

1 Tuesday, 24 April 2018

2 [Appeals Hearing]

3 [Open session]

4 [The appellant entered court]

5 --- Upon commencing at 9.30 a.m.

6 JUDGE MERON: Please be seated.

7 Before starting today's proceedings, may I ask everybody who will
8 be pleading not to resort to speed reading. It's very difficult for the
9 interpreters. I realise that you have very limited time and you have a
10 heavy mandate, but please let's bear in mind the interpreters. There
11 were some real problems yesterday, so let's try to avoid it today.

12 So let us now start today's proceedings.

13 Registrar, will you please call the case.

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

16 JUDGE MERON: Appearances for the parties.

17 Prosecution.

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

21 JUDGE MERON: Now counsel for Mr. Karadzic.

22 MR. ROBINSON: Good morning, Mr. President, members of the
23 Appeals Chamber, Peter Robinson, along with Kate Gibson and
24 Goran Petronjevic for Radovan Karadzic.

25 JUDGE MERON: And, Ms. Gibson, I'm sorry I did not mention you

1 yesterday.

2 MS. GIBSON: No offence taken at all, Your Honour.

3 JUDGE MERON: I apologise.

4 Now before starting, before going to Mr. Karadzic, I would like
5 to ask two questions each, one of each of the two parties.

6 Let me start from Defence. Yesterday the Prosecution argued that
7 because of the role of the legal advisor of Mr. Karadzic - a very
8 important role, if I may add - the Chamber had no special responsibility
9 to ensure his rights were protected. I mean, his right of
10 self-representing appellant and accused earlier on. Do you agree with
11 the Prosecution? That's the question for the Defence.

12 And now I turn to the Prosecution. You will recall my question
13 yesterday concerning whether the Trial Chamber relied on the large number
14 of adjudicated facts to enter convictions.

15 Ms. Gibson stated that there were 36 convictions for the
16 Scheduled Incidents that relied solely or in significant part only on
17 untested evidence. I realise that in your argument yesterday you
18 referred to some aspects of that, including that those determinations
19 were not made solely on the basis of the untested evidence, but I would
20 like a fuller response from the Prosecution to the specific points made
21 by Ms. Gibson yesterday.

22 Now both Defence and Prosecution can simply address these
23 questions when they have the floor.

24 So we will now turn to Mr. Karadzic for his reply to 11.00.

25 MR. KARADZIC: [Interpretation] Thank you. Good morning,

1 Your Excellencies.

2 JUDGE MERON: Ms. Gibson.

3 MS. GIBSON: Good morning, Mr. President and Your Honours.

4 I will be commencing our submissions in reply to the
5 Prosecution's response and to our appeal on the question of the fair
6 trial issues. After which, Mr. Robinson will address you on the question
7 of Srebrenica, and then again President Karadzic on issues relating to
8 Sarajevo and the municipalities.

9 I'd like to start, I think, with your question from this morning
10 about addressing the Prosecution's submission that the Trial Chamber had
11 no special responsibility to ensure the fairness of these proceedings
12 because during the trial President Karadzic was very ably assisted by a
13 legal advisor.

14 I would disagree that any suggestion can ever be made that the
15 Trial Chamber's duty to ensure a fair trial would ever be reduced or
16 mitigated because of the scope of or quality of the legal representation
17 and the assistance that he is receiving. What is clear is that when an
18 accused elects to represent himself, as is his right, there have been
19 various procedures put in place at the different trials as part of the
20 Trial Chamber's duty to ensure that the trials are fair, even though the
21 accused has chosen this particular course of representing himself.

22 In the Milosevic case, for example, it was an amicus curiae to
23 assist Mr. Milosevic; in the Stankovic case, for example, a special
24 counsel was put in place to cross-examine particularly vulnerable
25 witnesses in the place of the accused. In this case, the Trial Chamber

1 made a decision, which was upheld on appeal, that President Karadzic
2 would be assisted by a legal advisor. This in no way meant that the
3 Trial Chamber's right to ensure the fairness of the proceedings was
4 mitigated.

5 The point yesterday by the Prosecution, as I understood it, was
6 raised particularly in respect of the argument of parliamentary
7 privilege. The Prosecution is arguing on this appeal that the
8 Appeals Chamber has no authority to decide that question because
9 President Karadzic didn't squarely put the issue before the Trial Chamber
10 in the trial phase.

11 Our argument in our appeal brief, and we only went as far as to
12 say, the Appeals Chamber certainly has the discretion to consider points
13 that hadn't been raised at trial, and in the past they have done so, in
14 particular, when an accused has been self-representing. That is not to
15 indicate that President Karadzic wasn't ably assisted at trial. It was
16 just a reference to the fact that in other cases the Appeals Chamber
17 itself has said: We will address and engage with this issue, and one of
18 the many reasons we will is that the accused was self-represented. Our
19 submissions only went to that extent.

20 JUDGE MERON: Thank you.

21 MS. GIBSON: If I could turn then firstly to the question of
22 self-representation. The Prosecution argued yesterday that
23 President Karadzic's, and I quote, "only rationale for testifying in
24 narrative form was to save time." That's at transcript of yesterday,
25 page 172, lines 7 to 8. This is incorrect. Twice President Karadzic

1 made the link between narrative testimony and self-representation.

2 In his filing of 18 December 2003, which is referenced in
3 footnote 9 of our appeal brief, in which he confirmed that he wanted to
4 testify in narrative form, he cited to a US Court of Appeals decision
5 which affirmed that a self-represented accused could testify in narrative
6 form. His legal advisor then made the same link to the Trial Chamber on
7 the 20th of February 2014, where he said:

8 "You have essentially imposed me as his counsel for the purposes
9 of his testimony."

10 And I reference transcripts T45935 referenced at footnote 16 of
11 our appeal brief. To say that President Karadzic's only rationale for
12 testifying in narrative form was saving time is not correct.

13 The Prosecution is also wrong to criticise President Karadzic on
14 the basis of, and I quote, "he never even responded to the Prosecution's
15 written submissions on this topic," with reference to page 171, lines 17
16 to 18 of yesterday's transcript.

17 President Karadzic had 14 days to respond to the Prosecution's
18 submissions, the Trial Chamber's oral decision was rendered six days
19 after the Prosecution's filing, and you have to remember that this all
20 happened in the very dying days of the trial. And after five years of
21 evidence, the Trial Chamber's foot was firmly on the accelerator.
22 President Karadzic can't be blamed for the Trial Chamber's failure not
23 wait the time-period for him to respond.

24 The Prosecution was also incorrect yesterday when it said that it
25 would, and I quote:

1 "... add that the Defence this morning incorrectly claimed that
2 we made no reference to Karadzic's self-representation ... in our trial
3 submission," page 171, line 25, to page 172, line 1.

4 This again is incorrect. Our submission, which I will repeat
5 verbatim, is: No where in this filing did the Prosecution acknowledge
6 that in imposing counsel on President Karadzic for the purpose of his
7 testimony, they would be restricting a fundamental right of the accused.
8 Of course the Prosecution mentioned self-representation. That's what the
9 issue was about. Everyone was alive to this question. Defence had
10 raised it. The Prosecution had responded to it.

11 Our point is what was missing from the discussion and what was
12 never done was a balancing of the restriction of this fundamental right
13 in the manner laid down by the Appeals Chamber in Milosevic, and I'll
14 make reference to the Milosevic case's decision on interlocutory appeal,
15 the Trial Chamber's decision on the assignment of Defence counsel, from
16 the 1st of November 2004, paragraphs 17 to 19.

17 Turning then to disclosure. The Prosecution's submissions
18 yesterday on disclosure were a textbook example of the perpetrator
19 blaming the victim. There is no question that President Karadzic was
20 overwhelmed by disclosures during the trial that should have taken place
21 in pre-trial. And it's amazing that the Prosecution can assert as, an
22 argument, well, it's not a half million pages of delayed Rule 68
23 disclosure that was late. It's only a quarter of a million pages of
24 disclosure that was late.

25 Even if that's right, which we dispute for the reasons in our

1 appeal brief, and even if President Karadzic was given four months to
2 review this delayed disclosure, that's still over 2.000 pages for him to
3 read and analyse per day. But that's not even close to being the point.

4 President Karadzic should have had this before the trial started.
5 The accused has a right to prepare his Defence based on a full picture of
6 the Prosecution's evidence. Inculpatory and exculpatory, incriminating
7 and exonerating. The Prosecution's admission that it was only searching
8 for exculpatory evidence proximate to a witness's testimony, which it
9 didn't dispute its submissions, is indefensible.

10 As early as the Furundzija case in 1998, it was recognised that
11 an accused can suffer prejudice if he proceeds on a trial strategy that
12 was developed pre-trial without the benefit of proper disclosure of the
13 Prosecution's evidence. And I make reference to the Furundzija decision,
14 referencing footnote 72 of the Karadzic reply brief at paragraph 19.

15 My learned friend was also wrong to assert that the Defence
16 suggested yesterday that, and I quote, "the Trial Chamber sat back and
17 did nothing," the reference is at page 173, lines 23 to 24. No such
18 suggestion was made. Yesterday, we pointed out the remedies that the
19 Trial Chamber took but said that they were insufficient because they had
20 no impact on the Prosecution's case and did nothing to stem, let alone
21 stop, the disclosure violations, the most recent of which revealed itself
22 last Friday, April 20, 2018, when the Prosecution disclosed yet another
23 untimely record of a witness interview that was dated 2003 and is nine
24 years late.

25 Turning then adjudicated facts. The Prosecution's response

1 yesterday on this ground failed to engage in any way with the Defence
2 position on appeal that the volume of adjudicated facts made this trial
3 unfair. Again, the Prosecution simply repeats that the case law has
4 repeatedly affirmed that the adjudicated facts regime is consistent with
5 the rights of the accused.

6 We agree that's what the case law says. That's why we're here
7 trying to change it. And if we can't change it, we can at least
8 demonstrate how regimes that can be consistent with the rights of the
9 accused can also be implemented in a way that is not. That is manifestly
10 unfair. The Prosecution's submission did not engage with this central
11 point on ground 7.

12 As to General Mladic's testimony. Again, the Prosecution
13 misrepresents President Karadzic's submissions by saying that the Defence
14 submitted that the Prosecution could have set up a firm Chinese wall.
15 The reference is at page 180 of yesterday's transcript, lines 14 to 15.
16 We never said that. We have no idea if the Prosecution can set up a firm
17 Chinese wall. We're saying that the Prosecution said in Stanasic that it
18 could. And now if it's saying that it can't, then it should reorganise
19 itself so that it can.

20 And we agree with the Prosecution that, and I quote:

21 "Karadzic's right to present a Defence does not translate into an
22 absolute right to elicit every piece of potentially relevant evidence."

23 The reference at page 183, lines 5 to 7. But this wasn't a piece
24 of potentially relevant evidence. This was General Mladic. For 20
25 years, the Prosecution's narrative of these events has had

1 President Karadzic and General Mladic hand in hand. Mladic's words and
2 actions and notes in his diary and even hearsay evidence of gestures he
3 apparently made were deemed relevant and important and probative enough
4 to make adverse findings against President Karadzic throughout the
5 judgement and to base the form of his convictions.

6 This was not a piece of potentially relevant evidence. This was
7 seminal and it was available and it should have never been kept out of
8 the record of this case because of the structural integration of the
9 Office of the Prosecutor.

10 Concerning parliamentary privilege. The Prosecution still hasn't
11 offered a reason why parliamentary privilege should not apply in
12 international proceedings. Again yesterday it was emphasised that the
13 Appeals Chamber doesn't have the right to decide this.

14 We argued yesterday, and again in our briefs, why in our
15 submission the Appeals Chamber both can and should. But the Prosecution
16 only gave you a partial picture of President Karadzic's legal advisor's
17 submissions before the Trial Chamber on this issue.

18 Yesterday my learned friend made reference to transcript T43094
19 to T43095. And she is correct that the Trial Chamber asked
20 President Karadzic 's then-legal advisor whether the Defence was claiming
21 a privilege in respect of Krajisnik's parliamentary statements that would
22 preclude the Trial Chamber from admitting them in this case, and it is
23 correct that he said, "No, not at all." And so the Prosecution submits
24 that this was a narrow decision that pertained only to whether
25 Krajisnik's statements, whether Krajisnik could be questioned on these

1 statements in this trial.

2 But we invite the Appeals Chamber to continue reading, and
3 Mr. Robinson continues:

4 "As long as he," meaning, Mr. Krajisnik.

5 "As long as he is not questioned about that, then I don't think
6 in this context the privilege is violated by admitting it against
7 Dr. Karadzic. But if it were to be a trial of Mr. Krajisnik, it might be
8 a different situation."

9 And I refer to transcript of the trial, 43095.

10 The Defence never said that a parliamentary privilege wouldn't
11 prevent the admission of a parliamentary statement in an accused's own
12 trial. And in fact, in this response he indicated the opposite. But if
13 it's unclear whether or not this was a general ruling or a ruling
14 specific to Krajisnik, then let's look at the Trial Chamber's language.
15 And I refer to T43150, where the Trial Chamber said:

16 "While immunities and privileges may protect parliamentary
17 statements in domestic jurisdictions, this does not apply in
18 international criminal proceedings."

19 On a plain reading, the Trial Chamber is saying this, being the
20 protection offered by parliamentary privilege, does not apply in
21 international criminal proceedings. This is definitive, it's broad, it's
22 general. But in any event, even if the Appeals Chamber finds that
23 President Karadzic didn't raise the issue squarely at trial, he is
24 raising it now on appeal. The Appeals Chamber has a discretion to
25 consider it.

1 Turning then briefly to ground 31, a conviction of an accused
2 cannot be based solely or in a decisive manner on untested evidence. The
3 Trial Chamber in this case convicted President Karadzic of 15
4 Scheduled Incidents based on solely or in a decisive manner on evidence
5 admitted under Rule 92 bis. It convicted him of six scheduled incidents
6 based solely or in a decisive manner on adjudicated facts. It convicted
7 him of another 15 scheduled incidents based solely or in a decisive
8 manner on a combination of Rule 92 bis and adjudicated facts. And I'd
9 refer to citations in our appeal brief at paragraphs 554, 555, and 556.

10 Yesterday the Prosecution said that each of the
11 Scheduled Incidents, established by Rule 92 bis, were corroborated by
12 other evidence, and it referred to its table at paragraph 119 of its
13 response brief in which it purports to list all this evidence that
14 apparently corroborates the untested 92 bis evidence.

15 This table misses the point for two reasons. Firstly, much of
16 the corroborated evidence that's cited is just general patterns of
17 conduct in certain municipalities. It doesn't help in determining
18 whether a specific Scheduled Incident occurred or who the perpetrators
19 were or if there's any link to the accused. That's why it's not listed
20 as corroborative in the judgement. The Prosecution pointed to it now, in
21 2018, as being in its view corroborative, doesn't engage with the central
22 error, which is that the Trial Chamber didn't find it or didn't rely on
23 it or didn't consider that it was corroborative.

24 But in any event, this table doesn't establish that the Trial
25 Chamber didn't rely on untested evidence solely or in a decisive manner

1 to form the basis of a conviction. If you take yesterday's example from
2 the Prosecution, the Prosecution referred to Scheduled Incident A14.2 and
3 said, yes, the Trial Chamber did rely on Ferid Spahic's untested 92 bis
4 evidence. But according to the Prosecution, it also relied on a variety
5 of other evidence which corroborated Spahic's account.

6 The findings on Scheduled Incident 14.2 can be found in
7 paragraphs 1080 to 1093 in the judgement. In those paragraphs, the Trial
8 Chamber's finding cite to 55 footnotes. 55 references to the evidence.
9 Of these 55, 55 refer to Spahic's Rule 92 bis evidence, four footnotes
10 refer to both Spahic's untested 92 bis evidence in a combination with the
11 variety of the evidence that the Prosecution pointed to you yesterday.

12 So the Trial Chamber convicted President Karadzic on
13 Scheduled Incident 14.2, relying in a decisive manner on this statement.
14 For this conviction and in fact for each of these 36 convictions raised
15 under ground 31, this was the case.

16 Moving lastly to ground 29 and the impact of the decision of the
17 Supreme Court of the United Kingdom in the Queen v Jogee on JCE III of
18 the ICTY. Of course we agree with the Prosecution that the Appeals
19 Chamber has consistently upheld the ICTY's formulation of JCE III,
20 including just a few months ago in the Prlic appeal. In none of these
21 cases was the Appeals Chamber asked to reconsider this specific aspect of
22 the doctrine in this court in light of the reasoning in the Queen v
23 Jogee. That's what we've asked the Appeals Chamber to do in this case.

24 With your leave, Mr. President, I will turn the floor to lead
25 counsel to continue our arguments in reply.

1 JUDGE MERON: Thank you, Ms. Gibson.

2 Mr. Robinson.

3 MR. ROBINSON: Thank you, Mr. President. First of all, I owe an
4 apology to the interpreters and the court reporter. I was probably the
5 biggest offender yesterday of the speed. I have my sign.

6 JUDGE MERON: You were only one of them.

7 MR. ROBINSON: I have a sign this morning for my benefit, I'm
8 going to try to remind myself of it. But I have to tell you, I've got a
9 lot of adrenaline going, so I can't promise but I'll do my best.

10 Let me poke 20 holes in the Prosecution's argument for Srebrenica
11 and then I'm going to sit down.

12 1. The Prosecution said that there was false premise that the
13 Karadzic-Deronjic intercept was important and that it was primarily used
14 to mark the timing. That's at transcript page 203.

15 That's not how we read the judgement, and we're not alone. Days
16 and weeks following the Trial Chamber's judgement, something remarkable
17 happened. Along with the usual celebratory accolades from NGOs and
18 victims groups heralding President Karadzic's conviction, three articles
19 appeared from respected academics expressing disquiet about the thin
20 evidence used to convict President Karadzic of genocide in Srebrenica.

21 Among them were Marko Milanovic of the University of Nottingham,
22 Professor Kai Ambos from Goettingen University in Germany, and Professor
23 Milena Sterio of Cleveland Marshall Law School in the United States.
24 Their criticism of the judgement, which they saw hinged on the
25 interpretation of that cryptic intercept, are referred to in our opening

1 brief in paragraphs 733 and -34 and 771.

2 And Professor Sterio subsequently wrote an article published in
3 Emory Law Review, in which she suggested that since it was so difficult
4 to prove mens rea in President Karadzic's case, that perhaps courts ought
5 to simply admit that it will apply a relaxed standard when it comes to
6 high-ranking officials such as President Karadzic. You can find that
7 article at 31, Emory International Law Review, 271.

8 2. The Prosecution says that President Karadzic's praise for
9 those who carried out the Srebrenica operation shows that he knew of the
10 executions. Page 204 of the transcript.

11 This is senseless. President Karadzic fired General Mladic two
12 weeks after Srebrenica. At the assembly session in early August, he had
13 to justify firing General Mladic. If he knew that Mladic had led an
14 execution of 5.000 prisoners, he had more than ample reason to fire
15 General Mladic or even to convince General Mladic to resign. That was
16 the testimony of Defence Minister Milan Ninkovic at page T40510. But
17 President Karadzic didn't do that, because he had no knowledge of the
18 executions.

19 Incredibly, President Karadzic tried to take credit himself for
20 the Srebrenica operation. In a television interview of the 4th of
21 August, he said that General Krstic had planned the Srebrenica operation
22 in front of him. And in a speech at the assembly on the 15th of October,
23 President Karadzic said that he personally supervised the plan for
24 Srebrenica.

25 President Karadzic is not stupid. These efforts to personally

1 take credit for this Srebrenica operation are inexplicable if he had
2 knowledge of the executions.

3 3. The Prosecution says that President Karadzic received written
4 reports from the field during the Srebrenica operation. Yes, he did. He
5 received a daily report from the army Main Staff, regular reports from
6 the army's security service led by General Tolimir, and regular reports
7 from the Ministry of Interior. The Prosecution has those reports. There
8 is not even a single mention, not even a hint, that the prisoners had
9 been executed. If President Karadzic had been in on it or ordered the
10 executions, there was no reason to keep this information out of the
11 reports being sent to him.

12 4. The Prosecution says that President Karadzic received a
13 report from a police commissioner Dragomir Vasic, who was in the field,
14 about the Srebrenica operation. That's page 208. Yes, he did. The
15 Prosecution has that report. It makes no mention or even hint of
16 executions.

17 5. The Prosecution says President Karadzic received an oral
18 report from a field commander about the progress of the column of men
19 leaving Srebrenica. Yes, he did. But there is not a shred of
20 evidence that that report included even a hint that the prisoners were
21 being, would be, or had been executed.

22 6. The Prosecution says that President Karadzic received oral
23 information on the executions from General Mladic in a telephone call of
24 13 July. There were three Americans who were present during that call,
25 one who listened on the other line. All three of them testified there

1 was no discussion whatsoever about the prisoners, and the idea that
2 prisoners would be executed was simply incompatible with what they had
3 heard. That's T26080 through -82, T27406, and Exhibit D2905,
4 paragraphs 32 and 34.

5 7. The Prosecution says that President Karadzic was told about
6 the execution by deputy minister of interior Tomislav Kovac with whom he
7 met on the 13th and 14th of July. It's on page 207. But Kovac testified
8 that he never informed President Karadzic of any executions because he
9 didn't have information about them. That's D3960, paragraphs 129, and
10 124; and page 42792 of the transcript.

11 8. President Karadzic, according to the Prosecution, was told
12 about the executions by Zvonko Bajagic, a member of the Bosnian Serb army
13 with whom he met on evening of 14 July. But Bajagic testified that he
14 never informed President Karadzic about any executions. That's D3853,
15 paragraph 36(d).

16 9. The Prosecution says that President Karadzic was told about
17 the executions by Milenko Karisik, his director of national security with
18 whom he met on the 16th of July. But Karisik testified that he didn't
19 know of any executions and never informed President Karadzic of them.
20 That's Exhibit D3749, paragraph 63.

21 10. The Prosecution says that President Karadzic was told of the
22 executions by Deronjic on the 14th of July and must also have been
23 informed by the leaders of Srebrenica municipality with whom he met later
24 that day. But there's no evidence from Deronjic on what was said at that
25 meeting. In fact, three days later the on 17th of July, Deronjic faxed

1 President Karadzic a statement, signed by Robert Franken of UNPROFOR and
2 Mr. Mandzic, one of the Muslims who had been in Srebrenica, that the
3 evacuation had been conducted smoothly in accordance with the
4 Geneva Conventions and international humanitarian law. That's P4185.

5 And the leader of the delegation who attended the follow-on
6 meeting, Dane Katanic, and Assembly President Momcilo Krajisnik who also
7 attended the meeting, both testified that there was not even an inkling
8 from that long meeting that any prisoners from Srebrenica had been
9 executed. That's D3561, paragraph 8 for Katanic; and page 43352 of the
10 transcript for Krajisnik.

11 And the Prosecution now tells us that Krajisnik was the other
12 president referred to by Beara when he mentioned two presidents. That
13 will be a shock to Krajisnik. He was prosecuted for years at this
14 Tribunal and never charged with having anything to do with Srebrenica.
15 No one even put that to him at our trial when he testified as a Defence
16 witness, that he had ordered getting rid of the prisoners of Srebrenica.
17 That's an absolutely baseless speculation and ought to raise cautionary
18 flags to you as to how far the Prosecution is willing to substitute pure
19 speculation for fact.

20 11. The Prosecution claims that President Karadzic promoted
21 General Krstic on 13th of July. Yes, he did. But there is no evidence
22 he had any knowledge of any killings, which in any event had not started
23 yet. The general who brought Krstic's papers for President Karadzic to
24 sign on the 13th of July, Petar Skrbic, testified that there was no
25 discussion of execution of prisoners.

1 In fact, we tried to call everyone who had any contact with
2 President Karadzic during those days of 13 through 17 July to testify.
3 Those included: Persons on President Karadzic's immediate staff, such as
4 his national security counsellor, Gordan Milinic; his military advisor,
5 General Bogdan Subotic; his political advisor, John Zametica; and the
6 Secretary-General of his cabinet, Mile Dmicic.

7 It also included persons who were recorded in
8 President Karadzic's calendar as having met with him during 14-19 July,
9 including: President Krajisnik from the State Assembly; State Security
10 Director Dragan Kijac; Minister of Defence Milan Ninkovic; State
11 Secretary of the Ministry of Defence Dragan Kapetina; Vladimir Matovic,
12 an aide to the former president of Yugoslavia; American journalist, Robert
13 Djurdjevic; American professor, Srdja Trifkovic; Canadian businessman,
14 Milan Lesic; and French journalist, Yves Bataille.

15 All of them testified that President Karadzic gave no indication
16 that he knew prisoners would be, were being, or had been executed.

17 Even if the President had contact with people like Deronjic who
18 did have knowledge of the executions, you can't just assume that they
19 informed him of the killings. In the Krstic case, the Appeals Chamber
20 reversed a finding based on an inference that because a person had been
21 in contact with someone who had knowledge of the killings that person
22 must have shared that knowledge. The Trial Chamber had inferred
23 General's Krstic knowledge of the plan to execute the prisoners due to
24 his many contemporaneous contacts with General Mladic. The Appeals
25 Chamber reversed that finding, holding that, and I'm quoting:

1 That declaration of war said nothing about excavations and
2 applied only to Srebrenica and Skelani municipalities. The reference to
3 the forces of the Drina Corps are only because those municipalities were
4 in their zone of responsibility --

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

7 MR. ROBINSON: Sorry. That language didn't expand the
8 declaration of war to Zvornik municipality, and I invite you to look at
9 Exhibit P4553, the declaration of war.

10 13. The Prosecution says that that declaration of war was issued
11 after Karadzic's meeting with Deronjic on the 14th of July and he had
12 informed him of the executions. That's also wrong.

13 The republic communications centre log shows that that
14 declaration was issued and distributed at 11.55 a.m. on the 14th of July.
15 That's Exhibit P2803, at line 340. Deronjic's meeting with
16 President Karadzic didn't even start until 12.40 p.m., according to
17 President Karadzic's calendar. That's Exhibit P2242 at page 91.

18 14. The Prosecution says Karadzic lied to David Frost on the
19 17th of July when he was asked about 15.000 men missing from Srebrenica.
20 Page 211.

21 In fact, President Karadzic's interview with David Frost confirms
22 that he had no knowledge of the prisoners being executed. When Frost
23 asked him about 15.000 men missing from Srebrenica, President Karadzic
24 answered that they were in this large column and many of them would reach
25 Muslim territory "today or even tomorrow," and that "they would soon be

1 accounted for." That's P5235 at pages 2 and 3.

2 Now had he known those prisoners had been executed, it would be
3 foolish and counterintuitive to claim that the people he knew to be dead
4 would be showing up today and tomorrow.

5 15. The Prosecution says that President Karadzic spared the
6 local UN staff to avoid international scrutiny. That's ridiculous.

7 These local staff had been in Potocari. They had seen the
8 separation of the men and may have even seen some of the executions
9 around that white house. If President Karadzic knew of the executions
10 and the plan to execute the men, he had no reason to release these
11 people.

12 16. The Prosecution says that President Karadzic knew of the
13 reburials. Page 211. There's no evidence whatsoever of that, and they
14 didn't cite any in their briefs or in this hearing.

15 While the Prosecution was able to find an authorisation signed by
16 General Mladic for the requisition of fuel used in the reburials, they
17 never found a single piece of evidence that provides any indication
18 whatsoever that President Karadzic knew of any digging up of graves or
19 reburials.

20 17. The Prosecution says that since prisoners ended up in
21 Zvornik, Karadzic's reference to "somewhere else" in his conversation
22 with Deronjic must have referred to Zvornik. That's reading history
23 backwards.

24 I gave you the example yesterday of an allegation that the
25 president and Prosecutor Brammertz discuss the merits of the Seselj case

1 in the lobby. Well, Seselj ended up having his acquittal reversed and
2 being convicted. Would that make the allegation that the president and
3 Prosecutor had been discussing the merits of the case any more true?

4 18. The Prosecution says that the intercept corroborates
5 Nikolic. How would he know that Deronjic had talked to Karadzic earlier
6 that day? That's at page 216.

7 The answer is that Nikolic got that intercept in disclosure long
8 before he made the plea bargain and decided what he would tell the
9 Prosecution. Nikolic arrived in the Tribunal on 2 April 2002 as a
10 defendant and made his plea agreement more than a year later in May 2003.

11 19. The Prosecution said that the Chamber used the utmost
12 caution in evaluating Nikolic's evidence. I don't find a single place
13 where they decline to rely on Nikolic's evidence.

14 They even found that his testimony about Mladic's hand gesture,
15 which Mladic's own Trial Chamber rejected, was true. And they found that
16 Nikolic had informed Colonel Blagojevic of the killings, a fact that
17 Blagojevic's own Trial Chamber rejected.

18 And the Prosecution hasn't pointed to another case in all of
19 international criminal jurisprudence where someone was convicted on the
20 uncorroborated testimony of a participant in a crime that had made a plea
21 bargain with the Prosecutor. President Karadzic's case stands alone in
22 that respect.

23 20. The Prosecution discounts the references we've made to the
24 judgements of other trial chambers, like Mladic, Blagojevic, and Krstic,
25 as not being applicable to this case.

1 It's a strange position for a Prosecution that urged our Trial
2 Chamber to take judicial notice of almost 3.000 adjudicated facts from
3 other judgements because those findings were so reliable. Those
4 judgements are instructive. You have to decide what a reasonable trial
5 chamber would have done, and what better yard-stick to measure
6 reasonableness than what other trial chambers have done under similar
7 circumstances?

8 And other trial chambers have uniformly found it was unsafe to
9 base a finding on the responsibility of the accused on the testimony of
10 Momir Nikolic. The Prosecution's effort to dress up President Karadzic's
11 conviction as something more than Momir Nikolic's uncorroborated
12 testimony are smoke and mirrors.

13 This is an unsafe conviction. It should be reversed.

14 Now, I'll tell you that I have concentrated all my efforts in
15 this appeal on this one ground, much to Ms. Gibson's chagrin. And I have
16 done that because I wanted to emphasise it because it's important. If
17 you do nothing else in this appeal, you have to overturn this conviction.
18 This one for the ages. Some day, some intercept from the United States
19 or some other information will come about and prove conclusively that
20 President Karadzic didn't know anything about these executions.

21 But in the meantime, you have to decide the case on record that's
22 before you, and it would be a miscarriage of justice if you decide in
23 that case that this record was sufficient and safe upon which to convict
24 President Karadzic of genocide.

25 Thank you.

1 JUDGE MERON: Mr. Robinson, you really made a valiant effort to
2 present an argument as you did. It's a difficult argument to make for
3 you. You are, in fact, suggesting that there was a very efficient and
4 overarching conspiracy of silence by all the senior officers concerned to
5 hide things from President Karadzic, despite his mandate, his efficient
6 control of the operatives, et cetera, et cetera.

7 You are suggesting that everybody, including General Tolimir, and
8 we know the judgement which we issued on him, participated in this
9 conspiracy of silence, if I may call it.

10 Wouldn't senior officers have any interest in creating a record
11 of incriminating evidence either of what had transpired in writing or
12 orally? Were there not multiple ways in which senior officers could
13 communicate to Mr. Karadzic what was planned, A; and, B, what happened
14 later?

15 It's very difficult propositions that you advanced.

16 MR. ROBINSON: Yes, I understand that point, Mr. President, that
17 it's hard to believe that President Karadzic would not have been informed
18 by somebody of these executions. But, in fact, there's a background to
19 that.

20 And that is that in 1993 in April when the military had tried to
21 take Srebrenica and General Morillon was there trying to make it a safe
22 zone, it was President Karadzic that stopped that. And they were angry
23 with him for that, and there has been evidence in our record of that.
24 And the relationship between President Karadzic and those military
25 leaders - Mladic, Tolimir and others - was not very good and very

1 trusting as of 1995. In fact, there is evidence President Karadzic
2 dismissed Tolimir and Beara even before the Srebrenica events.

3 So while in a normal military and Commander-in-Chief setting you
4 would expect them to work hand in glove, there is ample evidence
5 in the record that that wasn't the case here. And that's why while your
6 proposition is logical, it doesn't actually fit the individual facts of
7 this particular case.

8 Thank you.

9 [Trial Chamber confers]

10 JUDGE MERON: Judge Sekule has a question.

11 JUDGE SEKULE: Thank you, Mr. President.

12 I want to understand -- Mr. Robinson, as well as the Prosecution,
13 I just want you to help me to understand: Is there any dispute with
14 regard to the alleged execution that may have happened between 13 July -
15 is that so? - 13th July to 17th July is [indiscernible], in particular,
16 in Zvornik?

17 What is the alleged number of the people alleged to have been
18 executed or killed in that area? Can somebody help me? I'd like to be
19 interested to know the number, without inferences anywhere. But I just
20 want to know what's the position of the parties and the evidence with
21 regard to that aspect alone during that period of time. Number, if
22 execution did happen. How many during that period of time? And it might
23 help me to understand.

24 MR. ROBINSON: Yes, thank you very much, Judge Sekule. I believe
25 the number is 5.113. That's what the Trial Chamber found the number of

1 people executed after the fall of Srebrenica. We disputed that during
2 the trial, but we don't raise it as an issue on appeal and it's not part
3 of our arguments on appeal here.

4 Perhaps the Prosecution might want to add to that.

5 JUDGE SEKULE: Prosecution.

6 MS. BAIG: Thank you, Judge. The Prosecution agrees that in the
7 trial judgement they found a very conservative number of 5.115 bodies.

8 JUDGE SEKULE: Thank you.

9 JUDGE MERON: So, in fact, the answer given by both Defence and
10 the Prosecution is that there is no dispute that at least this number was
11 involved.

12 JUDGE SEKULE: And that's what I wanted to know.

13 JUDGE MERON: That's correct, isn't it?

14 MR. ROBINSON: Yes, for the purposes of this appeal, that's
15 correct.

16 JUDGE MERON: Thank you, Mr. Robinson.

17 [Trial Chamber confers]

18 JUDGE MERON: [Microphone not activated] Mr. Karadzic now.

19 MR. KARADZIC: [Interpretation] Good morning to everybody. Thank
20 you, Excellencies.

21 If I may just add to what has already been said. I wondered and
22 asked myself how was it possible for this to be hidden for so long, such
23 a drastic incident.

24 One of the perpetrators revealed here in the courtroom why.
25 Drazen Erdemovic, a Croat in our military ranks, who was assigned to do

1 that, an alleged colonel who was leading that, already in May was
2 dismissed from the army. If it was that person, I dismissed him not
3 because of suspicions for a crime but due to ideological missteps. This
4 was not committed by any unit. This was done by ad hoc gathered groups
5 at some level.

6 I asked Erdemovic how was it possible that this was not known?
7 Who did you speak to somebody about this? And he said only with two
8 associates who would not speak about that to Pelemis, meaning one of the
9 commanders of the most immediate detachment.

10 How did this happen? Why? There was fear, shame, confusion, and
11 when I ordered on the 1st of April 1996 for the Military Prosecutor to
12 investigate everything, he replied: I investigated. Nobody knows
13 anything over there or does not wish to know. And this document exists
14 in the case file.

15 Well, this much about Srebrenica. I am in awe of the skill of
16 Mr. Robinson, and I would not wish to add anything further.

17 I would briefly like to comment on what was said by the
18 Prosecution yesterday. I am grateful to the learned ladies from the
19 Prosecution for repeating completely and strengthening the pattern in
20 which the Prosecution worked in this case. Everything was upside down,
21 the wrong way up, with a lot of speculation and various claims to which
22 we should just bow our heads and accept guilt.

23 However, even though this was their defence yesterday, the
24 decision by the Trial Chamber and justification of the judgement, there
25 are a few things that I would like to look at again.

1 It was said that I allegedly gave insincere explanations to my
2 collocutors from the United Nations that our operatives operating the
3 artillery were inexperienced. However, there is a report by
4 Tadija Manojlovic, the artillery commander of the Sarajevo-Romanija
5 Corps, which is ascribed to me as well. I'm being charged for that
6 statement. He said also:

7 "In the beginning, we didn't have any experts. We did not have
8 trained crews for weaponry, so there were mistakes and a waste of
9 ammunition."

10 A large number of civilians at the Markale market on the 5th
11 February were casualties in an empty market where you couldn't see
12 anything on the stalls. And there were 500 people there. How is this
13 possible? Why were they there?

14 One of the unusual things there was, is: How was it possible
15 that among those killed, there wasn't one single salesperson? There had
16 to be at least two or three, or an average two per stall, a person who
17 was selling their goods. Not one single salesperson was reported as
18 being killed.

19 Measuring the angle of descent by diagrams on the ground is
20 laughable. Berko Zecevic is an interested party in this. He's a Muslim
21 official, an official in that army. And so if by an illustration or a
22 drawing of fragments on the surface one would be able to determine the
23 direction and the angle of descent, then nobody would have any need to
24 preserve the channel and in that way establish the angle of descent.

25 It was said that said that a Serb artillery person confirmed that

1 30- to 40.000 shells were fired at the city from his firing position, and
2 that there were many such firing positions all around Sarajevo, both
3 Bosniak and Serbian ones. Had that many shells been fired from just one
4 firing position, Sarajevo would look worse than Dresden. The crews went
5 from one hill to the next, and then both sides would fire at the
6 trenches, the lines, or possibly infantry in the process of attack. This
7 mustn't be glossed over, and the Trial Chamber should not be put in a
8 position to be horrified by the number of 30- to 40.000 shells from one
9 place.

10 According to what was reported, there was an average of 2- to
11 3.000 shells. 2.000 shells in 1.400 days, this would come to --
12 actually, you can see for yourself. This would amount to millions of
13 shells fired. Sarajevo would have been razed to the ground had it been
14 exposed to even 10 per cent of that. These shells were moved from hill
15 to hill. Their guys and our guys fired at the lines and at the firing
16 positions.

17 Concerning the JCE, it was said yesterday that Bosnia was on its
18 way to independence. Bosnia had no such right, not without our consent.
19 In paragraph 3447, the Prosecution cites the judgement, saying that
20 designated, selected municipalities were taken, and that by 1992 they
21 were cleansed. But that is wrong.

22 Before the war, in all the documents you can see that Serbs were
23 the majority population in 65 per cent of the municipalities. None of
24 the municipalities shown by the Prosecution yesterday was entirely
25 controlled by the Serbs. Those were Serb settlements, Serb

1 neighbourhoods, within these municipalities. Almost each of them before
2 the war was negotiating on transformation into a community of two or
3 three municipalities. That was my intention and the intention of the
4 Bosnian Serb leadership. Not to separate the population but to
5 administratively segregate populated centres to avoid a rise in tensions.

6 So when Vojca Majinovic [phoen] said, cited in the judgement,
7 said we have gathered, assembled all the Serb municipalities in Foca,
8 that should be exculpatory. Foca was the largest community in
9 Yugoslavia. The plan was to have a centre of the Muslim community and a
10 Serb municipality, where each community can exercise their rights. The
11 greatest clashes were in Foca, Rogatica, Vlasenica, Bratunac, and
12 Zvornik. All the five municipalities were in the process of
13 transformation, which was stopped by the SDA.

14 And one European-oriented lady, Rabiya Subic, wrote a letter to
15 Izetbegovic complaining that it was his fault. Everything that happened
16 was his fault, because if he had let Muslims and Serbs reach an
17 agreement, none of that would have happened.

18 Why Serbs in control of so much territory would have been
19 prepared to concede some of them if they were, at the same time, fighting
20 to take-over others? I have said 100 times: Do not take other people's
21 property. And have a letter from Momir Bulatovic, president of
22 Montenegro, communicating to Milosevic that I had told him: Why on earth
23 did you take Jajce? There were a very few Serbs in Jajce. There were a
24 few problems with water supply and power supply, but we could agree with
25 the Croats and there were no major problems.

1 In those municipalities, the reality is that not the
2 municipalities were in question but neighbourhoods. One-fourth of Pale,
3 where I was based, was a Muslim municipality throughout the war. We
4 could have taken it if we had wanted it. Foca, not entirely. But a good
5 part around Ustikolina is still a Muslim municipality.

6 Furthermore, we have heard procedural objections, namely, I that
7 I did not explain what I would achieve but examining a particular witness
8 and I didn't lead particular evidence.

9 Your Excellencies, it never crossed my mind that the
10 Trial Chamber would accept and criminalise my actions that were taken
11 strictly in accordance with the law and the constitution of
12 Bosnia-Herzegovina. All that is black on white. We're talking about
13 organised forces, forces controlled by the state. We did not do anything
14 that was not prescribed by the legislation, which even envisaged
15 penalties for failing to take such action.

16 There was a lot of reference to late disclosure and my intention
17 to delay. I did want prolongations and extensions but not at the expense
18 of properly preparing my case. There were many violations of Rule 68. I
19 cannot explain to you well enough how much prejudice was done to the
20 Defence. (redacted)

21 (redacted)

22 (redacted)

23 (redacted)

24 (redacted) Such informal meetings. On the 19th, I had to travel by car to
25 Belgrade. On the 20th, I was to fly to Lisbon and stay there until the

1 27th. And then remain in Belgrade until the end of the day on the 30th.

2 There are records of my meetings with foreign representatives,
3 the American ambassador, with President Milosevic, et cetera.

4 (redacted)

5 (redacted) If his interview had been disclosed to me in time - and
6 it was disclosed to me after the trial was over, and that interview was
7 given to the media - the entire trial would have gone a different way.

8 Let me just give you one example. There was an opinion floating
9 around here that Arkan should have been put on trial even had there been
10 there no criminal complaint filed against him. In our system, that is
11 not possible.

12 If a report of the European Monitoring Mission had been disclosed
13 earlier where they say they wanted to interview Arkan but first wanted to
14 talk to the Muslims in Bijeljina who had direct experience of Arkan, then
15 the trial would have proceeded differently. And the Muslims said they at
16 first celebrated Arkan because he had stopped the bloodshed and was kind
17 to them. Arkan, like Mauzer, was an arrogant man, but Mauzer eventually
18 was commended.

19 Karadzic commanded Arkan only in 1995 when I allowed him to
20 defend Republika Srpska as part of the Ministry of the Interior, and he
21 did that honestly and well.

22 Yesterday I was astonished at the amount of words that can be
23 produced without being based on anything, that are pure slander,
24 that preconceptions --

25 MS. GOY: Your Honour --

1 THE APPELLANT: [Interpretation] -- and suspicions are more
2 important than evidence. It can be inferred allegedly --

3 JUDGE MERON: Excuse me, Mr. Karadzic.

4 Ms. Goy.

5 MS. GOY: Your Honour, could we move into private session just
6 for a second.

7 JUDGE MERON: You would have something to say?

8 MS. GOY: Yes.

9 JUDGE MERON: We will close the hearing for a moment to make it
10 private.

11 Mr. Registrar, please.

12 [Private session]

13 (redacted)

14 (redacted)

15 (redacted)

16 (redacted)

17 (redacted)

18 (redacted)

19 (redacted)

20 (redacted)

21 (redacted)

22 (redacted)

23 (redacted)

24 (redacted)

25 (redacted)

1 (redacted)
2 (redacted)
3 (redacted)
4 (redacted)
5 (redacted)
6 (redacted)
7 (redacted)
8 (redacted)
9 (redacted)
10 (redacted)
11 (redacted)
12 (redacted)

13 [Open session]

14 JUDGE MERON: Just wait one second so the -- are we now in open
15 session?

16 THE REGISTRAR: We're now in open session, Your Honours.

17 JUDGE MERON: We are in open session.

18 Ms. Karadzic, you may proceed.

19 MR. KARADZIC: [Interpretation] Your Excellency, also in public
20 documents and in the judgement this number, KDZ, is publicised and
21 doesn't reveal anything that hasn't been revealed before.

22 But let us continue. It was said yesterday that after the
23 14th July there is no mention of prisoners of war. When is there mention
24 of them, except in December 1994 when Manjaca camp was disbanded? These
25 are routine matters. When Deronjic informed me that there were 2.000, I

1 believed he was exaggerating because he wanted me to lend him some
2 assistance in terms of guards. But such people were easily replaced. We
3 simply couldn't feed so many people. Discussing prisoners of war was a
4 routine matter, completely under the law.

5 The Prosecution didn't explain why 50 pages of our final brief
6 are never mentioned in the judgement, as if we hadn't said a word. There
7 is absolutely no reference to it, as there is no reference to many
8 exculpatory elements that are present even in the testimonies of hostile
9 witnesses who were confronted with certain documents and then accepted
10 and confirmed these exculpatory elements. At the very least, many of
11 them cast a shadow of doubt, an absolutely sufficient shadow of doubt, to
12 justify the application of the principle in dubio pro reo.

13 The Prosecution says that I did not call certain witnesses or did
14 not show the profit in examining them. That cannot be done. That can
15 only be seen from the judgement. I was astonished by the judgement
16 because it concerned certain matters that are beyond any doubt, that
17 shouldn't have been mentioned at all, let alone as an incrimination.

18 As for reports from the army, I received regular reports along
19 the chain of command. All the lower-ranking units send reports to
20 superior units that are accumulated in the Main Staff, and then I am
21 informed just enough to be able to communicate with foreigners and plan
22 the further development of the army.

23 But if I did put certain questions, it was because I needed to
24 have information. If my foreign interlocutors tell me that something had
25 happened somewhere, I should be able to give an answer. If we had waited

1 for the results of our investigation, then I wouldn't have been able to
2 respond on the spot. The Prosecution took it as an admission of my
3 guilt. They say he didn't deny. How could I deny? I first had to
4 check.

5 There was talk about my personal control over access. It's clear
6 that I was not even able to contact with anyone from the army at the time
7 of Srebrenica events.

8 This would be my brief overview of the Prosecution's comments
9 yesterday.

10 As for Sarajevo, there are hundreds of exhibits showing that
11 Sarajevo was a stronghold of the Muslim army whose aim was to take over
12 all of the city and expel the Serbs from Sarajevo. After that, the Serb
13 part of Sarajevo, on the periphery, became a military stronghold of the
14 Serb army whose aim was to defend that part of Sarajevo, not take-over
15 the entirety of the city and the whole of Bosnia and Herzegovina. The
16 documents of the United Nations are unambiguous, especially those drafted
17 by the highest officials of the United Nations, and they confirm what I
18 say.

19 Let me just give you a reference. A UN report, D366, reporting
20 on what the BH army and the Bosnian Serb army respectively are doing and
21 intending. They say about the BH Army:

22 [In English] "BH Army forces will, as a priority, continue to
23 apply pressure to disrupt BSA lines of communication and strengthen the
24 links to the Srebrenica and Goradze pockets in Eastern and North Bosnia.
25 Apart from short-term benefits, any significant gain against these routes

1 would strengthen their position in upcoming negotiations. They will also
2 assist in ensuring BSA compliance with territorial agreements and place
3 BH army forces in the advantageous position for a disruption of
4 hostilities, which they probably regard as inevitable. A Sarajevo
5 offensive is unlikely to be successful without substantial Croat support.
6 It is the absence of this support that has probably delayed its launching
7 and has contributed to the inter-fractional tensions among the BH forces.
8 BH Army forces may be prepared to launch an offensive using their troops
9 without Croat support if they believe their position in peace negotiation
10 is so weak they must provoke foreign intervention."

11 [Interpretation] In the same document, the following is said
12 about the Serbian army:

13 [In English] "No major developments should be expected in the
14 Sarajevo area --"

15 JUDGE MERON: Would you excuse me, just for a second,
16 Mr. Karadzic.

17 MR. KARADZIC: D336.

18 JUDGE MERON: Thank you very much, Mr. Karadzic. Please
19 continue.

20 MR. KARADZIC: "No major developments should be expected in the
21 Sarajevo area without unacceptable casualties. The capture of the city
22 is an unobtainable objective for the Serbs. The BSA will remain in a
23 defensive posture and rely on its superiority indirect fire weapons to
24 deflect any BH army offensives."

25 [Interpretation] There is a vast number of evidence that Serbs

1 were exclusively in a defensive stance in Sarajevo, exclusively in a
2 defensive stance. And there were about 35 major Muslim offensives. And
3 all together, including minor ones, there were a total of 53. And I'm
4 not talking about daily exchanges of fire but about artillery
5 preparations and infantry attacks on the inner and the outer rings.

6 And now we have a document which in paragraph 4644 talks about
7 how the Trial Chamber described and concluded the nature of the conduct
8 of the Sarajevo-Romanija Corps, that it was a siege even though a siege
9 is something that happens in war, and we were the ones on whom war was
10 declared. Defence is legitimate. However, things were not as described.

11 This is what is said: The Muslim side misused the Sarajevo front
12 in order to block talks to suspend them when they wanted to and so on.
13 And in D1496 of the 6th of January of 1993, it's a document by the UNHCR,
14 and it notes some examples by the Human Rights Watch.

15 [In English] "... should be invited to address this protest to
16 the government of the Republic of Bosnia and Herzegovina who are, at
17 present, responsible for the continuation of the siege of Sarajevo."

18 If you take into account our constant efforts for
19 demilitarisation of Sarajevo and for placing Sarajevo under the authority
20 of the United Nations and the Muslim refusal of those proposals, it is
21 clear who was the side that needed the Sarajevo suffering. There is a
22 vast number of documents and evidence that that was so. And here is what
23 the commander of the Muslim army at the time, Sefer Halilovic, said.
24 This was a meeting --

25 JUDGE MERON: Mr. Karadzic, just to remind you, you have five

1 minutes.

2 MR. KARADZIC: [Interpretation] Yes, yes. Unfortunately, yes.
3 This is because I lack the skills to summarise everything.

4 Anyway, these are minutes of a meeting of the Presidency of
5 Bosnia and Herzegovina, this is 122nd Session of the 17th of June, before
6 they declared war on us. And this is what Halilovic said on page 4. He
7 talks about how they had already taken over Mojmiilo hill, that they
8 intended to liberate -- actually, to capture in Novo Sarajevo and Ilidza
9 and to integrate that into Sarajevo, and then Lukavica, and so on and so
10 forth. And then says the following about the forces in Sarajevo:

11 [In English] "The Territorial Defence of the Sarajevo region
12 consists of the following: The original Territorial Defence Staff in
13 Sarajevo region, two batteries of 120-millimetre launchers with 12 pieces
14 of the weaponry; batteries of 105 howitzers with five pieces;
15 122-millimetre artillery platoon, three pieces; armoured mechanical
16 platoon, APCs," and so on. "They have 16 municipal Territorial Defence
17 Staffs and 500 independent platoons and around 450 companies and armoured
18 anti-sabotage platoon," and so on and so on.

19 [Interpretation] Sarajevo had 275 staffs and command posts. We
20 never fired at them, and General Milosevic, when asked why not, he said
21 we only returned fire at the weapons that fired at us. And then the
22 observers, who did not know the deployment of forces, characterised that
23 as indiscriminate fire.

24 I would have a lot more to say, but the fact is that we can find
25 in the documents of the case evidence that there were no criminal plans

1 in existence, that there was no homogenisation of civilians but only of
2 territories, and the most instructive here are the documents mentioned
3 yesterday - P1, P92, and P938. I don't have time to show these documents
4 now, but these documents are my speeches at conferences when it's clear -
5 and I would kindly ask you to study those documents - when it was clear
6 that there would be three Bosnias, and I'm asking for discipline, for
7 order, and so on and so forth. And I say that each village would have
8 the opportunity to decide where they wanted to be, and so on and so
9 forth.

10 I just wanted to also look at paragraph 4642 of the judgement.
11 It says:

12 [In English] "The existence of a common plan can be inferred from
13 the fact that plurality of persons acted in unison. Furthermore, the
14 plan need not be previously arranged or formulated but may be realised
15 later on."

16 [Interpretation] And again, another inference. No proof. An
17 inference that you could infer due to the duration and due to the
18 plurality of persons. This is wrong. In racial and ethnic conflicts,
19 all members of a threatened or attacked community have no alternative but
20 to defend themselves, either to defend themselves for as long as possible
21 or even to seek to defeat their enemy or to be defeated and to disappear.

22 How is it possible not to see that Serbs in Sarajevo and in
23 Bosnia and Herzegovina were in favour of peace? They made desperate
24 concessions and backed down and ultimately the international community
25 from day one recognised the right to Republika Srpska. From day one

1 until Dayton. And this was codified at the United Nations.

2 But before that, there were tricks from the other side which were
3 successful, and they inflicted a lot of harm to us and to them. While
4 waiting for an international intervention, the Muslims exposed their
5 people to enormous casualties and suffering.

6 Thank you, Your Excellencies.

7 JUDGE MERON: Thank you, Mr. Karadzic. We will now have a pause.

8 MS. GUSTAFSON: I'm sorry to interrupt, Your Honour. I would
9 just like to seek some clarification. I am, of course, able and ready to
10 respond to your questions at any time, but I'd just like to confirm that
11 I would still have my 30 minutes to present the Prosecution appeal.

12 JUDGE MERON: In principle, we are supposed to observe the
13 answers to question within it, but I will give you an extra few minutes.

14 So we will now have a break of 30 minutes.

15 --- Recess taken at 11.03 a.m.

16 --- On resuming at 11.32 a.m.

17 JUDGE MERON: Please be seated.

18 Before going to the Prosecution, I just wanted to perhaps set the
19 record straight, Mr. Robinson, on the Krstic thing.

20 You referred, I believe, to paragraph 98 where there's a
21 reference that despite the fact that Mladic, of course, knew about the
22 killings, the Trial Chamber did not establish that Krstic learned about
23 the intention to execute Bosnian Muslims as a result of these contacts.

24 But in paragraph 104 of the appeal judgement, it is clearly
25 indicated that knowledge on the part of Krstic has been established,

1 although not his intent with regard to committal of genocide.

2 But our appeal judgement was based on his knowledge, and that was
3 the foundation to the aiding and abetting liability.

4 MR. ROBINSON: You're absolutely correct, Mr. President. And if
5 you are as careful in this appeal as you were in Krstic's appeal, you
6 will acquit President Karadzic. And in paragraph 104 --

7 JUDGE MERON: That was a very objective statement.

8 MR. ROBINSON: In paragraph 104, you see that it was based on
9 what Krstic said to Beara on that intercepted conversation.

10 JUDGE MERON: I understand that. I did want you to -- leaving
11 the court the impression that Krstic did not know.

12 MR. ROBINSON: It was proven on Krstic's own words. Not on what
13 someone who knew simply had contact with him. That was my point.

14 JUDGE MERON: The point is well taken. Thank you Mr. Robinson.
15 Prosecution.

16 MS. GUSTAFSON: Thank you, Mr. President.

17 I will start by addressing the questions you posed this morning
18 in relation to Dr. Karadzic's appeal. First, I would just like to
19 clarify that --

20 JUDGE MERON: Let me just ask you: I am presuming you will
21 addressing the question of municipalities in your statement today?

22 MS. GUSTAFSON: I'm sorry, Your Honour, I don't quite understand.

23 JUDGE MERON: You will be talking of the municipalities question
24 and what happened there?

25 MS. GUSTAFSON: In the appeal submissions.

1 JUDGE MERON: Yes.

2 MS. GUSTAFSON: Yes, correct.

3 JUDGE MERON: If I have one or two relevant questions, would you
4 like them now or at the end of your argument.

5 MS. GUSTAFSON: Well, Your Honour, if you could give them to
6 me now then I could fit them in in the most efficient way, hopefully.

7 JUDGE MERON: Let me ask you two questions, then.

8 Could you point to the Trial Chamber's findings, at a
9 paragraph preferably, to support the proposition that the Trial Chamber
10 presumed the intent for permanent removal to be inconsistent with
11 genocidal intent? That's the first question.

12 And the second question would be this: Would evidence
13 demonstrating ethnic bias, discrimination, and separation necessarily
14 prove genocidal intent?

15 So now you have all my questions, and you have the floor.

16 MS. GUSTAFSON: Thank you, Your Honour.

17 To begin by responding to the questions this morning, we'd like
18 to clarify that it is not our position in general that the
19 Appeals Chamber has no responsibility to ensure Dr. Karadzic's rights are
20 protected. Our submissions were specifically about the issue of waiver.
21 And in particular, our position is that there are no special
22 circumstances arising from self-representation for the Appeals Chamber to
23 consider an issue on appeal that was not raised at trial. And that's
24 because of the expert legal advice that, paid legal advice, that the
25 accused received throughout the trial.

1 On the adjudicated facts point, our position is that a large
2 number of adjudicated facts doesn't turn the trial upside down or shift
3 the burden, and the case law is clear that adjudicated facts don't
4 violate the presumption of innocence or the accused's rights.

5 I would add that in deciding preparation time for the Defence
6 case, the Trial Chamber took into account the large number of adjudicated
7 facts and the number of 92 bis and quater witnesses, and that decision is
8 it not appealed. I refer to our response brief, paragraph 145.

9 The Trial Chamber also expressly took into account the large
10 number of adjudicated facts in allocating to the Defence 300 hours to
11 present its case. That decision was upheld on appeal, and these
12 decisions are ignored by the Defence in their appeal. I refer you to our
13 brief, paragraph 146. I would add that all those 300 hours were not used
14 by the Defence.

15 Those factors alone demonstrate that the admission of adjudicated
16 facts and 92 bis and quater witnesses in this case caused no unfairness.
17 It was an additional point that we made yesterday, that on top of these
18 factors many of the adjudicated facts are covered by other evidence in
19 this case. That was tendered in the normal way, and that's confirmed by
20 the very limited number of incidents where the Defence claims the
21 findings are based solely on untested evidence. A total of 36 in the
22 context of dozens and dozens of incidents. And as we have pointed out in
23 our brief, and as I emphasised yesterday, even that modest figure is
24 inflated.

25 So with that, I will turn to the appeal submissions in this case.

1 The Chamber's findings show that Karadzic and other JCE members
2 embraced violent crimes to achieve the common criminal purpose of
3 permanently removing Muslims and Croats from Serb-claimed territory, and
4 it found that these violent crimes were integral to the implementation of
5 that common purpose. The Chamber then erred by relegating those crimes
6 to merely foreseeable consequences.

7 And the Chamber erred in failing to recognise that in the seven
8 Count 1 municipalities, the intensely violent pattern of crimes used to
9 implement the permanent removal objective reflected the intent to destroy
10 the Muslim and Croat communities in those municipalities and therefore
11 constituted the crime of genocide.

12 I will focus today on these two errors, reflected in grounds 1
13 and 3 of our appeal. I will conclude with a few words on ground 4.

14 As we have explained in our brief, the Chamber's conclusion on
15 the scope of the common purpose effectively stripped violent crimes out
16 of the common purpose. I will take you through the findings made by the
17 Chamber that demonstrate that these violent crimes had to form part of
18 the common purpose. Then, I will explain why the Chamber's common
19 purpose conclusion reflects an erroneous approach to intent.

20 Yesterday I explained how the permanent removal objective was
21 implemented, through a systematic pattern of violence against Muslims and
22 Croats. This was, in fact, how the JCE members and their tools forced
23 hundreds of thousands of non-Serbs out of their homes and communities and
24 out of the RS forever.

25 Karadzic was not just aware that this level of violence would be

1 required. He threatened it, he planned for it, and he encouraged it on
2 the ground.

3 Before the conflict, Karadzic threatened Muslims with
4 annihilation, possible extinction, and extreme bloodshed. The Chamber
5 found that these threats showed that Karadzic was "fully aware that a
6 potential conflict would be extremely violent and result in thousands of
7 deaths, the destruction of property, and the displacement of people, and
8 that it would be particularly devastating for the Bosnian Muslim people."
9 Paragraph 2708.

10 With this knowledge, as found by the Chamber, Karadzic then
11 prepared the military and political structures needed for this bloody
12 conflict, while promoting ethnic separation and inciting interethnic
13 hatred. Judgement references are at paragraphs 23, 25, and 26 of our
14 brief.

15 The Chamber also found that Karadzic and his associates were well
16 aware that they would need to use violence against Muslims and Croats in
17 order to separate them from Serbs, and they pursued this objective
18 anyway.

19 By late 1991 Karadzic and others in the leadership "were aware
20 and put on notice that the objective of ethnic separation would result in
21 violence given the extent to which the population in BiH was intermixed
22 and yet still proceeded to pursue this objective." Paragraph 2846.

23 And it found that Karadzic and the leadership "were prepared to
24 use force and violence against Bosnian Muslims and Bosnian Croats in
25 order to achieve their objectives." Paragraph 2599.

1 These findings show that even before they commenced their
2 criminal campaign, JCE members knew that violence against Muslims and
3 Croats was necessary to achieve their common purpose, and they went ahead
4 anyway. Prepared to use it.

5 And then the Chamber found that the implementation of that common
6 purpose was just as bloody and violent as the JCE members had envisaged
7 and as Karadzic himself had foretold. The Chamber found that from the
8 outset, Serb forces committed a systematic and organised pattern of
9 crimes through the course of "well planned and co-ordinated operations."

10 This pattern, the Chamber found, included: Murder, cruel and
11 inhumane treatment, rape and other acts of sexual violence, and wanton
12 destruction. All crimes the Chamber would later exclude from the scope
13 of the common purpose, paragraphs 3443 to 3445.

14 From the outset, the Chamber found that Karadzic and other JCE
15 members facilitated and encouraged these violent crimes through false
16 denials and deliberate inaction. The first municipal take-over was
17 Bijeljina, followed days later by Zvornik. JCE member Arkan took a
18 leading role in both attacks, which were marked by murder. These crimes
19 were immediately reported to Karadzic. He responded with false denials
20 and deflections, while taking no steps to stop or punish these crimes.
21 The references are at paragraph 35 of our brief.

22 To the contrary, Karadzic later thanked and congratulated Arkan
23 for "defending the Bosnian Serbs." Paragraph 3325.

24 And this pattern of violence and encouragement of violence
25 continued. As the weeks and months rolled on and the atrocities against

1 Muslims and Croats mounted, Karadzic continued to lie and mislead, while
2 adopting a policy of not punishing crimes against non-Serbs. References
3 are at paragraphs 38 to 41 of our brief.

4 And the Chamber found that through this conduct, this deliberate
5 failure to prevent or punish crimes, Karadzic, "signalled"
6 to Serb forces and Bosnian Serb officials that these crimes were allowed.
7 Paragraph 3501.

8 The Chamber made all these findings about Karadzic and other JCE
9 members threatening, expecting, and encouraging the use of violent crimes
10 to realise their objective. And then the Chamber took a wrong turn.

11 At paragraph 3466, the Chamber noted that Karadzic had received
12 information about the commission of violent crimes by Serb forces and had
13 nevertheless continued to pursue the common plan. But it held that
14 rather than intending these crimes, Karadzic simply "did not care enough
15 to stop pursuing the common plan."

16 But not caring enough to stop the common plan wasn't an
17 alternative to shared intent. Of course, Karadzic did not care enough
18 about the violent crimes to stop pursuing the common plan. Karadzic had
19 known since 1991 that his ethnic separation objective would entail
20 violent crimes and he pursued it anyway. Naturally, he was undeterred
21 when that violence was reported to him. It was expected. It was
22 intended.

23 Now the Defence portrays this intent conclusion as reflecting
24 Karadzic's ambivalence towards violent crimes. This is incorrect. The
25 conclusion shows Karadzic choosing between two options: Option 1,

1 stop pursuing the common purpose; or option 2, continue pursuing the
2 common purpose knowing it involved violent crimes. He chose option 2.
3 He chose it again and again and again. That choice does not reflect
4 ambivalence.

5 And that brings me to the other erroneous aspect of the Chamber's
6 intent conclusion. The conclusion paints Karadzic as the mere passive
7 recipient of information about violent crimes. Well, this vastly
8 understates the Chamber's own findings on Karadzic's role.

9 Karadzic, president, Supreme Commander, sat at the apex of the
10 Bosnian Serb leadership. And from that position, he: Threatened and
11 prepared for a bloody, violent campaign against Muslims and Croats; he
12 incited fear and hatred of non-Serbs; he fostered a climate of impunity
13 among subordinates who perpetrated violent crimes on a massive scale;
14 actively sought to shield the atrocities from outside scrutiny; and
15 rewarded perpetrators.

16 These factors overwhelmingly demonstrate his intent for violent
17 crimes, and the Chamber erred in failing to recognise this.

18 I'd like to conclude on ground 1 by emphasizing the importance of
19 your intervention, because the Chamber's conclusion on the scope of the
20 common purpose portrays countless victims of violent crimes as just the
21 unfortunate byproduct of some sanitised mass displacement campaign. A
22 campaign that bears no relationship to reality.

23 Karadzic and his associates knew that they would need to spill
24 rivers of blood to carve out the ethnically homogenous territory they
25 sought, and they embraced this bloody path. Karadzic, president and

1 Supreme Commander of the RS, is directly responsible for the resulting
2 human toll, and the judgement against him should reflect this.

3 Turning to ground 3. The central question here is whether the
4 pattern of crimes in the count 1 municipalities reflects genocidal
5 intent. And the answer is yes, and this becomes apparent once we clarify
6 two genocide myths.

7 The first is that the ICTY has already decided that there was no
8 genocide in the municipalities in 1992, and this is a myth that permeates
9 the Defence submissions. But the ICTY Appeals Chamber has already
10 explained - in this case - that criminal responsibility findings in other
11 cases, based on different evidentiary assessments, in relation to
12 difficult accused, have no precedential value. That's the 98 bis
13 judgement, paragraph 94.

14 In addition, the ICTY Appeals Chamber has spoken only twice on
15 this issue. And both times, it confirmed that the pattern of crimes in
16 the municipalities could support an inference of genocidal intent.
17 That's the Stakic appeals judgement, paragraph 56; and the 98 bis
18 judgement in this case, paragraph 100.

19 That brings me to the second genocide myth, and this is the one
20 that led the Chamber into error in this case. This is that genocidal
21 intent, the intent to physically or biologically destroy the targeted
22 group or part means the intent to physically or biologically destroy all
23 the members of that group or part.

24 This is not required by genocidal intent, nor does genocidal
25 intent boil down to a mathematical calculation of numbers killed or

1 subjected to other genocidal acts, but this is precisely the error the
2 Trial Chamber fell into when it compared the total number of group
3 numbers displaced versus those allegedly targeted for destruction at
4 paragraph 2624.

5 The scale of killings or genocidal acts is a relevant factor.
6 But a narrow focus on this factor to the exclusion of others is an error.
7 Correctly understood, genocidal intent - that is, the intent to
8 physically or biologically destroy the targeted group or part - is the
9 intent to destroy that group or part as a community, and this doesn't
10 require an intent to target every member of that group or part with
11 destruction.

12 This is the correct understanding for three reasons: First, the
13 victim of genocide is the targeted group or part as a community. Not its
14 individual members. And, second, the terms of the Genocide Convention
15 require a conception of genocidal intent whereby conduct intended to
16 destroy the group allows for the continued physical existence of group
17 members.

18 Let me explain why that is. Here you see Article 4(2) of the
19 Statute replicating Article II of the Genocide Convention, and it makes
20 clear that each of the five underlying genocidal acts can be committed
21 with the intent to destroy the group in whole or in part. We know from
22 case law that "intent to destroy" means "intent to destroy physically or
23 biologically."

24 That means, for instance, that under Article 4(2)(e) it's
25 possible to forcibly transfer children of the group to another group with

1 the intent to destroy the group physically or biologically. But, of
2 course, this conduct does not physically or biologically destroy or
3 necessarily even physically harm any group member.

4 How is this consistent with the intent to destroy the group
5 physically or biologically? The International Law Commission has
6 explained that:

7 "It is because this conduct would have particularly serious
8 consequences for the future viability of the group as such." That's at
9 footnote 405 of our brief.

10 The same reasoning applies to the infliction of serious mental
11 harm under Article 4(2)(b). Serious mental harm can be inflicted on
12 group members with the intent to physically or biologically destroy the
13 group, so the infliction of purely mental harm on group members must be
14 capable of contributing to the physical or biological destruction of the
15 group.

16 Two points follow from these provisions: First, conduct with no
17 physical or biological impact on individual group members can
18 nevertheless contribute to the physical or biological destruction of the
19 group. It does so by targeting the ability of those group members to
20 exist as a community or as a viable entity.

21 Second, and following from the first, one can intend to
22 physically or biologically destroy the group by inflicting harm that
23 allows for the continued physical existence of group members but that
24 targets the group's existence as a community.

25 That brings me to the third reason why genocidal intent is

1 focused on the intent to destroy the group as a community. ICTY and ICTR
2 case law has confirmed that conduct allowing for the continued physical
3 and biological existence of group members can nevertheless contribute to
4 the physical destruction of the group.

5 Chambers have provided critical insight on this point,
6 explaining, for instance, that conduct attacking the very foundation of
7 the group or that severs the bonds between group members or prevents the
8 group from reconstituting itself as a community can contribute to the
9 destruction of the group and reflect genocidal intent. Those references
10 are at paragraphs 109 to 113 of our brief. This reaffirms that the
11 physical or biological destruction requirement is focused on the intended
12 impact on the group as a community or as a viable entity.

13 This understanding of genocidal intent does not depart from the
14 physical or biological destruction requirement. Rather, it correctly
15 identifies the human group as the entity to be protected from this
16 destruction.

17 And a human group is not simply a collection of individuals. The
18 bonds between those individuals are what binds them together into a
19 group, and it is not difficult to envision a scenario where those bonds
20 eviscerated to the extent where the group itself no longer physically
21 exists, even if many of its members do.

22 Where the surviving group members exist but in a state where they
23 can no longer function as members of community or reconstitute themselves
24 into a community, the group itself is physically destroyed.

25 The Appeals Chamber in Krstic recognised this. It recognised

1 this when it held that the forcible transfer of 80 per cent of the
2 Srebrenica Muslim community out of the enclave "could be an additional
3 means by which to ensure the physical destruction of the Bosnian Muslim
4 community in Srebrenica." And this was because it contributed to the
5 inability of the targeted community to reconstitute itself.

6 In other words, conduct that inflicted no physical harm on group
7 members nevertheless contributed to the physical destruction of the
8 community. And the community itself was physically destroyed, despite
9 the continued existence of many group members. This is the kind of
10 destruction of bonds between group members that results in a group's
11 physical demise as a community, despite the physical survival of many
12 group members.

13 This holding from Krstic is a groundbreaking one but not because
14 it stretches the Genocide Convention beyond its intended scope. As I've
15 already explained, the convention demands such an understanding of
16 genocidal intent. It's groundbreaking because it recognised this. The
17 Trial Chamber in this case did not. When this correct understanding of
18 genocidal intent is applied to the pattern of crimes in the Count 1
19 communities, there can be no doubt that these crimes were intended to
20 physically destroy the communities.

21 We have described that pattern, focusing particularly in
22 Prijedor, in our appeal and reply briefs, so I will simply summarise:
23 Serb forces carried out a wave of violent, criminal attacks on non-Serb
24 villages and towns; inhabitants were shelled, massacred, abused, and
25 terrorised; villages and towns were razed to the ground; places of

1 worship systematically destroyed; inhabitants were rounded up and
2 families were separated under violent and traumatic conditions; entire
3 populations were detained in shocking conditions for weeks, sometimes
4 months.

5 In the camps: Killings, beatings, rape and other forms of
6 violence were pervasive. Omarska prisoners were afraid of dying "every
7 minute, every second." That's footnote 242 of our brief.

8 Those who survived these violent terrifying attacks were expelled
9 with nothing. They were torn from their homes, families, and
10 communities, forced into exile and isolation, and left to mourn the dead
11 and agonise over the missing.

12 And this is probably an appropriate point to respond to your
13 second question, Mr. President, about whether evidence demonstrating
14 ethnic bias or discrimination, would that necessarily prove genocidal
15 intent. And our answer to that question is: No, because evidence of
16 that wouldn't even necessarily establish the commission of an underlying
17 act of genocide which would be required.

18 And the broader answer to that is that that theoretical
19 proposition is far, far removed from the violent attacks on the
20 communities that we're dealing with in this case.

21 Now the Prosecution recognises that this pattern is different
22 than in Srebrenica, and Srebrenica involved a higher proportion of
23 killings. This is something emphasised by the Defence. But the question
24 is not the scale of killings but whether, overall, the crimes were
25 intended to destroy the targeted communities. And I will highlight three

1 unique factors from the Prijedor context that are reflective of this
2 intent.

3 First, while the scale of killings in Prijedor was lower than in
4 other genocidal campaigns, the scale of all genocidal acts overall was
5 vast. Over 30.000 Muslims and Croats were detained across the three main
6 camps alone - Omarska, Keraterm, Trnopolje; paragraphs 1749, 1793, 1851.

7 In these camps, killings and the infliction of serious bodily and
8 mental harm were routine, daily occurrences. As we've argued under
9 ground 2, the conditions of detention themselves amount to genocidal
10 acts. Prisoners were crowded into filthy facilities, deprived of food,
11 water, medicine, and basic sanitation, and exposed to deadly diseases.

12 Another unique factor in Prijedor was the deliberate mistreatment
13 of women and children, reflecting an intent to target all segments of the
14 community. They too were subjected to deplorable detention conditions,
15 abuse, and mistreatment.

16 In Trnopolje, the Prijedor camp, largely dedicated to the
17 detention of women, children, and elderly, the frequent rape of women and
18 girls "caused terrible fear and mental trauma among all of the
19 detainees." Paragraphs 1830 to 1831.

20 And third, the intent to destroy the Prijedor Muslim community is
21 also reflected in the targeting of prominent group members, the lynchpins
22 of the community: Religious and political leaders, doctors, lawyers,
23 professors, and businessmen were systematically singled out for
24 execution, torture, and abuse. Paragraphs 1587, 1596, 1740, 1744, 1749,
25 1753, and 1766.

1 The campaign had the intended impact. The targeted communities
2 were destroyed, and this is clear from the way surviving members of the
3 Count 1 communities speak about their existence: They suffer from
4 constant physical and mental pain, debilitating injuries, anxiety,
5 depression, nightmares, and lasting feelings of terror.

6 They described their lives as having, "stopped" in
7 1992, and explain that they live "all alone" as they mourn the loss of
8 family and community members. Although they continue to exist
9 physically, "it is as if we had been killed." I refer you to our appeal
10 brief, paragraphs 124 and 139; and our reply brief, paragraph 63.

11 JUDGE MERON: Should we say five more minutes.

12 MS. GUSTAFSON: This illustrates what it means to physically
13 destroy a community while allowing many community members to exist. The
14 survivors are harmed to the point where they cannot function as community
15 members and will never reconstitute themselves back into a viable
16 community. This is harm prohibited by the Genocide Convention.

17 I will conclude by emphasising that there's no incompatibility
18 between the objective of the overarching JCE and genocidal intent, and I
19 will respond to your first question in so doing.

20 It is important that the goal of Karadzic and other JCE
21 members was not just removal of Muslims and Croats but permanent removal.
22 In the eyes of the JCE members, only permanent removal would counter the
23 perceived threat faced by the Serbs, a threat that Karadzic repeatedly
24 warned was genocidal and ever-lasting. Paragraphs 2659 to 2672.

25 A criminal campaign aimed at destroying the Count 1 communities

1 was a logical means and the chosen means to achieve that permanent
2 removal objective and extinguish that perceived existential threat.

3 Your Honour, in response to your first question, our position is
4 that paragraph 2624, in particular, demonstrates that the Chamber
5 presumed that the intent for permanent removal was inconsistent with
6 genocidal intent; and in particular, it's because it found that a
7 reasonable inference to be drawn from the pattern, described above, is
8 that the intent behind those crimes was to ensure the removal of Muslims
9 and Croats from the municipalities. In other words, it found that the
10 objective of permanent removal was another inference, another reasonable
11 inference to genocidal intent.

12 Our position is that two are compatible. And that's clear,
13 because it was actually putting that forward as the reasonable
14 inference that was an alternative to genocidal intent, that the intent
15 behind the crimes was removal. Well, it's our position that the intent
16 behind the crimes was removal. It's always been our position. But what
17 we've always argued from the beginning is that in pursuing this removal
18 objective, the intent was to destroy these communities and that there is
19 no incompatibility. The Chamber's holding --

20 JUDGE MERON: You seem to have said a moment ago that it was
21 inconsistent. You are in fact saying it was consistent.

22 MS. GUSTAFSON: The Chamber found they were inconsistent. Our
23 position is that --

24 JUDGE MERON: Your position, I meant.

25 MS. GUSTAFSON: -- they're consistent.

1 JUDGE MERON: That they're consistent.

2 MS. GUSTAFSON: I apologise if I misspoke.

3 I'll use my last minute or so to make a few submissions on ground
4 4, on sentence.

5 Now as we've explained in our brief, the Chamber found that
6 Karadzic, as president and Supreme Commander of the RS, played an
7 essential and leading role in three vast criminal enterprises. The
8 gravity of his crimes is unprecedented.

9 His position at the pinnacle of the Bosnian Serb hierarchy does
10 not distance him from criminal responsibility. It amplifies his
11 responsibility. He abused his immense power to spill the blood of
12 countless victims. Justice requires that he receive the highest possible
13 sentence: A life sentence.

14 That concludes my submissions, barring any questions.

15 JUDGE MERON: Tell me, are you really focusing now on Prijedor
16 alone in the context of municipalities or communities? Your briefs were
17 much broader than that. Today you singled out Prijedor. Is this as an
18 example, or just the entirety of your case on that?

19 MS. GUSTAFSON: Our position, and this is consistent with the
20 position we took in the brief, is that the intent is reflected in all the
21 Count 1 municipalities but Prijedor is the clearest example of genocidal
22 intent.

23 And we recognise that for Your Honours to review and overturn all
24 of the findings in all of the Count 1 communities may be a lot of
25 intervention to ask for an Appeals Chamber, so that's another reason why

1 we've really highlighted Prijedor, so that if Your Honours wish to
2 intervene to correct the error, you could do so in a more circumscribed
3 way that would require less intervention and review of the record.

4 JUDGE MERON: Thank you for your argument.

5 We will now turn to Mr. Karadzic's response.

6 Ms. Gibson, you have 30 minutes. And I would appreciate it if
7 you would, in your response, refer to the arguments made on Prijedor in
8 the context of genocidal intent. Thank you.

9 MS. GIBSON: Thank you very much, Mr. President, Your Honours.

10 The first main problem with ground 1 of the Prosecution's appeal
11 is that it purports to centre on the Trial Chamber's finding that the JCE
12 members knew that they couldn't carry out their plan without these
13 additional crimes. Again and again in its appeal brief, the Prosecution
14 refers to the Trial Chamber's findings that Dr. Karadzic and the others
15 knew that they couldn't separate the relevant populations without
16 committing murder, cruel treatment, extermination.

17 This finding doesn't exist. At the heart of the Prosecution's
18 ground 1 is a finding that doesn't exist. What the Trial Chamber found
19 was that it was foreseeable to President Karadzic that the Serb forces
20 might commit the additional crimes while carrying out the original plan.
21 It never found that he knew that they would. And so he was convicted of
22 JCE III.

23 And this missing finding, this missing link, really breaks the
24 chain of the Prosecution's arguments. This knowledge, that actually
25 doesn't exist, is front and centre in the Prosecution's arguments as to

1 why the Appeals Chamber should make this radical reformulation of the
2 conviction. The Prosecution asserts he knew that the plan would cause
3 these crimes. They all knew that if they put the original plan in place,
4 this would happen. The Trial Chamber never found that.

5 The Prosecution argues this morning that President Karadzic was
6 faced with the choice of stopping this pursuit of the common plan and he
7 chose again and again and again not to stop the pursuit of the original
8 plan. But even if that's correct, even if he chose not to stop the
9 original plan, that's not enough for an intent finding, and the
10 Trial Chamber was very careful on this point.

11 The Trial Chamber had regard to the legal standard whereby a
12 knowledge of crimes and continued participation may be a sufficient basis
13 from which to infer intent. But knowledge and continued participation,
14 even when they're present, are an insufficient basis on which to
15 automatically conclude that there was intent. When intent is inferred in
16 this way, it must be the only reasonable inference available on the
17 evidence. And I make reference to the Popovic appeal judgement at
18 paragraph 1396, and the Sainovic and others appeal judgement at
19 paragraph 995.

20 Even when the accused's knowledge and continued participation
21 might suggest that he shared the intent to further another purpose, it
22 does not necessarily compel this conclusion if another reasonable
23 inference was available. Here, another reasonable inference was
24 available. That President Karadzic and the other JCE members shared the
25 intent for forcible transfer and deportation but did not care enough, in

1 the words of the Chamber, about the additional crimes to stop pursuing
2 the common plan. And the Prosecution has not shown that this finding by
3 the Trial Chamber, which took into account all the findings that they
4 referred to today, was unreasonable.

5 But putting this aside, perhaps the bigger obstacle to
6 Prosecutions ground 1 is the fact that at the heart of JCE I liability is
7 the participants' intent, their shared intent to commit the particular
8 agreed crime. It can't just be a plan to commit offences or commit
9 crimes generally. The accused must share the intent to commit the
10 specific crime or crimes that form the object of the common purpose, and
11 the Prosecution is asking you to lift all of these JCE III crimes out and
12 insert them into the original common plan, to find that they were part of
13 the original purpose on the 21st of October 1991.

14 In order to do that, the Prosecution needs to show that each of
15 the JCE members intended to commit each of these crimes, had the
16 particular intent for each of these crimes.

17 Take extermination, for example. For extermination to have been
18 part of the original common plan, each of the members of the JCE would
19 have needed to have intended killing on a mass scale in October 1991.
20 That finding is nowhere. For rape to have been part of the original
21 common plan, each of the members of the JCE would have needed to have
22 intended, in October 1991, to commit rape. That finding is nowhere. The
23 same for torture. The same for murder. These findings don't exist.

24 And remember that the Prosecution hasn't asked the
25 Appeals Chamber to revisit any factual findings or make any additional

1 factual findings or give any evidence more or less weight. The
2 Prosecution is saying that the Appeals Chamber can get there on the
3 Trial Chamber's own findings. But these findings doesn't exist.

4 And it's not surprising that the findings aren't there. If the
5 Trial Chamber had found that the JCE shared the intent for rape, for
6 example, in October 1991, then rape would have formed part of the
7 original common plan. It would have been part of the original JCE I.
8 And we raised this with the Prosecution in our response brief. We said
9 where are you seeing this? Where are all these findings, that
10 President Karadzic and the JCE members shared the particular intent for
11 each of these JCE III crimes? And in reply, the Prosecution relies again
12 on general adverse findings about President Karadzic's threats and the
13 fact that the crimes were integral to the common purpose.

14 This isn't enough. This just completely brushes past this
15 central element of JCE I. The Trial Chamber's findings don't support the
16 radical transformation of the conviction that the Prosecution is seeking.

17 Ground 1 of the Prosecution's appeal should be dismissed.

18 Just a few words on sentence, given that it was raised --

19 JUDGE MERON: Before you move on to sentence, you will remember,
20 of course, that in Krstic we determined that genocide can be committed in
21 a limited geographical area, and in that context I would be grateful if
22 you could say something more than you did, you did not say much, about
23 the Prijedor situation.

24 MS. GIBSON: I'm grateful, Your Honour. I'm going to leave the
25 response for ground 2 to lead counsel, and I'm confident that he will

1 address the question of genocide in Prijedor in his response.

2 Should we move directly to the response for ground 2? I will say
3 a few words on sentence so then I can complete, and I will give the
4 remaining time to Mr. Robinson to come back to you on your specific
5 questions.

6 Just briefly on sentence. Our arguments on sentence are set out
7 in full in our response brief, and I won't repeat them here, particularly
8 given that our submission is that the Appeals Chamber should order a new
9 trial or at least revise this judgement on basis of identified errors,
10 meaning that the question of sentence will likely become moot.

11 One point we thought was important to draw to Your Honours'
12 attention, and that is the Trial Chamber, in formulating
13 President Karadzic's sentence, was entitled to give President Karadzic
14 credit for resigning from his position and voluntarily relinquishing
15 power. There is a strong public policy interest in encouraging leaders
16 to voluntarily step down, and the Trial Chamber was entitled to recognise
17 President Karadzic's resignation by mitigating his sentence in this case.

18 Thank you very much. I will now pass to Mr. Robinson.

19 JUDGE MERON: Mr. Robinson.

20 MR. ROBINSON: Thank you, Mr. President.

21 First of all, I would like to commend Ms. Gustafson for what I
22 thought was a very eloquent argument, particularly on ground 3 and the
23 genocide in the municipalities. I actually found myself agreeing with
24 her on almost all of the legal principles that she stated.

25 The problem is that the facts of what happened in the Bosnian

1 municipalities in 1992 simply don't fit those legal principles, and this
2 is also not a court of first instance, so we're looking at it a little
3 differently.

4 Let me first turn to Prijedor and the question that you've asked.

5 First of all, I want to point out that the challenge about
6 Prijedor is to the methodology of the Trial Chamber, that they didn't
7 isolate Prijedor and examine everything, all of the elements of genocide
8 simply for that municipality. The first answer to that is to look at
9 what happened in the Brdjanin case, which involved Prijedor as well as a
10 number of other municipalities.

11 The trial chamber's discussion in Brdjanin contained no analysis
12 of genocide in any given municipality but discussed intent over the 11
13 municipalities, including Prijedor, contained in the indictment. The
14 same was true of the Krajisnik judgement, which included Prijedor and a
15 number of other municipalities not even in that same region.

16 So there's no authority really for the proposition that a
17 trial chamber is required to isolate all of the different municipalities
18 in the indictment and make a genocidal evaluation indictment by
19 indictment. That's point one.

20 But looking at Prijedor, you've already dealt with that, the very
21 same evidence in the Stakic case. This is not the first time that these
22 arguments have been made about Prijedor. What happened in Prijedor as
23 well as the other municipalities was horrible. Crimes against humanity
24 and war crimes were committed there. But as you decided in Stakic, and
25 you were on that Appeals Chamber Bench, it didn't amount to genocide. It

1 wasn't committed with the intent to destroy the group, the community.
2 And so there's nothing new about what our Trial Chamber heard or what
3 you've heard, other than that what has already been decided.

4 For the claim that the Trial Chamber thought that displacement
5 was counter-indicative of destruction, I see nothing in paragraph 2624
6 that indicates that. In fact, that paragraph almost looks like a
7 cut-and-paste from the Trial Chamber's judgement in Stakic. And that
8 judgement was appealed by the Prosecution, and the Appeals Chamber
9 approved this very same methodology.

10 In the Stakic case, the trial chamber had concluded that while it
11 was satisfied that the common goal was to establish a Serbian
12 municipality, there was insufficient evidence of an intention to do so by
13 destroying, in part, the Muslim group. And they said:

14 "Had the aim been to kill all the Muslims, the structure was in
15 place for this to be accomplished. The intention to displace a
16 population is not equivalent to the intent to destroy it."

17 And the ICTY Appeals Chamber affirmed this approach. It rejected
18 this same argument, that the trial chamber had confused this motive to
19 displace with the intent to destroy. So the Prosecution is asking you to
20 throw out not just the Stakic case but what is 17 years of jurisprudence.

21 In the Sikirica case involving three commanders and guards at
22 Keraterm camp in Prijedor municipality, the Trial Chamber, led by former
23 ICTY President Patrick Robinson, acquitted the three accused of genocide
24 at the conclusion of the Prosecution's case. It concluded that there was
25 evidence of killings and serious bodily and mental harm at the Keraterm

1 camp, but there was no evidence which established an intent to destroy
2 the Bosnian Muslims in whole or in part as such, and the Prosecution
3 didn't appeal those acquittals.

4 In the Stakic case, as I have mentioned, the Trial Chamber came
5 to its conclusions by looking at not only Stakic's intent but those of
6 people at a higher level in the political structure, including
7 President Karadzic, and they found that the goal of Stakic and the Bosnian
8 Serb leadership was not the destruction of the Bosnian Muslims or Croats
9 as a group but rather to eliminate any perceived threat to the overall
10 plan to take control of Prijedor municipality and force the non-Serbs to
11 leave. And the Appeals Chamber said that that conclusion was a
12 reasonable one, which is the standard that we have here.

13 In the Brdjanin case involving the president of the Crisis Staff
14 of the Autonomous Region of Krajina, which included Prijedor, a different
15 trial chamber, presided over by former ICTY President Carmel Agius, a
16 current Judge of the Mechanism, acquitted the accused of genocide,
17 finding that an intent to destroy had not been proven. And the trial
18 chamber found it significant that the Bosnian Serbs who controlled the
19 areas in question, militarily and politically, chose to use those
20 resources to displace rather than destroy the Muslims and Croats in this
21 area. And the Prosecution didn't appeal that acquittal.

22 In the Krajisnik case involving the president of the Bosnian Serb
23 Assembly, the trial chamber, led by current Mechanism Judge Alphons Orie,
24 acquitted Momcilo Krajisnik of genocide in the same seven municipalities
25 of Bosnia that were charged in our case. The trial chamber found that

1 neither Krajisnik nor other members of the joint criminal enterprise
2 including, President Karadzic or General Mladic, had the intent to
3 destroy the Bosnian Muslims or Croats in the municipalities of Bosnia.

4 And in the recent Mladic case, the trial chamber, composed of
5 three current judges of the Mechanism, acquitted General Mladic of
6 genocide and concluded that after having assessed the entire trial
7 record, including the statements, speeches, and conduct of
8 President Karadzic, it was not satisfied that the only reasonable
9 inference that could be drawn from the evidence is that they had the
10 intent to destroy the Bosnian Muslims and Croats in the municipalities,
11 which also included Prijedor.

12 And if that wasn't enough to convince you that reasonable judges
13 can conclude that there was no genocide in the municipalities, ten judges
14 of the International Court of Justice have examined the details of
15 genocide in the municipality allegations and concluded that those crimes
16 were not perpetrated with the intent to destroy the Bosnian Muslims as a
17 group, in whole or in part, paying particular attention to the events at
18 Prijedor.

19 The Prosecution presented no new evidence of genocidal intent in
20 our trial. They trotted out the same speeches, the strategic goals, the
21 variants A and B, that all of these trial chambers had already
22 considered.

23 The findings of our Trial Chamber, like those in Stakic, Brdjanin
24 and Krajisnik, and the International Court of Justice, that genocide was
25 not committed in the municipalities of Bosnia in 1992, in no way

1 diminishes the suffering of the victims or what they and their families
2 endured during that terrible time. It simply reflects that the legal
3 requirements of this very specific crime, requiring a very specific
4 intent to destroy the group as such, have not been met.

5 Even after what happened to the Jews in the Holocaust, the
6 Supreme Court of Israel acquitted Adolf Eichmann of genocide for crimes
7 in the two-year period where the Jews were deported rather than
8 exterminated.

9 The Prosecution has given you no reason to depart from 17 years
10 of jurisprudence. What happened in Bosnia in 1992, while awful, was not
11 genocide. President Karadzic's acquittal on Count 1 should be affirmed.

12 Thank you.

13 JUDGE MERON: Should I take it that you have -- your case has
14 been completed and we can turn to the Prosecution for their reply?

15 MR. ROBINSON: Yes.

16 JUDGE MERON: Prosecution, you have 15 minutes.

17 MS. GUSTAFSON: Thank you, Your Honour.

18 I'll start with --

19 JUDGE MERON: Until 12.45.

20 MS. GUSTAFSON: I'll start with ground 1 and then ground 3 and
21 then I will say a word on sentence.

22 And really I only have one point to make under ground 1, possibly
23 two small points. We agree that the law doesn't require an inference of
24 intent from knowledge and continued participation. The law is clear that
25 that is a basis to make the inference. We agree it's not required.

1 Our position is that when -- Dr. Karadzic's knowledge and
2 continued participation for months, even years in the common purpose,
3 with the knowledge of violent crimes, combined with the other factors in
4 this case - his threats of those very crimes against the groups, his
5 immense power and authority over perpetrators, his deliberate denials and
6 deflections, his rewarding of perpetrators - when you put all those
7 factors together, that, we say, leads to only one reasonable inference.

8 I would like to respond to the argument that we have not pointed
9 to findings about particular agreed crimes, and extermination was
10 emphasised in that regard.

11 We have set out at paragraphs 45 to 46 of our brief why all the
12 crimes the Chamber categorised as JCE III crimes belong within the common
13 purpose, and this includes a category-by-category analysis. But let me
14 just take you through murder and extermination as an example.

15 Karadzic's own pre-war threats reflect his anticipation of
16 violent crimes that involved "a blood bath," his word, "the
17 annihilation," his word, "the possible extinction," his words, of Bosnian
18 Muslims. This was matched by the routine commission of murder in the
19 execution of the common purpose, including an astonishing number of mass
20 killings. 26 of the many mass killings in this case reached the
21 massiveness threshold for extermination. Paragraphs 2460 to 2461. And
22 on the 12th May 1992 --

23 JUDGE MERON: How many killings were committed in Prijedor?

24 MS. GUSTAFSON: How many killings --

25 JUDGE MERON: Killings --

1 MS. GUSTAFSON: -- or incidents of extermination?

2 JUDGE MERON: -- in Prijedor.

3 MS. GUSTAFSON: I would have to double-check, Your Honour. You
4 want numbers of victims or numbers of incidents?

5 JUDGE MERON: Victims.

6 MS. GUSTAFSON: Victims. It's difficult to say from the
7 findings. For example, the Chamber found, based on the evidence of daily
8 executions and other murders at Omarska, that many people were killed at
9 Omarska. So there's some ambiguity in the findings. But it's clear when
10 you add them all up that there is at least 1.200 victims of murder in
11 Prijedor.

12 JUDGE MERON: Thank you.

13 MS. GUSTAFSON: On the 12th of May 1992, after the criminal
14 campaign had been ongoing for a month and Karadzic already had actual
15 knowledge that it involved murder, he claimed at a large public rally
16 that "the mutual extermination, killings, and tortures have been imposed
17 to us." Paragraph 2738.

18 Now, he painted his side's infliction of extermination, killing,
19 and torture as defensive and reactionary, a characterisation the Chamber
20 rejected at paragraph 2849. But this speech shows him not only
21 acknowledging but attempting to justify the infliction of mass killing
22 and mistreatment by his forces. A justification that matches his threats
23 from months earlier.

24 And then, of course, he reacted to reports of mass killings and
25 other serious crimes in the same way he reacted to all crimes: With

1 denials and deflections. And even in the case of the Koricanske Stijene
2 massacre in Prijedor, a massacre of 200, he rewarded the perpetrators,
3 aware of their involvement. I refer to our brief, paragraphs 35 and 37
4 to 41.

5 His conduct, and that of close associates, before and during the
6 criminal campaign, leaves no doubt that murder, extermination, cruel
7 treatment, and the other excluded crimes formed part of the common
8 purpose.

9 I'll move now to ground 3. Again, I will emphasise that findings
10 in other cases, and that was the thrust of the Defence submissions,
11 should rule the day here.

12 Well, I would like to expand on the point I made earlier, that
13 those findings in other cases are based on different evidentiary
14 assessments and different accused, by pointing out how Karadzic, over
15 anybody else in the RS, had genocidal intent, and how these crimes are
16 attributed to him above anybody else. He publicly on television
17 threatened the Muslims with a highway of hell resulting in their
18 "possible extinction."

19 That was a powerful message emanating from the pinnacle of the
20 Bosnian Serb leadership of a vulnerability of Muslims and impunity for
21 future perpetrators, and the speech actually did cause Muslims to feel
22 overwhelmed by the fear and anxiety of facing complete annihilation. I
23 refer you to transcript page 10414.

24 Again and again, Karadzic and others in the Bosnian Serb
25 leadership warned their followers that the Muslims and Croats were

1 genocidal enemies of the Serbs and that the Serbs had to fight for their
2 very survival. Paragraphs 2655 to 2672.

3 Karadzic knew exactly what he was doing in generating and
4 amplifying this message of hatred. This is clear from his answer when he
5 was confronted at a press conference in September 1992 with allegations
6 of atrocities, executions, and Nazi-like conditions in camps. This was,
7 of course, shortly after the international exposure of Omarska.

8 Karadzic answered by explaining that in an interethnic and
9 interreligious war, there was no need for a command to kill because the
10 three ethnic communities had "been antagonised during centuries."
11 That's paragraph 3348.

12 But, of course, it was Karadzic who had inflamed and exploited
13 this very ethnic antagonism, who had made sure that no command to kill
14 was required. In other words, Karadzic threatened non-Serbs with
15 extinction and annihilation, issued dire warnings of a looming genocidal
16 threat, and incited interethnic fear and hatred. This set the stage for
17 a criminal campaign of a genocidal nature, aimed at destroying the
18 targeted communities.

19 And once that campaign was underway, Karadzic oversaw it from the
20 apex of power. His power and authority over the perpetrators was
21 unparalleled, and so was his ability to chart its course.
22 Paragraphs 3480 to 3481.

23 In Prijedor, for example, the factual findings show that the
24 crimes were almost entirely perpetrated by Bosnian Serb police and army
25 forces. Who, in the RS, had de jure and de facto authority over the

1 police and the army that they exercised in fact? Radovan Karadzic.
2 Paragraphs 3157 and 3167.

3 What did he do that with immense power? He used it to encourage
4 the commission of crimes by deflecting outside scrutiny, continuing to
5 incite ethnic hatred, and deliberately failing to curb the rampant
6 criminality until international exposure of the Prijedor camps forced him
7 to change course. Paragraphs 3369, 3376 to 3381, 3386, 3498, and 3500.

8 He then rewarded with medals and promotions Prijedor police
9 officials, who he knew had been involved in the notorious massacre of 200
10 non-Serbs at Koricanske Stijene and who oversaw operations at Omarska.
11 Paragraph 1751, 1752, 1845, and 3432.

12 Karadzic and other JCE members' words and actions before and during
13 the campaign demonstrate that they embraced genocide as a means to
14 achieve their shared permanent removal objective. That intent was
15 matched by the pattern of crimes committed by subordinates they
16 controlled.

17 I will conclude with a brief word on sentence.

18 The sentence submissions focused on the Holbrooke agreement.
19 Now, it's unclear from the Chamber's reasoning if it was indeed the
20 supposed agreement with Richard Holbrooke that caused the Trial Chamber
21 to give Karadzic less than a life sentence. If that was the case, it was
22 an error.

23 Karadzic entered into this supposed agreement after his ability
24 to pursue his criminal campaigns had been completely exhausted. He was
25 defeated. The Bosnian Serbs were defeated. It was over. And he did it,

1 it's his own submission, that he entered in this agreement to get an
2 enormous benefit, to get immunity from prosecution. That's his case.

3 No public policy supports a sentence mitigation for someone who
4 oversees three massive criminal enterprises for three and a half years,
5 and then when they are unable to pursue them anymore, enter an agreement
6 to try to get a benefit to not be prosecuted for those enterprises.

7 That concludes our submissions. Thank you very much.

8 JUDGE MERON: I thank the Prosecution.

9 The last item on the agenda for our hearing today is a personal
10 statement by Mr. Karadzic. I take it you are interested?

11 Yes, so ten minutes, Mr. Karadzic, for your personal statement.

12 THE APPELLANT: [Interpretation] Thank you, Your Excellencies.

13 It's difficult for me not to touch upon a few points from what
14 we've heard. Only the Serbs in Bosnia lost the war because they had no
15 other aim than get their own republic. That's one.

16 Second, if the facts are not established, then you could portray
17 the Serbs as attacking an undefended, unarmed people. Although, in fact,
18 that people outnumbered them and was well armed. There are unbelievable
19 allegations, that 30.000 people were detained in Prijedor. Although
20 3.000 were, in fact, detained, after the Muslims attacked. Out of those,
21 1700 were released and 1400 were then properly kept in custody as
22 fighters.

23 My speech that was cited here was, in fact, a warning that
24 continuing certain actions would lead us to a highway of hell. It was a
25 plea, a warning. Not a threat. If it had been a threat, it would not

1 have been voiced.

2 And I would not like Judge Sekule to leave here in the belief
3 that we accepted that figure. We contested the number of 8.000 in the
4 indictment, so the Trial Chamber reduced it to 5.000-plus. But from the
5 moral standpoint, any such figure is no more important than just a few
6 hundreds because both are a tragedy.

7 I will not go back to the references to decorations of various
8 people, because there's a procedure for that. Ministers propose and the
9 president just awards the decoration. But I must say that it seems
10 nobody understands what this crisis was about. Whatever you call us, we
11 down there are one people: Serbs, Muslims, Croats, Montenegrins. We are
12 one people. We have one identity. There are various confessions among
13 us that have to be respected.

14 Serbia is the first country in Europe that recognised Islam as a
15 religion, and we never had anything against Muslims ever. We even
16 considered them Serbs of Muslim religion. But they have the right to be
17 a separate people. In symbiosis with the Serbs, they flourished. And I
18 am quoting from Adil Zulfikarpasic, their secular leader with whom I made
19 an agreement in 1991 in order to avoid the war.

20 They did indeed become stronger and flourish in symbiosis with
21 the Serbs. Then they wanted to separate from the Serbs and we accepted
22 that too. We didn't even mind the fundamentalism that appeared with a
23 new generation of politicians, if it didn't harm us. Other European
24 countries do object to it, but they find no way to confront it. But even
25 all the Islamic countries fight fundamentalism and political Islam. We

1 don't as long as it doesn't harm us.

2 The Serbian people are not anything like what they were portrayed
3 here. We saw from the way Serbia treated immigrants and refugees how
4 good a people they are. However, the people don't always listen to their
5 government. Like they didn't in 1941, when the government of Yugoslavia
6 ceded to Hitler's pressures. The people rose against it.

7 Even now in Prijedor, there are 2.7 per cent Muslims out of
8 49.000 Muslims in Prijedor sent to prisoner of war camps. That's not
9 genocide. 1700 were released, and 1400 were sent to a prisoner of war
10 camp. But here it seems that anything is possible if you ignore the
11 facts.

12 However, the facts are in the case file, and I hope this Chamber
13 will look at the facts. In that case, it will be clear that the Muslims
14 established their own municipality in Prijedor together with Serbs. And
15 why did they attack us? Because they got orders to attack us on the
16 30th of April. And then they did attack, as they did in Kljuc a bit
17 later, in May. Pursuant to orders from their central headquarters, they
18 did so. Although, each of these municipalities was supposed to be
19 divided into two for two communities.

20 Our main wish was for the Muslims to stay with us within
21 Yugoslavia. We understood the Croats. The Croats wanted to be with
22 their mother country, Croatia. But we have been together with the
23 Muslims since 1918 when we formed a common state. The common
24 administration, the education system, and political efforts then created
25 certain antagonisms between different communities.

1 When the Muslims decided to secede, they didn't have the right to
2 take us with them. So we said: All right. You don't want to live with
3 us any longer together in the large state of Yugoslavia, so we ask that
4 what you had within Yugoslavia, we have within Bosnia. A war was not
5 needed for that.

6 Republika Srpska was recognised before the war started. The war
7 was waged so as to disenfranchise us, to stop us from creating
8 Republika Srpska. If you see that, all these accusations fall away. If
9 you don't see that, then we have no more hope. It is the Serbian elite
10 who was involved in this war. Humanists and the elite. God knows how
11 the Muslims would have fared if the Serbs had been led by such
12 fundamentalisms as the Muslims.

13 So if you don't see the essence, namely that we had the right and
14 we received the right, which they then wanted to deprive us of, if you
15 don't see that the Muslims were the ones who attacked us first in every
16 municipalities -- and these facts are easy to establish. In two-thirds
17 of municipalities, there were no attacks or combat, especially in those
18 municipalities where, like Srbac, Mrkonjic Grad, and others, SDS members
19 were in the leadership.

20 Until 1994, there was a huge number of Muslims in our territories
21 and I was pressurised to let them go because some Muslims had butchered
22 already 6.000 Serb policemen. Nothing in these proceedings that was
23 alleged is true. And that is a guarantee that we will --

24 THE INTERPRETER: Interpreter's correction: Six policemen.

25 MR. KARADZIC: [Interpretation] And that is a guarantee that the

1 conflict between us will persist.

2 Harland admitted that Markale was about General Smith who was
3 trying to prepare a violent end to the war.

4 JUDGE MERON: [Microphone not activated]

5 THE APPELLANT: [Interpretation] Oh, I see. I thought you had a
6 question.

7 I don't want to court anyone here or to send any messages, but
8 the Muslims who had relations with me and contacts with me know me as a
9 man free of prejudice. We believe them to be our own people, but it's
10 fine if they don't want to be. If they want to be separate.

11 What is wrong is when a lie is perpetuated through the courts.
12 It will inflict great evil on our people. It is my deep conviction that
13 anyone who is willing to look carefully at the evidence cannot make a
14 mistake.

15 Thank you, Your Excellencies.

16 JUDGE MERON: Thank you, Mr. Karadzic.

17 With the personal statement by Mr. Karadzic, we are concluding
18 the hearing of the appeals in this case.

19 But before we adjourn, I would first like to thank the parties
20 for their work on the case, and I would like to say - and I'm sure I'm
21 speaking for my colleagues on the Bench - that both parties made
22 extremely professional arguments and the Bench highly appreciates this.

23 I would also like to thank the Registry, their staff in the
24 courtroom, which has so ably facilitated our hearings today and
25 yesterday, and to the interpreters for their excellent assistance and

1 their problems with confronting, from time to time, speed reading by the
2 counsel.

3 The Appeals Chamber, as you know, will render its judgement in
4 due course.

5 I would like to remind the parties that, in accordance with the
6 Scheduling Order issued on the 27th of February 2018, I will see the
7 parties tomorrow again, at 3.00 p.m., for the Status Conference in this
8 case.

9 And we are now adjourned.

10 --- Whereupon the hearing adjourned at 12.56 p.m.

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