

THE MLADIĆ TRIAL – THE LAST CASE BEFORE THE ICTY

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ABSTRACT

The trial judgment in the case Prosecutor v. Ratko Mladić on 22 November 2017 marked the end not only of the proceedings in this case but also of the work of the ICTY. Although having been one of the first persons to be indicted by the ICTY, Mladić was one of the last to be arrested and his trial was the very last to be concluded. As such, the parties, the Trial Chamber, and others involved with the case could use and build on the collective experience accumulated by the ICTY and generally in the field of international criminal law until that time. This brief provides an overview of the pre-trial and trial proceedings in the case and reflects on a few legal and other challenges and lessons learned, which are of relevance to other present and future international courts and tribunals.

I. INTRODUCTION

On 22 November 2017, the International Criminal Tribunal for the former Yugoslavia ("ICTY") rendered the judgment following its last trial, in the case of Prosecutor v. Ratko Mladić.¹ After more than five years of trial, the rendering of the judgment marked the end not only of the proceedings in this case but also of the work of the ICTY. The ICTY closed its doors at the end of December 2017, after more than 24 years of operations.² As one of the largest and most complex war crimes trials in history, the Mladić case presents numerous challenges and lessons that are relevant for other present and future international courts and tribunals.

¹ The author was the Senior Legal Officer assisting ICTY Trial Chamber I, to which this case was assigned throughout the pre-trial and trial phases of the case. This article is based on a number of lectures and presentations the author prepared and held during the spring of 2018, including at the T.M.C Asser Institute (The Hague, The Netherlands), University of Groningen (The Netherlands), University of Oxford (United Kingdom), the Irish Centre for Human Rights (Galway, Ireland), University of Amsterdam (The Netherlands), University of Copenhagen (Denmark), Stockholm University (Sweden), and the Grotius Centre for International Legal Studies (Leiden/The Hague, The Netherlands). The author is grateful for comments by Robert Schaeffer and Lucia Catani on earlier versions of the article. Any views expressed in this brief are those of the author alone and do not necessarily reflect the views of the ICTY or the United Nations in general.

² ICTY Press Release, "ICTY marks official closure with moving Ceremony in The Hague", 27 December 2017 (www.icty.org/en/press)(visited 14 September 2018). Of the 161 individuals indicted by the ICTY Prosecutor, 90 were convicted and sentenced, 19 acquitted, and 13 transferred to national jurisdictions for trial. In addition, for 37 individuals the proceedings were terminated early or the indictments were withdrawn and another 2 (Jovica Stanišić and Franko Simatović) were in retrial before the United Nations International Residual Mechanism for Criminal Tribunals (MICT). The MICT was established by the United Nations Security Council through Resolution 1966 to "continue the jurisdiction, rights and obligations and essential functions of the ICTY and the [International Criminal Tribunal for Rwanda]" (Security Council Resolution 1966, UN doc. S/RES/1966 (22 December 2010)).

II. INDICTMENT – CHARGING A MILITARY LEADER

On 24 July 1995, the ICTY Prosecutor filed a joint indictment against Radovan Karadžić and Ratko Mladić.³ These individuals were the two main political and military leaders in the Bosnian-Serb Republic throughout the armed conflict in Bosnia-Herzegovina in the 1990s.⁴ It was one of the first indictments filed before the ICTY, and it was presented while the conflict in Bosnia-Herzegovina was in one of its most brutal and bloody phases. A second indictment against the two accused was filed on 15 November 1995, covering events that took place in Srebrenica in July that year, around the time of the filing of the first indictment.⁵ On 28 April 2000, the two indictments were joined into one.⁶ Following the arrest of Karadžić in 2008, the case against the two accused was severed into two, resulting in one indictment against Karadžić and one against Mladić.⁷ With a few further amendments, the trial against Mladić proceeded on the basis of the latter indictment.⁸

Mladić was charged in his capacity as Commander of the Main Staff of the Bosnian-Serb army.⁹ Throughout the Indictment period he held the highest military position in the Bosnian-Serb Republic and he reported directly to the Bosnian-Serb president, Radovan Karadžić.¹⁰ Karadžić was the sole president for most of this period, with the exception of some months when he was a member of a collective presidency¹¹ together with, among others, Biljana Plavšić and Momčilo Krajišnik who were also charged and convicted before the ICTY.¹² According to the Indictment, Mladić was individually criminally responsible for having committed (through participation in joint criminal enterprises), planned, instigated, ordered, and aided and abetted the alleged crimes, pursuant to Article 7(1) of the ICTY Statute ("Statute").¹³ Further, he was charged with criminal

³ Prosecutor v. Radovan Karadžić and Ratko Mladić, Case No. IT-95-5-I, Indictment, 24 July 1995.

⁴ See Prosecutor v. Ratko Mladić, Case No. IT-09-92-T, Judgment, 22 November 2017 ("Trial Judgment"), para. 276; Prosecutor v. Radovan Karadžić, Case IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016, 24 March 2016 ("Karadžić Trial Judgement"), para. 2.

⁵ Prosecutor v. Radovan Karadžić and Ratko Mladić, Case No. IT-95-18-I, Indictment, 15 November 1995.

⁶ Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-I, Indictment, 28 April 2000; Prosecutor v. Ratko Mladić, Case No. IT-95-5/18-I, Indictment, 28 April 2000.

⁷ Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-PT, Order Severing Ratko Mladić, 15 October 2009. See also Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-PT, Prosecutor's Second Amended Indictment, 18 February 2009; Prosecutor v. Ratko Mladić, Case No. IT-09-92-I, Second Amended Indictment, 1 June 2011 ("Second Amended Indictment").

⁸ Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Fourth Amended Indictment, 16 December 2011 ("Indictment"). See also Second Amended Indictment, Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Third Amended Indictment, 20 October 2011.

⁹ Indictment, paras 3, 13, 18, 23, 28, 30, 32-34.

¹⁰ See Trial Judgment, para. 276.

¹¹ See Karadžić Trial Judgement, para. 2.

¹² See Prosecutor v. Biljana Plavšić, Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003 (conviction after guilty plea and sentenced to 11 years of imprisonment); Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A, Judgement, 17 March 2009 (convicted and sentenced to 27 years of imprisonment, revised to 20 years of imprisonment on appeal).

¹³ Indictment, paras 4-30.

responsibility as a superior, pursuant to Article 7(3) of the Statute.¹⁴ Thus, the Indictment charged all modes of liability provided for in the Statute.

The Prosecution charged Mladić with 11 counts of genocide, crimes against humanity, and violations of the laws and customs of war, pursuant to Article 3 through 5 of the Statute. The crime base in the case is divided into four parts, corresponding to four joint criminal enterprises ("JCE"). The first part of the case concerns crimes committed in 15 municipalities in the Bosnian-Serb Republic. This part corresponds roughly to the first (overarching) JCE, of which Mladić was alleged to have been a key member. The objective of this JCE was the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian-Serb-claimed territory in Bosnia-Herzegovina. The JCE was allegedly carried out through, *inter alia*, the commission of the crimes against humanity of persecution, deportation, and the inhumane act of forcible transfer.¹⁵

The second part of the case concerns crimes allegedly committed in Sarajevo, corresponding to the second JCE. According to the Indictment, Mladić and others participated in this JCE, the objective of which was to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling. The Prosecution alleged that the JCE was in existence between April 1992 and November 1995, but that Mladić participated in it only from 12 May 1992 onwards.¹⁶

The third part of the case, corresponding to the third JCE, concerns crimes committed in and around Srebrenica in July 1995. The objective of this JCE was to eliminate the Bosnian Muslims in Srebrenica and the JCE was allegedly in existence from the days immediately preceding 11 July 1995 to 1 November 1995.¹⁷

The fourth part of the case concerns the taking of hostages and it corresponds to the fourth JCE. This is the smallest part of the case and the JCE was allegedly in existence during May and June 1995. Its objective was to take UN personnel as hostages in order to compel NATO to abstain from carrying out airstrikes against Bosnian-Serb military targets.¹⁸

In conclusion, the Indictment against Mladić covers a time period of about three and a half years and geographically major parts of the territory claimed as the Bosnian-Serb Republic. Some, although not all, specific crime incidents were set out in lists or

¹⁴ *Ibid.*, paras 31-34.

¹⁵ *Ibid.*, paras 8-13.

¹⁶ *Ibid.*, paras 14-18.

¹⁷ *Ibid.*, paras 19-23.

¹⁸ *Ibid.*, paras 24-28.

schedules attached to the Indictment.¹⁹ The number of alleged victims in the case was in the tenth of thousands. The scope of the Indictment and therefore the scope of the trial itself were vast to such an extent that they find very few comparisons in international criminal law.

III. PROCEDURAL HISTORY - AN OVERVIEW

On 26 May 2011, almost 16 years after the initial indictment, Ratko Mladić was arrested in the village of Lazarevo, Serbia, in the house of a relative.²⁰ A few days later, he was transferred to the United Nations Detention Unit ("UNDU") in The Hague.²¹ His initial appearance took place on 3 June 2011 before the Pre-Trial Chamber, composed of Judge Alphons Orie, Judge Bakone Justice Moloto, and Judge Christoph Flügge.²² The same judges later conducted the trial, with Judge Orie as the Presiding Judge. At a further appearance on 4 July 2011, a plea of "not guilty" was entered by the Pre-trial Chamber on behalf of Mladić. The Accused himself was removed from the courtroom following him disrupting the proceedings and having been warned by the Presiding Judge.²³ Mladić was going to be removed from the courtroom 17 more times during the proceedings in the years to come and most notably during the delivery of the judgment on 22 November 2017.²⁴

After some weeks following Mladić's detention at the UNDU in June 2011, during which he was represented by a duty counsel, Mr Branko Lukić was assigned lead counsel in the case.²⁵ Some months later, Mr Miodrag Stojanović was assigned co-counsel.²⁶ Mr Lukić remained lead counsel throughout the trial but Mr Stojanović was replaced by Mr

¹⁹ *Ibid.*, Schedules A-G. The Defence argued that the Indictment was limited to the incidents specified in the Schedules, although it raised this matter at a very late stage of the proceedings. The Trial Chamber noted that Rule 72 of the Tribunal's Rules of Procedure and Evidence ("Rules") envisioned motions arguing defects in the indictment only during the pre-trial phase of the case. The Defence had filed its motion in October 2016, after the presentation of evidence in the case. The Trial Chamber rejected the motion on that basis. (Prosecutor v. Ratko Mladić, Case No. IT-09-92-T, Decision on Defence Motion Alleging Defects in the Form of the Indictment, 30 November 2016.) The Trial Chamber did consider incidents not listed in the Schedules as part of the Indictment (Trial Judgment, paras 5265-5270. See also Trial Judgment, paras 735-736, 782-784, 835-839, 894-919, 1472-1476, 1508-1514, 1798-1802).

²⁰ BBC News, "How fugitive Ratko Mladic was caught", 27 May 2011 (www.bbc.com/news/world-europe-13567722)(visited 14 September 2018).

²¹ Prosecutor v. Ratko Mladić, Case No. IT-09-92-I, Scheduling Order for Initial Appearance, 1 June 2011.

²² Prosecutor v. Ratko Mladić, T ("T."). 1-34.

²³ T. 46-47

²⁴ Trial Judgment, para. 5246 (with transcript references in footnote 17928); T. 44923. According to Rule 80(B) of the Rules, "[t]he Trial Chamber may order the removal of an accused from the courtroom and continue the proceedings in the absence of the accused if the accused has persisted in disruptive conduct following a warning that such conduct may warrant the removal of the accused from the courtroom". Throughout the proceedings Mladić received over 150 warnings for disruptive behaviour (Trial Judgment, para. 5246).

²⁵ Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Decision of the Deputy Registrar on Assignment of Counsel, 22 July 2011.

²⁶ Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Decision of the Registrar on Assignment of Co-Counsel, 23 February 2012.

Dragan Ivetić towards the very end of the trial proceedings, in January 2017.²⁷ The counsel was supported by a Defence team. The Prosecution team, under the supervision of the ICTY Prosecutor Serge Brammertz, was led by Senior Trial Attorneys, including Mr Peter McCloskey, Mr Alan Tieger, and Mr Dermot Groome.

The pre-trial phase of the case was concluded within a year of the arrest of Mladić. This phase consisted, *inter alia*, of frequent meetings between the Presiding Judge and the parties, aiming at concluding all preliminary matters as expeditiously as possible and preparing the case for trial.²⁸ Although the Rules only require formal hearings (so-called status conferences) every 120 days during the pre-trial phase,²⁹ the Pre-Trial Judge and the Chamber decided to meet with the parties more often and in more informal settings. The purpose was for the Chamber to closely monitor the parties' preparation for trial and to increase its familiarity with the case before the trial proceedings commenced. Because of the size of the case, during these meetings the Pre-Trial Judge put a particular focus on the progress with disclosure of material from the Prosecution to the Defence.³⁰

Motivated by case management concerns, the Pre-Trial Chamber (and later the Trial Chamber) issued detailed guidance to the parties on how to present and tender evidence, providing an indication of its strong preferences in this regard. Much of the guidance sought to bring the presentation and tendering of documentary evidence into court, to be done before the Trial Chamber and under its direct control, and preferably in connection with witness testimony.³¹ For example, with regard to presentation of evidence from the 'bar table', the Pre-Trial Chamber indicated that documentary evidence should preferably be tendered through witnesses who could give proper contextualisation and that bar table submissions therefore only would be accepted exceptionally and for a limited amount of documents.³²

²⁷ Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Decision of the Registrar on Withdrawal Assignment of Co-Counsel, 19 January 2017.

²⁸ According to Rule 65 *ter* (D)(iv)-(vii) of the Rules, the Pre-Trial Judge may order the parties to meet under the chairmanship of the Chamber's Senior Legal Officer to "discuss issues related to the preparation of the case". During the pre-trial phase in this case, the Pre-Trial Judge chaired the meetings, at which the accused was not present. The meetings were recorded and transcribed.

²⁹ Rule 65 *bis* of the Rules.

³⁰ Rules 66 and 68 of the Rules details the Prosecution's disclosure obligations. Disclosure material can be grouped into two categories: 1) material supporting the indictment, and 2) exculpatory material ("material which [...] may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence"). With regard to the Trial Chamber's involvement in disclosure matters, see for example Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Decision on Submissions Relative to the Proposed "EDS" Method of Disclosure, 26 June 2012.

³¹ Trial Judgment, paras 5258-5260, with references therein.

³² T. 109-110.

During the pre-trial phase of the case, the Pre-Trial Chamber also took judicial notice of approximately 2,000 adjudicated facts.³³ One of the underlying motivations of this procedural step is judicial economy, by avoiding the establishment of facts that have already been established by other Chambers.³⁴ For the same reason, the parties were encouraged to identify issues not in dispute in the case (so-called 'agreed facts'). However, the number of facts they ultimately agreed upon was very limited.³⁵

The Prosecution delivered its opening statements on 16 and 17 May 2012 and commenced the presentation of its evidence on 9 July 2012.³⁶ It called 169 witnesses to give oral testimony before the Trial Chamber.³⁷ The Prosecution's phase of the case lasted approximately 1 year and 9 months and ended in February 2014.³⁸ The Trial Chamber then heard Rule 98 *bis* submissions and delivered its Rule 98 *bis* decision, denying the motion for acquittal on all counts.³⁹ The Defence opted not to make any opening statement and started presenting its evidence on 19 May 2014.⁴⁰ Altogether it called 208 witnesses to give oral evidence.⁴¹ The total number of exhibits admitted into evidence during the trial was almost 10,000.⁴² During the Defence case, the Trial Chamber granted a request by the Prosecution to re-open its case to present evidence concerning a recently discovered mass grave in Tomašica in Prijedor Municipality.⁴³ This evidence was heard in June and July 2015.⁴⁴

The Trial Chamber commenced the trial on a schedule of five days per week. After more than a year of trial and with reference to Mladić's health situation, this regime was

³³ See, in particular, Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, First Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 February 2012 ("First Adjudicated Facts Decision"); Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Second Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 21 March 2012; Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Third Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 13 April 2012; Prosecutor v. Ratko Mladić, Case No. IT-09-92-PT, Fourth Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Concerning the Rebuttal Evidence Procedure, 2 May 2012.

³⁴ First Adjudicated Facts Decision, para. 8 (citing Prosecutor v. Édouard Karemera, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006).

³⁵ See Trial Judgment, para. 5261.

³⁶ T. 402-523, 525, 537.

³⁷ Trial Judgment, para. 5251.

³⁸ Prosecutor v. Ratko Mladić, Case No. IT-09-92-T, Prosecution Notice of the Close of its Case-in-Chief, 24 February 2014; Prosecutor v. Ratko Mladić, Case No. IT-09-92-T, Scheduling and Closing Order, 26 February 2014.

³⁹ T. 20992-21004, 21024, 21033. Rule 98 *bis* of the Rules reads: "At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction."

⁴⁰ T. 21049.

⁴¹ Trial Judgment, para. 5251. In addition to those witnesses who provided evidence orally, the Trial Chamber also received evidence in written form pursuant to Rule 92 *bis* and *quater* of the Rules. The total number of witnesses in the case was 592 (Trial Judgment, para. 5251).

⁴² Trial Judgment, para. 5256.

⁴³ Prosecutor v. Ratko Mladić, Case No. IT-09-92-T, Decision on Prosecution Motion to Re-Open its Case-In-Chief, 23 October 2014.

⁴⁴ T. 36085-36885.

modified to four days per week.⁴⁵ Overall, the hearing of evidence proceeded with only few adjournments. The evidentiary phase of the case concluded in September 2016.⁴⁶ At that time, the Trial Chamber had heard evidence by the Prosecution and the Defence, but it had not called any Chamber evidence.⁴⁷

Following the submissions of their final trial briefs on 25 October 2016, the parties presented their closing arguments in December that same year.⁴⁸ The judgment was rendered on 22 November 2017, following eleven months of intense deliberation and judgment drafting.⁴⁹ The judgment measures about 2,500 pages, divided into five volumes, one of which was filed confidentially.⁵⁰

IV. FOUR JOINT CRIMINAL ENTERPRISES – A SUMMARY OF THE CASE

One of the challenges for the Prosecution was to try to capture Mladić's individual criminal responsibility for crimes committed over a long period of time and in a vast territory, committed by principal perpetrators removed, and sometimes *far* removed, from him. The Indictment focused on four areas, which were distinct in place and time, as well as with regard to the character of the alleged crimes. While Mladić was charged with all modes of liability provided for in the Statute, the focus in the parties' presentation of evidence and submissions before the Trial Chamber, as well as in the trial judgment itself, was on Mladić's participation in the four JCEs.

The elements of the mode of liability of JCE, which had been established in ICTY case law, were set out by the Trial Chamber in the Judgment. First, there must be a plurality of persons participating in the realization of the common criminal objective. These individuals need not be organized in a military, political, or administrative structure. Secondly, the common objective must amount to or involve the commission of a crime provided for in the Statute. Thirdly, the accused must have participated in the criminal objective, which could be achieved by him or her committing one or more of the crimes

⁴⁵ Prosecutor v. Ratko Mladić, Case No. IT-09-92-AR73.3, Decision on Mladić's Interlocutory Appeal Regarding Modification of Trial Sitting Schedule Due to Health Concerns, 22 October 2013, para. 17.

⁴⁶ Prosecutor v. Ratko Mladić, Case No. IT-09-92-T, Scheduling Order, 9 September 2016, p. 1.

⁴⁷ *Ibid.* According to Rule 98 of the Rules "[a] Trial Chamber may order either party to produce additional evidence [and] [i]t may *proprio motu* summon witnesses and order their attendance". For the application of this provision, see ICTY Manual on Developed Practices, ICTY - UNICRI 2009 ("ICTY - UNICRI Manual"), pp. 85-86.

⁴⁸ T. 44232-44905.

⁴⁹ Following weekly meetings throughout the trial during which the importance, reliability, and credibility of witnesses and specific pieces of evidence were discussed, having received all the evidence and submissions by the parties, the Trial Chamber moved to almost daily meetings for deliberation on sections and chapters of the draft judgment. With regard to deliberation and judgment drafting generally, see ICTY - UNICRI Manual, pp. 109-125.

⁵⁰ Many of the ICTY judgements contain confidential information. As in the Trial Judgment, this information can be put in a confidential volume or annex, with clear references in the public volumes to when something has been removed for confidentiality reasons (see, for example, Trial Judgment, para. 3766, 4039, 4088, 4146, 4643, 4953). A Trial Chamber could also choose to issue two versions of the judgement: one public and one confidential. This was done in the Karadžić case.

forming part of it. It could also be achieved by the accused procuring or giving assistance to the execution of the crime, provided that this contribution is *significant* to the commission of the crimes. Finally, the element of *mens rea* requires that the JCE participants, including the accused, had the common state of mind of intent in relation to the crimes through which the common objective was to be carried out.⁵¹ The so-called third form of JCE deals with a situation when a crime outside the common criminal objective is committed and when this crime is "a natural and foreseeable consequence" of the execution of the JCE. For this form of JCE, it is sufficient that the accused was aware that the resulting crime was a possible consequence of the execution of the JCE and participated in it with that awareness.⁵² Importantly, the Trial Chamber also indicated that a JCE might exist even if none or only some of the principal perpetrators of the crimes were members of the JCE. This would be the case when the principal perpetrators are procured by one or more of the JCE members to commit the crime; when the JCE members make use of "tools" to carry out the crimes.⁵³

For each of the JCEs, the Trial Chamber first determined whether crimes had been committed, namely whether all the elements of crimes including the *mens rea* had been met. In case of positive findings with regard to the crimes, the Trial Chamber proceeded to determine whether and if so how Mladić had been involved in their commission.⁵⁴ In this respect, it reviewed each charged mode of liability. As mentioned above, because of the nature of the case, the focus came to be on the mode of liability of JCE.

The first (overarching) JCE roughly corresponded to what was referred to as the 'Municipality' part of the case. The first phase of the conflict in Bosnia-Herzegovina in the late spring of 1992 followed a very similar pattern in the different municipalities claimed as part of the Bosnian-Serb Republic. Bosnian-Serb forces launched attacks against Bosnian-Muslim and Bosnian-Croat towns and villages. The forces consisted of elements of the army and police but also of paramilitary formations and other volunteers. Some of the inhabitants of the towns and villages were killed, but most were forced out of their homes and municipalities. Many were arrested and brought to detention camps, which were set up in school buildings, factories, and other places. Most of the detainees were kept there, in terrible conditions, throughout the summer until they also were transported out of their municipality, often under the pretence of prisoner exchanges.⁵⁵ This pattern

⁵¹ Trial Judgment, para. 3561.

⁵² *Ibid.*, paras 3560-3561.

⁵³ *Ibid.*, para. 3561.

⁵⁴ See, for example, Trial Judgment, paras 1476, 1849, 1977. The Trial Chamber took the same approach with regard to the requirements set out in the Indictment (for example, ethnicity and geographical origin of victims) and the identities of perpetrators (see for example Trial Judgment, paras 376, 502, 519, 580, 1041, 1453, 1848, 1990).

⁵⁵ See Trial Judgment, paras 3034-3041.

was roughly followed in all municipalities and it is what came to be described as "ethnic cleansing".⁵⁶

The Trial Chamber found that there was a JCE from 1991 until the end of November 1995. The objective of the JCE was to permanently remove Muslims and Croats from Bosnian-Serb claimed territory.⁵⁷ In this respect, the Trial Chamber reviewed and made findings with regard to a vast volume of evidence. This evidence dealt with, *inter alia*, the political developments and the role of the Serb Democratic Party in 1991 and 1992; important political and military documents, in particular the so-called 'Variant A/B Instructions' and the 'Six Strategic Objectives'; speeches, statements, and utterances by members of the Bosnian-Serb political leadership; and attempts to cover up crimes, including the burials in the Tomašica mass grave in the summer of 1992.⁵⁸ In reaching its conclusion about the existence of a criminal objective the Trial Chamber also drew inferences from the crimes committed throughout the municipalities.⁵⁹ The crimes within the objective of the JCE were persecution, extermination, murder, the inhumane act of forcible transfer, and deportation (with regard to genocide, see section V below).⁶⁰ The members of the JCE included high-level political leaders of the Bosnian-Serb Republic: Radovan Karadžić, Biljana Plavšić, Nikola Koljević, Bogdan Subotić, Momčilo Mandić, and Mićo Stanišić.⁶¹ Karadžić, Plavšić, and Koljević were members of the collective presidency as the highest political body in the nascent Bosnian-Serb state.⁶² The other three were ministers in the Government: Subotić was Minister of Defence, Mandić Minister of Justice, and Stanišić Minister of Interior.⁶³

With regard to Mladić's contribution to the first (overarching) JCE, the Trial Chamber considered in particular his acts related to the Bosnian-Serb army. Many of the crimes committed in furtherance of the JCE had been committed by members of the army.⁶⁴ The Trial Chamber found that Mladić had taken part in establishing and organising units of the army, that he tasked some of them to cooperate with police units, and most importantly that he ordered and issued operational directives to units and in other ways was closely involved in army operations, which was evidenced by his participation in regular

⁵⁶ Letter dated 24 May 1994 from the Secretary-General to the President of the Security Council, S/1994/674 (27 May 1994), Annex: Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), paras 129-150; William J Fenrick, *The Crime Against Humanity of Persecution in the Jurisprudence of the ICTY*, XXXII *Netherlands Yearbook of International Law* 2001, p. 89.

⁵⁷ Trial Judgment, paras 4218-4232.

⁵⁸ *Ibid.*, chapters 9.2.2-9.2.12.

⁵⁹ *Ibid.*, paras 4218, 4225, 4227-4231.

⁶⁰ *Ibid.*, para. 4232.

⁶¹ *Ibid.*, para. 4238.

⁶² *Ibid.*, para. 29.

⁶³ *Ibid.*, para. 48.

⁶⁴ *Ibid.*, paras 4610, 4612.

meetings, briefings, and inspections.⁶⁵ The Trial Chamber concluded that Mladić had been instrumental to the commission of the crimes and found that his contribution had been significant.⁶⁶ With regard to Mladić's *mens rea*, the Trial Chamber considered his statements during the Indictment period and his expressions of commitment to an ethnically homogenous Bosnian-Serb Republic, even in territories that previously had a large percentage of non-Serb inhabitants.⁶⁷

While the first part of the case was well captured by the different crimes against humanity, in particular persecution, deportation, and the inhumane act of forcible transfer, the second part was characterized as a set of war crimes. With regard to the second JCE, the Trial Chamber found that the Bosnian-Serb army, in particular the Sarajevo-Romanija Corps which was based in the Sarajevo area throughout the conflict, deliberately shelled and sniped the civilian population of Sarajevo often at places which had little or no military value.⁶⁸ It found that hundreds of civilians were killed and thousands were injured.⁶⁹ The intention of the perpetrators was to target civilians and to shell the town in an indiscriminate manner.⁷⁰ The Trial Chamber found that there existed a JCE between 12 May 1992 and November 1995, with the primary purpose of spreading terror among the civilian population through a campaign of sniping and shelling. The objective involved the crimes of terror, unlawful attacks against civilians, and murder - all violations of the laws and customs of war.⁷¹ The members of the JCE included Radovan Karadžić and the two commanders of the Sarajevo Romanija Corps during the Indictment period: Stanislav Galić and Dragomir Milošević.⁷² Mladić's contribution to the JCE consisted, *inter alia*, of commanding units of the Sarajevo Romanija Corps from 1992 to 1995 in various operations and involvement in the establishment of the unit, including making decisions about its personnel. The Trial Chamber was convinced that Mladić's contribution had been significant.⁷³ The Trial Chamber inferred his intent to achieve the common objective from his statements and conduct throughout the Indictment period. It

⁶⁵ *Ibid.*, paras 4611-4612.

⁶⁶ *Ibid.*, para. 4612.

⁶⁷ *Ibid.*, paras 4686, 4688.

⁶⁸ *Ibid.*, paras 1888-1890.

⁶⁹ *Ibid.*, para. 1888. Schedules F and G of the Indictment list only 20 sniping and shelling incidents. However, the Indictment also clarifies that these incidents are merely "illustrative examples" of the charged sniping and shelling campaign (Indictment, para. 81).

⁷⁰ *Ibid.*, paras 3196-3200, 3211. The crime of terror constitutes acts or threats of violence the primary purpose of which is to spread terror among the civilian population and these acts or threats are not limited to direct acts or threats of violence but may include indiscriminate or disproportionate acts or threats (Trial Judgment, paras 3186-3187, referencing Prosecutor v. Stanislav Galić, Case IT-98-29-A, Judgement, 30 November 2006, para. 102).

⁷¹ *Ibid.*, para. 4740.

⁷² *Ibid.*, para. 4740. Stanislav Galić and Dragomir Milošević were tried and convicted before the ICTY. See Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement, 30 November 2006 (convicted and sentenced to 20 years of imprisonment, revised to life imprisonment on appeal); Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement, 12 November 2009 (convicted and sentenced to 33 years of imprisonment, revised to 29 years of imprisonment on appeal).

⁷³ *Ibid.*, para. 4893.

considered in particular that Mladić had personally directed shelling of Sarajevo on one occasion on 28 May 1992 and directed fire away from Serb-populated areas.⁷⁴

The third JCE concerned crimes committed in and around Srebrenica beginning in July 1995. These crimes were charged primarily as genocide. The case against Mladić with regard to Srebrenica was only the last step in a long row of proceedings against high-level military leaders involved in the killings of thousands of Bosnian-Muslim men and boys from Srebrenica.⁷⁵

The attack against the Srebrenica enclave had been prepared for months and was carried out between 6 and 11 July 1995.⁷⁶ Thousands of Bosnian-Muslim civilians, in particular women, children, and elderly, fled to Potočari to seek shelter in a compound used by the UN Protection Force.⁷⁷ The majority of the men, however, decided to flee the enclave on foot in an attempt to reach Tuzla, which was held by the Bosnian-Muslim side of the conflict. These many thousand men travelled together in one long column.⁷⁸ Some were civilians, others soldiers. Most of them were unarmed.⁷⁹ The Trial Chamber found that between 12 and 14 July 1995, the Bosnian-Serb army and police organized the evacuation of approximately 25,000 Bosnian Muslims, mostly women, children, and elderly, from the Srebrenica enclave to territories under the control of the Bosnia-Herzegovina army.⁸⁰ Men and boys, some as young as 12 years old, were separated out.⁸¹ They were detained in temporary detention facilities, including school buildings, together with other men and boys who were captured from the column.⁸² The men and boys were soon thereafter brought to execution sites in Srebrenica, Bratunac, and Zvornik where they were killed. Bosnian-Serb forces, in particular members of the Bosnian-Serb army, systematically murdered several thousand Bosnian-Muslim men and boys over the course of just a few days, between 12 and 17 July 1995.⁸³

The Trial Chamber found that in the days immediately preceding 11 July 1995, the objective of the third JCE involved the commission of the crimes of persecution and the inhumane act of forcible transfer. These crimes were committed after the Bosnian-Serb

⁷⁴ *Ibid.*, paras 4902, 4921.

⁷⁵ Prosecutor v. Radislav Krstić, Case No. IT-98-33; Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case IT-02-60; Prosecutor v. Momir Nikolić, Case No. IT-02-60/1; Prosecutor v. Dragan Obrenović, Case No. IT-02-60/2; Prosecutor v. Vujadin Popović et al., Case No. IT-05-88; Prosecutor v. Zdravko Tolimir, Case No. IT-05-88/2; Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18.

⁷⁶ Trial Judgment, para. 4976.

⁷⁷ *Ibid.*, para. 4977.

⁷⁸ *Ibid.*, paras 2637-2638.

⁷⁹ *Ibid.*, para. 2639.

⁸⁰ *Ibid.*, paras 2556-2561.

⁸¹ *Ibid.*, paras 2562-2566.

⁸² *Ibid.*, paras 2566-2567, 4984.

⁸³ *Ibid.*, para. 4984.

army attacked Srebrenica with the objective of emptying it.⁸⁴ Based on the evidence, the Trial Chamber was able to pinpoint a relative precise moment when the JCE developed in gravity to include also genocide, extermination, and murder. This moment was the early morning of 12 July 1995.⁸⁵ In this respect, the Trial Chamber considered in particular evidence that the killings were first discussed by high-level officers in the Bosnian-Serb army that morning. The Trial Chamber concluded:

"In the morning of 12 July 1995 [...] [Vujadin] Popović, [Svetozar] Kosorić, and [Momir] Nikolić spoke in front of [Hotel Fontana] and Popović told Nikolić that all the women and children would be transferred to Kladanj or Tuzla. With regard to the able-bodied men, Popović said that all the 'balijas' should be killed. They then discussed temporary detention facilities and execution sites. Later, Nikolić told [Colonel] Janković about the killing operation and realised that Janković already knew. Janković said that all of this was ordered and that Nikolić should not comment on it."⁸⁶

The Trial Chamber further considered that shortly after the fall of Srebrenica one witness, Milenko Todorović, a commander in the East Bosnia Corps at the time, had been ordered by Zdravko Tolimir to prepare Batković camp, which was a detention camp in Bijeljina Municipality, for the arrival of more than 1,000 detainees. Some time later, it was communicated to Todorović that this plan had been abandoned.⁸⁷

The Trial Chamber found that members of the third JCE included Radovan Karadžić and several named high-level officers in the Bosnian-Serb army.⁸⁸ These members used soldiers in the Bosnian-Serb army and members of the Bosnian-Serb police to commit the crimes in furtherance of the JCE.⁸⁹ With regard to Mladić's contribution, the Trial Chamber found, *inter alia*, that he commanded and controlled both Bosnian-Serb army units and police units during the Srebrenica operation and its aftermath. It found that he had significantly contributed to the JCE; it concluded that "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."⁹⁰ With regard to Mladić's intent, the Trial Chamber pointed to several of his statements and acts during and after the period when the Srebrenica crimes were committed. It pointed, *inter alia*, to his role in the Hotel Fontana meetings when Bosnian-Serb military leaders met with representatives of the Dutch Battalion stationed at Potočari to discuss the fate of the Bosnian Muslims who had

⁸⁴ *Ibid.*, para. 4987.

⁸⁵ *Ibid.*, paras 4956, 4977-4984, 4987.

⁸⁶ *Ibid.*, para. 4987.

⁸⁷ *Ibid.*, paras 4941, 4956, 4987.

⁸⁸ *Ibid.*, para. 4988.

⁸⁹ *Ibid.*, para. 4989.

⁹⁰ *Ibid.*, para. 5098.

gathered there.⁹¹ It further considered his order to separate the Bosnian-Muslim men from the women, children, and elderly in Potočari from 12 July 1995 onwards and his presence during this separation.⁹² As relevant for his *mens rea*, the Trial Chamber also considered Mladić's presence in two locations where several thousand captured Bosnian-Muslim men were held, and his misleading assurances to them that they would be taken to Bratunac to be exchanged.⁹³ The Trial Chamber found that Mladić shared the objective of the third JCE.⁹⁴

With regard to the fourth JCE, the Trial Chamber found that during some weeks in May and June 1995, Bosnian-Serb army officers and soldiers and Bosnian-Serb police arrested and detained hundreds of United Nations personnel.⁹⁵ Some of these were tied or handcuffed at locations of strategic military importance for the Bosnian-Serb army.⁹⁶ They were detained, *inter alia*, to exert leverage over NATO to stop airstrikes.⁹⁷ The Trial Chamber found that a JCE existed from about 25 May 1992, when NATO airstrikes commenced, until 24 June 1992 when the last hostages were released.⁹⁸ The members of the JCE included Radovan Karadžić and members of the Main Staff and Corps commands of the Bosnian-Serb army. They implemented the objective themselves and through Bosnian-Serb soldiers, whom they used as tools.⁹⁹ The Trial Chamber was convinced that Mladić had significantly contributed to the JCE; it found that he had been closely involved in all stages of the hostage taking. This included ordering Bosnian-Serb soldiers to detain UN personnel and keep them at potential NATO air strike targets.¹⁰⁰ The Trial Chamber concluded from Mladić's statements and conduct during the hostage taking that he shared the objective of the fourth JCE.¹⁰¹

With the exception of the fourth JCE, all the JCEs are very wide in scope. This is particularly the case for the first one, which covers a criminal enterprise lasting several years and involving the highest political and military leaders in the Bosnian-Serb Republic as its members. Members of this JCE used employees and associates of the military, police, and other parts of the state administration as tools to carry out the objective. The application of the JCE doctrine in this case was unique in terms of its scope. Generally,

⁹¹ *Ibid.*, para. 5128.

⁹² *Ibid.*, paras 5128, 5130.

⁹³ *Ibid.*, para. 5130.

⁹⁴ *Ibid.*, paras 5128-5130.

⁹⁵ *Ibid.*, paras 2315-2316. While all other parts of the Mladić case had been dealt with in several earlier ICTY cases, the Hostages part had only been addressed once, in *Prosecutor v. Radovan Karadžić*.

⁹⁶ *Ibid.*, para. 2315.

⁹⁷ *Ibid.*, paras 2315-2316.

⁹⁸ *Ibid.*, para. 5141.

⁹⁹ *Ibid.*, para. 5142.

¹⁰⁰ *Ibid.*, para. 5156.

¹⁰¹ *Ibid.*, paras 5157-5161, 5163.

the Trial Chamber found that the Prosecution had proven its case with regard to all four JCEs.

V. GENOCIDE – GENOCIDAL INTENT AND SUBSTANTIALITY

The Prosecution charged Ratko Mladić with two counts of genocide. Count 1 covered the killing of Bosnian Muslims and Bosnian Croats in six municipalities, which according to the Prosecution had seen the "most extreme manifestations" of the first (overarching) JCE.¹⁰² Count 2 covered the killings of approximately 7,000 Bosnian-Muslim men and boys from Srebrenica in July 1995.¹⁰³

With regard to each count, the Trial Chamber first considered whether the elements of the crime had been met. This included findings on whether the physical perpetrators had carried out the *actus reus* with the required *mens rea*, including the specific intent of genocide.¹⁰⁴ It also included findings as to whether Bosnian Muslims and Bosnian Croats were protected groups under the genocide definition. Protected groups in the definition are limited to national, ethnical, racial, and religious groups. Relying heavily on a few adjudicated facts and in light of the fact that the Defence had not disputed the status of Bosnian Muslims and Bosnian Croats in this respect, the Trial Chamber positively found that they indeed were protected groups.¹⁰⁵

With regard to Count 1, the majority of the Trial Chamber found that the physical perpetrators in five of the municipalities (Kotor Varoš, Sanski Most, Foča, Vlasenica, and Prijedor) had committed underlying acts of genocide, with the requisite intent, against the protected group of Bosnian Muslims.¹⁰⁶ Judge Orić dissented on this point. He found that the physical perpetrators had acted with the intent to support the moving out of the Bosnian-Muslim population so as to create ethnically pure areas. However, he did not find that they had acted with the intent to destroy a part of the protected group as such.¹⁰⁷

Following the majority's finding that the physical perpetrators acted with the requisite intent, the Trial Chamber went on to examine whether the Bosnian Muslims in the relevant municipalities constituted a substantial part of the protected group.¹⁰⁸ According

¹⁰² Indictment, paras 35-39.

¹⁰³ Indictment, paras 40-46.

¹⁰⁴ Even if the physical perpetrators of the underlying prohibited acts do not possess the specific intent, the specific intent of JCE members, if proven, would be sufficient for a conviction (Prosecutor v. Radovan Karadžić, Case IT-95-5/18-AR98bis.1, Judgement, 11 July 2013, paras 79-83).

¹⁰⁵ Trial Judgment, paras 3442, 3538.

¹⁰⁶ *Ibid.*, para. 3526.

¹⁰⁷ *Ibid.*, paras 5219-5220.

¹⁰⁸ See *ibid.*, para. 3526.

to the definition of genocide, as interpreted in the case law, genocide is established if the perpetrator has the intent to destroy the protected group *in whole*, or at least a substantial part of it.¹⁰⁹ The Trial Chamber examined the absolute and relative numbers of the part of the group, as well as other factors. In this respect, it stated that "[t]he Trial Chamber received insufficient evidence indicating why the Bosnian Muslims in each of the above municipalities or the municipalities themselves had a special significance or were emblematic in relation to the protected group as a whole."¹¹⁰ The Trial Chamber concluded that the Bosnian Muslims in the relevant municipalities did not constitute a *substantial* part of the protected group of Bosnian Muslims.¹¹¹ Mladić was acquitted on Count 1 of the Indictment.¹¹²

With regard to Count 2, the Trial Chamber, following the same steps as for Count 1, unanimously found that the physical perpetrators in Srebrenica had acted with the requisite intent and that the Bosnian Muslims in Srebrenica constituted a *substantial* part of the protected Bosnian-Muslim group.¹¹³ As for determining substantiality, the Trial Chamber noted that the population of Bosnian Muslims in Srebrenica formed less than two per cent of the Bosnian Muslims in Bosnia-Herzegovina as a whole.¹¹⁴ In that respect, there was similarity with the part of the Bosnian Muslim group considered under Count 1.¹¹⁵ What made the difference with regard to Count 2 was the strategic importance of the Srebrenica enclave. The Trial Chamber stated that:

*the enclave of Srebrenica was of significant strategic importance to the Bosnian-Serb leadership during the conflict because the majority Bosnian-Muslim population of this region made it difficult for them to claim the land as inherently Serb. The Bosnian-Serb leadership, in particular, accorded Srebrenica importance as it was in close geographical proximity to Serbia and, therefore, was required for maintaining a Serb-populated border area contiguous with Serbia. During the war, Srebrenica also became a refuge to Bosnian Muslims from the region especially when it was designated a UN safe area.*¹¹⁶

The Trial Chamber convicted Mladić on Count 2.¹¹⁷

¹⁰⁹ *Ibid.*, para. 3437, with reference to Prosecutor v. Radislav Krstić, Judgement, 19 April 2004, para. 8.

¹¹⁰ *Ibid.*, para. 3535.

¹¹¹ *Ibid.*, paras 3530-3535.

¹¹² *Ibid.*, paras 3536, 4233-4237.

¹¹³ *Ibid.*, paras 3549, 3554-3555.

¹¹⁴ *Ibid.*, para. 3551.

¹¹⁵ The equivalent percentages for the municipalities considered under Count 1 were: Sanski Most Municipality - 1,5 per cent; Foča Municipality - 1,1 per cent; Kotor Varoš Municipality - 0,6 per cent; Vlasenica Municipality - 1 per cent; Prijedor Municipality - 2,2 per cent (Trial Judgment, paras 3530-3534).

¹¹⁶ Trial Judgment, para. 3554.

¹¹⁷ *Ibid.*, paras 3555, 4987, 5130-5131.

VI. SENTENCING - "THE ONLY APPROPRIATE SENTENCE"¹¹⁸

As set out above, the Trial Chamber convicted Ratko Mladić on all counts but one, for genocide, crimes against humanity, and violations of the laws and customs of war. It sentenced him to life imprisonment.¹¹⁹ Only five other convicted persons before the ICTY had until then been given this highest sentence provided for by the Statute.¹²⁰ The Trial Chamber considered the grave nature of the crimes for which Mladić was convicted and the central role he had played in all four joint criminal enterprises. It stated:

*Mladić has been found responsible for having committed a wide range of criminal acts [...] 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.*¹²¹

The Trial Chamber further considered Mladić's age at the time of the rendering of the judgment.¹²²

The sentencing part of the Judgment also contains a reference to sentences in other cases before the ICTY. At the time of the rendering of the Judgment, altogether 90 people had been convicted and sentenced by the ICTY and many of the cases overlapped to some extent with the Mladić case as far as the crime base is concerned. In accordance with Appeals Chamber case law stating that a sentence should not be capricious or out of line with sentences in similar cases, for similar crimes, and with similar circumstances, the Trial Chamber noted the long list of cases dealing with different parts of the crime base. However, it concluded that those cases were of limited guidance "considering the scope and size of [the Mladić] case and the individual

¹¹⁸ Prosecutor v. Ratko Mladić, Case IT-09-92-T, Notice of Filing of Corrigendum to Updated Public Redacted Version of Prosecution Final Trial Brief, 13 October 2017, paras 1735, 1749.

¹¹⁹ Trial Judgment, para. 5213.

¹²⁰ These five are: Stanislav Galić (Prosecutor v. Stanislav Galić); Zdravko Tolimir (Prosecutor v. Zdravko Tolimir); Vujadin Popović (Prosecutor v. Vujadin Popović et al.); Ljubiša Beara (Prosecutor v. Vujadin Popović et al.); and Milan Lukić (Prosecutor v. Lukić and Lukić).

¹²¹ Trial Judgment, para. 5188.

¹²² *Ibid.*, para. 5204. The Defence unsuccessfully argued that Mladić's benevolent treatment of, and assistance to, certain victims and his physical health should be considered in mitigation (*ibid.*, paras 5198, 5203). Similarly, it failed to convince the Trial Chamber that Mladić suffered from a diminished mental capacity, which should be considered in mitigation (*ibid.*, para. 5201). The Trial Chamber considered evidence as to Mladić's "good character" but found "in light of the crimes for which Mladić has been found responsible" that it had little weight as a mitigating factor (*ibid.*, para. 5199).

circumstances of Mladić".¹²³ In other words, the Trial Chamber could not identify another ICTY case with which a helpful comparison could be made.

VII. CONCLUDING REMARKS

The case against Ratko Mladić is unique in international criminal law because of its size and complexity. The challenges for the parties and the Trial Chamber existed both on a legal level and on a more practical, trial management level.

One of the central legal issues in the case was the charges and findings concerning the JCEs. The application of JCE to a case of this kind casts a net of responsibility that catches crimes committed by physical perpetrators far removed from the accused. For most of the crime incidents the physical perpetrators were not themselves members of the JCE, but merely used by JCE members as tools to commit the crimes. To attribute such crimes to the accused required a careful analysis of the links between the physical perpetrators and one or more JCE members, in addition to the accused's link with the JCE. The application of the JCE theory required detailed and precise analysis of and conclusions from the evidence, throughout the whole chain of responsibility from the acts of the physical perpetrator to the contribution and *mens rea* of the accused himself. The application of the JCE theory in the Mladić case is an important test for the applicability of this theory in international criminal law generally.

Another interesting legal issue is the application of the genocide definition to the events referred to in Counts 1 and 2 of the Indictment. The dissenting opinion highlights the delicate balance involved in determining the intent to destroy versus the intent to deport and forcibly transfer. The important determination of what a *substantial part* of a protected group is, has received some attention in international case law. However, in this case, because of the two parallel genocide counts, the Trial Chamber was forced to address it head-on and review in detail whether even a numerically very small group still could be found to be "substantial".

With regard to the challenges on a trial management level, it is important to note that the length of trials before international criminal tribunals and courts are always measured in years. Five and a half years from opening statement to the rendering of judgment might appear long. However, for international criminal practitioners and others familiar with the inner workings of international criminal proceedings, the challenges to present and consider the evidence of almost 600 witnesses and about 10,000 documents within that time would be all too obvious. Unfortunately there are no measures that can be taken to

¹²³ *Ibid.*, para. 5210.

dramatically shorten the length of international criminal trials. There are, however, plenty of measures that must be taken to keep the trials manageable. The Mladić Trial Chamber's insistence on a five-day trial schedule would be an example of such a measure. Another would be the use of agreed and adjudicated facts, although it is doubtful that they had any real effect on the judicial economy in this case. Most of the measures relate to seemingly smaller and procedural parts of the case, in particular decisions and guidance before and during the trial proceedings on how the tendering and presentation of evidence in the case should be carried out. The Pre-Trial and Trial Chamber's attention to these matters already during the pre-trial phase of the case showed its positive effects only many years later, when it came to processing of evidence, deliberation, and drafting of the judgment.

The Mladić case is currently pending appeal before the MICT Appeals Chamber.