
 UNITED NATIONS	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-09-92-T
		Date:	22 November 2017
		Original:	English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Judgment of: 22 November 2017

PROSECUTOR

v.

RATKO MLADIĆ*PUBLIC WITH CONFIDENTIAL ANNEX*

JUDGMENT**VOLUME IV OF V**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger
Mr Milbert Shin

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Dragan Ivetić
Mr Miodrag Stojanović

onwards by ordering all VRS units to immediately block all UNPROFOR and humanitarian organisations' activity on the territory of the Bosnian-Serb Republic.

4612. The Trial Chamber considered in particular Mladić's acts vis-à-vis the VRS, given that many of the principal perpetrators of crimes were VRS members. Mladić issued orders regarding the establishment and organization of the VRS and its organs. Mladić was closely involved in VRS activities, as evidenced by regular briefings, meetings, and inspections. Mladić commanded and controlled VRS units and issued orders to other groups. Mladić also addressed the Bosnian-Serb Assembly during several of its sessions on issues surrounding the development of policies of the Bosnian-Serb political leadership and often suggested to Bosnian-Serb politicians what position they should take during peace negotiations in order to achieve the strategic objectives as initially defined. Mladić further placed severe restrictions on humanitarian aid. Mladić's acts were so instrumental to the commission of the crimes that without them the crimes would not have been committed as they were. In light of this, the Trial Chamber finds that through his actions set out in the previous paragraph, the Accused significantly contributed to achieving the objective of permanently removing the Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia-Herzegovina through persecution, extermination, murder, inhumane acts (forcible transfer), and deportation.

9.3.13 *Mens rea*

4613. The Prosecution argued that the Accused's statements and conduct demonstrate his intention to commit all of the alleged crimes.¹⁶³⁶⁶ The Defence submitted that the Accused (i) was primarily concerned with defending against a legitimate military threat, and made it clear that the fight was not against non-Serbs, but against those who sought war;¹⁶³⁶⁷ (ii) did not intend for his actions to have discriminatory effects, but assisted in the legitimate movement of populations when this was imperative on account of the conflict or humanitarian considerations;¹⁶³⁶⁸ (iii) did not know about the crimes or

¹⁶³⁶⁶ Prosecution Final Brief, paras 216-239.

¹⁶³⁶⁷ Defence Final Brief, para. 115.

¹⁶³⁶⁸ Defence Final Brief, paras 116, 142-143.

to convene another meeting at the Sarajevo airport on 15 March 1995 to address these problems with political representatives of both sides.¹⁶⁵¹⁵

4684. **Milovan Milutinović** testified that after the war, under Mladić's direct leadership, information and propaganda activities were aimed at the strict implementation of the Military Annex to the Dayton Peace Agreement.¹⁶⁵¹⁶ According to the witness, Mladić made an exceptional contribution to the Annex's implementation.¹⁶⁵¹⁷

The Trial Chamber's findings

4685. Based on the foregoing, in particular (i) the Accused's position as Commander of the VRS Main Staff; (ii) the VRS Main Staff's receipt of detailed reports; (iii) the Accused's personal receipt of regular updates, including meetings and phone calls; (iv) the Accused's involvement in the units' activities; and (v) the fact that the commission of crimes was widely acknowledged, reported on by international media outlets, and commented on by the UN, the Trial Chamber finds that the Accused knew that the crimes of persecution, murder, extermination, deportation, and inhumane acts (forcible transfer) were committed against Bosnian Muslims and Bosnian Croats in the Municipalities, including in detention facilities. The Accused significantly contributed to the Overarching JCE, as further detailed in chapter 9.3.12, with awareness of all of these crimes.

4686. The Trial Chamber further finds that the Accused's statements and conduct, in particular (i) his repeated use of derogatory terms such as 'Turks', '*balijas*', and '*Ustašas*' to refer to Bosnian Muslims and Bosnian Croats; (ii) his recalling of historical crimes that were allegedly committed against Bosnian Serbs and his references to the threat of 'genocide' against the Bosnian Serbs; (iii) his statements indicating an intention not to respect the laws of war in Croatia in 1991, and his later references to repeating the destruction inflicted during this conflict; and (iv) his expressions of commitment to an ethnically homogenous Bosnian-Serb Republic, even in territories that previously had a large percentage of non-Serb inhabitants; all demonstrate an intent

¹⁶⁵¹⁵ P2050 (Cable code from UNPROFOR to Annan on meetings with Bosnian-Serb officials, 14 March 1995), para. 1.

¹⁶⁵¹⁶ D862 (Milovan Milutinović, witness statement, 11 July 2014), para. 68.

¹⁶⁵¹⁷ D862 (Milovan Milutinović, witness statement, 11 July 2014), para. 68.

for the abovementioned crimes to be committed against Bosnian Muslims and Bosnian Croats on discriminatory grounds.

4687. The Trial Chamber received evidence that the Accused gave orders to the VRS and other subordinated forces to respect the Geneva Conventions. The Trial Chamber further received evidence, both in this chapter and in chapter 9.3.9, that the Accused appeared on various occasions to pursue peaceful solutions to the conflict, and made statements to UNPROFOR members indicating his desire to further the peace process. However, these actions and statements, sometimes providing misinformation, are inconsistent with the Accused's other conduct and are directly contradicted by his other contemporaneous statements. Considering this, and in light of what happened on the ground, the Trial Chamber finds that the Accused's orders to respect the Geneva Conventions, his statements to UNPROFOR personnel, and his involvement in peace negotiations were not indicative of his true state of mind.

4688. Based on all of the foregoing, the Trial Chamber finds that the Accused intended to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory through the commission of the crimes of deportation, inhumane acts (forcible transfer), murder, extermination, and persecution. The Trial Chamber is satisfied that the Accused shared the intent to achieve the common objective of the Overarching JCE through the commission of these crimes, and finds that the Accused held this intent by 12 May 1992 at the latest.

courtesy. Therefore, the measures utilised by the VRS which went further, and included the blockading of delivery of humanitarian aid and deliberately obstructive inspections, were disproportionate and calculated to restrict humanitarian aid to Sarajevo.

4891. In chapter 9.5.10, the Trial Chamber will consider whether Mladić's conduct in this respect, considered together with other acts or omissions, amounts to a significant contribution to the Sarajevo JCE.

9.5.10 Legal findings

4892. The Trial Chamber recalls its findings in chapter 9.4.3 that between 12 May 1992 and November 1995, there existed a joint criminal enterprise with the primary purpose of spreading terror among the civilian population of Sarajevo through a campaign of sniping and shelling. The objective of the JCE involved the commission of the crimes of terror, unlawful attacks against civilians, and murder. The Trial Chamber also found that for purposes of establishing a plurality of persons, the following participated in the realization of the common criminal objective: members of the Bosnian-Serb military and political leadership, including Karadžić, Galić, Dragomir Milošević, Krajišnik, Plavšić, and Koljević. The Trial Chamber also recalls its findings in chapter 5 that all principal perpetrators of the crimes in Sarajevo were members of the SRK.

4893. In chapters 9.5.2-9.5.10, the Trial Chamber made findings about Mladić's acts and omissions during the existence of the Sarajevo JCE. The Trial Chamber found that Mladić: (i) worked on establishing the SRK in May 1992; (ii) made personnel decisions in the SRK; (iii) commanded SRK units from 1992 to 1995 in various operations; (iv) ordered the production and use of modified air bombs; (v) procured military assistance from the VJ for the SRK; (vi) participated in policy discussions between 1992 and 1995 with members of the Bosnian-Serb government; (vii) participated in the dissemination of anti-Muslim and anti-Croat propaganda between September 1992 and June 1995; (viii) provided misleading information about crimes to representatives of the international community; (ix) failed to investigate crimes and/or punish members of the SRK who committed crimes; and (x) frequently ordered the restriction of humanitarian aid to Sarajevo. The Trial Chamber considered in particular Mladić's acts vis-à-vis the SRK, given that all perpetrators of the Sarajevo crimes were SRK members. Mladić's

acts were instrumental to the commission of these crimes. In light of this, the Trial Chamber finds that through his acts set out in this paragraph, the Accused significantly contributed to achieving the objective of spreading terror among the civilian population of Sarajevo through a campaign of sniping and shelling by way of committing the crimes of terror, unlawful attacks against civilians, and murder.

9.5.11 *Mens rea*

4894. According to the Indictment, the Accused and the other members of the JCE, the objective of which was to establish and carry out a campaign of sniping and shelling against the civilian population of Sarajevo, shared the intent for the commission of the crimes of terror, unlawful attacks on civilians, and murder.¹⁷¹⁷⁴ The Defence submitted that the Accused (i) did not intend to establish or carry out any campaign of sniping or shelling against the civilian population of Sarajevo, (ii) strictly implemented an absolute ban on the targeting of civilians, (iii) ensured that SRK personnel were made aware of their obligations under international law, (iv) made all efforts to reduce the risk to the civilian population of Sarajevo, and (v) made constant efforts to ensure the wellbeing and safety of civilians in Sarajevo.¹⁷¹⁷⁵

4895. As set out in further detail below, the Trial Chamber recalls its findings in chapter 9.5.10 regarding the significant contribution of the Accused to the common objective of the Sarajevo JCE. The Trial Chamber further received evidence with regard to the Accused's alleged intent to achieve the common objective of the Sarajevo JCE from **Rupert Smith**, UNPROFOR commander in Bosnia-Herzegovina between 23 January and December 1995;¹⁷¹⁷⁶ **David Fraser**, a Military Assistant to the UNPROFOR Commander in Sector Sarajevo from 17 April 1994 to 26 May 1995;¹⁷¹⁷⁷ **Michael Rose**, the UNPROFOR Commander from 5 January 1994 to 23 January 1995;¹⁷¹⁷⁸ **Witness RM-163**, an UNPROFOR soldier stationed in Sarajevo from 1993 to 1994 and a member of the RRF in 1995;¹⁷¹⁷⁹ **Husein Aly Abdel-Razek**, UNPROFOR Sector Sarajevo Commander from 21 August 1992 to 20 February

¹⁷¹⁷⁴ Indictment, paras 14-15.

¹⁷¹⁷⁵ Defence Final Brief, paras 2434-2441.

¹⁷¹⁷⁶ P785 (Rupert Smith, witness statement, 27 October 2009), paras 4, 6; Rupert Smith, T. 7287.

¹⁷¹⁷⁷ P576 (David Fraser, witness statement, 3 December 2012), paras 7, 11.

¹⁷¹⁷⁸ P736 (Michael Rose, witness statement, 26 March 2009), paras 5, 195; Michael Rose, T. 6839.

¹⁷¹⁷⁹ P628 (Witness RM-163, witness statement, undated), paras 4, 6-7, 9-10.

international organizations that Sarajevo was under no threat from the VRS, such statements are not a reliable basis for determining the true state of mind of the Bosnian-Serb leadership, particularly in light of Mladić's proposal to mislead the public. The Trial Chamber further recalls its finding that while Mladić prohibited firing at civilian targets without his approval and ordered that firing upon Sarajevo was only to take place in self-defence, such orders do not assist in determining the true state of mind of the Bosnian-Serb leadership, given that the language of the orders demonstrates that Mladić was more concerned with insubordination than with the welfare of the civilian population. The Trial Chamber finally recalls its finding that while Mladić ordered observance in all respects of the Geneva Conventions and other provisions of international law, such orders not to target civilians are not a reliable factor for determining the true state of mind of the Bosnian-Serb leadership, given that such orders were not adhered to and the leadership did not take measures to enforce such orders.

4920. The Trial Chamber notes that certain statements, such as the Accused's proposal to include Sarajevo in the agreement with regard to the demilitarized zones 'so that we finish the war', suggest that the Accused had peaceful intentions. However, the Trial Chamber does not consider such statements to be an accurate reflection of the Accused's mental state, as they directly contradict his other contemporaneous statements, and are inconsistent with his conduct. In light of the above, and considering the Trial Chamber's findings in chapter 9.4.3 regarding the unreliability of the Accused's orders prohibiting firing at civilian targets in Sarajevo as a means of determining his true state of mind, the Trial Chamber rejects the Defence submissions regarding the Accused's mental state.

4921. Based on all of the foregoing, in particular: (i) the Accused personally directing the 28 May 1992 shelling of Sarajevo, selecting targets, and directing fire away from Serb-populated areas; (ii) the Accused formulating and issuing directives and commanding the SRK; (iii) the Accused proposing in the spring of 1995 that Sarajevo be bombarded with explicit disregard for the safety of civilians; and (iv) the Accused ordering the SRK Command to cut utilities supplying Sarajevo on 6 September 1995, thereby forcing the inhabitants of Sarajevo to go outside and be exposed to sniping and shelling, the Trial Chamber finds that the Accused intended to establish and carry out a campaign of sniping and shelling against the civilian population of Sarajevo. The Trial

Chamber further finds that the Accused intended this campaign to spread terror among the civilian population of Sarajevo and that the Accused intended to perpetrate the crimes of terror, unlawful attacks on civilians, and murder. Lastly, the Trial Chamber finds that the Accused held this intention throughout the Indictment period.

9.6 Third joint criminal enterprise (Srebrenica)

9.6.1 Overview of the charges

4922. The Indictment states that between the days immediately preceding 11 July 1995 and 1 November 1995, the Accused participated in a JCE to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children, and some elderly men from Srebrenica.¹⁷²⁴⁶ The objective amounted to or included the commission of the crimes of genocide (under Count 2), persecution, extermination, murder, deportation, and inhumane acts (forcible transfer).¹⁷²⁴⁷ The Accused shared the intent for the commission of each of these crimes with other members of the JCE.¹⁷²⁴⁸

4923. According to the Indictment, the members of the JCE included, besides the Accused, Radovan Karadžić and:

republic-level members of Bosnian-Serb Political and Governmental Organs [as defined in the Indictment]; regional, municipal, and local level members of Bosnian-Serb Political and Governmental Organs [as defined in the Indictment] with responsibility in or for the Srebrenica, Vlasenica, Bratunac, and/or Zvornik areas; and commanders, assistant commanders, senior officers, and chiefs of VRS and MUP operating in or with responsibility over territory within the DK area of responsibility and/or Trnovo municipality; and members of a Serbian MUP unit called the Scorpions.¹⁷²⁴⁹

Alternatively, some or all of these individuals were not members but were used by members of the JCE to carry out crimes committed in furtherance of its objective.¹⁷²⁵⁰

4924. Members of the JCE implemented their objective by personally committing crimes or through and by using others to carry out crimes committed in furtherance of the objective.¹⁷²⁵¹ Those used to carry out the crimes were members of the VRS and MUP operating in or with responsibility over territory within the DK area of responsibility and/or Trnovo Municipality and a Serbian MUP unit called the Scorpions.¹⁷²⁵²

¹⁷²⁴⁶ Indictment, paras 7, 19.

¹⁷²⁴⁷ Indictment, paras 7, 19.

¹⁷²⁴⁸ Indictment, para. 20.

¹⁷²⁴⁹ Indictment, paras 20-21.

¹⁷²⁵⁰ Indictment, para. 21.

¹⁷²⁵¹ Indictment, para. 22.

¹⁷²⁵² Indictment, para. 22.

of the international community. He further stated on several occasions during the Hotel Fontana meetings that the Bosnian Muslims from Srebrenica could ‘live or vanish’ and ‘survive or disappear’. Based on the foregoing, the Trial Chamber finds that Mladić intended to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children, and some elderly men from Srebrenica, through the commission, as set out in chapter 8, of the crimes of persecution, inhumane acts (forcible transfer), murder, and extermination.

5129. With regard to the crime of genocide in particular, the Trial Chamber recalls its findings in chapter 8 that at least 3,720 Bosnian-Muslim males were killed and thousands of Bosnian Muslims in Srebrenica were subjected to serious bodily or mental harm, which contributed to the destruction of the targeted group as a result of actions of members of the VRS, military police, civilian police, special police, Drina Wolves, and paramilitary formations. With regard to whether the targeted part of the protected group constituted a substantial part of the protected group, the Trial Chamber recalls its finding in chapter 8 that the Bosnian Muslims in Srebrenica constituted a substantial part of the Bosnian-Muslim population in Bosnia-Herzegovina. Finally, the Trial Chamber recalls its finding that the physical perpetrators committed the prohibited acts with the intent to destroy the Bosnian Muslims in Srebrenica, as a substantial part of the protected group of Bosnian Muslims in Bosnia-Herzegovina, which constituted the crime of genocide.

5130. With regard to Mladić’s intent to commit genocide, the Trial Chamber considered in particular, his command and control over VRS and MUP units operating in and around Srebrenica from at least 11 July to 11 October 1995, his orders to separate the Bosnian-Muslim men from the women, children and elderly in Potočari from 12 July 1995, as well as his statements and speeches between 11 July and August 1995, in which he articulated that it was time to take revenge, and threatened that the Bosnian Muslims of Srebrenica could either ‘live or vanish’, ‘survive or disappear’, that only the people who could secure the surrender of weapons would save the Bosnian Muslims from ‘destruction’. The Trial Chamber further considered Mladić’s presence at Nova Kasaba football field and Sandići Meadow on 13 July 1995, where several thousand Bosnian-Muslim males were detained, and his misleading assurances that they would be taken to Bratunac to be exchanged, as well as his presence at a meeting on 13 July 1995, with MUP and VRS officers during which the VRS tasked the MUP with the killing of

about 8,000 Muslim males near Konjević Polje. Finally, the Trial Chamber recalls its findings on the murder, extermination, and persecution of Bosnian Muslims in Srebrenica, in chapters 7.2 – 7.16 and 8. Based on the foregoing and the Trial Chamber's finding that the Bosnian Muslims in Srebrenica constituted a substantial part of the Bosnian-Muslim population in Bosnia-Herzegovina, the Trial Chamber finds that the only reasonable inference is that Mladić had the specific intent to commit genocide. Under these circumstances, the Trial Chamber finds that Mladić intended to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children, and some elderly men from Srebrenica, through the commission, as set out in chapter 8.10.2, of the crime of genocide.

5131. Based on the above, the Trial Chamber is satisfied that Mladić shared the intent to achieve the common objective of the Srebrenica JCE through the crimes charged in counts 2 to 6 and 8 and rejects the Defence's argument that his personal actions and behaviour did not support criminal intent.

located at potential NATO targets; and that he had ordered that the detained UN personnel not be handcuffed, although he was aware that some had been.

5151. On 30 May 1995, the Accused informed various VRS corps commands and units that NATO was preparing an operation to free the UNPROFOR personnel held captive. Based on a 29 May 1995 Supreme Command decision, he ordered that all units were to open fire on the area of airborne assault and the area of deployment of UNPROFOR troops in the event NATO launched such an operation.

5152. On 30 May 1995, the Accused ordered the SRK Command to complete the disarming of captured UNPROFOR personnel, to deploy them to potential NATO air strike targets, and to transport the remaining detained UNPROFOR personnel to a safe place. This order included a reporting obligation to the Accused by way of regular combat reports.

5153. The Accused visited some of the detained UNMOs between 2 and 4 June 1995 and ordered their filming; footage of detained UNMOs was later broadcast on a local Bosnian-Serb television station and worldwide. The Accused issued orders addressed to various VRS units to release detained UN personnel between 2 and 17 June 1995 in execution of Karadžić's orders.

5154. During a meeting between General Janvier, the UNPROFOR Commander, and the Accused, held on 4 June 1995, Janvier requested the immediate release of UN personnel, to which the Accused stated that their liberation was contingent on a guarantee concerning the end of air strikes.

5155. Finally, the Trial Chamber recalls its finding on the hostage-taking JCE in chapter 9.8.

5156. Based on the foregoing, the Trial Chamber finds that the Accused was closely involved from around 25 May 1995 and throughout every stage of the hostage-taking, including as a negotiator with UNPROFOR representatives. Apart from the inherent threats associated with the way in which UN personnel were taken hostage, he ordered VRS units to detain the UNPROFOR personnel and to place them at potential NATO air strike targets, ordered the release of the detained UNPROFOR personnel, and informed an UNPROFOR representative that such release was contingent on the cessation of air strikes. The Trial Chamber further considers that UNPROFOR personnel were detained after a VRS officer communicated a threat from the Accused

that an UNMO officer's camp would be attacked if air strikes continued, and concludes that the only reasonable interpretation is that the Accused ordered the detention of the UNPROFOR personnel. The Accused's contributions to the hostage-taking JCE were central to the implementation of the JCE's common objective. Having considered the above, the Trial Chamber finds that the Accused significantly contributed to the JCE's common objective of capturing UN personnel deployed in various parts of Bosnia-Herzegovina and detaining them in strategic military locations to prevent NATO from launching further military air strikes on Bosnian-Serb military targets. The Trial Chamber is satisfied that the Accused's contribution falls within the scope of what is charged in the Indictment in that respect.

9.9.3 Mens rea

5157. The Trial Chamber recalls its findings in chapter 9.9.2 regarding the significant contribution of the Accused to the objective of the hostage-taking JCE, in particular that between 25 May and approximately 24 June 1995, the Accused ordered VRS units to detain UNPROFOR personnel, ordered the detainees to be placed at potential NATO air strike targets, personally visited the detainees, and informed the UNPROFOR Commander that the detainees' release was contingent on a guarantee concerning the end of air strikes. While the Accused, in his conversation with an UNPROFOR representative, maintained that the detained UNPROFOR personnel had not been threatened, the Trial Chamber recalls its finding in chapter 6 that subordinates of the Accused made such threats to exert leverage over NATO in order to secure the end of air strikes. The Trial Chamber finds that the Accused intended these threats to allow the hostage-taking crisis to develop.

5158. The Trial Chamber further received evidence with regard to the Accused's intent for the commission of the crime of hostage-taking, which is discussed in chapter 6 and recalled below. The Trial Chamber finds this evidence reliable. In particular, the Trial Chamber considered the evidence that on 26 May 1995, a VRS officer informed an UNPROFOR officer that he had been ordered by the Accused to attack the UNPROFOR officer's camp if further NATO attacks were to take place. Two days later, all OPs in the area were surrounded by heavily armed Serbs and 33 of the UNPROFOR officer's soldiers were detained.

5159. The Accused had two conversations with the UNPROFOR Commander on 26 May 1995. In the first conversation and upon the resumption of NATO air strikes around 10 a.m., the Accused urged the UNPROFOR Commander to think of the consequences to those under his command. In the second conversation, which took place around 2:50 p.m., the Accused informed the UNPROFOR Commander that he had received information that some detained UNPROFOR personnel had been placed at targets and that their fate rested with the UNPROFOR Commander.

5160. The Accused again spoke with the UNPROFOR Commander on 28 May 1995, acknowledging that some UN personnel were detained at potential NATO targets. During this conversation, the Accused told the UNPROFOR Commander that if he were to comply with the Accused's request to send letters of condolences to the families of dead Serb soldiers, he would 'give a chance for survival to the UK soldiers in Goražde'. The Accused also met separately with a representative of the French government, General Janvier, and the Commander of the VJ between 29 May and 10 June 1995. Each of these individuals urged the Accused to release the detained UNPROFOR personnel. The Accused informed General Janvier that the release of the detainees was directly linked to a guarantee that air strikes would cease.

5161. On 30 May 1995, the Accused ordered various VRS commands and units not to leak any information regarding the detained UNPROFOR personnel and forbade contact with the detained UNPROFOR personnel without Main Staff approval. Around 3 June 1995, following a meeting of the VRS Supreme Command, a press release was issued presenting the detention of UN personnel as an act of self-defence that would continue until the UN guaranteed the end of air strikes.

5162. The Trial Chamber considers both Defence submissions – that the Accused did not intend that UNPROFOR personnel should be detained in order to deter any action and that any knowledge the Accused had regarding the hostage-taking was vague and acquired after the fact – unsupported in light of the evidence recalled above, particularly the evidence of the Accused issuing orders to detain UN personnel and to place them at potential NATO air strike locations.

5163. Based on the foregoing, particularly the Accused's statements and conduct throughout the hostage-taking, including his issuing of orders to detain UN personnel and to place them at potential NATO air strike locations, the Trial Chamber finds that the Accused intended to capture UN personnel deployed in various parts of Bosnia-

Herzegovina and detain them in strategic military locations. The Trial Chamber also finds that the Accused's statements, in particular on the fate of UNPROFOR personnel, are tantamount to having issued threats to kill or continue to detain the UN personnel, and that these threats were meant to obtain the end of the air strikes. The Trial Chamber further finds that the evidence – particularly the Accused communicating to the UNPROFOR Commander that the release of the detained UNPROFOR personnel was contingent on the cessation of air strikes and the Accused's subordinates threatening the detained UNPROFOR personnel with the aim of stopping the air strikes – establishes that the Accused intended the hostage-taking to prevent NATO from launching further air strikes on Bosnian-Serb military targets. The Trial Chamber is thus satisfied that the Accused shared the intent to achieve the common objective of the hostage-taking JCE.

such gravity that the strongest condemnation that the international community can express is merited.¹⁷⁷⁶⁹ In relation to aggravating factors, the Prosecution submitted that Mladić's abuse of authority as the Commander of the VRS Main Staff and the special vulnerability of many of the victims constitute two of the most significant aggravating circumstances.¹⁷⁷⁷⁰

5187. The Defence submitted that in deciding on a sentence, the Trial Chamber is primarily tasked with analysing the gravity of the offences with the sole purpose of imposing a corresponding penalty.¹⁷⁷⁷¹ Furthermore, the Defence submitted that no aggravating circumstances exist.¹⁷⁷⁷² In the alternative, it argued that if the Trial Chamber were satisfied that aggravating circumstances do exist, limited weight should be attached to them.¹⁷⁷⁷³ Mladić did not abuse his position within the VRS and he did everything in his power to maintain or achieve peace, given the circumstances.¹⁷⁷⁷⁴ Additionally, the Defence argued that the vulnerability of the victims has been subsumed in the overall gravity of the crimes for which Mladić has been charged, and that therefore extending the sentence based on this consideration would constitute double-counting.¹⁷⁷⁷⁵

5188. Mladić has been found responsible for having committed a wide range of criminal acts through his participation in four JCEs. The crimes committed include some of the most heinous in international humanitarian law, namely genocide and extermination as a crime against humanity. In determining an appropriate sentence for Mladić, the Trial Chamber has considered the nature, scale, and brutality of the crimes for which Mladić has been found responsible, as well as the duration of his participation in those crimes and their overall impact on the victims and their families.

5189. More specifically, with respect to the Municipalities component of the case, Mladić has been found responsible for having significantly contributed to the overarching JCE the purpose of which was to permanently remove Bosnian-Muslim and Bosnian-Croat inhabitants from the territories of Bosnia-Herzegovina between 12 May 1992 and 30 November 1995. This is set out in detail in chapter 9.3, and involved the

¹⁷⁷⁶⁹ Prosecution Final Brief, paras 1735-1739. *See also* T. 44572-44574.

¹⁷⁷⁷⁰ Prosecution Final Brief, paras 1740-1743.

¹⁷⁷⁷¹ Defence Final Brief, para. 3413.

¹⁷⁷⁷² Defence Final Brief, para. 3420.

¹⁷⁷⁷³ Defence Final Brief, para. 3420.

¹⁷⁷⁷⁴ Defence Final Brief, paras 3421-3423.

¹⁷⁷⁷⁵ Defence Final Brief, paras 3429-3431.

commission of the crimes of persecution, extermination, murder, and deportation. The Trial Chamber's findings concerning these crimes are set out in detail in chapters 4 and 8. The Trial Chamber therefore finds that the crimes that Mladić has been found to have committed through his participation in the overarching JCE for the Municipalities are of a high level of gravity.

5190. With respect to the Sarajevo component of the case, Mladić has been found responsible for having significantly contributed to a JCE to establish and carry out a campaign of sniping and shelling against the civilian population of Sarajevo between 12 May 1992 and November 1995, the primary purpose of which was to spread terror among the civilian population. This is set out in detail in chapter 9.5 and involved the commission of the crimes of terror, unlawful attacks on civilians, and murder. The Trial Chamber's findings concerning these crimes are set out in detail in chapters 5 and 8. The Trial Chamber therefore finds that the crimes that Mladić has been found to have committed through his participation in the Sarajevo JCE are of a high level of gravity.

5191. With respect to the Srebrenica component of the case, Mladić has been found responsible for having significantly contributed to a JCE to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys and by forcibly removing women, young children, and some elderly men from at least 11 July to 11 October 1995. This is set out in detail in chapter 9.7 and involved the commission of the crimes of genocide, persecution, extermination, murder, and inhumane acts (forcible transfer). The Trial Chamber's findings concerning these crimes are set out in detail in chapters 7 and 8. The Trial Chamber therefore finds that the crimes that Mladić has been found to have committed through his participation in the Srebrenica JCE are of a high level of gravity.

5192. With respect to the hostages component of the case, Mladić has been found responsible for having significantly contributed to a JCE to take UN personnel hostage in order to compel NATO to abstain from conducting air strikes against Bosnian-Serb military targets during the months of May and June 1995. This is set out in detail in chapters 9.9 and involved the commission of the crime of taking hostages, which the Trial Chamber has discussed in chapters 6 and 8. The Trial Chamber therefore finds that the crime that Mladić has been found to have committed through his participation in the JCE to take UN personnel hostage was grave.

5193. Mladić's participation in all four JCEs was undertaken in his official capacity as Commander of the VRS Main Staff, a position which he held throughout the entire