pale where President Karadzic was, more than 100 kilometres away. This conversation took place at a time when thousands of prisoners from Srebrenica had been

bused to the nearby town of Bratunac on the evening of 13 July 1995.

The intermediary says:

"Deronjic, the President is asking how many thousands?"

Deronjic answers:

"About two for the time being."

The intermediary relays:

"Two, Mr. President."

And Deronjic adds:

"But there will be more during the night."

And then Deronjic asks:

"Can you hear me, Mr. President?"

And the intermediary tells him that the President can't hear you. This is the intermediary.

Deronjic then says:

"I have about 2.000 here now."

And the intermediary says:

"Deronjic, the President says all the goods must be placed inside the warehouses before 12 tomorrow."

Deronjic says:

"Right."

And then the intermediary says:

"Deronjic, not in the warehouses over there but somewhere else."

Deronjic says:

"Understood."

The conversation ends.

There is no recording of this conversation. We just have the notes of the member of the Bosnian Muslim army who intercepted this call.

President Karadzic agrees that he did have a conversation with Deronjic and that it pertained to the prisoners captured after the fall of Srebrenica, but he says that "somewhere else" meant Batkovici, a prison in Eastern Bosnia where prisoners of war were housed and regularly visited by the Red Cross and where the prisoners from Srebrenica would be taken to be detained and not killed.

In the Vasiljevic judgement, the ICTY Appeals Chamber stated that:

"When a chamber is confronted with the task determining whether it can infer from the acts of an accused that he or she shared the intent to commit a crime, special attention must be paid to whether these acts are ambiguous, allowing several reasonable inferences."

The Trial Chamber concluded that the President Karadzic ordered the prisoners to be taken to the Zvornik area and executed. How did the Trial Chamber infer that President Karadzic ordered that from that cryptic conversation we just looked at? Where did they get Zvornik from the words used by President Karadzic, "somewhere else"?

Well, they got it from the testimony of Momir Nikolic. Nikolic was a Bosnian Serb army captain who participated in the Srebrenica killings and burials, made a plea agreement with the Prosecution, and testified at several trials. The Trial Chamber that sentenced him and heard testimony in the Blagojevic case, led by the current Mechanism Judge Liu Daqun, found him to be evasive and lacking in candour.

Nikolic testified that at a meeting in Bratunac around midnight on the 13th of July, Deronjic stated that he had received instructions from President Karadzic that all of the Bosnian Muslim men should be transferred to Zvornik. According to Nikolic, in addition to Deronjic, police commander Dragomir --

JUDGE MERON: You have five minutes.

MR. ROBINSON: Thank you.

Police commander Dragomir Vasic and army Colonel Ljubisa Beara were also present when this statement was made.

For the statement that Deronjic said that he had received instructions from the accused, that all of the Bosnian Muslim men being detained in Bratunac should be transferred to Zvornik, the Trial Chamber appended footnote 18024, and that cited the testimony of Momir Nikolic and his plea agreement, as well as the testimony of two other witnesses: Srbislav Davidovic and Milenko Katanic.

So we ask whether or not this testimony of Nikolic is, in fact, corroborated. Well, Deronjic is deceased. He didn't testify. Vasic was on the Prosecution witness list but not called. And Beara testified as a Defence witness and denied even being in Bratunac on the 13th of July. So no other witness to the conversation corroborated.

What about the evidence cited by the Trial Chamber, Srbislav Davidovic and Milenko Katanic? Did that corroborate Nikolic's testimony? This Appeals Chamber has already said that it does not. In ruling on our motion to admit additional evidence on appeal, you said that:

"Having reviewed the excerpts of Davidovic and Katanic's evidence

relied upon by the Trial Chamber, none reflect direct knowledge of the meeting or the contents of its conversation."

So the Trial Chamber erred in finding that the testimony of Davidovic and Katanic corroborated Momir Nikolic. And it didn't even recognise that it had based that finding on Nikolic's testimony alone. That is a fundamental error.

It's no corroboration that Nikolic was aware of the meeting or even present. That could still be true and he could be lying about what was said.

For example, suppose you, Mr. President, encountered Prosecutor Brammertz one afternoon as you were leaving the building. You greet each other and exchange pleasantries. And suppose at the same time a member of Seselj's Defence team came out of the Defence room into the lobby and passed by, and suppose he later claimed that he overheard you and Prosecutor Brammertz discussing merits of Seselj's appeal.

There might well be video footage of you and Prosecutor Brammertz talking together in the lobby, and it might even show that the member of the Defence team was passing by, but that would be no corroboration of what was actually said.

The same is true here. Maybe Nikolic was outside of Deronjic's office as he claimed, but the issue is the content of what Deronjic said. And for that, there is no corroboration. The finding that President Karadzic was referring to Zvornik when he said the prisoners should be taken somewhere else rests entirely on the uncorroborated testimony of Momir Nikolic.

We could take a break right now, Mr. President, if you would like. Or if you want me to continue for a few more minutes, I could do that as well.

JUDGE MERON: We can take a break, and we will count this as your hour and a half.

So we will break for 30 minutes and reconvene at five minutes before 12.00.

--- Recess taken at 11.22 a.m.

--- On resuming at 11.58 a.m.

JUDGE MERON: Please be seated.

I would like to return for a moment to the question of privileges of journalists. We have, in fact, a case on the subject. The case is Prosecutor against Brdjanin and Talic, decision on interlocutory appeal. And I would like, for the record, since your argument may have perhaps introduced a tiny bit of a confusion, I would to like clarify this.

The decision of the Appeals Chamber in that interlocutory appeal concerned war correspondent Randall who had been subpoenaed and refused to testify. In that case, the Appeals Chamber noted, and I quote:

"War correspondents are, of course, free to testify before the international Tribunal, and their testimony assists the international Tribunal in carrying out its function of holding accountable individuals who have committed crimes under international humanitarian law. The present ruling concerns only the case where a war correspondent, having been requested to testify, refuses to do so. In this regard, the Appeals Chamber determined there was no absolute privilege against

protecting journalists from testifying. But prior to the issuance of a subpoena to testify to a journalist, a two-pronged test must be satisfied: First, the petitioning party must demonstrate that evidence sought is of direct and important value in determining a core issue in the case; second, it must demonstrate that the evidence cannot reasonably be obtained elsewhere."

I have the impression that there was nothing in this case indicating an involvement of or standing of a news agency. The decision is one of 11 December 2002. Just for the clarification of this matter.

And now we are returning to proceedings. 12.00. Would it be all right for you to continue for an hour and a half? So we will now continue till 1.30 and then have a break. And I thank Ms. Gibson for her argument during the first part of the session.

MS. GIBSON: Thank you very much, Mr. President. And if I could just interrupt lead counsel's submissions on Srebrenica just to return briefly to address what Your Honour has said.

We certainly agree that the privilege of war correspondents is a qualified one. So it's not an absolute privilege, like exists with ICRC staff, for example. You do have to satisfy a test before a journalist can be compelled to testify in this case.

Our arguments in relation to the Brdjanin decision, and I would refer Your Honours to our reply brief at footnote 195, in our submission, the Brdjanin decision is relevant to situations only in the case where a war correspondent, having been subpoenaed, then refuses to testify. That decision concerned the assertion of the privilege and not necessarily its

waiver. The Appeals Chamber was not addressing the question that's at issue in this case, being who can waive the privilege, the journalist or the news agency. And so for that reason we still thought that it was worth raising this question as not being one that's completely settled in the jurisprudence of this Tribunal.

And then I'll pass back to my lead counsel to continue his submissions.

MR. ROBINSON: Thank you, Mr. President. And returning to the issue of Srebrenica and the uncorroborated testimony of Momir Nikolic which formed the basis of the Trial Chamber's finding, that President Karadzic had referred to Zvornik when he said that the prisoners should be taken somewhere else. No rule prevents a Trial Chamber per se from basing a finding on the uncorroborated evidence of a participant in the crime who made a plea bargain with the Prosecution. The question is whether it was reasonable for the Trial Chamber to have done so. We contend that no reasonable Trial Chamber would have based such a finding based on the uncorroborated testimony of Momir Nikolic. You need look no further than what other Trial Chambers who have heard Nikolic's testimony have done to see whether it was reasonable.

In the Mladic case, the Trial Chamber declined to rely on Momir Nikolic's uncorroborated testimony concerning an alleged hand gesture made by General Mladic suggesting that the prisoners should be killed. The Trial Chamber said:

"In the absence of corroboration on this potentially important

event, the Trial Chamber finds it is unable to establish beyond reasonable doubt that the encounter between Nikolic and Mladic took place and that Mladic made the alleged hand gesture."

In the Blagojevic case, the Trial Chamber found that:

"Momir Nikolic cannot be considered a wholly credible or reliable witness. And that on matters that bear directly on the knowledge of the accused, such as what he reported to Colonel Blagojevic during these meetings or was told to do, it must require corroboration for such evidence in order to enter a finding against the accused."

The danger of drawing conclusions from ambiguous language in intercepted conversations was brought home in Krstic case. There, the Trial Chamber had inferred that General Krstic understood that 3500 prisoners were to be killed from Colonel Beara's statement in an intercepted conversation, that he needed help in distributing 3500 parcels. However, the Appeals Chamber held that:

"While such an inference may be drawn from this coded language, its meaning is insufficiently clear to conclude that no alternative interpretation is possible."

The same is true with the Deronjic-Karadzic conversation. The Trial Chamber said that:

"The use of code demonstrated a maligned intent behind the conversation", but as in the Krstic case it is possible, and indeed more plausible, that the participants to the conversation were talking in code because they didn't want the Bosnian Muslim army to know the location of prisoners.

And as in Krstic, no reasonable Trial Chamber could or should have made this critical finding that President Karadzic ordered the prisoners to be taken to Zvornik and executed, based solely on Nikolic's evidence.

Our Trial Chamber also referred to the testimony of a witness who testified that Colonel Beara told him that the order to get rid of the prisoners had come from two presidents, but that same witness testified that he thought Beara was falsely invoking some higher authority to persuade the witness to help him. The witness emphatically testified that he "did not believe for a moment" that President Karadzic had ordered any killings. So this is no corroboration that President Karadzic ordered the prisoners to be taken to Zvornik and executed.

Returning to the basis for the finding that President Karadzic agreed to and embraced the plan to execute the Srebrenica prisoners, we see again that it was composed of two things: Not only the conversation with Deronjic, but subsequent actions. So let's look at President Karadzic's subsequent actions referred to the Trial Chamber. There are three.

One subsequent action was that President Karadzic denied international organisations access to the Srebrenica and Bratunac area. This was simply not true. The basis for this finding was that on the 24th of July, a UN special rapporteur had sent a letter to President Karadzic requesting access to the Srebrenica area and President Karadzic never answered his letter. However, the UN's own

report on the events of Srebrenica indicated that the ICRC gained access to the Srebrenica, Bratunac area on the 27th of July, and the Prosecution has acknowledged as much in its brief at paragraph 443.

The Trial Chamber found that President Karadzic's order on the 14th of July declaring a state of war in the area of Srebrenica, Skelani municipalities also served to facilitate concealing the executions. But if President Karadzic had ordered the prisoners taken to Zvornik to be executed and wanted to hide those executions, his declaration of war would have included Zvornik municipality.

At the time he issued that order on the morning of the 14th of July, there was fierce fighting in the woods of Skelani and Srebrenica municipalities, which was the actual purpose of the declaration of war. Not to cover up crimes in Zvornik. So there was no basis to claim that President Karadzic denied access to internationals.

Next, the Trial Chamber found that:

"The accused ... embarked on an effort to disseminate false information about the fate of Bosnian Muslim males ..."

And third, it found that:

"The accused took no action to initiate investigations or prosecutions, and in fact commended those involved in the Srebrenica operation."

But both of those presuppose that President Karadzic had ordered the transfer of the prisoners to Zvornik and knew that they had been executed. If he didn't, there was nothing false about the information he disseminated or wrong with commending those involved in the taking of

Srebrenica.

But even if President Karadzic had found out subsequently that the prisoners had been executed, denying the killings after the fact or failing to punish, while it may attract liability as a superior, does not equate to sharing a common purpose to execute the prisoners. And as we've pointed out in paragraph 799 to 804 of our brief, to be responsible as a superior for the crime of genocide, the Prosecution would have to prove that President Karadzic not only knew of the executions but knew that they were committed with the intent to destroy the Bosnian Muslims as such.

In the Popovic case, Ljubomir Borovcanin's knowledge of the Kravica warehouse killings didn't mean that he was aware that those killings were committed with genocidal intent.

And in the Blagojevic case, the Appeals Chamber held that although Blagojevic knew that some murders had occurred, absent knowledge of the mass killings, no reasonable trier of fact could have found that he had knowledge of the perpetrators' genocidal intent.

Therefore, the subsequent actions referred to by the Trial Chamber provide no corroboration for the finding that President Karadzic agreed to and embraced the plan to execute the Srebrenica prisoners.

THE INTERPRETER: Kindly slow down for the interpretation. Thank you.

MR. ROBINSON: Stripped away of its trimmings, the finding that President Karadzic was a member of the JCE to kill the prisoners rests on

the uncorroborated hearsay testimony of Momir Nikolic, that he heard Deronjic say that President Karadzic had ordered the prisoners to be taken to Zvornik.

Srebrenica is the most well documented war crime in the 20th century. Intercepted conversations, copies of orders, correspondence, and abundant forensic evidence has allowed prosecutors and judges to trace and reconstruct the events after the fall of Srebrenica on a minute-by-minute basis. And with all of this evidence, not a single item corroborated that President Karadzic ordered the execution of these prisoners.

In the Krstic judgement, the Appeals Chamber stated that:

"Genocide is one of the worst crimes known to humankind, and its gravity is reflected in the stringent requirement of specific intent. Convictions for genocide can be entered only when that intent has been unequivocally established."

The Trial Chamber's finding that President Karadzic shared the intent to kill the prisoners from Srebrenica comes nowhere close to meeting that standard, and President Karadzic sits here before you convicted of a crime - genocide - that he did not commit.

The core function of an appellate court is to correct such errors and prevent a wrongful conviction. So I ask you to reverse President Karadzic's genocide conviction under Count 2.

Thank you.

JUDGE MERON: Have you completed your argument?

MR. ROBINSON: Yes, Mr. President. And President Karadzic is now

going to continue the argument.

MR. KARADZIC: [Interpretation] Once again, good day, Your Honours. I shall touch upon several grounds of appeal that I believe to be particularly important for the understanding of my appeal and my position.

I would not like us to abandon the foundations and deal with the fifth or the sixth floor, because that would be defeating to me, implying that we have accepted the first four floors and that it had to be that way. What I'm about to say cannot be said, unfortunately, in any milder terms. I do not wish to offend the members of the Trial Chamber, whom might have been helped in writing the judgement of a cohort of young, inexperienced people, who might have also had certain prejudices, but were certainly lacking in the understanding of our local culture, laws, and constitution. I appreciate the work of the opposite side, the Office of the Prosecutor, but that work is also subject to my critique.

The indictment is based on a huge amount of material, as Ms. Gibson has already said, that makes us unable to see the wood for the trees. What's surprising to me is that we don't wonder what the motives are. How did it happen, that the entire intellectual, moral, and professional elite of the Bosnian Serbs got involved in politics?

I wouldn't have gotten involved in politics either if there had not been certain challenges that the Prosecution has contested and proclaimed to be criminal. In other words, why would university professors, lawyers, doctors in Bosnia and Herzegovina, people who were dissidents for 40 years during the communist regime, gotten involved and

committed.

The Prosecution is trying to find my criminal mens rea in my political statements, which were always designed to produce a political effect, but also from remarks made in passing, jokes, and the remarks of other people as well, official and unofficial alike. However, one thing cannot be circumvented, and that thing is: What was the reason for Serbs to rise up and defend themselves?

The indictment - and unfortunately the judgement as well - is permeated with findings that I tried to persuade Bosnia-Herzegovina to become carved. Bosnia and Herzegovina did not have the right to secede, and a very important personality in this Tribunal, Judge Cassese, wrote simply that it was a revolutionary affair and that they did not have the right to unilateral secession, that it was a matter of violence.

Prosecution witness Mr. Treanor has said that what the HDZ and SDS did in the Assembly of Bosnia and Herzegovina on 15th October was an application of political violence. I will give you the reference in a moment. Ever since then, the Prosecution has stuck to its position despite this testimony. This was something that, in fact, compelled the entire Serbian people in Bosnia and Herzegovina to become involved.

Here it is. Judge Cassese said in Paris 1991:

[In English] "According to international law, the six Yugoslav republics did not have the right to external self-determination. The acquisition of independence of Slovenia, Croatia, BH, and FRY Macedonia can accordingly be observed as a revolutionary process which took place outside of the boundaries of existing legal norms."

[Interpretation] This was stated for the magazine Ekonomija in France. You will see in the indictment, and in the judgement as well, how many times I was criticised and accused for a number of eminently legal and lawful things that I was not only entitled to but I would have been criminally liable in my own country for high treason had I not done them.

I will have to skip from subject to subject because the sequence of my slides is not ideal.

Namely, the Prosecution imposed on the Trial Chamber the skipping-over of some vital matters and to seek my mens rea on some 5th floor or on the roof. Here you see this slide. The Trial Chamber accepted the Prosecution's suggestion that even my first statement at the founding assembly of my party was that [In English] "would not co-operate with any parties which have even the slightest trace of anti-Serbism."

[Interpretation] Just see how this was misused. At the integral text you see here means that this party shall not co-operate with anyone who is against Yugoslavia, against Serbs, that harbours anti-Semitism and anti-democracy. All these anti-mankind movements at this time arrive in the neighbouring republics, and that motivated me to get involved in politics. Whereas, I had no personal need for it.

So in such a situation where all around us horrible things were going on, the Prosecution, and, unfortunately, the Trial Chamber as well, maintained that I had no right to oppose the unilateral secession of Bosnia, that I did not have the right to urge people to join the Yugoslav People's Army, which was the only legitimate armed force, and all of this

resembles very much the political boiler plate of the previous regime.

Let us see what is written in paragraph 2654:

"It was clear that even in the speeches in which he spoke in favour of improving multi-ethnic relations and against violence, the accused stressed that the Bosnian Serbs were ready to use violence if they considered that they had been attacked and would not co-operate with anyone seen to be against the Serbs."

The first part of the statement was, by then, one and a half years old. But in order to blacken me and portray me as a person who is only concerned with his own people, this second part of the sentence from 1990 was added. I believe this is something that absolutely must not be done. The Trial Chamber should have cautioned them, that they have no right to do this. As I said, I don't have my slides in the correct order.

In other words, I was accused of unjustifiedly frightening the Serbs in Bosnia with prospects of genocide. A genocide that never happened in our history but I invented it. In fact, there is not a single home in Bosnia-Herzegovina that has no victims in their family of the fascist genocide that happened in the Second World War. If anyone knows this well, it is certainly this institution. And the rising tensions in our country were the result of the renewal and restoration of this idealogy. And as Mr. Goldstein stated: "Year 1941 is coming back."

Here, another slide. A great Jerusalem mufti visited Sarajevo. At that time, formed a Handzar division made up of Bosnian Muslims, and gifted it to Hitler. It was a particularly notorious and brutal unit,

especially keen on massacres of Serbs, Jews, and Roma. So there was this Handzar division, and now the Serbs should not be worried about the restoration of it.

Here in 1983, Mr. Izetbegovic, for the second time, was convicted for his "Islamic Declaration" which, from the moment he came into power, became the platform of his political activity. When they convicted him in 1983, I supported my friends in Belgrade, including Dobrica Cosic, in defending him, because nobody should go to prison for writing a book. And he told me that the Christians would not be victimised by this, but here you see five Muslim judges found him guilty. This is something else yet. Colin Powell, stating that it was not only Serbian paranoia. The Serbs had very good reason to be worried about being in a Muslim-dominated country. This is another excerpt from the judgement against Izetbegovic that was written in a book, but at the time for which I was indicted it had become a real threat to us. Here you see what would happen to the enemies of this idea.

And now I have to back to the many instances where my words were travestied. The judgement is replete with such instances that were put to the Trial Chamber by the Prosecution. Here we see another conversation in:

"July 1991, Milosevic told the accused that their objective was to have disintegration in line with our inclinations."

It was July 1991, Bosnia was still peaceful, and he is saying with regret that they were about to secede and we have to look after our own interests. But the talk here is about Yugoslavia. It has nothing to

do with Bosnia. In all our activities, we relied on the constitution of the Yugoslavia, the constitution of Bosnia-Herzegovina, the Laws on Defence, and we also relied later on the results of the peace conference that was takes place in The Hague.

In November 1991 we received this as the law on the territories where we were in the majority, and this was the so-called special status. Here you have another excerpt from Judge Cassese that we have read already.

Let me just recall that Muslim secular parties were along the same line as us and have supported the agreements that Izetbegovic later reneged on. Here again, the Prosecution expert Mr. Treanor said that on the 15th of October, when I was making that speech, which was later interpreted as a threat, it was, in fact, a plea and a warning that we might be led into war.

If I had wanted war, I would have cheered the Muslims in their efforts. And if I had in mind a joint criminal enterprise, it would have been impossible without a war. But the only party that made concessions till the last minute in order to avoid a war were the Serbs.

Another statement: Milosevic advised me that we should accelerate mobilisation, acquire weapons, and save the Serbs. There was no war yet. And here, I ask President Milosevic if this truce with the Croats is honest, and he says:

"For the time being because they're in a difficult situation but it's not honest in a long-term sense."

This was ascribed to me. Such patchwork in the indictment is

understandable because there is no evidence, but it should not be allowed. We were accused of intending to carry out ethnic cleansing. But here, look at what President Tudjman said to a US delegation:

"Muslims told me once that they were going to exterminate Serbs in Bosnia. I asked them: How are you going to expel one and a half million Serbs out of Bosnia?"

He answered:

"Muslims should rely on Croatia and the Serbs would leave Bosnia sooner or later."

Here, we have deliberate unprecedented confusion created when I was indicted and convicted of the idea of homogenisation. First of all, a false image was created whereby peoples were supposed to be separated there and not state entities, and that homogenisation meant not grouping of territories with certain majorities but the expulsion of peoples.

And you can see. In the presence of European observers before the war, ten villages, Dobratic -- 4.800 Croatian [as interpreted] within the Serbian dominated municipality of Skender Vakuf wanted to join Jajce or become an independent municipality. This is a right based in the constitution. And the president of that municipality granted that, agreed to it, and it's a natural process. It's normal.

Here, homogenisation of areas. A government official here says on the 25th of February -- and by that time it was already known that the European Community accepted that we were going to have three Bosnias. Three Bosnias was an idea initiated by Badinter, because he said that Bosnia was not like the other republics and it had to be given its

independence in a different way. And here is it says, briefly, something about borders. Regional borders -- excuse me:

"Regional borders must be drawn up on the basis of the decision of citizens of each village, municipality, and region as to where they want to live," and so on and so forth.

This is homogenisation. The grouping in the administrative sense. Nobody is going anywhere. Nobody is persecuting anyone else. It would be grouping such as we have in the Swiss cantons, in Switzerland. There is a vast number of evidence in the case file that the Serbs asked for a transformation of Bosnia according to the Swiss model and a transformation of Sarajevo according to Brussels model, where everybody would have their own municipality. There would be no borders, but they would be finishing all their work on their own.

On the 8th of March, ten days before the Lisbon agreement was accepted about the three Bosnias, Secretary Vance goes to see Genscher and says:

"Dr. Karadzic, the leader of the Serbs, was also positively inclined towards these talks. He wanted to avoid a war at all costs in Bosnia and Herzegovina."

There is no JCE without war. You cannot make it. There is no way to have that. And once again, what the Ustashas were doing in 1991 -- no, no, sorry, in 1941. Over 500.000 Serbs and 250.000 converted to Catholicism and 250.000 expelled. This is the well-known theory, about three-thirds.

On the 12th of May 1992 at the assembly where we decided to have

an army, I still am committed to three ethnic communities reaching an agreement for the war to be stopped, but this does not imply in any way the expulsion of anyone. No chance of that. And here we have Hitler's intelligence service, secret police writing to Himmler from Zagreb:

"The terrible deeds were committed by the Ustasha ... against the Serbs. The Ustasha groups had committed their horrendous acts especially against the elderly, women, and children," so on and so forth.

In the ten months of the war, there were already 300.000. This is February 1942. So by that time, already 300.000 Serbs were killed. And the Prosecution and the Trial Chamber is putting to me that I was needlessly alarming the Serbs. There isn't a single home in Bosnia and Croatia which did not suffer casualties during World War II.

So here it says that the JCE was born in October 1991. Another Chamber of this Tribunal in the Krajisnik case, on the basis of what I said on the 14th of February 1992 about the need to protect Muslims and Croats and keep them in our majority areas, the transformation or the division had already been agreed, and the Chamber concludes, in paragraph 908 of the judgement in Krajisnik, they say the following:

[In English] "In early 1992, respect for the interests of other peoples was still being expressed by Karadzic, as separation and homogenisation were not yet the declared aim of the nascent leadership in a 1994 speech," and so on and so on.

[Interpretation] The Trial Chamber shifts the day of creation later from February 1992, and here we have August 1992 and we see what Karadzic said:

"As far as other nations are concerned, we have to have a proportion participating in the municipal authorities. We have to be responsible, as we are forming a state. You are the organ creating it."

I'm addressing the assembly here:

"The state must be created in the best way. We have need to make it with all of its ingredients."

This is the position from start to finish and it never changed, and it was never foreseen anywhere that there would be no minorities.

Excellencies, may I remind you, the war in Bosnia and Herzegovina was a municipal war. Wars were breaking out. Let's say, wars in the western part, the war in Prijedor, Sanski Most, in Kljuc broke out eight or nine weeks after war broke out in Sarajevo. That was when the Serbs were the strongest. Why didn't they kill them and expel them then? Why were there crimes only in some 20 municipalities? Why?

And I recall the evidence that is in the case file, D2424, for example, and P3788. These exhibits from Eid Wolyami [phoen], who is not favourably inclined towards the Serbs, says that Muslims who were not fighting had no problems. They live like everybody else.

Some documents were disclosed late by the Prosecution. Regarding Grbavica, for example, in 1993 and 1994, different UN agencies were surprised that Muslims and Croats did not want to leave Serbian Grbavica. They were not enlisted in the army, so they were positively discriminated. Serbs had to fight, they did not have to fight, so they were wondering why anybody was trying to persuade them to leave Serb territory.

And now, this is not the right sequence, but Al-Husseini was a friend of Hitler. He would come to Sarajevo, he would sleep with our partners in our government, and this is what the state agency, the report of the State Security said:

"In the summer of 1943 when the Islamic reaction endeavoured to a create a so-called Islamic army, Alija Izetbegovic and others had organised the purchasing of arms, ammunition, sanitary materials, as well as other equipment," so on and so forth.

And since also I'm being challenged on all the reasons for taking care of the Serbs and saying that I generated unrest and alarm without any grounds at all, here we have David Owen saying it was extremely provocative for the Serbs in Croatia that Tudjman adopted the NDH, independent Croatian fascist satellite creation of Hitler during World War II.

Well, perhaps when I move to Sarajevo, I will come back to this slide.

This is the 27th of March 1992. The Cutileiro agreement is in force for ten days already, and I'm addressing the assembly. I'm saying that they should undertake everything with the full authorisation of the assembly to organise defence, exclusively defence. And on that day, the Council for National Security was founded. His Excellency Judge Meron mentioned it when he was reading the context, the introduction. On that day, gangs crossed over from Croatia as if they were going to a wedding and killed scores of people in the village of Sijekovac in Bosnia. War had not even broken out yet. The police didn't come out. They were not

interested in protecting the citizens. And for that reason, we formed the Council for National Defence.

And here can you see that I am calling for preparations for defensive purposes and that at any cost we should strive to maintain peace, that peace was in our interest, and that the conference had already yielded positive results. Had we done nothing on our own -- actually, there is evidence that we did nothing on our own.

So in November 1991, Mr. Izetbegovic committed himself that there -- the components of the population would have a five-year arrangement, including a minimum of common functions, after which the Republika Srpska could eventually secede.

As for the separation of states, I spoke about that on the 12th of May 1992 at an assembly session. This is a Prosecution Exhibit, a P exhibit. And the last sentence in this paragraph states that there was never any intention to separate the population. We had to change the strategic goals, we had to prepare for negotiations, but Muslims were still living throughout the Republika Srpska at that time as well. And at a rally the following day, we told them: You are not the enemy. The enemy is the extremist leadership alone.

This is also something that was assigned to me, ascribed to me, but actually President Tudjman heard somewhere in Europe that Muslims needed to be controlled. We already showed this. This is something that we were granted. We were granted these rights.

This was on the 4th of November. We were granted the right to show our national emblems, to autonomously run our educational systems,

to judiciary bodies, and to administrative structures including the judiciary and a regional police force, also to have our own legislative bodies.

So we were promised then to stay in Bosnia. We had the right to remain in Yugoslavia in the same way that Northern Ireland remained in the United Kingdom with its own territories, and just like Western Virginia remained in the union instead of going to the Southern Confederation. So this was a major of Virginia. These were our rights.

I am constantly said to have forecast a catastrophe, that that was my foreboding. But the way it's being ascribed to me is that as if it was my desire. Why would I talk about it as my concern and fear if this were my wish? Which normal person would like for chaos to reign? We acted in keeping with the constitution of the SFRY. There was no chance not to defend the country. Each individual was bound to defend the country. Until the army arrived, they would defend as best they knew how. Once the army arrived, then they would take over command.

High treason is the punishment for impeding the defence of the country. It is the duty of each municipality to organise its own defence. I'm being charged here with the fact that the municipalities were defending themselves, that they were organising themselves. There was army in each municipality. So until the JNA arrived, the Supreme Commander of the army was the municipal president by the nature of his office. This was according to the law, and this applied to every municipality.

And here we have how the volunteers were created. A small part

of them went rogue, and then that was later punished. But each one of them was a member of the armed forces of the Socialist Federal Republic of Yugoslavia. Anybody who takes part in resistance against the enemy. A small number of them later were brought to trial. So peace at any cost.

And here we have a list of the people who knew what would happen, and they were asking for things to slow down a bit. They were asking us not to rush. The Bosnian Serb Assembly was the formal means through which the idealogy and objectives of the Bosnian Serb leadership were officially sanctioned and disseminated. The Bosnian Serb Assembly in Bosnia and Herzegovina was a highly educated body of people. A highly democratic body. I was criticised hundreds of times. Anybody had the right to speak. There was no way that it could be any form of means.

And here, we see what Treanor stated about anticipating. The Prosecution pressured the Trial Chamber to convict me because I was anticipating what would happen, but it wasn't difficult to anticipate. We could see what happened in Croatia two or three months before that and what happened in 1941 and what happened in each war. There wasn't a war in the territory of Yugoslavia as a result of foreign aggression that was not accompanied by a civil war amongst the different factions in Yugoslavia. Each civil war.

Here is what Treanor said about Serbs:

"Since Bosnia was in Yugoslavia and the Serbs in Bosnia were in Yugoslavia, then all they had to do was just remain in Yugoslavia, maintain the status quo. If that's what happened, that would maintain

the peace."

If you are defending the status quo, you don't need a JCE. You're defending what you have. You are not requesting something new. You are satisfied with what you have and you are defending it. Here Treanor said that this was violence in the parliament committed by the SDA and the HDZ. This is about homogenisation. And here is the trial judgement:

"Bosnian Serbs had agreed to the three main principles of the Cutillero plan which stated that BiH would be an independent state," which was a very painful compromise for us. "That it would maintain its present borders and that it would consist of three constituent parts. However, when war broke out the option of an independent BiH with cantons was dropped. Or vice versa, when the Muslims or the SDA reneged on the Lisbon agreement, that was when the war broke out."

And especially in Sarajevo. Here is General Rose. Particularly in Sarajevo, Your Excellencies. In Sarajevo for 1400 days of street fighting, a smaller number of people were killed than it would be the case if there was any real terror. Around 6.000 Muslim fighters were killed and between 4- and 5.000 Serbian fighters. As for the civilians, the numbers are smaller, significantly. Serbs only responded when they were threatened. And here is how the Muslims provoked crisis in order to accuse the Serbs and receive -- or cause an international armed intervention.

If the terror in Sarajevo suited the Muslims, it did not suit the Serbs. Why would the Serbs terrorise Sarajevo? There were 60.000 Serbs

there and neighbours, Muslims. And thirdly, the Muslim side used all the crises in order to stop any conference. The indictment and trial judgement say that the Serbs were terrorising Sarajevo in order to compel the Muslims to start the talks, but it was the other way around. The Muslims were causing crisis. There was murder and suicide of their own people just to avoid conferences, because they expected an international intervention, aid from Saudi Arabia and others, and here a very responsible general we see is saying that. This is not so important.

And here is how -- once again, General Rose. He says that the French had even more serious evidence that the Muslim troops in the city were killing their own citizens and that was rather a rule than an exception.

In such cases, Your Excellencies, the UN needs to codify this once and for all. We were never allowed to participate in the investigation. The Bench even said Karadzic requested joint investigation. Either he knows that neither the Muslims nor the UN would allow him that. Well, excuse me, if you wouldn't allow us that, then you cannot accuse us and put us on trial for those incidents.

The Muslim side can produce something like that out of spite as much as it wants. But if we can't carry out an objective investigation, well, they were provoking this in order to cause a bombardment of the Serbs, and several sometimes they were successful. But the UN must not allow this. If there is no joint investigation, you cannot accuse the side that was prevented from participating in it.

Here is October 1991. Krajisnik and myself are talking. We are

monitoring what's going on in The Hague, and we are happy that the conference in The Hague is progressing well and that things are moving in the right direction, and that perhaps the bloodshed, which is still limited only to Croatia, not to -- it didn't spill over to Bosnia, would perhaps stop.

Your Excellencies, starting from the 20th of October until the 4th of November to the beginning of the war, all my statements have to be viewed in context. The context of a conference, of new incidents. If I say take power in a municipality, I didn't say take-over. It's a significant difference. To take power, it means you got, now you need to exercise it, and you have to make sure that Muslims and Croats don't flee. Now we have a constitutive unit and it has to be ordered, disciplined, based on law. You can see that we are monitoring this and we never made a single move without seeing previously that it had been agreed in The Hague.

Here is how, on the 18th of March, a high official of the Muslim side celebrated the Lisbon agreement, the Cutillero plan. He celebrated it. He said excellent, the Muslims are doing great and the Serbs were in a weaker position but we accepted it. And to this date to Dayton, we remained truthful to the Lisbon agreement.

Here is another excerpt from the press. It is D302. These are all exhibits.

Here is what Treanor said. I have been accused here and attacked for making communities of municipalities. Now in Kosovo, the Albanians have to allow the Serbs to create such a community of municipalities.

It's a constitutional category, and here is what Treanor said: It's something recognised in the constitution. The municipalities are entitled to those rights.

Here I was attacked for strategic goals as if they were war goals. We had strategic goals throughout all the negotiations. The maximum and the minimum ones. When the war broke out, the negotiating team had to offer a new approach to the parliament, and here is how Treanor understood this quite correctly. Quite correctly.

The goals and the objectives from the point of view of the Bosnian Serb negotiators, headed by Dr. Karadzic, throughout all the negotiations, and they underlay the position of the Bosnian Serbs all the way through the Dayton meetings. The strategic goals from the point of view of the Bosnian Serb negotiators were the goals that they sought to achieve. It was never implied that those were war goals. Local wars do not produce fait accompli. There has to be a conference.

Here is what Treanor testified, that our military factor should have won, according to military logic. And Karadzic said, no, we have to leave room for the other people to be satisfied. I am accused of plans to permanently remove Muslims and Croats from Serb-claimed territories. The Trial Chamber concluded that the territorial claims were not criminal acts as such but that the removal of the population was. Then the Prosecution understood that temporary removal during war operations was an obligation, that it had do be done so, and then it added that the Serbs wanted to permanently remove. How are you going to remove somebody permanently when immediately after the war the status quo is

re-established again, if possible? There's no chance to do that. I proposed and signed proposals for the return of refugees, so this is just a myth about permanent removal or expulsion.

Martin Bell and many others did not know many things when they gave amalgamated statements. During the trial and during their testimonies they learned some things. This refers to Martin Bell and Treanor and even Harland, Fraser, many people from the United Nations. If the Chamber needs that, the Defence can make a list. All these people corrected their views once they learned certain things, because they hadn't known them previously. No one is taking this into account, what Martin Bell says. He learned this when he saw particular documents here in the courtroom. Communities of municipalities, we were attacked. Treanor said this was compulsory. These are the strategic goals. And so on and so forth.

So there's no way at all that something that is imputed in the indictment and in the trial judgement is really correct. I'm commenting on each and every paragraph. Most of the comments are exculpatory.

One of the examples is when they say Karadzic knew that crimes were being committed. The police informed him. The police informed me that it was doing its own work. That it was doing arrests and prosecuting. This should be exculpatory. Well, one of the myths that the Prosecution has succeeded in imposing on the Trial Chamber are the Serbian armed forces. In one of the paragraphs, I'm listing and that they referred to me saying that the Serbian forces were the army, the police, and the Territorial Defence, and the political ones were the SDS

and other parties.

The Prosecution has managed to persuade the Chamber that the Serbian forces, as a formulation, implied the JNA, with which we had nothing to do, nor could we command it. We didn't have control over one single soldier of the JNA. It was there until the 20th of May. Our Territorial Defence could not be independent as long as the JNA was present. It was resubordinated, according to the law, to the Yugoslav People's Army.

And then further on, it says the Serbian forces included the volunteers. The volunteers were left behind after the JNA left. We did not have volunteers. There were some who became maverick. We arrested them. There's evidence of this and there's no doubt. And paramilitary forces. Well, we arrested those regularly. So the Serbian forces were the army and the police. There were no other Serbian forces.

And on the 13th of June, I prohibited the establishment of paramilitary forces. I ordered that they had to subordinate themselves to regular units or they would be arrested, and I said that I disowned them all and that we were no longer responsible for them. They are outlaws. How can anyone charge me for crimes of a paramilitary unit that we persecuted and prosecuted and that I disowned?

These are matters that simply don't -- this is what -- Mole testified that the Muslims targeted themselves and that they wanted to bring about a military intervention. Why would Serbs terrorise Sarajevo and then bring about an intervention against themselves? It's clear whose objective that was. Here is Mole again. He was the chief of the

monitors. He says that he knows Mr. Henneberry and that such things were happening. General Rose said that they were rather a rule than an exception. Here is Mole saying he that believes, for political reasons, no public categorical statement that the Muslims were doing this could be made, that they were shelling their own civilians. However, that was general knowledge, common knowledge, that the investigations strongly pointed to the fact that the Muslim forces did, on occasion, shell their own civilians.

Your Excellencies, one incident is sufficient for the Prosecution to have the burden of proof proving that in other cases the perpetrators were not Muslims but Serbs. One incident. In Sarajevo, there are 260 mosques full of people, especially on Friday. I asked the commander of the Sarajevo-Romanija Corps how many mosques did you hit, and he said not a single one. Judge Baird asked why. He said, well, they didn't shoot from the mosques. He only responded, judging by the weapons. He did not respond by targeting the people.

Here is Mole who said that it was part of the tactics. That civilian locations were being abused, neighbourhoods were being abused, UN hospitals and schools, and these locations were used to fire from them. Mole again says this, he had personal experience with those instances that the presidential side or, rather, the Muslim army would shoot at the Serbian side so that the Serbs would respond and target those particular facilities. Here is Rose again about Muslims. The Muslims opened fire to the Serbs, hoping they would return fire towards settled places, which would be a new cause for the international

community to condemn the Serbs.

Your Excellencies, what the Prosecution has done and what the Trial Chamber has done with Goddess Justitia and her scales is unbelievable. On one side were international pacts, international documents about human international rights, the UN charter, the Helsinki Convention about borders, constitutions, domestic constitutions, domestic laws, parliament decisions, government decisions, and finally my presidential decisions. A huge number of documents. That was all on one scale. On the other scale were rumours, jokes, unofficial, and sentences made by other people, gossip. And what weighed as having more weight? The jokes and gossip.

And on 16th of February, it was determined that no one could say who targeted Markale. All the UN reports did not want to accuse one side. And then we have a private person, a Muslim official who says now I'm going to prove that it was the Serbs, and the Trial Chamber takes that into account. If this is an UN Tribunal, how is it possible that the findings of the UN are disregarded? Sometimes it was possible to get a testimony of people who attended certain meetings, who alleged that I said something. If I had said that, the whole world would known that. In the presence of the UN, that would have been on front pages.

So they either distort my statements or they call someone who would say that I said something. And he sends a report at the same time, and this is not included, and it would have to be, because those were such drastic matters. Again, the French knew much more than Mole about these things.

It is my personal belief that international justice is necessary, but this is the best way to ensure that there's never going to be one. The Court did not allow us to demonstrate the conduct of the other party. In criminal law, one must make a distinction between what was necessary and what was criminal. There is such a thing as necessary defence. All the international factors agree that the strategy of the Serbian side was to contain the enemy forces from over-flooding the entire territory. The Serbs did not advance anywhere. We did not advance on Sarajevo.

There is no such evidence that our strategy was not offensive. Our strategy was defensive in all of Bosnia. The territories were not taken by force. Even the Prosecution admits that even before the war we had 60 per cent of the territory where we had settled ages ago. And when the Turks, the Ottoman Turks arrived, we ran to the mountains.

This knowledge is easily accessible. The case file is replete with such evidence. But we are not allowed to show the behaviour of the other side, because that is said to be tu quoque defence. It is not. If they attack and open fire on the Serbs, the Serbs have to respond at some point, without even asking the commander or the president. A person simply has that right to defend himself.

You will see in the judgement it looks like a boxing match where you don't see one fighter. You only see the other, and whatever that second fighter is doing looks ridiculous. The Prosecution claims and the Trial Chamber accepted, unfortunately, that I was crying wolf for no reason at all. If I'm saying it's going to rain while it's already raining, it's neither unnecessary nor ridiculous. If we were being

attacked by the Muslims, our fight is justified. The Prosecution has produced a number of witnesses whose testimonies were clearly exculpatory. However, the Trial Chamber ignored that, and it practically butchered my 230 witnesses. They are renowned persons of high standing. They can be easily examined. However, their testimonies were rejected out of hand.

I know that this legal system is different to ours. In our system, we don't rely only on procedural but on meritum as well. If the factual basis has not been established or has been incorrectly established, that calls for a re-trial. Certain statements were misused. Rights were neglected. Facts were distorted, and motives were concealed, and the consequences of this entire conduct were then portrayed as sheer madness.

After reading our appeal brief, our final brief, all the evidence in the case file, I believe that the Chamber, consisting of highly qualified professionals and experts, will find this judgement unsafe and quash it. This is not a jury trial. If it were a jury trial, I could believe that the performance skills of Mr. Kruger and the rest of the time outdid ours, but that was not the case. To deny that the Serbs, together with the Jews and the Roma, fell victim to a horrible genocide in the Second World War and that they were rightfully scared of the same thing happening again in the indictment period is absolutely unfair.

I am at your disposal to produce a list of twisted statements, a list of exculpatory documents that are even cited in the judgement but they were not acknowledged. I will prepare all that, if necessary. But

the Prosecution must not be allowed to establish new standards. Defence must not be hamstrung in any way. One party to the trial must not be stopped from participating in the investigation. This is our last chance. International justice will no longer exist otherwise, or it will exist but it will be a gift for criminals. For this world, justice is the only hope. Justice and light. But they won't fall from the sky. We have to work for them. Darkness already exists. You have to create light to confront it, and the same goes for justice if this Court does not remedy the errors made.

Your Honours, many innocent people are now in prison because the proceedings were improper. This could lead to several acquittals and reversals which would save the honour of this Tribunal. I am not embittered, but it is a fact that what was imposed upon the Serbian people towards the end of the 20th century and still goes on is a curiosity that will be remembered and remain. The judgements and the truths established about Bosnia will not evaporate. They will be confirmed and reconfirmed with each new day.

Thank you. If you have any questions, I'm at your disposal.

JUDGE MERON: I thank the Defence for completing their submissions. We will now have a pause and we will resume at 2.30 for the response by the Prosecution.

--- Luncheon recess taken at 1.26 p.m.

--- On resuming at 2.32 p.m.

JUDGE MERON: Please be seated.

Okay, we will now turn to response by the Prosecution. One hour

and 30 minutes. So at 4.00 you will finish.

MS. GUSTAFSON: Thank you, Mr. President.

Mr. President, Your Honours, the Trial Chamber and analysed a vast body of evidence and rendered a thorough and careful judgement. Over the course of a five-year trial, the Chamber received evidence from nearly 600 witnesses and over 11.000 exhibits. The Chamber's careful consideration of this evidence is reflected throughout the judgement.

The Chamber made hundreds of detailed witness credibility assessments. Again and again, the Chamber weighed competing pieces evidence against each other and in light of the entirety of the record and reached reasoned conclusions. It reached thousands of reasoned findings on the evidence.

And after all this careful assessing and weighing of the evidence, the Chamber concluded that Radovan Karadzic, president and Supreme Commander of the Republika Srpska, or RS, played a leading role in four joint criminal enterprises. Enterprises encompassing a countless array of crimes perpetrated over the course of three and a half years.

In seeking to unwind these conclusions on his criminal responsibility, Karadzic faces a formidable burden and he's fallen well short. Every one of his grounds of appeal suffer from basic flaws.

The first half of his appeal is consumed by what he terms fair trial arguments, but he's failed to show any unfairness and falls well short of demonstrating that he should be awarded a new trial.

Most of the second half of his appeal concerns arguments on each of the four joint criminal enterprises. For each he argues that there

was no JCE or that he did not participate in it. He seeks full exoneration, a full acquittal, and again his arguments fall well short of meeting his burden.

Many of his arguments are grounded in the erroneous premise that the beyond reasonable doubt standard applies to individual non-essential findings or even to individual pieces of evidence. Other times, and there many of these, he seeks to reinterpret pieces of evidence while ignoring the Chamber's findings on that very evidence or disregarding the totality of the record that informed the Chamber's contrary conclusions. These flawed methodologies show no error.

I'll begin our submissions today by addressing the procedural arguments raised in grounds 1 through 27, and I will focus on the grounds argued this morning. I'll then turn to the municipalities component of the case and make submissions on grounds 28 and 29.

THE INTERPRETER: The interpreters would kindly ask that all other microphones in the courtroom are switch off.

MS. GUSTAFSON: Then I will hand the floor to Ms. Baig, who will address you regarding the Srebrenica component and ground 40. And Ms. Goy will conclude with submissions on grounds 34 and 36 to 37 on Sarajevo.

Turning then to the procedural grounds. Radovan Karadzic received a fair trial, and that fairness is demonstrated in the basic defects that permeate his 26 procedural grounds of appeal. Every one of these grounds is undone by at least one of these defects, frequently several of them. So I will begin reviewing four of these defects, and

then respond to the arguments presented today about specific grounds.

The first defect is that Karadzic repeatedly complains about issues he never raised at trial or situations he caused himself. For example, at trial he failed to take basic steps to secure the evidence of certain witnesses. Now on appeal, he seeks to blame the absence of their evidence on decision denying them protective measures. That's ground 18.

Only now on appeal does Karadzic argue that the Chamber's decision declining to assign counsel to Witness Banovic deprived him of Banovic's evidence. At trial, he took no position on the issue, didn't contest the decision, and did not seek a subpoena for Banovic. That's ground 21.

He never raised the issue about which he now complains in ground 27.

Karadzic tendered and relied on RS Assembly records at trial and only now does he claim that they should not have been used as evidence. That's ground 24 and I will come back to that.

In his reply brief, Karadzic claims that there are special circumstances that should encourage the Appeals Chamber to entertain these issues not raised at trial because he is self-represented. But this is misleading. Self-representation, it's true, can be a basis for an Appeals Chamber to find that special circumstances exist, but the application of this exception remains discretionary. That's the Tolimir appeals judgement, paragraphs 183 to 184. And this exception should not apply to Karadzic because throughout his entire trial he benefitted from expert legal advice.

Karadzic's legal advisor at trial, now his lead counsel, was granted right of audience and frequently intervened on Karadzic's behalf. His legal advisor often informed the Court that he was speaking for the Defence or that he had or would consult with Karadzic. I refer you, as a few examples, to transcript pages 25069, 31394, 31858, 35566 to -67, 40075, and 45188.

And in 2010 at the beginning of trial, Karadzic argued that his legal advisor had been performing the "functions and tasks for which a co-counsel is normally responsible." That's 14 January 2010 submission. And the ICTY president found that Karadzic's legal advisor's role "more closely reflected work normally undertaken by co-counsel" and increased his hourly rate to the regular rate for counsel. That's the 19 February decision, paragraphs 51 to 53.

So where Karadzic decided not raise an issue at trial, it could not have been due to a lack of available legal advice. No special circumstances exist.

That brings me to defect two, Karadzic repeatedly takes positions contradicted by controlling Appeals Chamber jurisprudence. I refer you to grounds 8, 9, 11, 12, 6, 7, and 23. In no case does he provide cogent reasons to deviate from this Chamber's long-standing law and practice, and he does not even mention the cogent reasons standard in any of these grounds.

Defect three, Karadzic repeatedly distorts the record. For example, he complains it was unfair for the Chamber to granted Rule 70 protections for certain witnesses, but he ignores that he requested and

received the very same Rule 70 protections for a Defence witness. That's ground 18.

He mischaracterises the Chamber's decision on parliamentary privilege, wrongly suggesting it concerns his own assembly statements. Ground 24. Again, I'll come back that.

He complains about the alleged cumulative effect of adjudicated facts without even mentioning the nine separate times that the Trial Chamber rejected the very same argument. That's ground 16.

Defect four is the failure to show impact or seek a proportionate remedy. This is endemic to Karadzic's appeal. For instance, he just asserts that the Chamber's observations during the site visit undoubtedly affected its assessment, but he provides no substantiation. That's ground 2.

For many grounds of appeal, he just lists judgement paragraphs purportedly affected by the alleged error without any attempt to demonstrate impact on the findings in those paragraphs. For instance, in grounds 7 through 10, 15, 17, 18, and 23.

Numerous grounds concern discretionary trial management decisions applicable to individual witnesses that, taken at their highest, would have a de minimis impact on the record. For example, under ground 13, Karadzic claims that the Chamber's exclusion of Pero Rendic's evidence deprived him of evidence on the distribution of food at Omarska, even though Rendic denied any knowledge on this issue.

Karadzic complains of having insufficient time to prepare for three delayed disclosure witnesses but does not explain how a bit more

preparation time could have possibly affected the verdict. That's ground 17.

He argues that the Chamber erroneously excluded Witness Kopravica's statement under Rule 92 quater, but the Chamber found that the statement had a very low probative value in light of pervasive inconsistencies and highly evasive responses, and Karadzic doesn't explain how material of such low probative value could have possibly affected the verdict. But he seeks nothing less than a brand new trial for this alleged error. He seeks a new trial as a remedy for 21 of his 26 grounds, no matter how trivial the alleged error or how deficient the impact argument.

I'll turn now to ground 1. But just before I do, I would like to respond to a claim this morning that the Prosecution was seeking an unfair trial in this case. We reject that allegation. The Prosecution takes its obligations to safe-guard the rights of the accused seriously and did so in this case.

Turning to ground 1. This concerns Karadzic's decision not to testify. This is a textbook example of defects one and four, Karadzic raising arguments on appeal that he ought to have raised at trial and failing to demonstrate impact.

Now, the Defence claimed this morning that the Prosecution led the Chamber down the path of violating Karadzic's rights. The Prosecution did no such thing and there was no such violation. At trial, it was Karadzic who did not contest the Chamber's ruling that he was to testify in question and answer format. And nearly a month after that

decision, Karadzic declared - with no explanation - that he had decided not to testify. He never claimed at trial that this decision had any connection to the Chamber's ruling. And I refer you to our response brief, paragraphs 11 to 13.

In the reply brief, the Defence argues that we've cited no authority or practice for the contention that Karadzic was required to inform the Chamber why he decided not to testify. And it was even claimed today that it's our burden to establish that Karadzic chose not to testify for other reasons.

Well, the authority we rely on is Article 23 of the Statute, which limits grounds of appeal to those alleging errors that invalidate the judgement or occasion a miscarriage of justice. And under this authority, it is for Karadzic to establish that the Chamber's ruling on the form of his testimony had an impact on the judgement. And to do this, he must connect that ruling to his decision at trial not to testify.

At trial, he asserted no such connection and took no steps to challenge the Chamber's ruling. He never even responded to the Prosecution's written submission requesting the Chamber to require him to testify in question, answer format. So he has failed to meet his statutory burden to demonstrate that the Chamber's form of testimony ruling had an impact on his decision not to testify and therefore an impact on the judgement.

And I would add that the Defence this morning incorrectly claimed that we made no reference to Karadzic's self-representation rights in our

trial submission on this issue. At paragraph 5 of our 8 January 2014 submission, we clearly argue that a pro se defendant has no unilateral right to testify in narrative form. We clearly recognised the implication on self-representation rights and argued that they did not override the Chamber's discretion on the management of the trial in this instance.

And if our submissions and the Chamber's decision were focused more on time and efficiency than on rights, that is because Karadzic's only rationale for testifying in a narrative was to save time. At transcript page 45188, his legal advisor said:

"We had originally planned on 32 hours of examination for Dr. Karadzic, which we were going to ask the Chamber for permission for me to ask him questions. And as the case progressed and we saw that the number of hours we had didn't seem to be adequate, we looked for ways in which we could reduce this and decided that we could cut it in half by having him testify in narrative form."

Even if Karadzic's legal arguments are considered by this Chamber, he shows no error. As we've pointed out in paragraph 15 of our brief, the Trial Chamber's ruling is consistent with Appeals Chamber jurisprudence and Karadzic has shown no unreasonable interference with his rights.

Likewise under ground 2, Karadzic has shown no error in the decision to conduct site visits without his attendance. Even assuming that his right to self-representation or to presence were implicated by these decisions, the limitations were minimal, justified, and proportionate.

Grounds 1 and 2 should be dismissed.

And that brings me to ground 6 concerning disclosure. And Karadzic's theme under ground 6 is that unless you grant him a remedy on appeal, you will be perpetuating a climate of impunity. That's incorrect in fact and it's incorrect in law. It's incorrect in fact because there was no climate of impunity regarding disclosure at trial. The Prosecution repeats now what it said at trial: It takes its disclosure obligations seriously and went to great lengths in an effort to meet those obligations, not only by stretching its existing resources but also by hiring or reassigning staff to work on disclosure in this case. I refer to our 27 July 2011 report to the Chamber, paragraphs 13 to 15.

And the Chamber repeatedly found that the Prosecution acted in good faith. For example, its decisions of 16 December 2010, paragraph 25; 6 November 2012, paragraph 12; and 13 July 2015, paragraph 18.

A rhetorical question was asked this morning: Why would the Prosecution bother allocating more time and resources to disclosure in light of the Trial Chamber's approach? Well, the Prosecution did bother and the record demonstrates that, and we reject the Defence characterisation that the Prosecution "started to realise that nothing was going to happen." This is allegation of bad faith is contradicted by the record and we categorically reject it.

Moreover, the Chamber did not sit back and do nothing, as was suggested this morning. The Chamber demanded that the Prosecution account for instances of late disclosure. It ordered detailed

explanations, set deadlines, demanded changes to disclosure practices, reprimanded the Prosecution, and it granted remedies to Karadzic to ensure he suffered no prejudice. I refer you to paragraph 53 of our response brief.

The record refutes Karadzic's claim that the Chamber fostered a climate of impunity, and the climate of impunity claim is also based on an incorrect interpretation of the law. Settled Appeals Chamber law states that a remedy should only be granted based on a showing of prejudice.

Karadzic brought a stream of disclosure violation motions at trial, but in virtually every instance the Chamber found there was no prejudice because the material he complained about was duplicative of the material he already had, of marginal value, or both. Karadzic's claim that he should have nevertheless received a remedy suffers from defect two, seeking unwarranted departures from Appeals Chamber law.

And Karadzic doesn't engage with the multiple Trial Chamber decisions granting him adjournments to be absorb newly disclosed material, remedies that remedied any potential prejudice. I refer you to the trial judgement, paragraph 6153. And that failure to engage with the Chamber's decisions was echoed in the submissions this morning.

As the Appeals Chamber has observed, the Trial Chamber is best placed to determine the appropriate periods of adjournment in such circumstances. I refer you to the 28 April 2006 Karemera appeals decision at paragraph 7, and Ndindilyimana appeals judgement, paragraph 22.

Karadzic does not even attempt to show that these remedies were inadequate. Instead, he incorrectly implies at paragraph 64 of his brief that an adjournment is not a remedy. And this was repeated today where it was claimed that the remedies granted were limited to reports and explanations. An adjournment to absorb disclosure is a remedy. The Defence cannot simply ignore the contents of the Chamber's decisions while at the same time claiming those decisions created a climate of impunity.

The Defence only addresses the reasoning in relation to three decisions, each concerning a single document. We've addressed these claims in our response brief, so today I will only discuss the one that was mentioned this morning in argument. The Zepinic evidence about the alleged staged shelling attack at the Vase Miskina street on the 27th of May 1992. The Defence claimed this morning that the late disclosure of this evidence prejudiced Karadzic because he could not elicit it at trial, but he did elicit this evidence.

He elicited the same evidence from a Prosecution witness, and the Chamber considered it and found that it didn't make a difference because the Vase Miskina Street incident was not a Scheduled Incident. That's footnote 15114. This is an example of the Defence's repeated failure to show prejudice.

Karadzic makes only two other identifiable claims of error. The first is that suffered cumulative prejudice and second is that his trial was unduly delayed as a result of disclosure. Turning first to cumulative prejudice.

We heard a lot this morning about the supposed 500.000 pages of material supposedly disclosed during trial. This figure is wrong and therefore misleading. The claim at paragraph 93 of the appeals brief, that the Prosecution disclosed this 500.000 pages of, "exculpatory" material after the trial began is wrong, and it's also wrong that the claim that less than 10 per cent of that amount did not represent a disclosure violation.

The truth is that based on Karadzic's own figures set out in his annex C, about half of this 500.000 pages was either disclosed before the first witness was heard in April 2010, or it was not exculpatory material under Rule 68(i) but rather collections of relevant material disclosed under 68(ii). The Prosecution was under no deadlines in relation to 68(ii) material, and Karadzic provides no support for the implied contention that material falling within this category reflects a disclosure violation.

Karadzic also claims at paragraph 35 of his reply brief, and the sentiment was repeated this morning, that he had to read this 500.000 pages while spending six hours a day in court. While putting aside the misleading nature of the figure itself, this argument ignores that the Chamber suspended the trial for a total period of more than four months for the purpose of allowing Karadzic time to review and incorporate large batches of newly disclosed material into his preparations, paragraph 6153.

Once this misleading figure is put aside, there is very little left to the cumulative prejudice argument. And in particular, the

Defence does not engage with two separate Trial Chamber decisions that considered and rejected this very same claim. In those decisions from September 2012 and August 2014, the Chamber took into consideration that it had granted multiple adjournments, delayed the hearing of witnesses connected to late disclosed material, imposed specific disclosure related deadlines, and required the Prosecution to institute additional measures to address identified problems.

And in the second of these decisions, the Chamber also took into consideration that Karadzic had "failed to pay regard to the Chamber's repeated instructions that he should not consider the filing of disclosure violation motions as a purely numerical exercise," and that he had "failed to exhibit how any of the newly disclosed material could have been used by him to advance his case."

Karadzic does not meet his burden of demonstrating an abuse of discretion by disregarding the Chamber's reasons and repeating failed trial arguments. His claim of cumulative prejudice should be dismissed.

That brings me to the issue of delay. This morning we heard that disclosure caused delay after delay after delay. Well, let's put this into perspective. Karadzic's delay argument is based on a total of 14 weeks of adjournments to review material that was late disclosed to him. He argues that this 14 weeks amounts to undue delay.

But this ignores that Karadzic began asking to prolong the proceedings from the outset and well before the Prosecution had been held in violation of any disclosure obligations. For example, on the 3rd of September 2009, Karadzic sought to delay the start of trial based on the

Prosecution's timely disclosure. He also pointed to reasons unrelated to disclosure, such as conducting witness interviews and Defence funding. That's his 3rd September 2009 submission at paragraphs 22 and 28.

And in that same request, Karadzic emphasised that his right to be tried without undue delay "is not in issue here," and that he did not want his right to an expeditious trial to serve as a basis for the Trial Chamber to restrict his preparation time, and he went so far as to accuse the authorities of being all too eager to expedite the proceedings. That's at paragraph 12. And years later, he was still moving to prolong the trial. Again, for a variety of reasons, including disclosure as well as the size of the Prosecution's case and Defence funding. I refer you to 26 April 2012 Scheduling Order, paragraph 2.

In other words, the record shows that whether the disclosure in question was timely or late, Karadzic repeatedly sought to delay the proceedings in order to absorb that disclosure and for unrelated reasons.

And it's no surprise that he was more focused on slowing the trial down than speeding it up, because his trial did proceed expeditiously. The total length of time from his initial detention to the delivery of the trial judgement was approximately seven and a half years. This is well inside the undue delay bounds for a case of this size.

Just as an aside here in response to Defence submissions this morning that the size of the case made this an unfair trial, there's nothing wrong with a big case, and the size of this case reflects the scope and scale of Karadzic's criminal responsibility.

So to conclude on ground 6, the Prosecution's disclosure in this case was far from perfect. We've always acknowledged that and we acknowledge it again today. But imperfect disclosure does not equate to unfairness. It is the prejudice test that's designed to determine whether the disclosure process has caused any unfairness. And Karadzic has failed to demonstrate any unremedied prejudice from disclosure in this case.

Ground 6 should be dismissed.

That brings me to ground 7, concerning the challenges to the use of adjudicated facts in this case. In his reply brief, Karadzic claims that the Appeals Chamber has never faced what he terms a constitutional challenge to adjudicated facts. In support, he cites to the partially dissenting opinion of Judge Robinson in the Mladic adjudicated facts appeals decision. That very opinion states at paragraph 101 that:

"The Tribunal's case law has confirmed the constitutionality of Rule 94(B)."

And indeed, the case law has repeatedly affirmed that the adjudicated facts regime is consistent with the rights of the accused. I refer you, for example, to the 16 June 2006 Karemera appeals decision, paragraph 39. It was asserted this morning that that decision was about judicial economy, but what the Appeals Chamber said in that decision was:

"Taking judicial notice of adjudicated facts under Rule 94(B) is a method of achieving judicial economy and harmonising judgements of the Tribunal while ensuring the right of the accused to a fair, public, and expeditious trial."

Ground 7 is another example of defect two - Karadzic seeking to circumvent directly applicable Appeals Chamber law - and it should be dismissed.

That brings me to ground 20. Mladic took the stand in the Defence case but refused to testify on the basis that his answers would incriminate him. Karadzic failed to show that the Chamber abused its discretion by declining to compel Mladic to answer questions "in light of his right against self-incrimination as an accused whose trial is pending before the Tribunal." Transcript page 46052.

First I will address the claim at paragraph 96 of the reply, that we're exaggerating the difficulties in sealing off the Mladic proceedings from exposure to Mladic's testimony. He argues in reply, and that argument was repeated this morning, that we could have established a firm Chinese wall, just like we did in the Stanisic and Simatovic trial in relation to Witness Milovanovic.

There is no comparison between these two scenarios. In the Milovanovic situation, the Prosecution team in one case was permitted to interview Witness Milovanovic during a break in his testimony in another case on the condition that the two teams did not discuss the contents of that interview until his testimony was complete. That situation was to come to an end within five days.

Three factors distinguish that situation from this one: First, the information wall was only needed for a few days; second, the information consisted of a private interview over which the Prosecution could clearly maintain control over that short time-period; and three,

Milovanovic was not an accused and there was no identifiable risk of an irreparable violation of a fundamental right.

Here in contrast, the Tribunal would have to have prevented any direct or indirect exposure of Mladic's testimony to any member of the Mladic Prosecution team for several years, all while that testimony was in the possession of both parties and a variety of other actors, potentially being discussed in open court, disclosed across multiple cases, and exposed in Tribunal filings, including the widely publicised trial judgement. There was a clear risk of failure and a corresponding risk that Mladic's trial would be tainted and the proceedings against him stayed. I refer you to our response brief, paragraphs 189 to 195.

And I contrast this to Tolimir situation that was mentioned this morning and the Appeals Chamber decision on Tolimir subpoena, because in that instance the trial proceedings against Tolimir were over. His self-incrimination risk from compelled testimony was significantly reduced, because no evidence was being tendered in his case. The only possible evidence to be tendered would have been an additional evidence motion.

I'd like to also address the claim in reply that the Prosecution is taking inconsistent positions, arguing on the one hand that exposure of Mladic Prosecution team members to his compelled testimony would risk the collapse of the Mladic trial; and on other hand, that Mladic's testimony was so insignificant that it would have made no difference to Karadzic's trial.

Karadzic claims that we're arguing Mladic's testimony is both

important and unimportant. There's no inconsistency here, however, because these are two different issues. In relation to Mladic's own trial, it's the importance of his fundamental right against self-incrimination that matters. Not the contents of the testimony. According to Appeals Chamber law, Mladic had a fundamental right protecting him against any direct or indirect uses of his compelled testimony, and safe-guarding that right would have required sealing off the Mladic proceedings from any exposure to his testimony, regardless of its contents.

In contrast, the impact of Mladic's testimony in this case has everything to do with the contents of that testimony. And the four questions that Karadzic posed to Mladic concerned the existence of the three main common criminal purposes in this case and whether Mladic ever told Karadzic about the executions of Srebrenica prisoners. Of course, Mladic would likely have denied all this, much as he did in his own trial, but Karadzic elicited similar self-serving denials from a range of co-JCE members and other associates, and he made those same denials himself in argument. And I refer you to our response brief, paragraphs 197 to 201. He has not shown that more of the same from Mladic would have made a difference.

And if Karadzic considered Mladic's testimony to be so crucial to this case, one would have expected him to have brought a motion for additional evidence on appeal. Because Mladic's self-incrimination risk was significantly reduced once the evidentiary phase of the trial ended in December 2016, and even further reduced after the trial judgement was

rendered in November 2017, but in all that time Karadzic has never attempted to tender that evidence.

I'd like to lastly respond to the claim that Karadzic had a right to General Mladic's evidence. That's at his brief, paragraph 336.

Karadzic's right to present a Defence does not translate into an absolute right to elicit every piece of potentially relevant evidence. A variety of restrictions exist that preclude parties from compelling testimony from witnesses, and those restrictions do not automatically render the proceedings unfair.

For instance, if Karadzic and Mladic had been tried together, Karadzic clearly could not have compelled him. That would not have made his trial unfair and nor does this.

Karadzic fails to show that the Chamber abused its discretion in determining that the risk to Mladic' fundamental rights outweighed Karadzic's interest in eliciting his evidence.

Ground 20 should be dismissed.

That brings me to ground 23 on war correspondent privilege. Under ground 23, Karadzic is asking the Appeals Chamber to rule that war correspondents' employers, not the correspondents themselves, are the holders of the privilege. And Your Honour Judge Meron noted, the Appeals Chamber in Brdjanin has held that war correspondents "are, of course, free to testify before the international tribunal."

It was claimed this morning that the Brdjanin decision involved the assertion of the privilege and not the waiver, but that's incorrect because the Appeals Chamber held that war correspondents were free to

testify and that they possessed a qualified privilege that could exempt them from compulsion. In other words, the holding in Brdjanin is that the holder of the privilege both for assertion and for waiver purposes is the individual war correspondent, him or herself.

A decision of the STL was mentioned this morning. However, in that decision the Trial Chamber reached no decision on which party held a war correspondent privilege, because it found that on the facts before it the witness in question was not a war correspondent. The STL decision does not assist Karadzic.

This is another attempt to deviate from Appeals Chamber law without showing cogent reasons.

Ground 23 should be dismissed.

That brings me to ground 24, parliamentary privilege. Karadzic's complaint about the use of his assembly speeches is probably the best example of defect one, raising issues for the first time on appeal and complaining about situations he brought about himself, because at trial Karadzic supported the admission of transcripts and minutes of assembly sessions, and he tendered many of those documents into evidence himself. And he repeatedly relied on his own assembly speeches in those records throughout trial to examine witnesses and substantiate his arguments.

And when the Defence argued at trial that Defence Witness Krajisnik could not be questioned on his assembly speeches, the Trial Chamber asked Karadzic's then legal advisor directly whether the Defence was claiming a privilege that would preclude the Trial Chamber's

use of assembly records, and he responded: "No, not at all. No." He clarified that the Defence was only claiming a narrow privilege for Krajisnik not to be questioned in court about what he said in the assembly, and he agreed that the Chamber could rely on the assembly records as written evidence. That's transcript page 43094 to 43095.

The Defence claimed this morning that the Chamber's decision on parliamentary privilege was a general one, but this was the request they ruled on. A narrow request regarding Krajisnik's statements and the use of them to examine Krajisnik.

Ultimately, the Chamber did rely on these exhibits extensively, and they underlie a multitude of findings supporting Karadzic's guilt. And it's only now, on appeal, faced with all those incriminating findings that Karadzic makes a sweeping claim of privilege and seeks a brand new trial.

Now, there was a novel claim made this morning that a person can assert privilege at any time, and apparently this includes after it has been waived and in relation to the very material over which it has been waived. Well, that submission was unsupported and it's contradicted by common sense.

We heard a lot about fairness this morning. Well, fairness requires that Karadzic not be permitted to unwind the entire judgement based on an argument raised for the first time on appeal that contradicts the position he took at trial.

Ground 24 should be dismissed.

That brings me to ground 26, and this concerns the Miletic

reopening decision. And the Chamber reasonably denied Karadzic's request to reopen his case to tender proposed testimony from Miletic. It concluded that Karadzic had not demonstrated the testimony would be sufficiently probative, particularly considering the late stage of the proceedings and the delay that a reopening would cause. Karadzic does not show that the Chamber abused its discretion.

In its reply brief, the Defence relies heavily on the Popovic Trial Chamber's findings on Miletic's role in restricting aid to Srebrenica, forcibly removing the population, and monitoring the column and the corridor. He argues that these findings on Miletic's central role in Srebrenica events demonstrate that Miletic was "in a unique position to exonerate President Karadzic." That's at reply paragraphs 124, 126, and 128. But these findings do not indicate what Miletic would have testified to in this trial.

In the Popovic trial, Miletic denied that he had this central role. Karadzic's 65 ter summary of Miletic's proposed testimony indicates Miletic was planning to repeat those denials and distance himself from the forcible transfer, the corridor, and most everything else Srebrenica-related.

I will give you two specific examples that illustrate why the Popovic trial record does not assist Karadzic.

First, Karadzic relies on the Popovic Trial Chamber's findings on Miletic's role in drafting and implementing Directive 7. Directive 7 is, of course, the directive signed by Karadzic that contains the incriminating order to the Drina Corps to create an unbearable situation

of total insecurity with no hope of further survival or life for inhabitants of Srebrenica. Karadzic argues paragraph 124 of his reply that the Popovic findings on Miletic's role in drafting Directive 7 could have exonerated Karadzic in relation to Directive 7 and the forcible removal plan.

But in his own trial, Miletic took the position that Karadzic could amend the draft directive written by Miletic and "could add the incriminated passages," and that "the final text belonged to President Karadzic who had the single and exclusive authority to approve it." And this shifting of blame to Karadzic is echoed in Karadzic's 65 ter summary of Miletic's proposed evidence, which states:

"He," Miletic, "prepared a draft of Directive 7 and gave it to General Milovanovic for onward transmission to the president. His draft did not include any reference to the civilian population of Srebrenica or Zepa. Did he not notice that language in Directive 7 until after the war."

Second, Karadzic relies at paragraph 126 of his reply on the Popovic Chamber's finding that Miletic was among the Main Staff's most knowledgeable members and provided information to President Karadzic. Again, based on this Karadzic argues that Miletic could have exonerated him regarding Karadzic's knowledge of the execution of prisoners. But in the Popovic trial, Miletic took the position that the Prosecution did not prove that President Karadzic took decisions on basis of reports from Miletic. Karadzic had many sources of information and that President Karadzic sometimes had much more information than the

Main Staff.

And again, Miletic's 65 ter summary states that Miletic never knew of any plan to kill prisoners from Srebrenica, knew of no policy directed at restricting convoys to Srebrenica, knew of no plan or intention to expel the Muslims from Srebrenica, was unaware of the reburial of prisoners, and so on. Karadzic fails to show how Miletic could possibly have exonerated him. The Popovic trial record points in the opposite direction, Karadzic's own 65 ter summary points in the opposite direction also.

Ground 26 should be dismissed.

That brings me to ground 31, and this is where the all the sweeping statements about adjudicated facts and 92 bis witnesses turning the trial upside down and reversing the burden get down to brass tacks, because it's under ground 31 where the Defence actually lists the incidents that it claims are based solely on adjudicated facts or untested witness evidence. And that was confirmed this morning.

And how many incidents in this big case does the Defence claim rest solely on adjudicated facts? Six. That's paragraph 555 of the appeal brief. And this proves the point we were making in our brief, for example, at paragraph 73, which was that for many adjudicated facts the Prosecution tendered evidence that covered those same facts. So for those incidents, the Defence faced the same allegations and the same burden via evidence tendered in the normal way.

The same applies to Rule 92 bis and quater evidence. The Defence alleges only 15 incidents rest solely or decisively on 92 bis or quater

evidence, and even this modest figure is inflated. For most of those 15 incidents, the bis or quater evidence was amply corroborated and the findings are not based solely or decisively on that witness evidence.

I will give you just one example, which is that Karadzic's claim that the Chamber's findings on Scheduled Incident 14.2, that's the execution of 45 Muslims, near Paklenik in Sokolac, are based slowly on Rule 92 bis Witness Farid [phoen] Spahic. That claim is contradicted by a plain reading of the judgement.

A plain reading of the judgement shows that the Chamber relied on a variety of other evidence corroborating Spahic's account. This includes two Defence witnesses, two documents, and voluminous exhumation evidence that the Chamber discussed at length while noting multiple consistencies with Spahic's account. And I refer you to the first entry of our chart at paragraph 310 of our response brief where we've laid that out.

And in any event, even if findings on a handful of incidents are based slowly on untested witness evidence, this does not show error. In accordance with the Popovic appeals judgement, none of Karadzic's convictions under any counts rest solely or decisively on untested witness evidence.

Karadzic seeks to rely on the Djordjevic appeals judgement but it does not assist him. The Djordjevic Appeals Chamber held that if untested witness evidence on an incident underlying a conviction constitutes a critical element of the Prosecution case and a vital link in demonstrating an accused's responsibility, then that incident cannot

be based solely or decisively on that untested evidence. But it also held that where the untested evidence is corroborated by findings demonstrating a similar pattern of conduct, the Chamber's findings on that one incident cannot be said to rest solely or decisively on untested witness evidence. That's paragraphs 807 to 808.

And applying that holding here, none of the incidents Karadzic points to are based solely or decisively on untested witness evidence. Again, I refer you to the chart at paragraph 310 of our brief.

Ground 31 should be dismissed.

That brings me to ground 28, so I'm moving away now from procedural grounds and to the common criminal purpose, to permanently remove Muslims and Croats from the municipalities.

The Chamber reasonably concluded that Karadzic participated in this common criminal purpose. Under ground 28, Karadzic argues that there was another reasonable inference to this conclusion. He argues that in creating a de facto Serb state, the RS, the Bosnian Serb leadership sought only political autonomy, not ethnic separation, and that the crimes committed across 20 indictment municipalities were the unintended result of a civil war between groups with a history of violence against each other.

This alternative narrative ignores most of the evidence and findings that underpin the Chamber's conclusions. He, therefore, has not met his burden on appeal, because he fails to show that on the totality of the record his alternative native was reasonable.

In explaining why Karadzic's narrative is not reasonable, I'll

begin with an overview of that totality, an overview of the findings on the nature and scope of the permanent removal objective and the manner of its implementation. This is the proper context to evaluate Defence arguments. Then I will address in more detail some of the specific Defence arguments under ground 28.

Your Honours, by late 1991 Bosnia and Herzegovina, BiH, was heading towards independence. And as found by the Chamber, Karadzic, the undisputed leader of the Bosnian Serbs, was adamantly opposed to independence for BiH, paragraph 2711. That opposition is illustrated by his October 1991 televised speech, where he threatened the Bosnian Muslims that if they pursued independence, they would face a highway of hell and suffering, resulting in the possible extinction of the Muslim people, paragraphs 2675 and 2707.

Karadzic and the Bosnian Serb leadership insisted that Bosnian Serbs would not become trapped in a Muslim dominated independent state. So they formed a criminal plan, and their plan was to forcibly take-over territories within BiH that they claimed for the Serbs and to permanently remove non-Serbs from those territories through the commission of crimes, paragraph 3447.

They began implementing this plan through a campaign of crimes that commenced in April 1992. Serb forces attacked and took over targeted municipalities and perpetrated a co-ordinated systematic pattern of crimes designed to remove non-Serbs from the RS. All the while, as the Chamber found, Karadzic issued false denials and false assurances to internationals about the crimes and facilitated their commission on the

ground by adopting a policy of non-punishment and by taking no genuine steps to prevent or punish them. For example, paragraphs 3381, 3410, 3425, 3501, and 3504.

By late 1992, most of the territory claimed by Karadzic and the Bosnian Serb leadership had been rendered ethnically pure Serb territory. However, the campaign continued for another three years. The primary focus of those three years was to cleanse a handful of remaining Muslim enclaves in Eastern Bosnia, including Srebrenica. You will hear more from Ms. Baig about events in Srebrenica in 1995.

Your Honours, here is a map of Bosnia and Herzegovina. It's depicting in colour the location of the 20 indictment municipalities, and the colours depict the predominant ethnicity of those municipalities in 1991 before the conflict. Dark green is for absolute majority Muslim, light green relative majority Muslim; dark red absolute majority Serb, and light red relative majority Serb.

Now, each of these 20 municipalities were strategically significant to the Bosnian Serb leadership. Paragraph 3446. In particular, they are all encompassed by the Bosnian Serbs six strategic goals. Karadzic announced these goals to the RS Assembly on 12th of May 1992. The strategic goals formalised the ethnic separation policy which was already in place and being implemented, and they guided the implementation of the permanent removal campaign for the remainder of the conflict. Paragraphs 2857 and 2895 to 2903.

Geographically, the municipalities fall within three of these six goals: Goal 2, creating a corridor across northern Bosnia; goal 3,

eliminating the Drina as a border between the Republika Srpska and Serbia proper in Eastern Bosnia; and goal 5, dividing Sarajevo into Serbian and Muslim parts. And the yellow border there shows the border around the ten municipalities that constituted the administrative region of Sarajevo. And all the municipalities were also linked to the first and the most important strategic goal: The separation of Serbs from the other two ethnic communities. Paragraphs 2857, 2896, and 2898. Ethnic separation was at the core of the strategic goals. Paragraph 3439.

All of these 20 municipalities had large non-Serb populations. Many, as you can see, were majority Muslim. Cumulatively, hundreds of thousands of non-Serbs lived in these 20 municipalities, and yet Karadzic and his co-JCE members sought to transform them into ethnically pure Serb territory.

Now, Dr. Karadzic claimed this morning that homogenisation in BiH concerned some kind of administrative grouping and that Muslims who were not fighting in the municipalities had no problems. The facts belie these claims.

The criminal campaign carried out by Serb forces was intense, organised, and effective, and I will illustrate this by explaining how it was implemented in two Muslim majority municipalities: Foca and Zvornik, both connected to strategic goal 3.

Before the conflict, approximately 52 per cent of Foca's 40.000 inhabitants were Muslims, paragraph 839. But just four months into the conflict, by mid-August 1992, there were almost no Bosnian Muslims in Foca, paragraph 933. And by early 1993, Karadzic was informed at the

assembly that not a single Bosnian Muslims remained in Foca and that "there is only one people living on the Territory of Foca and there is only one religion practiced there." That's paragraph 933.

Let me explain how Serb forces forcibly removed 20.000 Muslims from Foca in just a few months, and this is based on the Chamber's factual findings in volume 1.

Serb forces began their attack on Foca on the morning of 8 April 1992. They shelled and fired on the town, primarily its Muslim neighbourhoods, wounding many Muslims. Then they took over the town area by area, systematically looting, burning, and destroying Muslim homes. They attacked and destroyed surrounding Muslim villages, and they beat, killed, and rounded up villagers. Bosnian Serb police, military, and civilian officials established a network of detention facilities where they imprisoned Muslims in squalid conditions.

The largest of these was KP Dom Foca. It was established by a decision of the central RS government, that's Karadzic's government, and it was jointly controlled by the Ministry of Justice and military authorities. In detention, men and boys were routinely beaten and hundreds were murdered, women and girls were systematically raped by police and military officials.

For many detainees, this mistreatment lasted for weeks and months before they were finally expelled. In this climate of extreme violence, Muslims who could flee did. This is how 20.000 people were permanently removed from their homes and communities in just a few months.

Turning now to Zvornik, which followed the same pattern. Before

the conflict, approximately 60 per cent of Zvornik's 81.000 inhabitants were Muslim, paragraph 1228. But by December 1992, the VRS Drina Corps was able to report that Zvornik's 60 per cent Muslim population had been "cleansed and replaced with an ethnically pure Serb population." Paragraph 1365, quoting P2955. And in January 1993, Karadzic himself proclaimed that Zvornik used to be 50-50 but now "they are all Serbs." Paragraph 2760. This, from the president who now claims he sought only political autonomy.

Let me tell you how Zvornik was so thoroughly and efficiently cleansed. Again, this is based on the Chamber's findings in volume 1.

Around 8 April, the same day Foca was attacked, Arkan's paramilitaries, working with police, military, and paramilitary forces attacked Zvornik. They shelled Zvornik town all day, then began looting and burning buildings in town and killing Muslims. As one of Karadzic's own witnesses admitted, Arkan's forces were killing Zvornik Muslims to "sow fear." That's at footnote 4333. And it worked. Muslims began to flee.

And to be clear, Arkan was a JCE member. Not a renegade. Paragraph 3462. The Chamber found, and these findings are not challenged by Karadzic, that the RS Presidency, headed by Karadzic, invited Arkan's unit to operate in BiH, that Karadzic himself supported this co-operation, and that Karadzic later publicly thanked and praised Arkan for "defending the Serbs." Paragraphs 3198, 3236, and 3228.

I'll digress here for a moment to respond to Dr. Karadzic's claim this morning that he persecuted and prosecuted and disowned

paramilitaries. But he has not challenged these findings that he supported, thanked, and praised Arkan, nor has he challenged any of the Chamber's findings on his support for paramilitary groups. For example, paragraphs 3197, 3234, and 3492.

And just as in Foca, after the attack on Zvornik town, Serb forces then began attacking the surrounding Muslim villages. They set houses ablaze, destroyed mosques, raped and killed villagers, forcibly expelled women and children, and detained many others. And just as in Foca, police, military, and paramilitary forces established a network of camps. As in Foca, they mistreated, tortured, mutilated, and killed detainees on a daily basis. As in Foca, hundreds of prisoners were beaten to death or executed.

The Zvornik killings were so intense that Gero's slaughter-house became an open-air execution site and collection centre for corpses. Hundreds of bodies of killed Muslims were transported to the slaughter-house, stacked up in rows, and subsequently and buried in mass graves. I refer you to footnote 4561 and the evidence cited therein.

Just as in Foca, in the face of this carnage those who were not detained or killed fled in fear, as intended. This is the reality on the ground that allowed Karadzic to declare in January 1993 that in Zvornik they are all Serbs.

These two municipalities are illustrative of the broader pattern. The Chamber found that the overwhelming majority of the non-Serb population of the 20 indictment municipalities were forced out of the RS through a systematic and organised pattern of crimes involving killings,

cruel treatment, unlawful detention, rape and other acts of sexual violence, discriminatory measures, and wanton destruction. Paragraphs 3442 to 3445 and 6047.

Now I'll turn back to Karadzic's claimed alternative inference that he, the president of the RS, played no role in this vast array of crimes carried out across 20 municipalities largely by his own forces, that he sought political autonomy only. I will address two basic flaws with this argument. First, I'll explain how this alternative narrative is based on individual items of evidence that Karadzic seeks to interpret in isolation from the record and without regard for the contrary findings. Then I will address his arguments based on events in non-indictment municipalities.

Turning to the first point, the evidence Karadzic relies on to support his alternative. Here the methodology is to reinterpret fragments of evidence in isolation, as I said. And this does not meet his burden. I'll illustrate this by focusing on Karadzic's challenges to the findings that he advocated ethnic separation, and then I'll turn to the evidence that Karadzic relies on to support his narrative.

In his brief, Karadzic selects five statements that the Chamber relied on, and he argues that they do not support the Chamber's conclusion that he advocated ethnic separation. We've responded to those in our brief, and I won't discuss them today. Instead, I will show you a few you of the statements the Chamber relied on that Karadzic does not mention. Statements that plainly support that Karadzic advocated ethnic separation.

On February 1992, so about six weeks before the criminal campaign commenced, Karadzic told SDS officials that:

"It is not possible to make a solid co-existence without friction and conflicts. We are not brothers. We must know that. The world understands that very well when they ask why can't you live together. I say because we are three cultures, three peoples, and three religions."

That's P12 relied on at paragraph 2732.

Two weeks later, 28 February, Karadzic told the SDS Assembly:

"Muslims cannot live with others. We must be clear on that. They couldn't live with Hindu who are as peaceful as sheep. They couldn't life with the Greeks on Cyprus. They couldn't live in Lebanon with Arabs of the same blood, same language but of a different faith. There can be no discussion here."

That's P938, paragraph 2756.

In July 1992 when the criminal campaign to forcibly remove Muslims and Croats was in full force, Karadzic told the RS Assembly that:

"Europe wants to keep us and the Croats in one unitary state so that we control the Muslims, and we cannot control the Muslims in such a unitary state. We know very well what fundamentalism is and that we cannot live together. There's no tolerance. They quadruple through the birthrate and we Serbs are not up to that."

That's Exhibit D92, relied on at paragraph 2745.

Now Karadzic is free pick and choose which pieces of evidence he wishes to address on appeal, but it is for him to explain how the Chamber acted unreasonably when it relied on Karadzic repeatedly insisting that

Serbs could not live with the other ethnicities to conclude exactly that, at paragraph 2841. Instead, Karadzic just ignores most of that evidence, including the examples I just showed you.

Let me turn to the statements Karadzic puts forward to support his narrative of innocence, statements where Karadzic claims to oppose ethnic cleansing and issued instructions purporting to protect minorities or allow them to return. This is a point Dr. Karadzic argued this morning.

There are two key flaws with reliance on these statements. First as we have pointed out in our response brief, Karadzic repeatedly ignores the Chamber's express consideration of these statements. Secondly, Karadzic presents these statements on appeal in isolation.

Dr. Karadzic himself this morning emphasised the importance of interpreting his statements in context. Well, the Chamber properly did consider these statements in light of the context, in light of the totality, and that totality showed Karadzic threatening a bloodbath, insisting on ethnic separation, overseeing a vast criminal campaign aimed at removing non-Serbs from Serb-claimed territory, making false and misleading statements about that campaign rather than taking any genuine measures to stop it, then praising the demographic transformation achieved by his forces.

Based on that overwhelming body of inculpatory evidence, the Chamber reasonably concluded that Karadzic's statements purporting to protect minorities and oppose ethnic cleansing were a sham, a sham designed to mislead the international community and perpetuate a false

narrative that the Bosnian Serb state was legitimately created. For example, paragraphs 2847, 2850, 2854, 3085, and 3094 to 3095.

That brings me to my last point under this ground. The Chamber concluded that across the 20 indictment municipalities, Serb forces perpetrated a consistent pattern of crimes in a "co-ordinated fashion" and "during the course of well-planned and co-ordinated operations." Paragraphs 3441 to 3445.

The only challenge to this finding is to complain that this pattern of crimes could not have been systematic because the Chamber did not make similar findings for municipalities outside the indictment. This is essentially a criticism of the Trial Chamber for doing its job.

The Trial Chamber was tasked with analysing events and crimes within the indictment. Karadzic demonstrates no error by pointing to what may or may not have happened outside the indictment.

Ground 28 should be dismissed.

I'll just say a few words on ground 29, which is the challenge to JCE III in this case.

In ground 29, Karadzic argues that the Chamber should overturn almost over 20 years of Tribunal jurisprudence on JCE III liability and adopt a probability rather than a possibility standard. And this morning it was argued that this is the right thing to do.

First, the Appeals Chamber has consistently upheld the possibility standard and rejected a probability standard. I refer you to our brief, paragraphs 290 and 297. And this includes just a few months ago in the Prlic appeal at paragraphs 584 to 591.

Second, the Appeals Chamber has repeatedly upheld JCE III as currently formulated as a fair basis for liability because the accused already possesses the intent to participate to further the common criminal purpose, thereby reflecting an awareness of a higher likelihood of risk and a volitional element. That's the Sainovic appeals judgement, paragraph 1558. It's not subjective foresight alone that results in criminal responsibility.

Finally, Karadzic's claim that JCE III liability is purportedly "out of step with everything," that was an argument made this morning, is incorrect. While national law is not relevant to this issue, as we've noted in footnotes 14 and 15 of our response to the amicus curiae's submissions on Jogee: Australia, Canada, Hong Kong, New Zealand, Scotland, and US all have a form of liability similar to JCE III. And New Zealand, Australia, and Hong Kong have expressly considered Jogee and declined to follow it.

Ground 29 should be dismissed.

Your Honours, that concludes my portion of the submissions. We have some time left. I can either pass the podium now to Ms. Baig or we can take the break now, as you prefer.

JUDGE MERON: I would prefer for you to continue. We will end at 4.00, Ms. Baig.

MS. BAIG: Good afternoon, Mr. President, Your Honours. I will be addressing Srebrenica, and again we have a map for you just to orient you where we are. Hopefully it will come up in a moment.

In early July 1995, the Bosnian Serb forces seized control over

the UN Safe Area of Srebrenica. And like the take-overs of many other municipalities, the Srebrenica take-over was devised with the intent to permanently remove the Bosnian Muslim population living there. And as in the municipalities, this required force.

By the morning of the 12th of July, more than 25.000 people were gathered at the UN compound. There, the displaced population spent one or two nights in catastrophic conditions, where they were abused by Bosnian Serb forces. Families were systematically separated: Women, children, and the elderly forced onto buses; men and boys taken away. From the 12th to the 13th of July, up to 30.000 women, children, and some elderly men were forcibly transferred to Bosnian Muslim territory. And on 13th of July, the organised killings began. More than 5.000 Bosnian Muslim men and boys were systematically executed.

These crimes inflicted long-lasting suffering on the surviving members of the Srebrenica community, and from the apex of power it was Karadzic who sealed the fate of the Srebrenica victims. His convictions for forcible transfer, murder, extermination, persecution, and genocide are well-founded and he shows no error.

Before moving to Karadzic's ground 40 submissions concerning his shared intent to kill, I have one small point to make with regard to grounds 38 and 39. At paragraph 197 of his reply, Karadzic claims that the Prosecution has made a concession, and we would just like to point out that this is not correct. The Prosecution's position on that issue is set out in footnote 1560 of our brief. And should Your Honours have any questions regarding the submissions on the other grounds relating to

Srebrenica, I would be happy to address them. But otherwise, I will move straight into ground 40.

In July 1995, forces under Karadzic's control worked together to perpetrate the largest mass killing on European soil since World War II. In only a few days, more than 5.000 Bosnian Muslim men and boys lay dead in mass graves.

Karadzic's challenge to his killing conviction rest on a false premise. He claims that his convictions hinge on the interpretation of a single intercepted call on the 13th of July between Karadzic and his trusted subordinate, Deronjic. This is not so.

I will begin by showing that his premise is a false one. Karadzic was convicted for these killings, crimes of murder, extermination, persecution, and genocide because he knew about the plan. He affirmatively joined the plan, and he actively participated in it.

The intercept is primarily used to mark the timing of when Karadzic became actively involved in the killing plan, and it's simply one of many interlocking findings that demonstrate his embrace of and participation in the killing. And then I'll turn to Karadzic's arguments about the intercept itself, including his challenge to Momir Nikolic's evidence.

So starting with the false premise. The Chamber concluded that Karadzic oversaw and was actively involved in the implementation of the killing plan. Paragraphs 5811 and 5820. As president and Supreme Commander, Karadzic was the only person in charge of all three organs involved in the killing operation: The military, the police, and the

civilian authorities. And the operation carried out by these three groups under his authority was described by the Trial Chamber as deliberate, highly organised, systematic, and horrendous. Paragraphs 5668 and 5669.

By the 13th of July, thousands of Bosnian Muslim men and boys were in the custody of Karadzic's forces. Some had been torn from their families during separations at the UN compound at Potocari, and others had been captured from the column of men who had fled into the woods when Srebrenica was taken over. All were already marked for death. Prisoners were stripped of their belongings and their ID cards. They were told that they would not need them. And ultimately, these prisoners were systematically executed by Karadzic's forces. Hundreds dying together, all of them shot. Sometimes the mass graves had been prepared in advance. And afterwards, when the news of the massacres was already common knowledge worldwide, he praised subordinates on their "brilliant victory in Srebrenica," promoting and rewarding many of the key actors, referring to Mladic, as a legend. Paragraph 5813.

The Chamber found that the killing operation followed a consistent pattern, that its vast scale required extensive co-ordination between multiple layers and branches of the Bosnian Serb forces, all under Karadzic's oversight and with his active involvement, and the Chamber details what this oversight and involvement consisted of.

I'd like to give you three broad categories of what Karadzic did to oversee the operation and to ensure its success.

First, Your Honours, as president and Supreme Commander, Karadzic

used numerous channels to obtain information from the ground enabling him to monitor the activities of his forces as the plan unfolded. He received daily written reports from the Main Staff, the Main Staff security organ, and the Ministry of the Interior. Karadzic discounts some of these reports in his brief because they didn't specifically refer to killings, but the Chamber found that these reports provided him with critical information, including about efforts to capture Bosnian Muslim men fleeing in the column and the large number of prisoners taken.

And tellingly, after the 14th of July, these reports made no further mention of prisoners. And it cannot be surprising, Your Honour, that there weren't specific written records about crimes, particularly when there was a high-level direction not to leave such a written record and not to speak on the radio about it. That's at paragraph 5801.

Your Honours, I'll continue until you stop me. I'm having trouble watching the clock.

JUDGE MERON: Are you moving to another subject?

MS. BAIG: I'm moving to the next point, so I might --

JUDGE MERON: Then you might just as well do it tomorrow.

[Trial Chamber confers]

JUDGE MERON: I meant after the pause.

MS. BAIG: I'm sorry, I don't understand.

JUDGE MERON: What I meant to say, at 4.00 we are having a break, aren't we?

MS. BAIG: Yes.

JUDGE MERON: Of half an hour.

MS. BAIG: Yes, Your Honours.

JUDGE MERON: And after the break, we will continue.

MS. BAIG: Yes.

--- Break taken at 4.00 p.m.

--- On resuming at 4.30 p.m.

JUDGE MERON: Please be seated.

May I ask you to continue. Ms. Baig.

MS. BAIG: Thank you, Your Honours. Before I begin, I have two small housekeeping matters. First of all, we're joined by our colleague, Abeer Hasan, at the Prosecution table; and second, I have been asked to make a correction in relation to ground 29 that Ms. Gustafson spoke about this afternoon. She referred to Prlic appeals judgement, paragraphs 584 to 591, and the correct reference is to Prlic appeals judgement, paragraph 3022.

So I was speaking about the false premise that everything in this judgement was based on the single intercept, and I was taking Your Honours to what Karadzic was doing to oversee and ensure the success of the operation. I was going to give you three categories. The first category was using numerous channels to monitor his forces, and I spoke about the written reports, but Karadzic also received information orally directly from high-level officials from the military, the police, and the civilian authorities.

For example, on the 13th of July, as the organised killings were beginning, from the VRS, the military, Karadzic spoke directly with Mladic, who was the commander of the Main Staff, in the evening of the

13th of July for more than one hour. And shortly after that conversation, Mladic orders his forces to move the prisoners to Zvornik to be killed. That's paragraph 5711 and 5818.

From the police, Karadzic met personally with the minister of the interior and the police commander Kovac on the afternoon of the 13th of July, and Kovac briefed Karadzic on developments in Srebrenica, including all the information that he had obtained from the state security and police subordinates. Immediately thereafter, Kovac went to the Srebrenica area, met with Mladic, and then toured Srebrenica, Bratunac, and Zvornik, where he observed the transportation of the men to Zvornik and spoke with leading participants in the killings.

And when he returned the next day, he briefed Karadzic immediately upon his return about the progress of the killing plan. Paragraphs 5781 and 5782 of the trial judgement.

And as we see from the 13th of July intercept, Karadzic also spoke to Deronjic, the top civilian leader in Srebrenica, on the 13th of July. And by this time, the Chamber concluded that Karadzic already knew that there was a plan to kill the prisoners. 5811.

But, Your Honours, it wasn't just high-level officials. Karadzic also received information from those much further down the chain of command in the VRS and the police and from civilians. For example, the Trial Chamber found that on the 14th of July he received a phone call directly from a field commander who was defending the major road north of Srebrenica, and that that field commander reported directly on the progress of the column of the Bosnian Muslim men in the woods.

And the same day, Karadzic met personally with a group of civilian authorities from Serb Srebrenica, and their discussion included the creation of a War Presidency.

And on 15th of July, he received a direct report from Vasic, who was the Zvornik police chief. And Zvornik [sic] reported that additional forces were urgently needed to help to intercept the column of men, and additional forces were sent the next day.

And when Karadzic wanted more information, he got it. Karadzic summoned Bajagic, who was a low-level VRS official, to his office in the middle of the night, around 1.00 a.m. on the 15th of July, to report on the events in Srebrenica. And Karadzic would send his trusted subordinates to gather information in the field, as he did at the beginning of the operation on the 13th of July when he sent Kovac to tour the crime sites, and as he did on the 16th of July, only 90 minutes after the VRS had opened the corridor, when he sent Karisik to Zvornik.

The Trial Chamber concluded that Karadzic closely monitored the operation and despite his power to do so, despite being the only one who could have done so, Karadzic did nothing to halt or hinder the plan. The Chamber concluded that this furthered the plan's objective. Paragraphs 5829 and 5830.

Turning to the second category of Karadzic's oversight and involvement. This involved giving orders ensuring the success of the killing operation, including by appointing key subordinates.

So in addition to the intercepted conversation, the intercepted instruction to Deronjic, which I will return to in a moment,

Your Honours, on the 13th of July Karadzic promoted Krstic to command the Drina Corps. This is Krstic whose brigade in 1992 had separated men from women and then committed an organised massacre of the men in Sokolac municipality. Krstic, who personally supervised the separations and forcible transfers at Srebrenica. And Karadzic rewarded him with a promotion and later heralded Krstic as one of the main architects of the brilliant victory in Srebrenica. And I would refer you to paragraphs 1047, 1062 to 1063, 5813, and footnote 19768 of the trial judgement.

And in the 6th of August assembly, Karadzic lamented that had Krstic not been sent elsewhere, he could have ensured the column was encircled and destroyed because he had "proven to be very good." That's Exhibit P1412 at page 17.

In another order on the 14th of July Karadzic, with full knowledge of the ongoing killing operation, Karadzic declared a state of war in Srebrenica. Paragraph 5819. On the same day, he issued another order appointing trusted Deronjic to the position of president of the War Presidency. The Chamber found that there was no longer a military reason for such orders. Instead, these orders were issued in order to facilitate the "smooth execution" of the killing operation. Paragraph 5819. And his orders gave the military, and Deronjic, extraordinary powers to commandeer civilian personnel and resources, such as excavators, that were required for the large-scale killing and burial operation, and these additional powers were critical.

After the mass killings at Kravica warehouse on the 13th of July,

the Main Staff scrambled through the night to find the heavy machinery needed to bury the bodies, and the additional powers granted by Karadzic enabled his forces to accomplish the herculean task of burying more than 5.000 dead bodies in just a few days.

The Defence claimed this morning that the effect of the declaration of war was limited to Srebrenica, but that's not so. Paragraph 3, which was what was relied on by the Chamber in footnote 19627, explicitly covers the armed forces throughout the area of responsibility of the Drina Corps, which includes the municipalities of Srebrenica, Bratunac, and Zvornik. Paragraph 190 of the trial judgement.

And the third category. Karadzic's involvement is further illustrated by the steps he took to shield the killing operation from international attention and international intervention. It was Karadzic who personally controlled access to the area, and he used his powers to prevent internationals from accessing the area while the killing operation was ongoing. He ignored UN demands for access to the Srebrenica missing in July and August.

It was not until late July after the murders were done that the ICRC was granted restricted access to the area. They found only 164 detainees from Srebrenica, and they were told that there were no more. And we can see from Prosecution Exhibit P5177 that various UN bodies were still seeking access to the missing or dead on the 30th of August 1995. And I would refer Your Honours to paragraphs 5787 and 5788 of the trial judgement.

Karadzic also disseminated false information about the fate of

the Bosnian Muslim men. He deliberately lied to David Frost of CNN on the 17th of July, giving answers that suggested that the missing men and boys were still alive. And in order to avoid unwanted international scrutiny, Karadzic allowed Bosnian Muslim local staff of UNPROFOR to leave with the UN. Murdering them would have attracted too much international attention. Paragraph 5132.

Karadzic also knew about the massive reburial operation conducted by his forces in September and October 1995, and you will recall that during the dead of night they moved bodies from their original mass graves into multiple secondary ones to conceal the evidence of their crimes. This ghastly operation was triggered by the international community's discovery of the existence of mass graves when the US Secretary of State Madeleine Albright addressed the UN Security Council in August 1995.

And following Albright's visit to one of the suspected execution sites in March 1996, Karadzic and Mladic celebrated in the success of their cover-up. Karadzic boasted that "a big show was put on for Albright, she expected they would find 1200 Muslim bodies ... but they found some 5." Paragraph 5793.

Your Honours, this is why we say that Karadzic's argument is based on a false premise. It's clear that the Chamber's assessment of Karadzic's intent and involvement in the JCE goes far beyond the single intercept highlighted by the Defence. There are layers of evidence and findings against him that prove his shared intent and involvement.

I will now turn to Karadzic's challenge to the intercept itself.

In an intercepted conversation that you have already heard about, a call at 8.10 p.m. on the 13th of July 1995, Karadzic asks through his intermediary about the prisoners in Bosnian Serb custody.

[Trial Chamber and Registrar confer]

JUDGE MERON: We are ready now.

MS. BAIG: Karadzic asks through his intermediary about the prisoners in Bosnian Serb custody, and Deronjic informs him about the large number of detainees in Bratunac, some 2.000 with more expected overnight. Deronjic's information in this intercept is consistent with the Chamber's findings, that on the 13th of July between 1.500 and 2.000 Bosnian Muslims were already detained by the Bosnian Serb forces. That's paragraph 5707.

And then Karadzic gives an instruction, that "all the goods must be placed inside the warehouses before 12.00 tomorrow," and clarified that he meant "not in the warehouses over there, but somewhere else."

Your Honours, Karadzic acknowledges that this call took place. He admits that Deronjic was informing him of the large number of detainees in Bratunac. He says they were using code, that by "goods" he meant "Bosnian Muslim prisoners." References are at footnotes 18019 of the trial judgement and paragraph 206 of the reply. And Karadzic is right, that there is no record of him using the word "Zvornik" in this coded conversation.

But this does not mean that the Trial Chamber acted unreasonably in concluding that this is what he meant when he said "somewhere else." It's clear from Deronjic's response that Deronjic understood the

instruction, he says: "Understood." And just a few hours later, Deronjic explains to others that Karadzic ordered the prisoners to be taken to Zvornik. And it's clear from the rest of the evidence, evidence that the Defence is ignoring, that in this intercept Karadzic was instructing Deronjic to move the prisoners to Zvornik to be executed. Most importantly, Your Honours, this is what happened.

The Chamber found that at the time of the intercepted call, Karadzic already knew about the plan to kill the Bosnian Muslim prisoners. And rather than intervene to prevent the killings at that point, Karadzic ordered them to be transferred elsewhere. Paragraph 5818.

And around the same time as this call, Mladic's order to transfer a large number of Bosnian Muslim detainees from Bratunac to Zvornik was conveyed down the military chain of command. Paragraphs 5711, 5309 to 5310.

And during the night of the 13th of July, in accordance with Karadzic's instruction, the busing of the prisoners to Zvornik began. And over the course of the next few days, vast numbers of military and police and civilian authorities - all under Karadzic's control - worked hand in hand to move the thousands of Bosnian Muslim prisoners to Zvornik, to then systematically execute them, and then to bury them in mass graves, all while Karadzic was maintaining constant oversight through many reporting channels, and all while Karadzic was seeking and receiving information from multiple sources up and down the hierarchy.

Your Honours, recall that Karadzic's order to Deronjic in the

intercept was to move the prisoners before 12.00 tomorrow. Karadzic met Deronjic in person just 40 minutes after that noon deadline, and they discussed the implementation of Karadzic's order to move the rest of the prisoners to Zvornik, and they discussed the massacre of around a thousand Muslim prisoners at Kravica warehouse the day before. And, of course, Deronjic had just spent the previous night working with the military to obtain the civilian resources needed for the mass burial of the Kravica's many victims, hundreds of victims.

And what was Karadzic's response when he knows not just of a plan but that his subordinates were actively murdering Bosnian Muslim prisoners on a mass scale, and the prisoners were being transported to Zvornik where there was no prison, no reason to send them other than to kill them?

He was the supreme commander. Did he order his military to stop the killings? No. Did he order the police to stop? No. Did he explain to Deronjic that this was all a terrible misunderstanding of his coded message? No. Did he order Deronjic to move the prisoners to safety or to stop using civilian resources in the criminal killing operation? No, he did not. He did the opposite. As I've just described, Karadzic facilitated their work.

You'll recall that later the same day, the 14th of July, Karadzic put even more power into Deronjic's hands by declaring war and by appointing Deronjic as president of the War Presidency.

Your Honours, the Chamber had every reason to conclude that Karadzic instructed Deronjic that the Bosnian Muslim prisoners should be

sent to Zvornik.

And this was not the only evidence that Karadzic ordered the prisoners to be moved to Zvornik. The Chamber also received independent evidence from Momir Nikolic that Karadzic had ordered the prisoners to be transferred to Zvornik.

Momir Nikolic was the chief of security and intelligence of the Bratunac Brigade. He testified that in the early hours of the morning of 14th July he overheard a conversation between Beara, who's Mladic's subordinate in the VRS Main Staff, and Vasic, the Zvornik police chief, and Deronjic. The three men representing the VRS, the police, and the civilian authorities were discussing where the prisoners should be taken for execution. Not whether they should be killed but where they should be killed. And Deronjic prevailed by invoking Karadzic's instruction that the prisoners be transferred to Zvornik.

The Chamber was alert to Witness Nikolic's role in the crimes and treated his evidence with "the utmost caution." Paragraph 5056.

And it provided a robust explanation, spanning 22 paragraphs and 6 substantive footnotes, devoted to Momir Nikolic's credibility and reliability. And in particular, I would direct Your Honours to footnote 18022, where the Trial Chamber acknowledged Karadzic's challenges to Nikolic's evidence about this particular meeting, and the Chamber was "nevertheless satisfied of the truthfulness and reliability of Nikolic's account of the meeting."

Karadzic repeatedly complains that Nikolic's evidence was uncorroborated. Legally, of course, this doesn't matter. There's no

error in relying on an uncorroborated witness. And factually, he's wrong. Nikolic's account of this meeting was corroborated. For example, it was corroborated by the intercept which records Karadzic instructing Deronjic to move the prisoners. The Defence ignores that these two independent pieces of evidence fit seamlessly together.

Nikolic's evidence was corroborated by the fact that the prisoners were actually taken to Zvornik where they were then killed, and it was corroborated by an independent account of Mladic's subordinate Beara instructing VRS officers and municipal authorities on the 14th of July that the VRS had to get rid of the detainees in Zvornik based on an order from the "two presidents."

And I note here, because it's an issue raised in reply, that the Prosecution has stated that by "two presidents" Beara meant President Karadzic and likely the president of the RS Assembly Krajisnik, that's in the Prosecution's final trial brief, footnote 3583.

And as we set out in our response brief, Nikolic's account of this meeting was also corroborated by Witnesses Katanic, Davidovic and KDZ480.

The Defence argued this morning that the Appeals Chamber has already found that Nikolic's testimony was not corroborated. In a decision on a Defence motion, this Chamber found that these witnesses didn't have direct knowledge about this meeting but did not address the issue of corroboration. Corroboration doesn't require direct knowledge or exact duplication. Evidence is corroborative when it's compatible regarding the same fact or sequence of linked facts. That's Prlic appeals judgement, paragraph 1643. And these witnesses are compatible.

They are corroborative.

And finally, Your Honours, I'd like to emphasise that it does not show error in this trial judgement for the Defence to point to a different Trial Chamber's assessment of a witness's evidence in a different case based on a different evidentiary matrix. Credibility assessments are fact and case specific, and one Trial Chamber is not bound by another's views. That's Popovic appeals judgement, paragraphs 132 and 184.

Your Honours, Karadzic advances a different version of the intercept, one in which he meant for the prisoners to be sent to the ICRC monitored prison in Batkovic for war crimes screening. His version cannot be reconciled with the rest of the evidence about his knowledge and conduct.

His alternative version would have required a large-scale conspiracy involving all of his varied subordinates and sources of information, from the military, the police, and the civilian authorities, up and down the hierarchy. They would all have to have been keeping a massive secret from their leader while all constantly feeding him the same lie. A conspiracy theory that the Chamber rejected as "inconceivable" at paragraph 5802.

And Karadzic's version of the intercept is contradicted. It's contradicted by the fact that during the major executions, the mass executions from the 13th to the 16th of July, not a single Muslim prisoner was sent to Batkovic. Paragraph 5131. And it's contradicted by the fact that despite the number of international inquiries about the prisoners

from the ICRC, UN, and journalists, Karadzic never told anyone that the prisoners had been sent to Batkovic. Instead, he ignored or misdirected them. Such evasions make no sense, if, as he claims, he had innocently sent the Muslim prisoners to ICRC-monitored detention facilities.

Your Honours, Karadzic's conviction was not based on a single intercept, nor was it based on a single interpreted in light of an uncorroborated accomplice witness.

Karadzic's conviction for the Srebrenica killings was based on a careful assessment of the totality of a large body of compelling evidence, and the evidence showed that Karadzic, sitting at the apex of power, used the forces under his authority and control to execute more than 5.115 Bosnian Muslim men and boys. His intent has been unequivocally established.

Karadzic shows no error and ground 40 should be dismissed.

And unless Your Honours have any questions, I will turn the podium over to Ms. Goy to address Sarajevo.

JUDGE MERON: Ms. Goy, what other topics would you cover after Sarajevo, just to give us an orientation?

MS. GOY: Just Sarajevo, Your Honours.

JUDGE MERON: Just Sarajevo.

MS. GOY: Yes. For the rest, we are relying on our written submissions, unless obviously Your Honours have questions.

JUDGE MERON: Thank you. Well, we will ask our colleagues whether they have questions.

MS. GOY: Thank you.

JUDGE MERON: And Ms. Goy, you may start.

MS. GOY: Before addressing the individual grounds in relation to Sarajevo, Your Honours, let me briefly summarise the events in Sarajevo as found by the Trial Chamber, because this provides the relevant context for the individual grounds.

For almost three and a half years, from late May 1992 to October 1995, the Bosnian Serb forces, in the form of the Sarajevo-Romanija Corps, the SRK, carried out a campaign of shelling and sniping of civilians in Sarajevo with the primary purpose to spread terror.

The SRK opened deliberate fire, directed it at civilians, including children and civilian objects. Nowhere was safe for the citizens of Sarajevo. The SRK targeted civilians when collecting water, in trams, and at their homes. Towards the end of the conflict, the SRK even used modified air bombs on the city, highly destructive weapons that were clearly unsuited for the use in urban areas because they could not be directed at a specific object.

Karadzic argued this morning that only a small number of people were affected in Sarajevo, but the number of civilian victims was high. Thousands were wounded or killed due to shelling or sniping. The Chamber noted evidence that over 10.000 civilians were killed or wounded in Sarajevo in the indictment period. Trial judgement 4644, and 4591.

But what was the reason for this campaign of terror in Sarajevo?

Sarajevo, the capital of Bosnia and Herzegovina, was of extreme importance for the Bosnian Serb leadership and Karadzic in particular.

Your Honours have already heard that the division of Sarajevo was one of the six strategic goals, and the campaign furthered and maintained this division. Karadzic and others also used the situation in Sarajevo as a bargaining chip to pressure the Bosnian Muslims and the international community into accepting Bosnian Serb demands. Paragraphs 4575 and 4707. And Your Honours will hear more about how Karadzic modulated the campaign to suit his political goals.

This, in brief, is the situation as found by the Chamber.

Your Honours heard the argument today that it was the Muslims that targeted their own civilian population. To the extent the Defence is making the general argument that the Muslims were responsible for the shelling and sniping in Sarajevo, this falls outside the scope of the appeal. But in any event, the Trial Chamber addressed this argument in paragraphs 4503 to 4519.

In particular, it noted the evidence of Richard Mole and General Rose, two of the witnesses that Mr. Karadzic has referred to this morning. And I refer Your Honours to the trial judgement, paragraphs 4512 and 4513. And the Chamber accepted that there was evidence of some incidents where Bosnian Muslims targeted their own population, usually near the Presidency building and for political purposes. But this was limited to a miniscule number. Paragraph 4516.

And the Chamber addressed Karadzic's specific argument in relation to the Scheduled Incident he challenges, Scheduled Incident G8, in specific terms in paragraphs 4237, 4242, and 4250.

Your Honours have also heard the Defence argue that the ABiH

provoked responses by the SRK. This argument relates to some extent to ground 33, the ground relating to the proper application of international humanitarian law. The Trial Chamber did address ABiH firing practices and acknowledged evidence that the ABiH at times were provoking SRK fire. Paragraph 3626 and 4002 to 4003.

But what matters for Karadzic's criminal responsibilities is not whether the ABiH provoked SRK fire but whether the SRK's response was in compliance with international humanitarian law, and the Chamber reasonably found that it was not. The SRK either directly targeted civilians or the Chamber reasonably inferred from the indiscriminate or disproportionate nature of the attack that it was, in fact, directed against the civilian population.

I would now like to address the remaining Sarajevo grounds, 36, 37, and ground 34. And with Your Honours' permission, I'd like to start responding with the more general ground 36, 37, that relates to Karadzic's sharing of the common purpose.

The Chamber concluded that Karadzic shared the common purpose to spread terror among the civilian population of Sarajevo through a campaign of shelling and sniping. He shared it with VRS commander Ratko Mladic, the SRK commanders Stanislav Galic and Dragomir Milosevic, and three other members of the Bosnian Serb Presidency. The Chamber reasonably concluded, in paragraph 4676, that this common plan must have come from the Bosnian Serb political and military leadership because for over three years the SRK shelled and sniped at civilians in Sarajevo. For over three years, the shelling and sniping followed the same pattern.

For over three years, this pattern continued in a city that was of extreme importance to the Bosnian Serb leadership. For over three years, the VRS Main Staff under Mladic and the SRK Command under Galic and Dragomir Milosevic controlled the SRK. And during the entire period, Karadzic controlled the Bosnian Serb military.

Karadzic's conduct throughout clearly shows that he shared the common purpose of the Sarajevo JCE and that he intended to spread terror among the civilian population through the campaign of shelling and sniping. Paragraph 4891.

Karadzic continuously supported Mladic, although he knew from the outset what Mladic was planning for Sarajevo. Karadzic was directly involved in military matters in and around Sarajevo. Karadzic was aware of the attacks on civilians in Sarajevo but denied and deflected SRK responsibility before the international community.

Karadzic modulated the campaign according to his political goals. For example, he increased the level of sniping and shelling to influence negotiations with the UN and the Bosnian Muslims, to pressure them into accepting his demands. Paragraph 4886.

Karadzic supported and promoted SRK commanders although he was aware of their involvement in the campaign. And Karadzic failed to prevent the shelling and sniping of civilians and punish those responsible.

In addition, Karadzic made many statements that show that he adopted a hard-line position. He threatened and encouraged violence on many occasions. Paragraph 4922.

The Defence raises a number of challenges in relation to the common purpose and Karadzic sharing it. Today, I will just respond to two and thereby focus on arguments raised in reply.

One, the Chamber's finding on the common purpose stands, regardless of a meeting between Mladic, Karadzic, and others prior to Scheduled Incident G1; and two Karadzic's orders purporting to protect the civilian population do not undermine the finding that he shared common purpose.

The Chamber's findings on the common purpose do not depend on a meeting between Mladic, Karadzic, and others prior to Scheduled Incident G1.

We explained in our response brief that even if Karadzic did travel to Lisbon on 20 May, the meeting could still have occurred on that day. And this does not contradict the Prosecution's position at trial, as suggested in the reply brief.

In the final trial brief, the Prosecution referred to the meeting occurring days later than 19 May, and this does not exclude the 20th.

But in any event, the conclusion that there was a common purpose to terrorise the population in Sarajevo which Karadzic shared does not depend on this meeting.

The Trial Chamber found that the common purpose "materialised in late May 1992, with the events described in relation to the scheduled Incident G1." That's paragraph 4649.

The meeting forms part of these events, but there are other events surrounding G1 which show that the plan materialised, materialised

in the sense that it was put into action.

About two weeks before G1, on 12 May 1992, in Karadzic's presence, Mladic outlined his plan for Sarajevo in the 16th Session of the Bosnian Serb Assembly. He made his view clear: Besieging and targeting Sarajevo with large numbers of heavy weapons would compel Bosnian Muslims to agree to Bosnian Serb demands.

Having heard Mladic's clear explanation of his strategy for Sarajevo, the Bosnian Serb leadership voted in favour of Mladic's appointment as commander of the VRS Main Staff, paragraph 4735, and Karadzic, who had sought out Mladic for this post, continued to support him.

About two weeks later then on 28/29 May, Mladic followed through with the strategy he had announced. The SRK massively bombarded the entire city of Sarajevo, Scheduled Incident G1. Mladic personally issued orders to fire at areas of Sarajevo, because there was not much Serb population there. He ordered to continue firing, "so that they cannot sleep, that we roll out their minds." Paragraph 4028.

On 30 May then, while the bombardment continued, UNPROFOR General Morillon and Major-General MacKenzie met with Karadzic to discuss the massive bombardment. And how did Karadzic react? He kept supporting Mladic and defended him before the international community. He said that due to the inexperience, the forces overreacted to attacks by the ABiH and that Mladic did not have all the forces under his command. This was clearly disingenuous. Mladic was carrying out what he had told Karadzic and others in the assembly session two weeks earlier.

In this conversation, Karadzic also agreed to contact Mladic in order to stop the bombardment. Paragraph 4037. But not even a week later on the evening of 5 June 1992, the SRK launched another attack against the entire city of Sarajevo that lasted three days and killed or injured numerous civilians and damaged and destroyed civilian buildings. Scheduled Incident G2, paragraph 4055.

Therefore, based on the events around G1 the Chamber reasonably concluded that a common purpose had materialised to spread terror among the civilian population through the campaign of shelling and sniping and that Karadzic shared that purpose. This holds true regardless of when or whether the meeting occurred.

This brings me to the second point. The Chamber discussed Karadzic's few orders that civilians were not to be targeted and concluded that they did not undermine his shared intent. This was reasonable because these orders happened when Karadzic was pressured by the international community, under threat of NATO air-strikes, or when it was in his interest to do so to achieve his political goals.

These orders were not meant to stop the campaign of shelling and sniping altogether. At most, they were meant to stop it for a certain period, when the campaign was inconvenient for Karadzic. Paragraph 4927.

On other occasions, Karadzic was paying mere lip service to the protection of civilians in Sarajevo. Paragraph 4936.

The Defence argues in reply that Karadzic's orders to protect the civilian population were effective, regardless of whether they were issued following international pressure. But this misses the point.

These orders were effective as long as this was convenient for Karadzic. As soon as this reason fell away, the campaign continued.

For instance, two days after the first Markale incident of 5 February 1994, that Your Honours will hear more about in a bit, Karadzic issued an order directly to the SRK commanders and units where he threatened to hold them personally responsible for any attacks on civilians. Trial judgement 4776. And this order was effective, as the Chamber found in the same paragraph.

And why did Karadzic issue this order? Because of the outrage and pressure by the international community after the shelling of Markale market. As the Chamber found, the Bosnian Serbs faced the possibility of NATO air-strikes. Paragraph 4877 and footnote 16631. But when the political pressure decreased, the campaign continued. Footnote 16626.

This shows that Karadzic could stop the targeting of civilians when he wanted to. That the campaign of targeting civilians in Sarajevo continued for over three years means that he, the Supreme Commander, intended it to continue. Karadzic's general instruction to the protection of the civilian population in Sarajevo were, on most occasions, mere lip service. The Chamber reasoned that this was clear to all present given that they, instructions of the Supreme Commander, had no effect on the ground. Paragraph 4936.

For example, in reply the Defence points to language of Directive 1, that maltreating the civilian unarmed population is strictly forbidden. Exhibit D232. This general language was mere lip. It had no effect in besieged Sarajevo.

Mladic issued Directive 1 on 6 June 1992, in the midst of the second massive shelling incident in Sarajevo, G2. Despite this general language, the massive bombardment of the entire city of Sarajevo continued. If Karadzic had really wanted to stop the bombardment of the civilian areas in Sarajevo through this directive, he would have made this clear, like he did after the first Markale incident. There he said:

"Exclude any possibility of uncontrolled shelling. Keep the behaviour under control and sanction offences," Exhibit P846.

In contrast, Directive 1 does not mention the shelling of Sarajevo nor any sanctions.

In sum, Your Honours, the Chamber's conclusion that Karadzic shared the common purpose to spread terror among the civilian population is reasonable. It is amply supported by the evidence. Not only did the Supreme Commander not stop the campaign that was going on for over three years or hold perpetrators accountable, no, he supported and promoted those in charge and modulated the campaign to achieve his political goals.

Grounds 36 and 37 should be dismissed.

I would like to end my submissions with ground 34, the shelling of Markale market on 5 February 1994.

The Chamber found that the SRK fired the 120-millimetre shell that hit Markale market on 5 February 1994 in the middle of the day. Markale market was an open-air market where the citizens of Sarajevo bought and sold food and other goods. It's located in the old town of Sarajevo, a part of Sarajevo which the SRK frequently fired at.

Also on 5 February, many civilians were at Markale market. And when the shell exploded, it killed at least 67 and injured more than 140. Many were women and elderly.

Your Honours, the conclusion that SRK fired the shell is reasonable. The Defence today raised concerns pointing to a UN report and said that the Chamber relied on a Muslim official who said he was going to prove that it was the Serbs. The Defence is talking about Dr. Berko Zecevic, who estimated the angle of descent on which the Chamber relied. And the Chamber was reasonable to rely on Dr. Berko Zecevic's estimate.

And the angle of descent is relevant because it helps to determine the origin of fire, but there are also other factors the Chamber took into account to reach its conclusion that the SRK was responsible for the attack.

To show that the Trial Chamber's conclusion was reasonable, I will explain the relevance briefly of the angle of descent. I will then address why the Chamber was reasonable to take into account Zecevic's angle. And lastly, I will point to the other factors that the Chamber took into account to reasonably determine that the SRK fired the shell.

The angle of descent is relevant because it can be used to determine whether the shell was fired from the SRK-held territory. It's not in dispute that the shell was fired from north-northeasterly direction, 18 degrees, east from north. And to make this more visible for Your Honours, we are using a map on which Witness Zecevic had marked the direction of fire. And that's Exhibit P2317, page 17 in the B/C/S

version. And for ease of visibility, we have highlighted Zecevic's markings of the direction of fire. And Your Honours can see the direction of fire between the two outer red lines.

The confrontation line was 2.300 to 2.800 metres away. Trial judgement 4199. And we have added the confrontation line from Exhibit P1058 onto Zecevic's map. And the SRK controlled the territory outside the red confrontation line, so to the north-easterly direction.

Therefore, if the shell was fired from a distance greater than the distance to the red confrontation line, it must have come from the SRK. And this distance, and I'm getting a bit technical now, is essentially determined by two factors: The angle of descent of the shell, how steep it enters into the ground, how steep the flying curve is - the lower the angle, the further the distance to the impact; and the number of charges used - the charge is an additional propellant which adds to the speed and therefore to the distance. Up to six additional propellants or charges can be added to the mortar shell. So when one inputs the angle of descent and the number of charges into a firing table for this type of mortar, one can determine how far they fly.

As for the charges, it's not in dispute on appeal that the shell was fired with three or more charges. Trial judgement 4248.

And as for the angle of descent, the Chamber relied on the angle estimated by Zecevic: 55 to 65 degrees.

At this angle and charge 3 or more, the source of fire is well within SRK-held territory, and Zecevic visualised this on his map. He marked the possible areas of origin of fire for the different charges,

and we have highlighted those areas in blue. And we can delete charges 1 or 2, because it's not in dispute on appeal that the shell was fired with at least three charges. It then becomes clear that at this angle of descent, 55 to 65 degrees, the origin of fire is well within SRK held territory.

So the angle of descent can be calculated based on an analysis of the crater left by the shell, which brings me to the second point.

JUDGE MERON: You have five minutes, Ms. Goy.

MS. GOY: I'm sorry, Your Honour, I thought I had still 15 minutes.

JUDGE MERON: [Microphone not activated].

MS. GOY: I'm very relieved.

So the Chamber was reasonable to rely on the angle of descent of 55 to 65 degrees as estimated by Zecevic, and this was reasonable because those experienced with crater analysis confirmed that the crater was sufficiently intact to make reliable estimates and that the range estimated by Zecevic overlapped to a large extent with the estimates made by others.

The tail-fin of the shell was removed on the day of the incident. But despite this removal, the crater remained sufficiently intact to make reliable estimates of the angle of descent. The Chamber considered Defence arguments, that measurements and estimates were unreliable because the crater had been disturbed, and it reasonably concluded that the angle of descent could at least be estimated, relying on Zecevic and Hamill.

So Zecevic analysed the crater the day after the incident on the 6th of February. He had the required expertise, he was a mechanical engineer with years of experience in the weapons industry, footnote 14231. And the Chamber has explicitly addressed Defence arguments that Zecevic is not credible and dismissed them as unfounded, paragraph 4247.

Zecevic explained in detail how he measured the angle. He placed the stabiliser back into the tunnel created by the penetration. Transcript page 12168. And Zecevic confirmed that when he placed the stabiliser back into the tunnel, he positioned it in a way it should have been positioned and that there was no major deviation from its original position, transcript page 12168.

Allsop, the Defence's own expert, looked at footage of the original position of the stabiliser and footage when the stabiliser was reinserted, and he confirmed that Zecevic seemed to insert the stabiliser in a position similar to its original position. Transcript page 29461.

And Your Honours can see how it looked when the stabiliser was inserted back into the crater on 6 February 1994. This is a still from the video, Exhibit D896, at 39 minutes, 15 seconds. And I also refer Your Honours to the matching photograph, Exhibit P5951, page 1. And Your Honours can see the stabiliser fits tightly in the hole, and Your Honours will also have noticed that this hole bears no similarities with the Defence's drawing in paragraph 183 of the reply brief.

Zecevic calculated an angle of approximately 60 degrees and added a margin of error of 5 degrees on either side and therefore estimated 55 to 65 degrees. Importantly, Your Honours, Defence expert Allsop

acknowledged that Zecevic's margin of 10 degrees is a generous margin. Transcript page 29508.

And just to put this in perspective for Your Honours, 10 degrees is generous because it covers almost one third of all theoretically possible ranges. The theoretical possible range was only 36 degrees. This is because the angle had to be higher than 49 degrees to clear the buildings around the market, and it could not be higher than 85 degrees, which is the maximum possible angle. And I refer Your Honours to trial judgement 4246, Allsop at transcript 29508, and Exhibit P5922, page 5. The Chamber was therefore reasonable when it relied on Zecevic's ability to estimate the angle on the 6th of February.

But not only Zecevic on the 6th, also Commandant Hamill and Major Khan estimated the angles even on the 11th of February. Hamill had the required expertise. He was a technical advisor to the UN investigation team and had extensive knowledge of artillery weapons. Footnote 14231. Hamill explained that on 11 February the crater was not completely intact but intact enough to estimate an angle of descent. Exhibit P1994, e-court page 137.

Also his fellow commission member Khan acknowledged that while the exact tunnel could not be ascertained, he could work out an approximate angle. Exhibit P1441, page 23. And why then, as Karadzic has raised this morning, did the UN report conclude that the angle could not be reliably estimated? The Chamber does not answer this question directly, but this does not undermine the Chamber's reasoning. It was reasonable for the Trial Chamber to rely on the evidence of those

experienced with crater analysis - Zecevic and Hamill - in light of their explanation as to the state of the crater when they conducted their analysis.

More over the Chamber was reasonable to rely on Zecevic because the angles of descent estimated by Hamill and Khan independently overlap to a very large extent with Zecevic's estimate and Zecevic had the largest margin of error.

Your Honours, the original estimates of Hamill and Khan were made in a different measuring units, mils, and converted by the Chamber, and in the case of Khan, by the OTP, to degrees. And Your Honours can find the conversion formula at transcript page 28944. And I note that in the original mils, Khan and Hamill estimate the same highest range. Your Honours can find this Exhibit P1441, page 17.

The Chamber was mindful that there were also measurements or estimates by others with different angles of descent. It addressed those differences and reasonably explained why the other estimates could not be relied upon. Paragraph 4246 and 4247.

What remains are crater analysis by experts who each explained why and how they were able to estimate the angle of descent, and then independently came up with very similar estimates. Between the three, the Chamber reasonably relied on Zecevic, who had the broadest margin of error, a margin which even Defence expert Allsop acknowledged was generous.

Your Honours, the Defence makes a new suggestion in reply. Namely, that the estimates overlap because they all analysed the crater

which had been altered. This new suggestion is not supported by the evidence. Hamill, in fact, made a careful distinction between a crater which is sufficiently intact to still allow an estimate of the angle of descent and a crater that is so disturbed that no measurements are possible.

He said the crater was disturbed between his first analysis on 11 February and his second analysis on 12 February 1994, which made measurements impossible on the 12th. That's Exhibit P1441, page 25.

The Defence's new theory is also contradicted by another piece of technical evidence, the shrapnel pattern. Shrapnel pattern are the imprints left by the shrapnel on the surface when the shell explodes. They are not influenced by the disturbance of the crater. Zecevic concluded in his report that the shrapnel pattern was typical for an angle of descent of 60 degrees. Exhibit P2317, page 5. This rebuts the Defence's new theory and it further confirms Zecevic's estimate of the angle of between 55 and 65 degrees based on the crater analysis.

In addition, the Chamber reasonably concluded that the Defence fired the shell by also relying on other non-technical evidence. This brings me to my third point.

The Chamber took into account other evidence, non-technical evidence, which also indicated that the shell came from the SRK side of the confrontation line; and more particularly, SRK positions in Mrkovici. Trial judgement paragraphs 4249 and 4250. Namely, that the SRK had 120-millimetre mortars in the area of Mrkovici, which is north-northeast of Markale, in the established direction of fire. That the SRK

opened fire on the old town from positions along the direction of fire.

The Chamber referred to evidence that in 1993 the artillery regiment in Mrkovici had fired 30.000 to 40.000 rounds into the city. Trial judgement 4250, 4192. And just the night before the incident, the SRK had shelled the city centre. Footnote 14243.

The shelling of the Markale thus fit neatly in the pattern of SRK shelling.

The Chamber further considered, and reasonably dismissed, the possibility of the ABiH shelling Markale.

The Chamber noted that there was no evidence that the ABiH had mortars in the area of Grdonj, which it held in the established direction of fire, and that there was no sighting of mobile mortars on that day or shell noise coming from within the city.

And in any event, achieving an accurate hit on Markale market from a mobile mortar would be extremely difficult, bordering on impossible.

Thus in sum, the Defence failed to show that the Trial Chamber was unreasonable when it concluded that the SRK fired the shell that hit Markale market on 5 February 1994.

Ground 34 should be dismissed.

It was just pointed out to me that I said the Defence fired the shell. But, of course, that the SRK fired the shell. I apologise.

JUDGE MERON: I was just about to ask you about it.

MS. GOY: I misspoke, I apologise, Your Honours.

To conclude, Your Honours. In the Prosecution's view, the

Chamber properly found Karadzic is guilty of egregious crimes across four joint criminal enterprises. He received a fair trial and fails to demonstrate any factual or legal errors in the judgement. His appeal should be dismissed.

This ends our submission except for a small housekeeping matter. At transcript page 120, the reference to the Prlic appeal judgement paragraph should actually be the reference to paragraph 1647, unless Your Honours have any questions.

JUDGE MERON: Let me look into that.

[Trial Chamber confers]

JUDGE MERON: No, thank you very much for your argument.

MS. GOY: Thank you.

JUDGE MERON: I thank Mr. Robinson and Mr. Karadzic for his arguments, and this will be -- pardon me? And Ms. Gibson, of course. Particularly Ms. Gibson. I believe this is the end of the day.

And tomorrow, let me remind you of the schedule. We will start exactly at 9.30, and until 11.00 we will have a reply of Karadzic. 11.00 to 11.30 a pause. Appeal of the Prosecution, 11.30 till 12.00. 12.00 till 12.30 response of Karadzic. 12.30 to 12.45 reply of the Prosecution. And then Mr. Karadzic would have, should he desire, an opportunity for a personal address of ten minutes.

So on this we will rise now, and I thank you again.

--- Whereupon the hearing adjourned at 5.41 p.m., to be reconvened on Tuesday, the 24th day of April, 2018, at 9.30 a.m.