

MICT-13-55-A

**MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**

**IN THE APPEALS CHAMBER**

Before: Judge Theodor Meron, Presiding  
Judge William Hussein Sekule  
Judge Vagn Prüsse Joensen  
Judge José Ricardo de Prada Solaesa  
Judge Graciela Susana Gatti Santana

Registrar: Mr. Olufemi Elias

Date: 21 February 2018

**PROSECUTOR**

**v**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**REQUEST FOR LEAVE TO MAKE SUBMISSIONS AS *AMICUS CURIAE***

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**The Office of the Prosecutor:**

**Mr. Serge Brammertz  
Ms. Laurel Baig  
Ms. Barbara Goy  
Ms. Katrina Gustafson**

**Defence Counsel:**

**Mr. Peter Robinson  
Ms. Kate Gibson**

## I. INTRODUCTION

1. The undersigned Applicants (Yvonne McDERMOTT REES and Federico CERUTTI) seek leave to make submissions as *amicus curiae* in the case of *Prosecutor v. Karadžić*, MICT-13-55-A, pursuant to Rule 83 of the MICT Rules of Procedure and Evidence.
2. The Applicants wish to offer their observations with regard to the Trial Chamber's finding that the Accused possessed the *mens rea* for genocide in relation to the Srebrenica JCE.<sup>1</sup> This finding has been identified as an issue in both Parties' appellate briefs.<sup>2</sup>

## II. THE APPLICANTS

3. **Dr Yvonne McDermott Rees** is Associate Professor of Law at Swansea University in the United Kingdom. She is the author of *Fairness in International Criminal Trials* (Oxford University Press, 2016) and over 50 journal articles and book chapters relating to international criminal law and procedure and human rights law. Her publications on the topic of evidence and proof in international criminal trials include 'Inferential Reasoning and Proof in International Criminal Trials: The Potentials of Wigmorean Analysis' (2015) 13(3) *Journal of International Criminal Justice* 507-533; 'The ICTR's Fact-Finding Legacy: Lessons for the Future of Proof in International Criminal Trials' (2015) 26(3) *Criminal Law Forum* 351-372; 'Analysis of Evidence in International Criminal Trials using Bayesian Belief Networks' (2017) 16(2-3) *Law, Probability and Risk* 111-130 (with Colin Aitken), and 'Strengthening the Evaluation of Evidence in International Criminal Trials' (2017) 17(4) *International Criminal Law Review* 682-702.
4. **Dr Federico Cerutti** is a Lecturer at the School of Computer Sciences at Cardiff University in the United Kingdom. His research activity is focused mainly on nonmonotonic reasoning (in particular argumentation theory), and on decision support with uncertainty and trust. His research addresses models of arguments

<sup>1</sup> *Prosecutor v. Karadžić*, Judgement, Case No. IT-95-5/18-T, 24 March 2016, paras. 5746-5831.

<sup>2</sup> *Prosecutor v. Karadžić*, Radovan Karadzic's Appeal Brief, Case No. MICT-13-55-A, 23 December 2016, pp. 182-212; *Prosecutor v. Karadžić*, Prosecution Response Brief, Case No. MICT-13-55-A, 16 May 2017, pp. 151-172.

and critiques for practical reasoning and decision support, and provides efficient algorithms for solving relevant problems in argumentation theory. He has co-authored more than 50 peer-reviewed papers, including on the use of argumentation schemes for intelligence analysis,<sup>3</sup> and on employing technical tools and algorithms to assist with reasoning.<sup>4</sup>

5. Both Applicants are researchers on a project entitled *Developing a Tool to Support Reasoning in International Criminal Trials*, which aims to examine how insights from computer sciences, in particular the study of logic and argumentation schemes, could be used to support lawyers and judges working on complex international criminal cases. The *Karadžić* case was chosen as a case study for this project, in light of its topical nature and the interesting issues from the perspective of the science of logic that it gave rise to. The Applicants, believing that the MICT Appeals Chamber could benefit from this analysis, prepared the attached proposed *amicus* submissions.

### **III. THE APPLICANTS' REASONS FOR BELIEVING THEIR SUBMISSIONS WILL AID THE PROPER DETERMINATION OF THE ISSUES**

6. The Applicants seek permission to submit *amicus* observations on the Trial Chamber's finding that the Accused possessed the *mens rea* for genocide in Srebrenica. The enclosed submissions seek to chart the precise factual and inferential bases for these findings in the judgment, and to identify the forms of reasoning that led to these conclusions, from the perspective of logic theory.
7. Our analysis shows that, whilst the Trial Chamber's findings are generally founded on a sound evidentiary basis, the evidentiary foundations of some findings are unclear or unstated. Similarly, certain inferences that appear to have been drawn by the Trial Chamber in reaching its conclusions are not explicitly stated.

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<sup>3</sup> Alice Toniolo, Timothy J. Norman, Anthony Etuk, Federico Cerutti, Robin Wentao Ouyang, Mani Srivastava, Nir Oren, Timothy Dropps, John A. Allen, and Paul Sullivan, 'Supporting Reasoning with Different Types of Evidence in Intelligence Analysis', (2015) *Proceedings of the 2015 International Conference on Autonomous Agents and Multiagent Systems (AAMAS)*.

<sup>4</sup> Federico Cerutti, Mauro Vallati and Massimiliano Giacomini, 'jArgSemSAT: An Efficient Off-the-Shelf Solver for Abstract Argumentation Frameworks' (2016) *Proceedings of the Fifteenth International Conference on Principles of Knowledge Representation and Reasoning* 541-544; *Id.*, 'An Efficient Java-Based Solver for Abstract Argumentation Frameworks: jArgSemSAT' (2017) 26(2) *International Journal on Artificial Intelligence Tools*, 1750002;

8. Given that the Appeals Chamber is asked to decide whether the Trial Chamber's conclusions were such that no reasonable trier of fact could have reached, we believe that our elucidation of the key inferential steps taken by the Trial Chamber, and the critical questions to which they give rise, will be useful in the determination of that issue.

#### **IV. CONTACT OR RELATIONSHIP BETWEEN THE APPLICANTS AND ANY PARTY TO THE CASE**

9. MCDERMOTT REES has met Peter ROBINSON, counsel for Radovan Karadžić, on a number of occasions, and hosted him for a guest lecture at her previous institution (Bangor University) in 2015. MCDERMOTT REES has met Kate GIBSON of the Karadžić defence team once, when both were speakers at the ADC-ICT Annual Conference in The Hague in December 2017.
10. MCDERMOTT REES has also been in contact with President Meron, in her capacity as co-convenor of a British Academy conference in March 2018 on the theme of *Judicial Independence in Times of Crisis*. President Meron was initially proposed as a keynote speaker at this conference, but owing to a competing commitment, is unable to attend.
11. CERUTTI has no personal or professional connection with either Party to the *Karadžić* case.
12. Neither Party has been consulted in the preparation of the enclosed *amicus* submissions. The proposed submissions represent the Applicants' views alone. They are submitted for the sole purpose of assisting the Appeals Chamber in the proper determination of the issues identified in this application.

#### **V. CONCLUSION**

13. Pursuant to Rule 83 of the MICT Rules of Procedure and Evidence, the Applicants respectfully seek leave to file the proposed *amicus curiae* observations attached to this application.

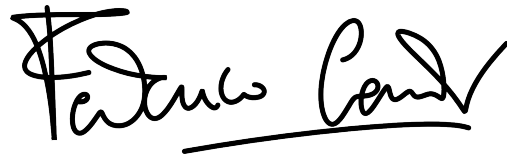
Word count: 1079

Respectfully submitted,



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DR YVONNE MCDERMOTT REES



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DR FEDERICO CERUTTI

Dated this 21<sup>st</sup> day of February 2018

At Swansea, United Kingdom

MICT-13-55-A

## ANNEX

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### **PROPOSED *AMICUS CURIAE* OBSERVATIONS**

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MICT-13-55-A

**MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**

**PROSECUTOR**

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***AMICUS CURIAE* OBSERVATIONS**

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MICT-13-55-A

## I. INTRODUCTION

1. These observations pertain to the Trial Chamber's finding that the Accused possessed the *mens rea* for genocide in relation to the Srebrenica JCE.<sup>1</sup> This finding was the subject of academic critique at the time of the Trial Judgment,<sup>2</sup> and is likely to be a key issue to be decided on appeal.<sup>3</sup>
2. As researchers with a particular interest in reasoning from the perspectives of law and logic, we believe that recourse to argumentation schemes<sup>4</sup> can assist the Appeals Chamber in identifying the precise factual findings and inferential steps taken by the Trial Chamber in reaching its conclusions on this aspect of the Accused's culpability.<sup>5</sup>
3. Our intention in preparing this brief is not to suggest that the Trial Chamber's findings were correct or incorrect, but to unpack the precise factual and inferential bases for these findings in the judgment, and to identify the forms of reasoning that led to these conclusions. We believe that this elucidation of the reasons for the relevant findings may assist the Appeals Chamber in determining whether the applicable appellate standard has or has not been met.
4. We limited our analysis below to the reasoning process that can be fathomed from the Trial Chamber's judgment. As such, we did not analyse issues such as the

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\* The research that informed this brief formed part of a project entitled *Developing a Tool to Support Judicial Reasoning in International Criminal Trials*, funded in part by Cherish-DE, the United Kingdom's Digital Economy Crucible (<http://cherish-de.uk>).

<sup>1</sup> *Prosecutor v. Karadžić*, Judgement, Case No. IT-95-5/18-T, 24 March 2016 (hereinafter, '*Karadžić Judgment*'), paras. 5746-5831.

<sup>2</sup> E.g. Marko Milanović, 'ICTY Convicts Radovan Karadzic', *EJIL: Talk!*, 25 March 2016, available online at <https://www.ejiltalk.org/icty-convicts-radovan-karadzic> (last accessed 1 February 2018); Kai Ambos, 'Karadzic's Genocidal Intent as the "Only Reasonable Inference"?'', *EJIL: Talk!*, 1 April 2016, available online at <https://www.ejiltalk.org/karadzics-genocidal-intent-as-the-only-reasonable-inference> (last accessed 1 February 2018); Milena Sterio, 'The Karadžić Genocide Conviction: Inferences, Intent, and the Necessity to Redefine Genocide' (2017) 31 *Emory International Law Review* 271-298.

<sup>3</sup> *Prosecutor v. Karadžić*, Radovan Karadzic's Appeal Brief, Case No. MICT-13-55-A, 23 December 2016, pp. 182-212; *Prosecutor v. Karadžić*, Prosecution Response Brief, Case No. MICT-13-55-A, 16 May 2017, pp. 151-172.

<sup>4</sup> Defined and explained in para. 10 below.

<sup>5</sup> This is the standard established in, *inter alia*, *Prosecutor v. Sainović et al.*, Decision on David J. Scheffer's Application to File an *Amicus Curiae* Brief, Case No. IT-05-87-A, 7 September 2010, p. 2.



reliability of witnesses or evidence, which are the purview of the Trial Chamber alone.

5. We focused our analysis only on the findings that the Accused embraced the expansion of the common plan to remove Bosnian Muslims from Srebrenica to include the killing of men and boys, and that the Accused shared the intent to destroy the Bosnian Muslims in Srebrenica. However, the methods set out below could be utilised by the Appeals Chamber in its analysis of any of the Trial Chamber's findings.
6. Before introducing the argumentation scheme charts created (part IV) and analysis (part V), this brief sets out the principles of logical analysis (part II) and the relevant factual findings of the Trial Chamber (part III).

## II. PRINCIPLES OF LOGICAL ANALYSIS

7. The term *logic* can be applied across a range of disciplines. For the sake of this brief, we will adopt Hofweber's definition of 'certain valid inferences and good reasoning based on them'.<sup>6</sup> It is worth noting that this does not cover the entire spectrum of critical and rational thinking; rather, it focuses on inferences that can be formally validated within—usually—a mathematical framework. Let us consider for instance one of the simplest and best known types of inferences, namely Aristotle's syllogism in its traditional format:

*Major Premise:* All men are mortals

*Minor Premise:* Socrates is a man

*Conclusion:* Socrates is mortal

This simple example allows us to identify the three important elements in an inference: *major premise* or *rule*; *(minor) premise*; and *conclusion*. There are three types of inferences that can be drawn from these elements:

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<sup>6</sup>Thomas Hofweber, 'Logic and Ontology' in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2017 Edition), available online at: <https://plato.stanford.edu/archives/win2017/entries/logic-ontology/> (last accessed 14 February 2018).

- **Deduction:** given a major premise (or a general rule), and a specific case, we infer the conclusion for the specific case. This is the case in Aristotle's syllogism.
  - **Induction:** given a set of associations between minor premise and conclusion, we infer a general rule. In the case above, observing that Socrates is both a man and a mortal gives ground to infer that all men are mortals. This type of reasoning is often related to probabilistic and defeasible inferences: for example, by observing that most sheep are white, we conclude that sheep are usually white.
  - **Abduction:** given a conclusion, and given a reasonable major premise, we can infer a minor premise. In the case above, observing that Socrates is mortal, and assuming the major premise 'All men are mortals' leads us to conclude that Socrates is a man. However, assuming the major premise 'All dogs are mortals' would lead us to conclude that Socrates is a dog.
8. Classical logic is inherently deductive: provided that the major premises are correct, we now have mathematical and computational tools to prove (or disprove) whether a specific conclusion holds from a set of major and minor premises.<sup>7</sup> The scientific process is often based on inductive reasoning: scientists observe phenomena, derive a general rule (major premise), and test it extensively.<sup>8</sup> Abduction is widely used in common sense reasoning and scientific reasoning.<sup>9</sup> In criminal trials, the generation of hypotheses by both prosecution and defence is also typically an abductive process.<sup>10</sup>
9. The process of reaching conclusions on the guilt or innocence of the accused may be a straightforward exercise in deduction. For example, if we assume the major premise that people's fixed designs are usually carried out, and that A had a fixed design to kill B, we can reach the conclusion that A probably carried out his fixed

<sup>7</sup> Stephen Cole Kleene, *Introduction to Metamathematics* (Amsterdam: North-Holland, 1952).

<sup>8</sup> For instance, the law of universal gravitation was derived by observations.

<sup>9</sup> Jonathan Adler, 'Testimony, Trust, Knowing' (1994) 91 *Journal of Philosophy* 264–275.

<sup>10</sup> David A. Schum, 'Species of Abductive Reasoning in Fact Investigation in Law' (2001) 22 *Cardozo L. Rev* 1645-1681; On abduction and induction generally, see Charles Sanders Peirce, 'Abduction and Induction', in Justus Buchler (ed.), *Philosophical Writings of Peirce* (New York: Dover Publications, Inc., 1955) 150-156.

design and killed B.<sup>11</sup> Judicial reasoning may also be inductive, where conclusions are based on a common sense reading of the evidence presented. This was illustrated by the ICTR Appeals Chamber in *Rutaganda*:

The reasonable doubt standard in criminal law cannot consist in imaginary or frivolous doubt based on empathy or prejudice. It must be based on logic and common sense, and have a rational link to the evidence, lack of evidence or inconsistencies in the evidence.<sup>12</sup>

We can also observe forms of abductive inference in judicial decision-making, most notably in the ‘inference to the best explanation’ approach.<sup>13</sup> In *Ngirabatware*, the Appeals Chamber noted that the standard of proof required ‘the exclusion of every reasonable alternative explanation [other than that of guilt]’.<sup>14</sup>

10. Logic alone does not account for the entire notion of critical thinking. After Hamblin’s seminal work,<sup>15</sup> the disciplines of *informal logic* and *argumentation* started to identify approaches to critical thinking, providing structures for inferences, and defining standard of proofs to evaluate them. For the sake of this brief, we will focus on the creation of *argumentation schemes*.<sup>16</sup>

Argumentation schemes are abstract argument forms commonly used in everyday conversational argumentation, and other contexts, notably legal and scientific argumentation. [...] Each scheme has a set of critical questions matching the scheme and such a set represents standard ways of critically probing into an argument to find aspects of it that are open to criticism.<sup>17</sup>

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<sup>11</sup> This example is taken from John Henry Wigmore, *The Principles of Judicial Proof, as Given by Logic, Psychology and General Experience, and Illustrated in Judicial Trials* (Chicago: Little, Brown, and Company, 1913), 417.

<sup>12</sup> *Prosecutor v. Rutaganda*, Judgment, Case No. ICTR-96-3-A, 26 May 2003, para. 488.

<sup>13</sup> Peter Lipton, *Inference to the Best Explanation* (London: Routledge, 1991), 32–38; Simon De Smet, ‘Justified Belief in the Unbelievable’, in Morten Bergsmo (ed.), *Quality Control in Fact-Finding* (Torkal Opsahl Academic EPublisher, 2013) 77, 89–91; Mark Klamberg, ‘The Alternative Hypothesis Approach, Robustness and International Criminal Justice: A Plea for a “Combined Approach” to Evaluation of Evidence’ (2015) 13 *Journal of International Criminal Justice* 535; Ronald J. Allen & Michael Pardo, ‘Juridical Proof and the Best Explanation’, (2008) 27 *Law & Philosophy* 223; Douglas Walton, *Abductive Reasoning* (Tuscaloosa and London: University of Alabama Press, 2005), 23–26.

<sup>14</sup> *Ngirabatware v. Prosecutor*, Judgment, Case No. MICT-12-29-A, 18 December 2014, para. 20, citing *Prosecutor v. Mrkšić and Šljivančanin*, Judgment, Case No. IT-95-13/1-A, 5 May 2009, para. 220.

<sup>15</sup> Charles Leonard Hamblin, *Fallacies* (London: Methuen, 1970).

<sup>16</sup> Douglas Walton, Chris Reed and Fabrizio Macagno, *Argumentation Schemes* (Cambridge: Cambridge University Press, 2008).

<sup>17</sup> Douglas Walton, ‘Argumentation Theory: A Very Short Introduction’, in Iyad Rahwan and Guillermo R. Sinari (eds), *Argumentation in Artificial Intelligence* (Dordrecht [etc.]: Springer, 2009), 1–22.

11. In legal scholarship, John Henry Wigmore pioneered an early form of argumentation scheme over a century ago.<sup>18</sup> Wigmore's charting method required the creation of two elements: a key list of factual propositions and a chart representing the inferential relationships between those propositions.<sup>19</sup> The purpose, in Wigmore's own words, was to create:

[S]ome method which will enable us to lift into consciousness and to state in words the reasons why a total mass of evidence does or should persuade us to a given conclusion, and why our conclusion would or should have been different or identical if some part of that total mass of evidence had been different. The mind *is* moved; then can we not explain *why* it is moved? If we can set down and work out a mathematical equation, why can we not set down and work out a mental probative equation?<sup>20</sup>

Connections between Wigmore's charting methods and argumentation schemes have already been investigated.<sup>21</sup>

12. To illustrate a basic argumentation scheme, let us consider the so-called *argument from cause to effect*<sup>22</sup> and its critical questions (CQ1-3):

*Major Premise:* Generally, if *A* occurs, then *B* might occur.

*Minor Premise:* In this case *A* might occur.

*Conclusion:* Therefore, in this case *B* might occur.

**CQ1:** How strong is the causal generalisation?

**CQ2:** Is the evidence cited (if there is any) strong enough to warrant the causal generalisation?

**CQ3:** Are there other causal factors that could interfere with the production of the effect in the given case?

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<sup>18</sup> Wigmore, *The Principles of Judicial Proof* (n 11).

<sup>19</sup> For further discussion and analysis, see Paul Roberts, 'The Priority of Procedure and the Neglect of Evidence and Proof: Facing Facts in International Criminal Law' (2015) 13(3) *JICJ* 479-506; Yvonne McDermott, 'Inferential Reasoning and Proof in International Criminal Trials' (2015) 13(3) *JICJ* 507-533; Terence Anderson, David Schum and William Twining, *Analysis of Evidence* (2<sup>nd</sup> edn, Cambridge University Press, Cambridge, 2005).

<sup>20</sup> Wigmore, *The Principles of Judicial Proof* (n 11), 4.

<sup>21</sup> E.g. Douglas Walton, 'Argumentation and Theory of Evidence' in Caroline M. Breur *et al.* (eds), *New Trends in Criminal Investigation and Evidence*, vol. 2, (Antwerp: Intersentia, 2000), 711-732.

<sup>22</sup> Douglas Walton, *A Pragmatic Theory of Fallacy* (Tuscaloosa and London: University of Alabama Press, 1995).

13. An argument should not be considered warranted unless reasonable answers to each critical question are provided. Moreover, the existence of counterarguments as well as some answers to some critical questions can weaken an argument. While mathematically we can no longer *prove* the correctness of a conclusion given its premises, the community studying argumentation in artificial intelligence developed formal, mathematical methods for assessing the acceptability status of arguments in connection with a network of counterarguments.<sup>23</sup>
14. To exemplify the graphical representation of inferences, let us consider the following instance of an argument from cause to effect:

*Major Premise:* Generally, if Bosnian Muslims have been recently killed by Bosnian Serb forces, then it might occur that such forces will kill Bosnian Muslims in the future.

*Minor Premise:* In this case Bosnian Muslim have been killed by Bosnian Serb forces.

*Conclusion:* Therefore, in this case it might occur that Bosnian Muslims will be killed by Bosnian Serb Forces in the future.

Figure 1 depicts such an argument.

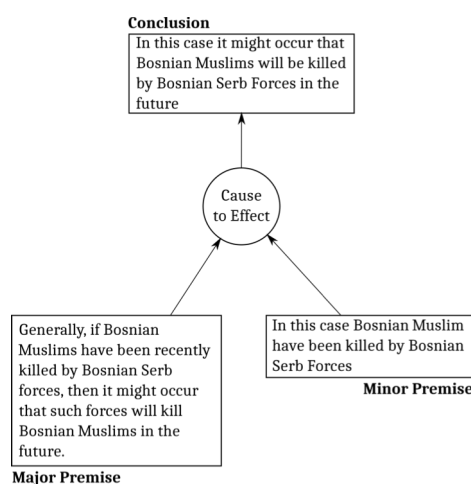


Figure 1: Simple instance of an argument from cause to effect

<sup>23</sup> Phan Minh Dung, 'On the Acceptability of Arguments and its Fundamental Role in Nonmonotonic Reasoning, Logic Programming and n-Person Games' (1995) 77(2) *Artificial Intelligence* 321-357.

15. In Figure 1, squared boxes depict pieces of information that can be used to draw inferences. Figure 2 depicts the case where two pieces of information are conflicting.

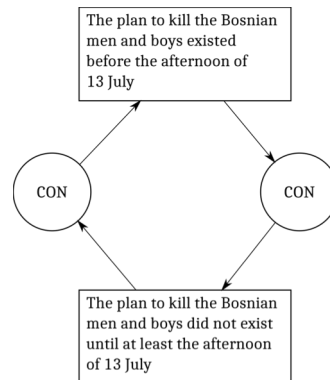


Figure 2: Simple example of conflicting pieces of information.

16. For instance, if we consider only the case of Figure 2, let us denote with  $A$  the piece of information depicted on top ('The plan to kill the Bosnian men and boys existed before the afternoon of 13 July') and with  $B$  the opposite piece of information, both  $\{A\}$  and  $\{B\}$  alone are not conflicting and they can defend themselves against any conflict. However, since the intersection between  $\{A\}$  and  $\{B\}$  is empty, we cannot sceptically conclude anything about the degree of acceptability of  $A$  and  $B$ .<sup>24</sup> Although approaches to reasoning with probabilities and weights have been proposed in the literature,<sup>25</sup> and they would help in identifying whether  $A$  or  $B$  should have a higher degree of acceptability, the problem in using those approach is that deriving such quantitative assessments—such as the probability of a pieces of information to be true—is extremely complicated and requires several assumptions and additional knowledge. As will become apparent in the analysis that follows, we chose not to enter in these discussions: deriving such quantitative assessments on the basis of the Trial Chamber's decision alone would be unjustifiable from a scientific standpoint.
17. Since 2015, one of the authors of this brief, together with colleagues, investigated the usage of argumentation schemes in the context of intelligence analysis, whose aim is to make sense of potentially incomplete or conflicting information in order

<sup>24</sup> In the following we will consider this notion of sceptical reasoning, which is widely accepted in the argumentation in artificial intelligence literature.

<sup>25</sup> E.g. Anthony Hunter and Matthias Thimm, 'Probabilistic Reasoning with Abstract Argumentation Frameworks' (2016) 59 *Journal of Artificial Intelligence Research* 565-611.

to identify hypotheses that enable the analyst to understand a situation.<sup>26</sup> This research, *inter alia*, formally linked a graphical representation tool for inferences to one of the most prominent approaches for formal argumentation presented to date, ASPIC+;<sup>27</sup> and employed state-of-the-art algorithms for efficient reasoning.<sup>28</sup> Senior analysts at the US Army Research Laboratory have positively evaluated this approach.<sup>29</sup> As part of a subsequent project, the software (CISpaces) was improved and released.<sup>30</sup> This software was used in the preparation of this brief's analysis. Once pieces of information are linked by inferences and conflicts, CISpaces can identify those pieces of information such that: they are not conflicting each other; they can stand the conflicts they receive (e.g. collectively they defend themselves against any conflict), and they belong to all the maximal sets satisfying the previous two conditions (sceptical reasoning).

### III. RELEVANT FACTUAL FINDINGS

18. A timeline in Appendix A of this brief sets out the Trial Chamber's findings in chronological order. Having found that a common plan existed in Srebrenica to eliminate the Bosnian Muslims from Srebrenica,<sup>31</sup> the Trial Chamber held that the Accused 'adopted and embraced the expansion of the plan' to encompass the killing of the Bosnian Muslim men and boys of Srebrenica.<sup>32</sup> The Chamber held that, in light of the Accused's position as RS President and Supreme Commander, as well the consistent flow of information he sought and received throughout, he must have known of the expansion of the plan to include the killings 'at some

<sup>26</sup> Alice Toniolo, Timothy J. Norman, Anthony Etuk, Federico Cerutti, Robin Wentao Ouyang, Mani Srivastava, Nir Oren, Timothy Dropps, John A. Allen, and Paul Sullivan, 'Supporting Reasoning with Different Types of Evidence in Intelligence Analysis', (2015) *Proceedings of the 2015 International Conference on Autonomous Agents and Multiagent Systems (AAMAS)*.

<sup>27</sup> Henry Prakken, 'An Abstract Framework for Argumentation with Structured Arguments' (2010) 1(2) *Argument and Computation* 93-124.

<sup>28</sup> Federico Cerutti, Mauro Vallati and Massimiliano Giacomin, 'jArgSemSAT: An Efficient Off-the-Shelf Solver for Abstract Argumentation Frameworks' (2016) *Proceedings of the Fifteenth International Conference on Principles of Knowledge Representation and Reasoning* 541-544; *Id.*, 'An Efficient Java-Based Solver for Abstract Argumentation Frameworks: jArgSemSAT' (2017) 26(2) *International Journal on Artificial Intelligence Tools*, 1750002.

<sup>29</sup> Alice Toniolo, Timothy J. Norman, Nir Oren, Federico Cerutti, John A. Allen, Mani Srivastava, and Paul Sullivan, 'A User Evaluation of Argumentation, Crowdsourcing and Provenance Reasoning in Support of Collaborative Intelligence Analysis' (working paper; on file with authors).

<sup>30</sup> Defence Science and Technology Laboratory Accelerator project, Ministry of Defence, UK, <https://cispaces.org/> (on 28<sup>th</sup> January 2018).

<sup>31</sup> *Karadžić Judgment* (n 1), para. 5810.

<sup>32</sup> *Ibid.*, para. 5811.

point prior to his conversation with Deronjić' on the evening of 13 July.<sup>33</sup> Despite this finding, the Chamber only felt able to make a positive determination that the accused agreed to the expansion of the common plan to include the killing of the men and boys of Srebrenica 'as of the moment of the conversation with Deronjić.'<sup>34</sup>

19. The conversation between the Accused and Deronjić took place at approximately 8.10 pm on 13 July.<sup>35</sup> During that conversation, Deronjić was asked 'how many thousands', to which he replied 'about two... bur there'll be more during the night.'<sup>36</sup> The intermediary informed Deronjić that the Accused said 'All the goods must be placed inside the warehouses before twelve tomorrow... not in the warehouses over there, but somewhere else.'<sup>37</sup> The Chamber understood the references to 'goods' in this conversation to refer to the detainees who were at that time held on buses and in detention facilities in Bratunac.<sup>38</sup> The Chamber determined that the reference to 'not in the warehouses over there, but somewhere else' was the Accused's instruction to Deronjić to have the detainees transferred to Zvornik, where they were killed between 14 and 16 July.<sup>39</sup>
20. The Chamber held that the Accused's 'shared intent [with the principal perpetrators]' was 'reaffirmed by the fact that, from the moment he directed Deronjić to move the detainees to Zvornik the Accused became, and subsequently continued to be, actively involved in overseeing the implementation of the plan to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys.'<sup>40</sup>
21. The Chamber's conclusions that the Accused was 'actively involved' in the oversight of the killing of the men and boys after the 13 July conversation, and that his shared intent can be inferred from his activities after that conversation, appear to be based on the following factual findings, charted in Figure 3 below:

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Ibid.*, para. 5772.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Ibid.*, para. 5710.

<sup>39</sup> *Ibid.*, paras. 5714-5723.

<sup>40</sup> *Ibid.*, para. 5811.



- a. The Accused monitored international media coverage of the events in Srebrenica.<sup>41</sup> The Accused received a copy of the statement issued to the media on 17 July 1995 at around 18.30 on the evening of its issue,<sup>42</sup> and referred to it in an interview with David Frost.<sup>43</sup> The statement summarized the agreement reached at the third Hotel Fontana meeting on 12 July 1995, and was signed by Deronjić, Mandžić (acting as representative of the Bosnian Muslim population) and Franken (acting as representative of UNPROFOR).<sup>44</sup> In the same interview with Frost, when asked about the 15,000 men from Srebrenica who were unaccounted for, the Accused stated that Bosnian Serb Forces had opened the lines and allowed the men to pass through to Bosnian Muslim-held territory.<sup>45</sup>
- b. International organisations, namely the ICRC and the UN Centre for Human Rights, were not granted access to Srebrenica and other areas under the control of Bosnian Serb Forces.<sup>46</sup> The ICRC was granted access to Batković camp in late July, where they were able to locate 164 detainees from Srebrenica.<sup>47</sup>
- c. In late July and early August 1995, the Accused promoted and praised some of the military personnel who played key roles in the takeover of Srebrenica, including Mladić, Živanović, and Krstić.<sup>48</sup>
- d. In August 1995, referring to ‘Muslim soldiers’, the Accused stated that ‘several thousand fighters did manage to get through’ and that ‘we were not able to encircle the enemy and destroy them’.<sup>49</sup> The Chamber interpreted this statement as expressing regret that the corridor had been opened on 16 July.<sup>50</sup>

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<sup>41</sup> *Ibid.*, para. 5785. On 17 July 1995, a statement created by Bosnian Serb representatives summarizing the outcomes of the third Hotel Fontana meeting was released to the media; this was received by the accused at 6.30 pm on 17 July (*Ibid.*, paras. 5128-5129).

<sup>42</sup> *Ibid.*, para. 5129.

<sup>43</sup> *Ibid.*, para. 5786.

<sup>44</sup> *Ibid.*, para. 5128.

<sup>45</sup> *Ibid.*, para. 5786.

<sup>46</sup> *Ibid.*, paras. 5787-5788.

<sup>47</sup> *Ibid.*, para. 5788.

<sup>48</sup> *Ibid.*, para. 5789.

<sup>49</sup> *Ibid.*, para. 5791.

<sup>50</sup> *Ibid.*, paras. 5471-5473.

- e. On 22 March 1996, the Accused told Mladić of plans to investigate the killings in Srebrenica.<sup>51</sup> Initial steps were taken, but no investigations were ever carried out.<sup>52</sup>
22. The Trial Chamber also made findings on the Accused's conduct in the time *before* it held that he agreed to the expansion of the plan to include the killing of the men and boys. These included findings on orders issued<sup>53</sup> and the role of the Accused in operational matters.<sup>54</sup> It will be recalled that the Chamber held that the Accused knew of and participated in the plan to forcibly remove the women, children, and elderly men from Srebrenica 'as of the evening of 11 July',<sup>55</sup> and that he agreed to the expansion of that plan to encompass the killing of the able-bodied men and boys on the evening of 13 July,<sup>56</sup> 'as of the moment of the conversation with Deronjić'.<sup>57</sup> In light of the Chamber's clear statement that genocidal intent could only be inferred from the time of the evening of 13 July,<sup>58</sup> no inference can be drawn from these earlier contextual findings on the role and conduct of the Accused. As such, these elements have not been charted in Figure 3 below.
23. In addition to the phone call with Deronjić, the Chamber's finding that the Accused knew of the expansion of the common plan to include killing appears to be based on the following findings, which we have charted in Figure 4 below:
  - a. The Accused met with Kovač on 13 July<sup>59</sup> and 14 July.<sup>60</sup> Kovač had earlier been present in the Zvornik, Bratunac, and Srebrenica areas, and had met with and/or received communications from Vašić, Mladić, and

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<sup>51</sup> *Ibid.*, para. 5793.

<sup>52</sup> *Ibid.*, paras. 5794-5796.

<sup>53</sup> E.g. Directive 7, issued 8 March 1995, discussed *ibid.*, para. 5756, and the Accused's 11 July order appointing Deronjić as civilian commissioner for Srebrenica, discussed *ibid.*, para. 5693.

<sup>54</sup> E.g. in approving the passage of humanitarian aid convoys (*ibid.*, paras. 5757-5758) and in assigning combat roles and dealing with requests for MUP troops (*ibid.*, para. 5759).

<sup>55</sup> *Ibid.*, para. 5814.

<sup>56</sup> *Id.*

<sup>57</sup> *Ibid.*, para. 5811.

<sup>58</sup> *Ibid.*, para. 5829.

<sup>59</sup> *Ibid.*, para. 5781.

<sup>60</sup> *Ibid.*, para. 5780.

Borovčanin.<sup>61</sup> The Chamber held that Kovač would have shared this knowledge with the Accused.<sup>62</sup>

- b. The Accused met with Deronjić on 14 July.<sup>63</sup> While there was no direct evidence of the content of their conversation, the Chamber had ‘no doubt’ that the Accused and Deronjić discussed the killings at the Kravica Warehouse on 13 July 1995, and the implementation of the Accused’s instructions to Deronjić given in their phone conversation in the evening of 13 July.<sup>64</sup>
- c. The Accused met with Bajagić on 15 July 1995. Bajagić had witnessed the detention of Bosnian Muslim men at the Nova Kasaba football field and heard about the Kravica warehouse killings.<sup>65</sup>
- d. The Accused received a phone call on 13 July telling him that Srebrenica ‘was done’.<sup>66</sup> The Chamber found that this phone call was received from Mladić.<sup>67</sup>

#### IV. CHARTING THE TRIAL CHAMBER’S FINDINGS ON KARADŽIĆ’S *DOLUS SPECIALIS* IN RELATION TO THE GENOCIDE IN SREBRENICA

- 24. In the charts that follow, we used the principles of logic set out at section II above to illustrate the apparent evidentiary and inferential bases for the Chamber’s findings.
- 25. The following chart—Figure 3—depicts our understanding of the Chamber’s line of reasoning in concluding that the Accused was actively involved in the oversight of the killing of the men and boys after the 13 July conversation.

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<sup>61</sup> *Ibid.*, para. 5781.

<sup>62</sup> *Ibid.*, para. 5804.

<sup>63</sup> *Ibid.*, para. 5807.

<sup>64</sup> *Ibid.*, para. 5808.

<sup>65</sup> *Ibid.*, para. 5783.

<sup>66</sup> *Ibid.*, para. 5768.

<sup>67</sup> *Ibid.*, para. 5769.

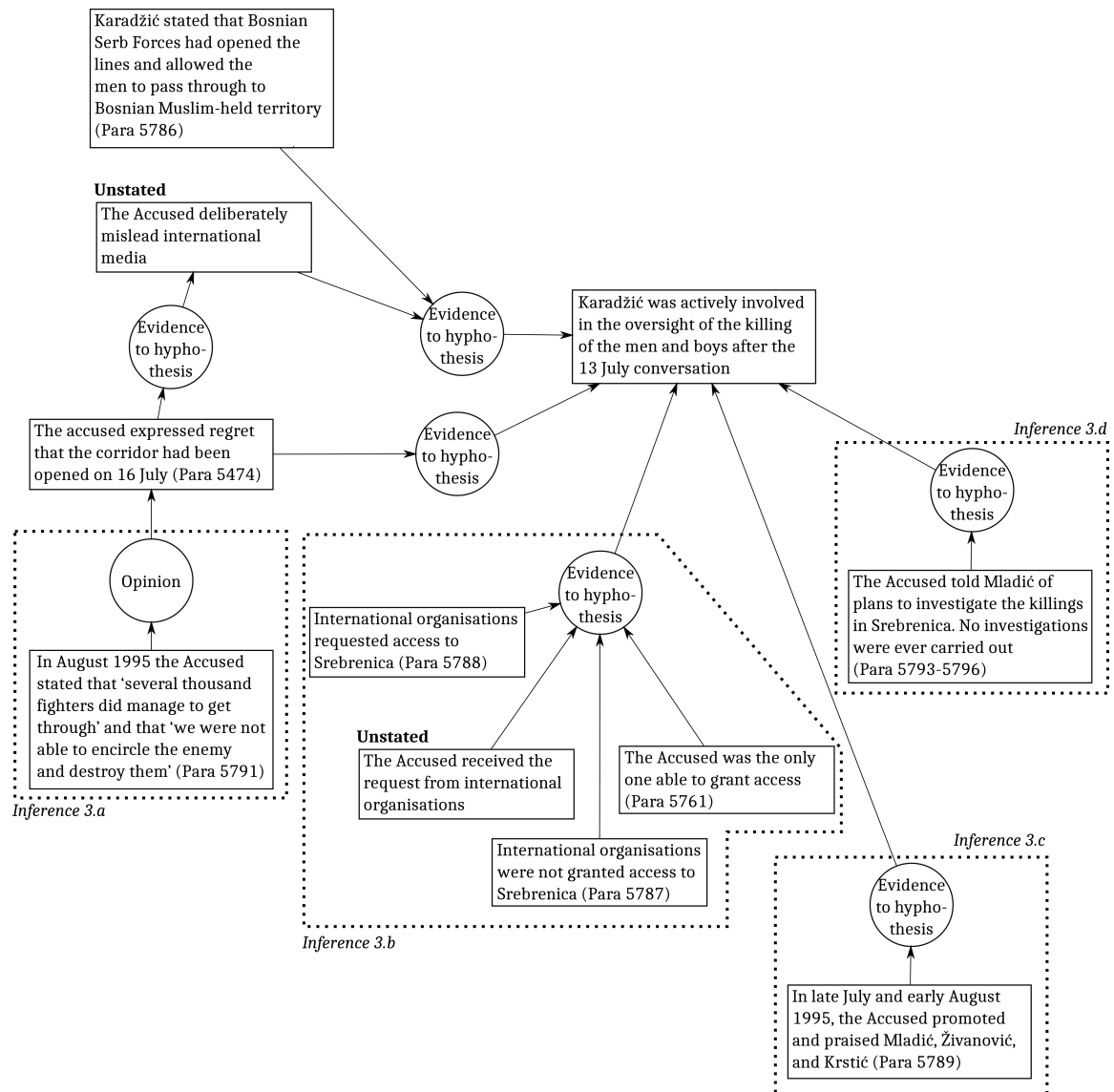


Figure 3 Our understanding of Chamber's reasoning line to conclude that the Accused was actively involved in the oversight of the killing of the men and boys after the 13 July conversation

26. Appendix B lists the complete definitions of the argumentation schemes used in the analysis. Squared solid lined boxes represent information gathered from the Trial Chamber's judgment, unless explicitly marked with **Unstated**. In this case, we intend to highlight how a particular factual finding seems missing but necessary to expose the entire line of reasoning. Since this is based on our own understanding, we did not include an analysis of critical questions for the inferences based on such unstated pieces of information, although we would strongly advocate such an exercise, should the Appeals Chamber agree that such unstated inferences did appear to play a role in the Trial Chamber's conclusions.

27. Circled boxes in Figure 3 represent inferences, thus adding semantics on the links between pieces of information.<sup>68</sup> Dotted areas identify inferences for which there are critical questions<sup>69</sup> that were not explicitly addressed in the Trial Chamber’s judgment, marked with *Inference* followed by a number and a letter. The inferences in Figure 3 give rise to the following critical questions:

- *Inference 3.a*

1. Was there any other reasonable explanation for the statements that ‘several thousand fighters did manage to get through’ and ‘we were not able to encircle the enemy and destroy them’, other than that they were an illustration of regret that the corridor had been opened on 16 July?

- *Inference 3.b*

1. Was it established as true that the Accused received the request for access from international organisations?
2. Was there any other reasonable explanation for why international organisations were not granted access to Srebrenica, other than this being true *because* the Accused was actively involved in the oversight of the killings after the 13 July conversation?

- *Inference 3.c*

1. Was there any other reasonable explanation for why, in late July and early August 1995, the Accused promoted and praised Mladić, Živanović, and Krstić, other than it being true *because* the Accused was actively involved in the oversight of the killings after the 13 July conversation?

- *Inference 3.d*

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<sup>68</sup> To simplify the presentation of the graphs, differently from the examples presented in Section II we omitted elements of argumentation schemes—e.g. major premises of arguments from evidence to hypothesis—when they are clearly inferred from the context.

<sup>69</sup> Outlined further in Appendix B below.

1. Was there any other reasonable explanation for why no investigations were ever carried out, other than it being true *because* the Accused was actively involved in the oversight of the killings after the 13 July conversation?
- 
28. The following chart—Figure 4—depicts our understanding of the Chamber’s line of reasoning that led it to conclude that the Accused was knowledgeable of the intent to kill Bosnian Muslims. Figure 4 follows the same conventions used for Figure 3<sup>70</sup> with the exception that *Inference 4.cX* groups together some of the inferences leading to the conclusion that the Accused conveyed to Deronjić the direction that the detainees should be transferred to Zvornik.<sup>71</sup>
  29. It is worth highlighting that, unlike Figure 3, Figure 4 includes encircled boxes representing conflicts between pieces of information, identified with colored boxes and the label CON.<sup>72</sup> Also unlike Figure 3, Figure 4 depicts two arguments from Witness Testimony; for those arguments, we did not analyse critical questions, as the assessment of witness credibility and reliability is one for the Trial Chamber alone to make.<sup>73</sup>

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<sup>70</sup> See above, para. 27.

<sup>71</sup> This is just to increase the readability of the rather dense graph: it does not modify the pragmatics of the analysis.

<sup>72</sup> See above, para. 15, for further explanation.

<sup>73</sup> *Prosecutor v. Kupreškić et al.*, Judgment, Case No. IT-95-16-A, 23 October 2001, para. 30. See further above, para. 4.

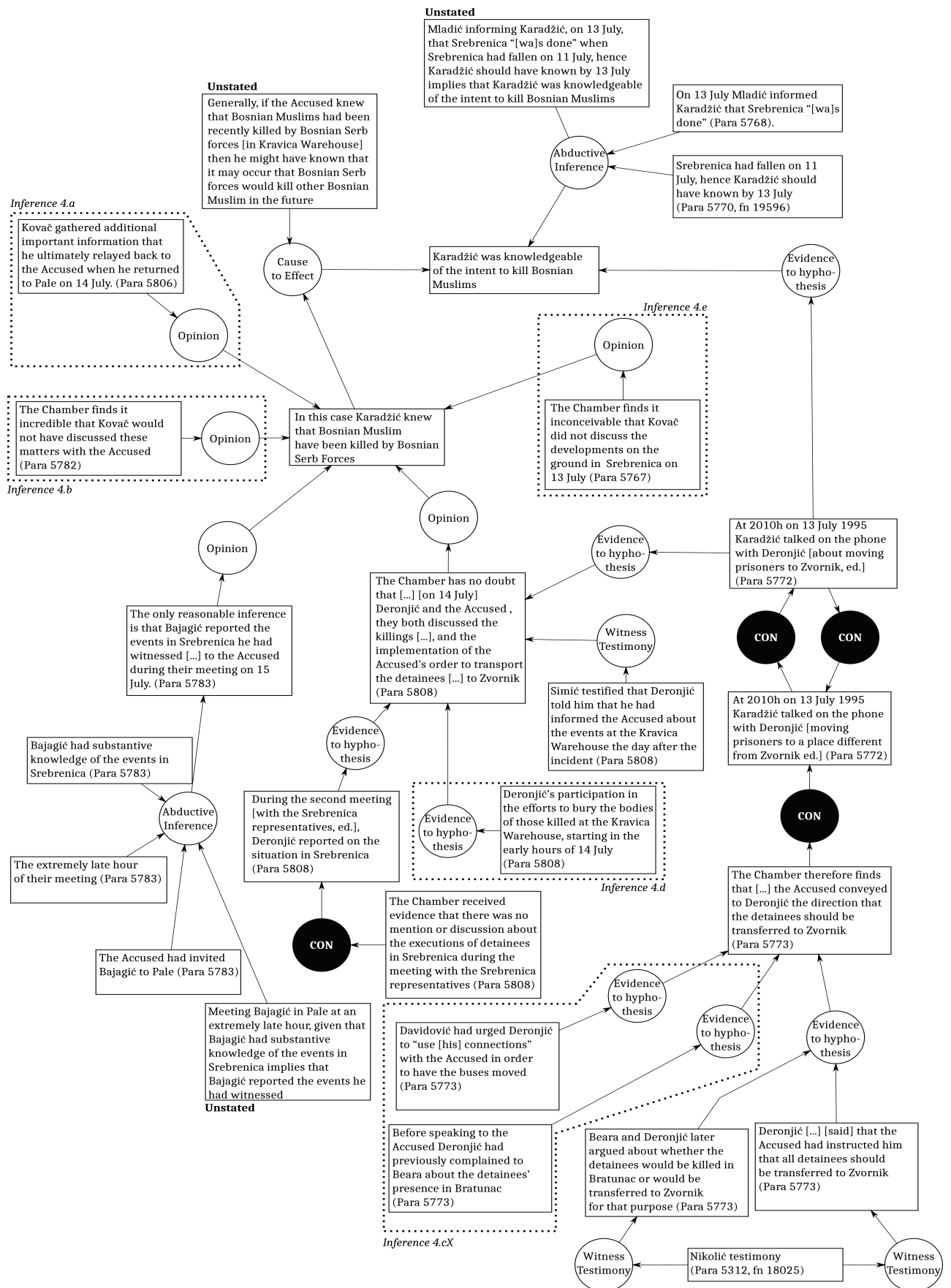


Figure 4 Our understanding of the Trial Chamber's line of reasoning in concluding that the Accused was knowledgeable of the intent to kill Bosnian Muslims

30. The inferences in this Figure 4, and their related critical questions, are as follows:

- *Inference 4.a*
  1. What evidence supported the finding that Kovač relayed back additional important information to the Accused when he returned to Pale on 14 July?
- *Inference 4.b*
  1. What evidence supported the finding that Kovač discussed these matters with the Accused?
- *Inference 4.cX*
  1. Is there any other reasonable explanation for why Davidović had urged Deronjić to ‘use [his] connections’ with the Accused in order to have the buses moved, other than it being true because the Accused conveyed to Deronjić the direction that the detainees should be transferred to Zvornik?
  2. Is there any other reasonable explanation for why, before speaking to the Accused, Deronjić had previously complained to Beara about the detainees’ presence in Bratunac, other than it being true *because* the Accused conveyed to Deronjić the direction that the detainees should be transferred to Zvornik?
  3. Is the only reasonable inference to be drawn from the intercepted phone conversation that the Accused instructed Deronjić that all detainees should be transferred to Zvornik?
- *Inference 4.d*
  1. Is the only reasonable inference to be drawn from Deronjić’s participation in the efforts to bury the bodies of those killed at the Kravica Warehouse, and the fact that he met with the Accused shortly afterwards, that he would have discussed the killings with the Accused?



- *Inference 4.e*

1. What evidence supports the claim that Kovač discussed the developments on the ground in Srebrenica on 13 July?

## V. ANALYSIS

31. In the charts above, we have attempted to identify the precise factual and inferential bases for the Trial Chamber's findings that the Accused's genocidal intent in the Trial Chamber judgment, and to elucidate the forms of reasoning that led to these conclusions. We have highlighted conclusions that appear to be implicit in the Trial Chamber's factual findings but not expressly stated. In addition, each of the inferences identified above gives rise to a number of 'Critical Questions', which the Appeals Chamber may wish to consider in its determination of the issue.
32. It is important to recall that the standard of proof beyond reasonable doubt does not apply to each individual fact, nor is it solely limited to the question of the culpability or otherwise of the accused. The standard of proof applies to 'each and every element of the offences charged'.<sup>74</sup> In the present case, the accused's *mens rea* is clearly an element of the offence of genocide in Srebrenica. The Trial Chamber judgment's findings on the Accused's knowledge of the expansion of the plan (Figure 4) and his active involvement in the killings (Figure 3) were clearly 'material facts' upon which proof of *mens rea* hinged.<sup>75</sup>
33. The set of arguments depicted in Figure 3 justifies the claim that the Accused was actively involved in the oversight of the killing of the men and boys after the 13 July conversation. However, for each inference line supporting this conclusion, either necessary premises are unstated (hence left to the reader to assume), or at least one relevant critical question is not explicitly answered.

<sup>74</sup> *Prosecutor v. Gotovina*, Judgment, Case No. IT-06-90-T, 15 April 2011, para. 14.

<sup>75</sup> *Prosecutor v. Halilović*, Judgment, Case No. IT-01-48-A, 16 October 2007, para. 109; *Prosecutor v. Martić*, Judgment, Case No. IT-95-11-A, 8 October 2008, para. 55; *Prosecutor v. Milošević (Dragomir)*, Judgment, Case No. IT-98-29/1-A, 12 November 2009, para. 20; *Prosecutor v. Mladić*, Judgment, Case No. IT-09-92-T, 22 November 2017, para. 5250.

34. The set of arguments depicted in Figure 4 justifies the conclusion that the Accused was knowledgeable of the intent to kill Bosnian Muslims. As depicted above, the only line of reasoning supporting this conclusion that relies solely upon witness testimony (and not unstated findings or pieces of information for which critical questions have not explicitly been answered) is that based upon Nikolić's testimony that he overheard Deronjić say that the Accused had instructed Deronjić that all detainees should be transferred to Zvornik.<sup>76</sup>
35. Another line of reasoning justifying the conclusion in Figure 4 is based on Simić's testimony that Deronjić told him that he had informed the Accused about the events at the Kravica Warehouse the day after the incident,<sup>77</sup> in conjunction with the unstated assumption that if the Accused knew that Bosnian Muslims had been recently killed by Bosnian Serb forces [in Kravica Warehouse], then he might have known that it may occur that Bosnian Serb forces would kill other Bosnian Muslims in the future.
36. A third line of reasoning is based on an abductive inference with the unstated premise that Mladić<sup>78</sup> informed Karadžić, on 13 July, that Srebrenica '[wa]s done'. The Trial Chamber appears to have concluded that, given that Srebrenica had fallen on 11 July, Karadžić would have known this by 13 July. From that unstated inference, it drew a further inference that the conversation implied that Karadžić knew of the intent to kill the Bosnian Muslims of Srebrenica.

## VI. CONCLUSIONS

37. Depending on its answers to the above critical questions, the Appeals Chamber may conclude that the Trial Chamber's conclusions from the above evidence and inferences that the accused that the Accused knew of the intent of the perpetrators to destroy the Bosnian Muslims of Srebrenica, and was actively involved in overseeing the implementation of the plan to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys, were conclusions that a reasonable

<sup>76</sup> *Karadžić Judgment* (n 1), para. 5312, n 18025, and para. 5773.

<sup>77</sup> *Ibid.*, para. 5808.

<sup>78</sup> There was some debate about whether the phone conversation was with Mladić or another member of the VRS, and what was said: *ibid.*, paras. 5768-5770.

Tribunal of fact could have drawn. Alternatively, it may determine that these were conclusions that no reasonable trier of fact could have reached.<sup>79</sup>

## VII. RELIEF REQUESTED

38. The Appeals Chamber is respectfully requested to take these submissions into consideration in rendering its judgment.

Word count (including Appendices): 7747

Respectfully submitted,

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DR YVONNE MCDERMOTT REES

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DR FEDERICO CERUTTI

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<sup>79</sup> Article 23(1)(b), MICT Statute (referring to ‘an error of fact which has occasioned a miscarriage of justice’. The identical wording of Article 25(1)(b), ICTY Statute and Article 24(1)(b), ICTR Statute has been interpreted to require the Appeals Chamber to assess whether the conclusion is one that no reasonable trier of fact could have reached in, *inter alia*, *Prosecutor v. Blaškić*, Judgment, Case No. IT-95-14-A, 29 July 2004, para. 16. In *Kupreškić*, the Appeals Chamber noted that this standard would be met and a conviction would be overturned where ‘the Appeals Chamber is satisfied that the Trial Chamber returned a conviction on the basis of evidence that could not have been accepted by any reasonable tribunal or where the evaluation of evidence was “wholly erroneous.”’: *Kupreškić et al.* Appeal Judgment (n 73), para. 41.

## Appendix A: Trial Chamber's findings: relevant timeline

- **11 July 1995**
  - During the night between 11 and 12 July 1995, the column of Bosnian Muslim men started moving in a northwesterly direction towards Tuzla, trying to cross the Bratunac–Konjević Polje Road<sup>1</sup>
- **12 July 1995**
  - 1000h  
Popović told Momir Nikolić that “all the balijas should be killed.”
- **13 July 1995**
  - Morning/Afternoon
    - Bosnian Muslim men from the column who had either surrendered or been captured after emerging from the woods, were assembled near the Bratunac–Konjević Polje Road<sup>2</sup>
    - Groups of detainees were put on buses or marched towards the Kravica Warehouse<sup>3</sup>
  - 1550h—1610h
    - Between 3:50 and 4:10 p.m. on 13 July, the Accused met Kovač in Pale. Immediately thereafter, Kovač departed towards Vlasenica. The Chamber notes that Kovač testified that during this meeting, he and the Accused discussed the situation around Sarajevo, which Kovač claimed he had felt was of far greater concern at the time. However, having analysed the entirety of Kovač's testimony in light of the totality of the evidence, the Chamber notes numerous internal inconsistencies within Kovač's testimony, as well as inconsistencies with prior statements given under oath. In the Chamber's view, these inconsistencies, as well the evasiveness and even intermittent combativeness displayed by Kovač throughout his testimony, arise from Kovač's efforts to minimise his own involvement in the events in Srebrenica in July 1995. The Chamber has therefore approached his testimony with extreme caution and has only relied upon it where it is consistent with other evidence.<sup>4</sup>
  - 1630h—Night
    - Some time after 4:30 p.m., one of the Bosnian Muslim detainees brought to the warehouse took away the rifle of Krsto Dragišević—a member of the 3rd kelani Platoon—and shot him dead. [...]Members of the 3rd Skelani Platoon started shooting at the detainees in response to the killing of Dragišević.<sup>5</sup>

<sup>1</sup> *Karadžić Judgment* (n 1), para. 5157.

<sup>2</sup> *Ibid.*, para. 5174.

<sup>3</sup> *Ibid.*, para. 5180.

<sup>4</sup> *Ibid.*, para. 5766.

<sup>5</sup> *Ibid.*, para. 5228.

- According to KDZ063, some time after arriving at the Kravica Warehouse, the Bosnian Serb soldiers guarding the detainees became agitated and angry. Shortly after, intense shooting began outside the warehouse, lasting approximately half an hour. While the shooting was ongoing, the soldiers came in and out of the warehouse and seemed to be in a panic, yelling at the detainees that the Muslims were attacking the soldiers. The detainees panicked and became frightened as they did not know what was happening outside. After the first period of shooting ended, two uniformed men entered the East Room and started shooting at the detainees; five to ten soldiers followed and joined in.<sup>6</sup>
- As members of the Bosnian Serb Forces entered the warehouse and shot at the detainees with M-84 machine guns and automatic rifles, gunshots were also fired at the doors and windows from outside. In addition to the shooting, a number of hand-grenades were thrown in the warehouse through the windows.<sup>7</sup>
- The shooting quieted down as the night fell.<sup>8</sup>
- 1700h—1840h
  - A telephone connection was established and the Accused had an hour-long conversation, part of which occurred over the speakerphone. Ristić recalled that it had been very difficult to hear because the line kept going down. However, the end result of the conversation was that the participants in the meeting understood that Srebrenica “[wa]s done.”<sup>9</sup>  
Ristić testified that the Accused had addressed the person on the other end of the line as “General Mladić”. Premović also testified that the person who had called the Accused during their meeting was Mladić. The Chamber notes that Trifković insisted that the Accused did not speak with Mladić; however, the Chamber recalls its assessment of Trifković’s credibility outlined above. [...] The Chamber is satisfied that, as testified by Ristić and Premović, the Accused indeed spoke to Mladić during their meeting on 13 July.<sup>10</sup>
- 1900h
  - Drago Nikolić called Dragan Obrenović at the Standard Barracks and told him that Popović had just telephoned to inform him that a large number of Bosnian Muslims who were being detained in Bratunac would be transferred to Zvornik to be shot. 18007 Drago Nikolić then reported that Popović had said

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<sup>6</sup> *Ibid.*, para. 5230.

<sup>7</sup> *Ibid.*, para. 5232.

<sup>8</sup> *Ibid.*, para. 5234.

<sup>9</sup> *Ibid.*, para. 5768.

<sup>10</sup> *Ibid.*, para. 5769.

the order came from Mladić, and that “everyone, including Pandurević was aware of [it].”<sup>11</sup>

○ 2010h

- At approximately 8:10 p.m., the Accused was recorded in an intercepted conversation with Deronjić, which was conducted through an intermediary and unfolded as follows:

: I’m waiting for a call to President Karadžić. Is he there?

B: Yes.

: Hello! Just a minute, the duty officer will answer now, Mr. President.

B: Hello! I have Deronjić on line.

: Deronjić speak up.

D: Hello! Yes. I can hear you.

: Deronjić, the President is asking how many thousands?

D: About two for the time being.

: Two, Mr. President. (heard in the background)

D: But there’ll be more during the night.

[...]

D: Can you hear me, President?

: The President can’t hear you, Deronjić, this is the intermediary.

D: I have about two thousand here now by [...]

: Deronjić, the President says: “All the goods must be placed inside the warehouses before twelve tomorrow.”

D: Right.

: Deronjić, not in the warehouses over there, but somewhere else.

D: Understood.

: Goodbye.<sup>12</sup>

The Chamber finds that the discussion between the Accused and Deronjić pertained to the accommodation of the Bosnian Muslim men who were then being held on buses and in detention facilities in Bratunac.<sup>13</sup>

- Mladić’s order for the transfer of a large number of Bosnian Muslims who were being detained in Bratunac to Zvornik, where they were to be detained and, ultimately, shot, was conveyed down the chain of command by members of the VRS security organs.<sup>14</sup>

• 14 July 1995

<sup>11</sup> *Ibid.*, para. 5309.

<sup>12</sup> *Ibid.*, para. 5772.

<sup>13</sup> *Ibid.*, para. 5710.

<sup>14</sup> *Ibid.*, para. 5711.

- Just after midnight
  - Beara and Deronjić argued about where the Bosnian Muslim men were to be executed, as Beara insisted that he had instructions from his “boss” that the detainees were to remain in Bratunac, and Deronjić countered that the Accused had instructed him that all detainees in Bratunac should be transferred to Zvornik. Eventually, Beara and Deronjić agreed that the detainees would indeed be transferred to Zvornik.<sup>15</sup>
  - Some of the detainees being held in Bratunac town began to be transferred to the first of four detention sites in Zvornik, where members of the Zvornik Brigade MP were awaiting their arrival.<sup>16</sup>
- Morning
  - Popović, Beara, and Drago Nikolić met at the Standard Barracks in Zvornik.<sup>17</sup>
  - Pursuant to an order from Beara, Popović—with the assistance of Momir Nikolić—organised a convoy to transport the remaining Bosnian Muslim males in Bratunac to the buildings in Zvornik which had been designated for their detention.<sup>18</sup>
  - Beara, Popović, and Drago Nikolić supervised the ongoing operation at multiple detention and killing sites in the Zvornik area between 14 and 16 July.<sup>19</sup>

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<sup>15</sup> *Ibid.*, para. 5712.

<sup>16</sup> *Ibid.*, para. 5712.

<sup>17</sup> *Ibid.*, para. 5713.

<sup>18</sup> *Ibid.*, para. 5713.

<sup>19</sup> *Ibid.*, para. 5714.

## Appendix B: Argumentation Schemes used in the Analysis

The following Argumentation Schemes have been used in this analysis:

### 1. Abductive Inference (Adapted from the “Abductive Argumentation Scheme”<sup>20</sup>)

*Premise I:*  $F$  is a finding or given set of facts.

*Premise II:*  $E$  is a satisfactory explanation of  $F$ .

*Premise III:* No alternative explanation  $E'$  given so far is as satisfactory as  $E$ .

*Conclusion:* Therefore,  $E$  is plausible, as a hypothesis.

*CQ1:* How satisfactory is  $E$  as an explanation of  $F$ , apart from the alternative explanations available so far?

*CQ2:* How much better an explanation is  $E$  than the alternative explanations available so far?

*CQ3:* How thorough has the investigation of the case been?

*CQ4:* Would it better to continue the investigation instead of drawing a conclusion at this point?

### 2. Cause to Effect<sup>21</sup>

*Major Premise:* Generally, if  $A$  occurs, then  $B$  might occur.

*Minor Premise:* In this case  $A$  might occur.

*Conclusion:* Therefore, in this case  $B$  might occur.

*CQ1:* How strong is the causal generalisation?

*CQ2:* Is the evidence cited (if there is any) strong enough to warrant the causal generalisation?

*CQ3:* Are there other causal factors that could interfere with the production of the effect in the given case?

### 3. Evidence to Hypothesis<sup>22</sup>

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<sup>20</sup> Walton, Reed, and Macagno, *Argumentation Schemes* (n 16), 171.

<sup>21</sup> *Ibid.*, 328.



*Major Premise:* If  $A$  (a hypothesis) is true, then  $B$  (a proposition reporting an event) will be observed to be true.

*Minor Premise:*  $B$  has been observed to be true, in a given instance.

*Conclusion:* Therefore,  $A$  is true.

*CQ1:* Is it the case that if  $A$  is true, then  $B$  is true?

*CQ2:* Has  $B$  been observed to be true?

*CQ3:* Could there be some reason why  $B$  is true, other than its being true because of  $A$  being true?

#### **4. Opinion** (Elaborated from the “Argument from Popular Opinion”<sup>23</sup>)

*Acceptance:*  $A$  is accepted as true.

*Presumption Premise:* If  $A$  is generally accepted as true, that gives a reason in favor of  $A$ .

*Conclusion:* Therefore, there is a reason in favor of  $A$ .

*CQ1:* What evidence supports the claim that  $A$  is accepted as true?

*CQ2:* Even if  $A$  is accepted as true, are there any good reasons for doubting that it is true?

#### **5. Witness Testimony**<sup>24</sup>

*Position to Known Premise:* Witness  $W$  is in a position to know whether  $A$  is true or not

*Truth Telling Premise:* Witness  $W$  is telling the truth (as  $W$  knows it).

*Statement Premise:* Witness  $W$  states that  $A$  is true (false).

*Conclusion:* Therefore,  $A$  may be plausibly taken to be true (false).

*CQ1:* Is what the witness said internally consistent?

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<sup>22</sup> *Ibid.*, 331.

<sup>23</sup> *Ibid.*, 311.

<sup>24</sup> *Ibid.*, 310.

*CQ2*: Is what the witness said consistent with the known facts of the case (based on evidence apart from what the witness testified to)?

*CQ3*: Is what the witness said consistent with what other witnesses have (independently) testified to?

*CQ4*: Is there some kind of bias that can be attributed to the account given by the witness?

*CQ5*: How plausible is the statement *A* asserted by the witness?



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
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FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE  
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

**I - FILING INFORMATION / INFORMATIONS GÉNÉRALES**

<b>To/ À :</b>	MICT Registry/ Greffe du MTPI	<input type="checkbox"/> Arusha/ Arusha	<input checked="" type="checkbox"/> The Hague/ La Haye
<b>From/ De :</b>	<input type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Prosecution/ Bureau du Procureur
<b>Case Name/ Affaire :</b>	KARADZIC		
<b>Case Number/ Affaire n° :</b>	MICT-13-55-A		
<b>Date Created/ Daté du :</b>	20/02/2018	<b>Date transmitted/ Transmis le :</b>	21/02/2018
<b>No. of Pages/ Nombre de pages :</b>	34		
<b>Original Language / Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ Anglais <input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ Autre (specify/préciser) :		
<b>Title of Document/ Titre du document :</b>	Request for Leave to Make Submissions as Amicus Curiae		
<b>Classification Level/ Catégories de classification :</b>	<input checked="" type="checkbox"/> Unclassified/ Non classifié <input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue <input type="checkbox"/> Confidential/ Confidentiel <input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu <input type="checkbox"/> Strictly Confidential/ Strictement confidentiel <input type="checkbox"/> Ex Parte R86(H) applicant excluded/ Art. 86 H) requérant exclu <input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu <input type="checkbox"/> Ex Parte other exclusion/ autre(s) partie(s) exclue(s) (specify/préciser) :		
<b>Document type/ Type de document :</b>	<input checked="" type="checkbox"/> Motion/ Requête <input type="checkbox"/> Submission from parties/ Écritures déposées par des parties <input type="checkbox"/> Indictment/ Acte d'accusation <input type="checkbox"/> Decision/ Décision <input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers <input type="checkbox"/> Warrant/ Mandat <input type="checkbox"/> Order/ Ordonnance <input type="checkbox"/> Book of Authorities/ Recueil de sources <input type="checkbox"/> Notice of Appeal/ Acte d'appel <input type="checkbox"/> Judgement/ Jugement/Arrêt <input type="checkbox"/> Affidavit/ Déclaration sous serment		

**II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT**

<input checked="" type="checkbox"/> Translation not required/ La traduction n'est pas requise					
<input type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word est jointe)					
<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ Autre (specify/préciser) :	
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :					
<b>Original/ Original en</b>	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ Autre (specify/préciser) :
<b>Translation/ Traduction en</b>	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ Autre (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :					
<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ Autre (specify/préciser) :	

Send completed transmission sheet to/ Veuillez soumettre cette fiche dûment remplie à :

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