



International Tribunal for the Prosecution of  
Persons Responsible for Serious Violations of  
International Humanitarian Law Committed  
in the Territory of the Former Yugoslavia  
since 1991

Case No.: IT-03-67-T

Date: 22 June 2012

Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, Presiding  
Judge Frederik Harhoff  
Judge Flavia Lattanzi

**Registrar:** Mr John Hocking

**Order of:** 22 June 2012

**THE PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

**PUBLIC DOCUMENT WITH PUBLIC ANNEX**

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**ORDER TO FILE PUBLIC REDACTED VERSION OF VOJISLAV ŠEŠELJ'S  
FINAL BRIEF**

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**The Office of the Prosecutor**

Mr Mathias Marcussen

**The Accused**

Mr Vojislav Šešelj

**TRIAL CHAMBER III** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Chamber” and “Tribunal”, respectively),

**NOTING** “Professor Vojislav Šešelj’s Final Brief”, filed – following the instructions of the Chamber – as a confidential document on 30 January 2012<sup>1</sup> (“Final Brief”),

**NOTING** the Order of 26 April 2012, in which the Chamber ordered Vojislav Šešelj (“Accused”) to file a public redacted version of his Final Brief by 31 May 2012 at the latest,<sup>2</sup>

**FINDING** that the Accused has not filed a public redacted version of his Final Brief by the date set in the Order of 26 April 2012,

**CONSIDERING** that the Final Brief of the Accused discloses confidential information, such as the identity of protected witnesses, and contains quotes not only from the transcripts of closed sessions, but also from other confidential sources,

**RECALLING** that it is incumbent upon the Accused to file a public redacted version of his Final Brief,<sup>3</sup>

**CONSIDERING** that since the Accused did not file a public redacted version of his Final Brief,<sup>4</sup> the Chamber, wishing to ensure the respect of the principle of the proceedings being public, as set out in Rule 78 of the Rules of Procedure and Evidence (“Rules”), and in the interest of justice, has, exceptionally, redacted itself the passages of the Final Brief of the Accused that contain confidential information,

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<sup>1</sup> “Завршни претресни поднесак одбране проф. др Војислава Шешеља”, 30 January 2012 (confidential). See also “Certificate”, 31 January 2012 (confidential); for the English translation, see “Professor Vojislav Šešelj’s Final Brief”, 21 March 2012 (confidential); for the French translation, see “*Mémoire en clôture de Vojislav Šešelj*”, 27 March 2012 (confidential).

<sup>2</sup> “Order Charging the Accused Vojislav Šešelj to File a Public Redacted Version of His Final Brief”, 26 April 2012 (public) (“Order of 26 April 2012”), p. 2.

<sup>3</sup> See Order of 26 April 2012, p. 1 and fn. 4.

<sup>4</sup> The Chamber also notes that, during the administrative hearing of 7 February 2012 and with respect to the length of the Final Brief of the Accused, the Accused stated that he no longer wanted to work on the said Brief (Administrative Hearing, “T(E)” of 7 February 2012, pp. 17081 and 17082). The Chamber is deeply concerned by the continuous lack of cooperation on the part of the Accused.

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Rules 54 and 78 of the Rules,

**ORDERS**, *proprio motu*, the Registrar to:

- (i) file as a public document the public redacted version of the Final Brief of the Accused enclosed in the Annex to this decision;
- (ii) include the redactions made by the Chamber in the confidential versions of the Final Brief of the Accused in English and Serbian, and to file the public redacted versions.

Done in English and in French, the French version being authoritative.

          /signed/            
Jean-Claude Antonetti  
Presiding Judge

Done this twenty-second day of June 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

**PUBLIC ANNEX TO “ORDER TO FILE PUBLIC REDACTED VERSION OF  
VOJISLAV ŠEŠELJ’S FINAL BRIEF”**

INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case no. IT-03-67-T

**TO TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, Presiding  
Judge Frederik Harhoff  
Judge Flavia Lattanzi

**Registrar:** Mr John Hocking

**Date:** ~~1 September 2011~~  
/handwritten: 30 January 2012/

**Submission** /handwritten: **486/**

THE PROSECUTOR  
v.  
Professor VOJISLAV ŠEŠELJ

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PROFESSOR VOJISLAV ŠEŠELJ'S FINAL BRIEF

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**The Prosecutor**

Christine Dahl  
Daryl Mundis

**The Accused**

Professor Vojislav Šešelj

**Expert Team Assisting the Defence**

Zoran Krasić	Gordana Pop-Lazić
Dragan Todorović	Petar Jojić
Vjerica Radeta	Momir Marković
Elena Božić-Talijan	Mirko Blagojević
Vesna Marić	Jadranko Vuković
Ognjen Mihajlović	Miroljub Ignjatović
Filip Stojanović	Ljubiša Petković
Dejan Mirović	Marina Toman
Nemanja Šarović	Ljiljana Mihajlović
Boris Aleksić	Aleksandar Martinović
Nataša Jovanović	

INTERNATIONAL CRIMINAL  
TRIBUNAL FOR THE FORMER YUGOSLAVIA

*The Prosecutor*

v.

*Professor Vojislav Šešelj*

Case No. IT-03-67-T

Submission number /handwritten: **486/**

**PROFESSOR VOJISLAV ŠEŠELJ'S  
DEFENCE FINAL BRIEF**

**I. Introduction**

Pursuant to Rule 86 (B) of the Rules on Procedure and Evidence, Professor Vojislav Šešelj is filing his Defence Final Brief (hereinafter: Final Brief) as part of his closing argument at the close of the presentation of evidence in this trial. The purpose of this Final Brief is the proposal and request that the Trial Chamber render a judgement that Professor Vojislav Šešelj is not guilty on any count of the indictment, since there is no evidence on which to find him guilty.

Professor Vojislav Šešelj is filing his Final Brief after the close of the Prosecution presentation of evidence. Professor Vojislav Šešelj decided to take this step for two important reasons. First, because the Prosecution did not succeed in proving that there are grounds for the charges and, second, because Professor Vojislav Šešelj is not in the position or, rather, the Trial Chamber did not ensure suitable conditions for him to present his Defence evidence, since he was not allowed privileged communication with his legal associates and has not had the financing of his Defence expenses approved.

In addition, it is clear that throughout this trial there has been a political background to the charges against Professor Vojislav Šešelj or, rather, an insistence on indicting him at any cost and, if possible, keeping him in detention for as long as possible so that his political influence should be stopped. None of the accused before the ICTY has had to wait as long for the trial to begin as in this case, and none of

them has had so many of his guaranteed and protected rights permanently violated, as in Professor Vojislav Šešelj's case.

He has been in continuous detention since 24 February 2003. In order to win the guaranteed right to represent himself, he had to go on hunger strike.

For a full nine months he was completely denied any communication with anyone outside the Detention Unit. First, for seven months, from December 2003 to mid-July 2004 because of the elections and the forming of the Government in Serbia, and two months in 2006, just before the first attempt to begin the trial.

From October 2008, he was also denied privileged communication with his legal associates. In several of his submissions, Professor Vojislav Šešelj explained in detail and proved that all his rights relating to a fair and just trial have been seriously violated.

Professor Vojislav Šešelj is the only one whose defence is not being financed with UN funds and this gives the impression that the ICTY is proud of the fact that the entire ICTY system has managed also to disregard in the most blatant way his right to an expeditious trial.

## **II. Background to the Trial and Violation of Rights**

### **Political Background to the Indictment**

The Prosecution drafted the indictment on 15 January 2003. It was confirmed by the duty judge on 14 February 2003, and Professor Vojislav Šešelj came to The Hague on 24 February 2003. On 28 February 2003, the Prosecution asked for stand-by Counsel to be imposed on Professor Vojislav Šešelj. It took the Prosecution only four days of detention to initiate the procedure to impose Counsel.

Let us recall that at the time the Prosecutor Carla Del Ponte had a meeting on 17 February 2003 at which Zoran Đinđić, Prime Minister of the Republic of Serbia, asked her to take Professor Vojislav Šešelj away and not bring him back, but he also "warned" her that she would have great difficulties with him. This is no longer any sort of secret, since Carla Del Ponte clearly described all of this in her memoirs.

Regardless of the decisions that have been made up to now, the following questions are inevitably raised again:

- Did the Prosecutor apply correctly her discretionary right to raise an indictment on 15 January 2003?

- Did the duty judge, who confirmed the indictment on 14 February 2003, do so in line with the Statute and the Rules?

Any reasonable person can answer both questions: the raising and confirming of the indictment against Professor Vojislav Šešelj at the time was a clear error in the sense of criminal law, but all of this was the intention of those who were politically hindered by him. The political motivation behind the indictment against Professor Vojislav Šešelj cannot be overlooked, because this has been a public matter from the very beginning. The judges no doubt concluded the same, as they amended the Rules of Procedure and Evidence in the provision on the confirmation of an indictment. This was not simply done in order to categorise the cases (as this amendment was explained), but because it was established that at that time, at the start of 2003, ICTY's existing work strategy was not right. The ICTY was looking for cases, while Professor Vojislav Šešelj who, had he remained free, would never have allowed as a leader the further break-up of the Serbian statehood, was in the international political elite's way.

The political background of this trial cannot have been overlooked for a full nine years, the length of Professor Vojislav Šešelj's stay in detention. Professor Vojislav Šešelj has filed several submissions on this matter, which exist in the court files.

#### **Violation of the Right to Defence**

From 9 May 2003, when the Trial Chamber imposed stand-by Counsel by force, Professor Vojislav Šešelj has continually engaged in proceedings to preserve and protect his right to defend himself. The Prosecution filed its first motion on 28 February 2003 or, rather, on day four of Professor Vojislav Šešelj's detention, and asked the Trial Chamber to impose Counsel on him. At the request of the Prosecution, either through stand-by counsel and twice through Counsel, the Trial Chamber flagrantly violated the right of Professor Vojislav Šešelj to defend himself. On 8 December 2006, the Appeals Chamber adopted the second time, and only after 28 days of hunger strike, the final decision to restore Professor Vojislav Šešelj's right to defend himself.

This did not prevent the Prosecution from renewing its request, starting on June 2008 during its presentation of evidence phase, to impose Counsel on Professor Vojislav Šešelj. In this phase of the trial, when the Prosecution had only another 18

hours to present its evidence, it asked for the trial to be suspended and for Counsel to be imposed urgently. In this way, the Prosecution continued to confirm its basic argument that, for it, the trial was only possible if Professor Vojislav Šešelj was not allowed to defend himself. The Prosecution needed a “selected attorney”, who would be imposed by force as Counsel for Professor Vojislav Šešelj, so that the Prosecution would also have control of the defence.

Professor Vojislav Šešelj has filed several submissions and studies on this matter, which exist in the court files.

### **Initiation of Proceedings for Contempt of Court**

The Prosecution initiated several proceeding for contempt of court against Professor Vojislav Šešelj. Once in the pre-trial phase, and this Prosecution motion was denied by the Trial Chamber, with Judge Agius presiding, without this Prosecution motion being given to Professor Vojislav Šešelj either at the time or later.

The second time, the Prosecution filed a motion to initiate contempt proceedings in October 2008. Since the Trial Chamber did not want to consider it, by decision of the ICTY President the motion was referred to Trial Chamber II, with Judge Carmel Agius presiding. However, Judge Carmel Agius had to withdraw *ex officio* from ruling in this procedure, and his Trial Chamber issued a decision on 21 January 2009 in the form of an order to initiate contempt proceedings against Professor Vojislav Šešelj.

The Prosecution needed this indictment in order to justify its request to impose Counsel, because it seems that conspiracy was also needed in order to understand why the Prosecution did not succeed in proving guilt during its presentation of evidence or showing that there were any grounds for conviction.

One of the contempt proceedings for disclosing the identity of three protected witnesses ended with a 15-month prison sentence. These proceedings were essentially brought in order to achieve two goals: first, to impose again Counsel and second, to find some justification for the violation of the right to an expeditious trial.

The second contempt proceedings were held in 2010 because of a book that contains statements by 11 Defence witness who had first revealed their identity publicly, but who had also revealed all the problems they had during their contacts with the Prosecution investigators.

If we look at the statistics of the trial, then the purpose of initiating proceedings for contempt is perfectly clear. The trial commenced on 7 November 2007 and by the end of 2007, only one witness had testified. During 2008, 61 witnesses testified. In 2009, nine witnesses testified, and the same number in 2010. Therefore up to and including 31 December 2008, 77.5% of the witnesses had testified. Therefore, the first phase of the trial, the Prosecution's presentation of evidence, was nearing its end, but ICTY did not want to bring the trial to a close because the entire course of the trial was unfavourable for the Prosecution and the charges against Professor Vojislav Šešelj. This is why the contempt proceedings were needed as an excuse for the systematic violation of Professor Vojislav Šešelj's rights.

The third contempt proceedings were initiated in 2011, again because of a book on Professor Vojislav Šešelj's site. Despite the fact that the subjects of all these contempt proceedings have been books containing Professor Vojislav Šešelj's defence materials, the very fact that proceedings for contempt have been initiated for not respecting orders of the Trial Chamber on protective measures clearly leads to the conclusion that ICTY judges do not recognise Professor Vojislav Šešelj's right to defend himself. Anything that involves Professor Vojislav Šešelj's defence bothers the ICTY system, and it transpires that through these serial contempt proceedings the ICTY judges are effectively fighting to instil "reverence". There is almost a picture of the judges' uniforms and togas as a fashion detail that expresses inviolability, infallibility and the benchmark for international justice. Therefore, respect is imposed by force, and not a single example is shown of quality ICTY decisions that deserve respect because they reflect a respect for international standards and law. Since Professor Vojislav Šešelj is the only one to legally expose the background to and the essence of the ICTY, it is clear that the ICTY system set up a response by which it instils "reverence" and does so in the most flagrant way through contempt proceedings against Professor Vojislav Šešelj. It is its intention to make clear to everyone, through the example of Professor Vojislav Šešelj, the terrifying nature of this institution, which can fit everything into its standards and its mission. In this way the ICTY system sends a clear message that it is more important to ensure the respect for the ICTY than to bring to a close the main trial for charges of war crimes. Professor Vojislav Šešelj is in detention and he is being tried in order to ensure respect for the ICTY, while the charges for war crimes are no longer important, because the charges for war crimes were without grounds from the very start.

**Violation of the Obligation to Disclose Prosecution Material**

The matter of disclosing Prosecution material, and Professor Vojislav Šešelj requested that this be done on hard copy in Serbian, in writing, only started being resolved on 8 December 2006, and was resolved in a more or less acceptable way only half-way through 2007. However, this was not enough of a warning to the Prosecution, and even at the end of the first phase when the Prosecution presents its evidence, there is still a considerable amount of material that has not been disclosed to Professor Vojislav Šešelj. It need only be said that over 400 folders of Prosecution material were disclosed during May 2008 or, rather, during the presentation of Prosecution evidence, and all the video material lasting 6,600 hours has still not been disclosed. To be sure, they can be disclosed, but only through a procedure that goes against any reasonable thinking. Well, that's the ICTY.

We simply need to recall that the Prosecution had the obligation to disclose during the pre-trial phase, and certainly before the start of the trial. If we bear in mind that the first attempt to start the trial was in November 2006, and we see the amount of material that was disclosed during the Prosecution's presentation of evidence in 2007 and 2008, then it is absolutely clear what sort of deceit has been used by the Prosecution and how benevolent the Trial Chambers' approach towards the Prosecution has been. On the basis of this it is easy to establish that the Prosecution abused its obligation to disclose material in order to deceive and mislead both Professor Vojislav Šešelj and the Trial Chambers. There is no need to recall that when the obligation to disclose is abused, the Accused is not in a position to benefit from the right guaranteed to him to be informed of all the aspects of the counts and everything with which he is charged.

**Violation of the Obligation to Finance Defence Expenses**

The only case at the ICTY where the Defence costs are not financed is the case against Professor Vojislav Šešelj. The Trial Chamber issued a decision ordering the Registry to finance the cost of the defence of Professor Vojislav Šešelj, who is representing himself, with United Nations funds, but to this day the Registry has not acted on this decision. The Registry was already fully informed in 2003 of Professor Vojislav Šešelj's financial situation. In the meantime, the Registry has carried out all the checks related to Professor Vojislav Šešelj's financial situation, both directly and

with the help of the relevant organs in Serbia and he has not received to this day funds to finance his defence.

It is worth noting that the pre-trial phase lasted from 24 February 2003 to 7 November 2007 and that the Registry did not even pay for the expenses of the aeroplane tickets when Professor Vojislav Šešelj came to The Hague on 24 February 2003. During the trial phase, the Registry did not pay anything out either. As a partial solution to this situation, the Registry paid only for the cost of travel and stay in The Hague for his legal associates and case managers who visited Professor Vojislav Šešelj at the Detention Unit, but on two occasions (in September and December 2008) the visit was at the expense of the legal associates, and this is how it has continued to this day.

#### **Violation of the Right to Communicate with Legal Associates**

Privileged communication with legal associates went ahead for the first time on 21 December 2006 or, rather, after almost four entire years of detention. From December 2003 until mid-July 2004, Professor Vojislav Šešelj was not allowed to communicate in any way with persons outside the Detention Unit, and in the second half of 2006 the ban lasted more than two months. From 29 September 2008 Professor Vojislav Šešelj was also not allowed any privileged communication with his legal associates, either by telephone or through any privileged visits to the Detention Unit. During a visit by his legal associates in December 2008, the discussions and communication took place in a special room with video and audio monitoring. These bans concerned associate Zoran Krasić, and in 2011 they were also extended to Boris Aleksić, Dejan Mirović and the case manager Nemanja Šarović.

In the six years of detention, Professor Vojislav Šešelj asked once in 2004 to be released pending the start of the trial. This request was denied. There is no need to remind anyone that it was not even made possible for Professor Vojislav Šešelj to attend his mother's funeral.

### **III. The Indictment and Counts**

From 15 January 2003 until the end of the presentation of evidence by the Prosecution, the indictment against Professor Vojislav Šešelj was amended several times. Of the initial 14 counts, there are now only nine left. The indictment was amended as follows:

1. On 15 January 2003 the Prosecutor raised an indictment against Professor Vojislav Šešelj, and on 14 February 2003 Judge Kwon examined it and confirmed the indictment (hereinafter: Initial Indictment) which had 14 counts (eight counts of crimes against humanity and six counts of violations of the laws or customs of war). To show how many obvious errors existed in this indictment, it is sufficient to mention that 15 counts were listed, although there were actually only 14 counts. An objection raised to this indictment was partially granted and the Prosecution was ordered to remove the counts for Vojvodina, only for these counts to be brought back in at a later date by a decision of the Appeals Chamber, on condition that the Prosecution proved specifically the existence of some conditions that would prove the existence of a nexus.

2. With the permission of Trial Chamber II, on 12 July 2005 the Prosecution drafted the Modified Amended Indictment (hereinafter: Modified Amended Indictment), which kept the same 14 counts.

3. In its decision of 8 November 2006, the Trial Chamber reduced the Modified Amended Indictment as follows:

- Counts 2, 3, 5, 6 and 7 were removed from the indictment;
- the crimes allegedly committed in Western Slavonia in Paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32, and 34 were removed as charges from the indictment;
- it was decided that the Prosecution could not present evidence on crimes in Western Slavonia, Brčko, Bijeljina, Bosanski Šamac and on Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present evidence relating to the crime base for Western Slavonia, Brčko, Bijeljina, Bosanski Šamac and on Boračko Lake/Mount Borašnica.

By order of Trial Chamber I, on 10 November 2006 the Prosecution drafted, and submitted to Professor Vojislav Šešelj on 14 November 2006, the "Prosecution's Submission of Redacted Version of Modified Amended Indictment and Annexes, Pursuant to Rule 73 *bis* (D) and Trial Chamber I Decision Dated 8 November 2006" (hereinafter: Redacted Version).

4. On 25 June 2007, the Prosecution drafted the Second Amended Indictment.

5. The Third Amended Indictment dates from 7 December 2007, and was drafted in accordance with the decision of the Trial Chamber of 27 November 2007.

Corrigendum to the Third Amended Indictment dates from 10 November 2008. It is worth noting that the trial started on 7 November 2007.

It should be noted that Professor Vojislav Šešelj filed timely objections to all the indictments or, rather, amendments, in accordance with the Rules of Procedure and Evidence, and that they were partially granted in two instances.

A serious scandal occurred when Professor Vojislav Šešelj objected to the Modified Amended Indictment. With respect to the deadline and right to object, for over a year the Trial Chamber II and Trial Chamber I did not set Professor Vojislav Šešelj straight. The first objection was returned due to the excessive number of pages, and the second time it was supposedly not submitted in time, only for it to be established and admitted a few months later that both objections had been premature, because the Prosecution had not disclosed the material accompanying the Modified Amended Indictment, which meant that this objection was submitted only in 2007, following a decision of the new Trial Chamber.

For this final brief, in addition to recalling how the indictments were amended, it is also important that the Prosecution started the process of presenting Prosecution evidence pursuant to the Third Amended Indictment and that its numbering of paragraphs and counts follows the Initial Indictment and, therefore, due to the amendments, certain paragraphs and counts no longer exist as they have been removed, as in the case of

- **paragraphs:** part of paragraph 17 (a); part of paragraph 18; paragraph 19; part of paragraph 22; paragraph 23; part of paragraph 24; paragraph 25; part of paragraph 26; three parts of paragraph 27; paragraph 29 (c); paragraph 29 (d); paragraph 29 (f); paragraph 29 (h); paragraph 29 (i);

- **counts:** 2; 3; 5; 6; and 7.

Therefore, when presenting its evidence the Prosecution intended to prove that Professor Vojislav Šešelj had responsibility for the following counts of the Third Amended Indictment;

**Count 1:** Persecutions on political, racial and religious grounds, crime against humanity, punishable under Articles 5 (h) and 7 (l) of the Statute;

**Count 4:** Murder, a violation of the laws or customs of war, as recognised by Common Article 3 (1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7 (1) of the Statute;

**Count 8:** Torture, a violation of the laws or customs of war, as recognised by Common Article 3 (1) (a) of the Geneva Convention of 1949, punishable under Articles 3 and 7 (a) of the Statute;

**Count 9:** Cruel treatment, a violation of the laws or customs of war, as recognised by Common Article 3 (1) (a) of the Geneva Convention of 1949, punishable under Articles 3 and 7 (1) of the Statute;

**Count 10:** Deportation, a crime against humanity, punishable under Articles 5 (d) and 7 (1) of the Statute;

**Count 11:** Inhumane acts (forcible transfer), a crime against humanity, punishable under Articles 5 (i) and 7 (1) of the Statute;

**Count 12:** Wanton destruction of villages, or devastation not justified by military necessity, a violation of the laws or customs of war, punishable under Articles 3 (b) and 7 (1) of the Statute;

**Count 13:** Destruction or wilful damage done to institutions dedicated to religion or education, a violation of the laws or customs of war, punishable under Articles 3 (d) and 7 (1) of the Statute;

**Count 14:** Plunder of public or private property, a violation of the laws or customs of war, punishable under Articles 3 (d) and 7 (1) of the Statute.

#### **IV. Evidence Presented by the Prosecution**

The Trial Chamber approved 125 hours to the Prosecution for the presentation of evidence. The Prosecution's task in the first phase of the trial was to prove Professor Vojislav Šešelj's guilt on all counts of the indictment. The trial started on 7 November 2007 with the Prosecution's opening statement, and the Prosecution's presentation of evidence phase ended in March or, rather, on 1 June 2010.

With respect to the date of the opening of the trial, we should keep in mind that, concerning the right to disclosure and from what moment the deadline for disclosure was counted, Professor Vojislav Šešelj used legal recourses available to him, and certain strange decisions were issued according to which the trial did not commence with the Prosecution's opening statement (7 November 2007), but on the day the testimony of the first Prosecution witness was heard (mid-January 2008)?

In this phase of the proceedings, the Prosecution changed its list of witnesses or, rather, from the start of the trial it has kept changing the list of Prosecution witnesses. In the pre-trial phase it calculated the number of witnesses by code as 144

Prosecution witnesses. The Prosecution also counted on the witnesses in its submissions on 29 March 2007 (105 witnesses), 19 September 2007 and 10 December 2007 (100 witnesses), and during the presentation of evidence from the list of witnesses, the number of Prosecution and Chamber witnesses heard in the courtroom came to 81 witnesses.

During the trial, the Prosecution inserted into its witness list, and heard the testimony of, [REDACTED], Vesna Bosanac (92 *ter*), and the expert witness Ivan Grujić was replaced with two expert witnesses, Anamarija Radić and Višnja Bilić, and decided not to call two witnesses.

The Trial Chamber's decision to admit into evidence the statements given by witnesses to the Prosecution investigators, despite the witnesses testifying in court, is truly astonishing. This is done solely in order to decide, in case the probative value must be established, whether to give priority to the initial statement or the oral testimony. The relevance and probative value should be given to the testimony in court and not to what the Prosecution investigator wrote that was allegedly the initial witness statement. In this sense, it will be interesting to see the situation with the witness statements that were given to the security organs in 1992 or some later statements where no mention is made of Professor Vojislav Šešelj's name and the fact that these very same witnesses in the courtroom or in their following statements pursuant to Rule 92 *ter* and 92 *quater* apparently remembered and mentioned Professor Vojislav Šešelj.

Mention must be made here of the complete inequality of the accused before the ICTY. Some accused who are representing themselves, such as Karadžić, have disproportionately more time to cross-examine Prosecution witnesses than the Prosecution has for the examination-in-chief. It is simply the case that anything that has been allowed to others is not allowed to Professor Vojislav Šešelj.

In this context one needs to be reminded of the unreliability not only of statements and testimony pursuant to Rule 92 *ter*, but also statements pursuant to Rule 92 *quater* and in general the statements given by witnesses in other cases.

#### **Erroneous Application of Rule 92 *ter***

Professor Vojislav Šešelj did not cross-examine the Prosecution witnesses who gave evidence pursuant to 92 *ter* for reasons of pure principle and because, as explained above, the application of this Rule violates not only the principle of

evidentiary procedure, but also represents a type of abuse that limits and denies the right to defence, bringing into question the fair and just trial. Professor Vojislav Šešelj made several submissions on this matter and explained in detail that the witnesses were not able to repeat and confirm all the allegations that were allegedly made in the statement they gave to the Prosecution, that these were in fact statements compiled by the Prosecution, that it was a well-known fact that a large number of witnesses were surprised by the contents of these statements, and that a few Prosecution witnesses denied the allegations in these statements, claiming that they had never said any such thing to the Prosecution investigators. In addition, Rule 92 *ter* is a rule added to the Rules after Professor Vojislav Šešelj came to The Hague, and there is therefore no possibility of applying this rule in his case because retroactive application of rules is not allowed, as laid down in Rule 6 (D) of the Rules.

By comparison with the decision of the Trial Chamber in the pre-trial phase on the application of Rule 92 *ter*, the number of 92 *ter* witnesses increased during the presentation of the Prosecution evidence. In this way, the number of the Prosecution's *viva voce* witnesses was reduced, but, at the same time, a number of witnesses who had initially been planned as *viva voce* witnesses and identified in a decision of the Trial Chamber, had become 92 *ter* witnesses. In this way Professor Vojislav Šešelj was deprived of his right to defend himself because, instead of the testimony of these witnesses before the Trial Chamber with the examination-in-chief and the cross-examination, all that was admitted into evidence was the statements of these witnesses and their oral confirmation that what was being admitted was their statement. This is how dozens of pages and a large number of paragraphs were admitted into evidence without any verification, and had Professor Vojislav Šešelj by any chance used his right to cross-examine these witnesses within the time-limit under Rule 92 *ter*, he would never have been able to verify all the claims made in the statements.

At the appropriate moment in this Final Brief, Professor Vojislav Šešelj will prove that the 92 *ter* witnesses were specially selected because they had already testified in other cases before the ICTY, and it would not be good for some other information to emerge during the cross-examination by Professor Vojislav Šešelj; because these are highly compromised Prosecution witnesses or because they are false witnesses who would not be able to repeat the text of the pre-ordered statement, or it

would simply be clear to the general public what sort of forgeries and lies were used by the Prosecution.

### **Erroneous Application of Rule 92 *quater***

The Trial Chamber did not grant the Prosecution's request to admit into evidence pursuant to this rule the statements and testimony of dead Prosecution witnesses. The Trial Chamber later changed its initial decision and admitted into evidence the statements and testimony of witnesses who had died in the meantime. Simply, these statements cannot be relevant, nor can they be assigned any probative value, because they were not verified by the defence, and there is too much proof that initial witness statements do not have any value, considering that a large number of witnesses in the courtroom withdrew the statements they gave to the Prosecution investigators. It is sufficient to mention that Professor Vojislav Šešelj asked for proceedings to be initiated against 44 Prosecution witnesses, who gave false statements to the Prosecution investigators, and 40 of this number falsely testified in the courtroom. Therefore, relevance and probative value must not be assigned to statements pursuant to Rule 92 *quater*.

### **List of *Viva Voce* Witnesses and 92 *ter* Witnesses**

During the presentation of evidence by the Prosecution at the trial, the following witnesses were heard:

1. Anthony Oberschall (hate-speech expert witness) 11, 12 and 13 December 2007;
2. VS-015, Goran Stoparić, 15, 16, 17, 22, 23 and 24 January 2008;
3. Yves Tomić (Greater Serbia expert witness) 29, 30 and 31 January 2008 and 5, 6 and 7 February 2008;
4. VS-004, [REDACTED], **protected**, 7, 12 and 13 February 2008;
5. Reynaud Theunens (military expert witness) 14, 19, 20, 21, 26, 27 and 28 February 2008;
6. VS-013, Mladen Kulić, 4, 5 and 6 March 2008;
7. VS-021, [REDACTED], **protected**, 6 March 2008 (**92 *ter***);
8. VS-020, Vilim Karlović, 11 and 12 March 2008;
9. VS-1126, Dragutin Berghofer, 12 March 2008 (**92 *ter***);
10. VS-1127, Emil Čakalić, 18 and 19 March 2008;
11. VS-1013, [REDACTED], **protected**, 25 and 26 March 2008;

12. VS-1015, [REDACTED], **protected**, 27 March 2008;
13. VS-033, [REDACTED], **protected**, 1 and 2 April 2008;
14. VS-1014, Fadil Kopic, 9 April 2008 (**92 ter**);
15. VS-1062, [REDACTED], **protected**, 10 April 2008;
16. VS-007, [REDACTED], **protected**, 15, 16 and 17 April 2008;
17. VS-1065, [REDACTED], **protected**, 22 April 2008;
18. VS-002, [REDACTED], **protected**, 6, 7 and 8 May 2008;
19. VS-1120, Đuro Matovina, 13 and 14 May 2008;
20. VS-1106, Asim Alić, 15, 20 and 21 May 2008;
21. András Riedlmayer (destruction of religious sites) 21, 22 and 27, 28 May 2008;
22. VS-051, [REDACTED], **protected**, 28 and 29 May 2008;
23. VS-1111, [REDACTED], **protected**, 3 June 2008;
24. VS-1055, [REDACTED], **protected**, 4 and 5 June 2008;
25. VS-1018, Perica Koblar, 10 and 11 June 2008;
26. VS-1057, Safet Sejdić, 12, 17 and 18 June 2008;
27. VS-1012, [REDACTED], **protected**, 18 and 19 June 2008;
28. VS-1060, [REDACTED], **protected**, 24 and 25 June 2008;
29. VS-1064, [REDACTED], **protected**, 25 June 2008;
30. VS-1026, Redžep Karišik, 1 July 2008;
31. VS-1051, [REDACTED], **protected**, 2 July 2008;
32. VS-1052, [REDACTED], **protected**, 2 July 2008 (**92 ter**);
33. VS-1069, Fahrudin Bilić, 2 and 3 July 2008;
34. VS-1112, [REDACTED], **protected**, 8, 9, 10, 15 and 16 July 2008;
35. VS-1105, [REDACTED], **protected**, 16 July 2008 (**92 ter**);
36. VS-1022, [REDACTED], **protected**, 17 July 2008;
37. VS-1024, Ibrahim Kujan, 22 July 2008 (**92 ter**);
38. VS-048, Nebojša Stojanović, 22 and 23 July 2008; on 23 July 2008 Senior Trial Attorney Daniel Saxon was also questioned.
39. VS-061 (formerly [REDACTED]), [REDACTED], **protected**, 24 and 25 September 2008;
40. VS-038, [REDACTED], **protected**, 1 and 2 October 2008;
41. VS-035, Aleksa Ejić, 7, 8 and 9 October 2008;

42. VS-1133, Franjo Baričević, 14 and 15 October 2008;
43. VS-1134, ██████████, **protected**, 15 October 2008 (**92 ter**);
44. Ewa Tabeau, 21, 22 and 23 October 2008;
45. VS-018, Jelena Radošević, 23 October 2008 (**92 ter**);
46. VS-016, ██████████, **protected**, 28 and 29 October 2008;
47. Vesna Bosanac, 4 and 5 November 2008 (**92 ter**);
48. VS-1131, Milorad Vojnović, 5 and 6 November 2008 (**92 ter**);
49. VS-1119, Julka Maretić, 6 November 2008 (**92 ter**);
50. Expert Witness Davor Strinović, 11 November 2008;
51. VS-1093, ██████████, **protected**, 12 November 2008;
52. Expert Witness Višnja Bilić, 18 and 19 November 2008;
53. VS-1136, Katica Paulić, 19 November 2008;
54. Expert Witness Anamarija Radić, 20 November 2008;
55. VS-009, Aleksandar Stefanović, video link, 25 and 26 November 2008;
56. VS-1068, ██████████, **protected**, 26 November 2008 (**92 ter**);
57. VS-1139, Ljubiša Vukašinović, 27 November 2008;
58. VS-1016, Fadil Banjanović, 2 December 2008;
59. VS-1007, Sulejman Tihčić, 3 and 4 December 2008;
60. VS-1028, ██████████, **protected**, 9 December 2008;
61. VS-044, Jovan Glamočanin, video link, 10 and 11 December 2008;
62. VS-1000, ██████████, **protected**, 11 December 2008 (**92 ter**);
63. VS-065, ██████████, **protected**, video link, 8 and 9 January 2009;
64. VS-1087, ██████████, **protected**, video link, 9 January 2009 (**92 ter**);
65. VS-008, ██████████, **protected**, 13 and 14 January 2009;
66. Expert Witness Zoran Stanković, 15 January 2009;
67. VS-1035, ██████████, **protected**, 28 and 29 January 2009;
68. VS-1066, ██████████, **protected**, 3 and 4 February 2009;
69. VS-2000 ██████████, **protected**, 4 and 5  
February 2009;
70. VS-1010, ██████████, **protected**, 11 February 2009;
71. VS-1029, Alija Gušalić, 4 March 2009;
72. VS-027, ██████████, **protected**, video link, 7 and 8 July 2009;
73. VS-037, ██████████, **protected**, 12 and 13 January 2010;

74. VS-029, Vojislav Dabić, 26 and 27 January 2010;
75. VS-1067, [REDACTED], **protected**, 2 February 2010;
76. VS-067, [REDACTED], **protected**, 16 and 17 February 2010;
77. VS-1058, [REDACTED], **protected**, 9 March 2010;
78. VS-1033, [REDACTED], **protected**, 10 March 2010;
79. VS-34, [REDACTED], 30 March 2010; did not testify;
80. VS-017, Zoran Rankić, 11 and 12 May 2010;
81. VS-032, Nenad Jović, video link, 6 and 7 July 2010.

#### **Witness Statements Given to Prosecution Investigators**

The first phase of the trial, while the Prosecution was presenting evidence, the situation in the courtroom was marked almost every day by Prosecution witnesses denying parts of their claims from the statements that they allegedly gave to the Prosecution investigators. This was almost the standard situation during the trial, starting with the first Prosecution witness, VS-015, Goran Stoparić, and practically every subsequent Prosecution witness. Whether this could be seen and established clearly during the trial depended solely on the extent to which the witness statement contained in the statement given to the Prosecution investigator was relevant to Professor Vojislav Šešelj's defence.

This involved situations where witnesses denied that they had said to the Prosecution investigators what was written in the statement they had supposedly given to the Prosecution investigator. These situations occurred during cross-examination, when Professor Vojislav Šešelj asked a Prosecution witness whether the witness had really said something that was presented as his statement, and was contained in the statement compiled by the Prosecution investigator during the interview with the witness, and then the witness is surprised that this was written in his alleged statement.

These statements were compiled by the Prosecution investigators during interviews with the witness. The interviews were conducted through interpreters and lasted several hours a day for several days. The original statements were drafted in English. They were then translated into Serbian. Between the time the interview ended and the time when the witness signed the statement, a period of between several days and several months elapsed. The statements were read out to the witnesses in English and the witnesses signed them as their own, but in some cases statements in

Serbian were signed. None of the witnesses who gave statements received copies of their statements.

All of these statements are considered as part of the investigation process, since at the ICTY the investigation is in the hands of the Prosecution. Under the conditions laid down in the Rules of Procedure and Evidence these statements can be evidence. From a general point of view, these statements represent for Professor Vojislav Šešelj important information about the charges or some aspects of the charges. This is why they are disclosed as Prosecution material in accordance with the provisions of the Rules of Procedure and Evidence.

A considerable number of Prosecution witnesses denied in the courtroom that they had said what the Prosecution investigator wrote down. In this situation, the witness did not deny what was written, but claimed that he did not say it. Therefore, the question inevitably arises whether by putting together these statements in this way the Prosecution was creating grounds for the charges rather than fulfilling its obligation to verify whether there are any grounds for charges. Only amateurs and naïve people can believe that the errors arose because of the problem of interpretation. Hence the surprise when the discussion and conclusions of the Trial Chamber were voiced in the courtroom based on whether a witness confirmed his signature.

Professor Vojislav Šešelj filed criminal reports against 44 witnesses for false testimony. Of that number 40 witnesses gave false testimony in the courtroom during the examination-in-chief and the cross-examination, and the statements refer to factual claims. Professor Vojislav Šešelj asked for proceedings to be initiated against these people pursuant to Rule 91 of the Rules of Procedure and Evidence. All the false statements and false testimony in the courtroom resulted from consent or threats, coercion and blackmail by the Prosecution. Let us recall who these false witnesses are, so that in the part of this submission in which their testimony is analysed attention will be paid and it should be borne in mind that they do not deserve the protection granted them by the ICTY, which has still not initiated proceedings against the following witnesses:

1. VS-015, Goran Stoparić, testified on 15, 16, 17, 22, 23 and 24 January 2008;
2. VS-013, Mladen Kulić, testified on 4, 5 and 6 March 2008;

3. VS-1013, [REDACTED], **protected** witness, testified on 25 and 26 March 2008;
4. VS-1015, [REDACTED], **protected** witness, testified on 26 and 27 March 2008;
5. VS-033, [REDACTED], **protected** witness, testified on 1 and 2 April 2008;
6. VS-1014, Fadil Kopic, **protected** witness pursuant to Rule 92 *ter*, testified on 9 April 2008;
7. VS-1062, [REDACTED], **protected** witness, testified on 10 April 2008;
8. VS-007, [REDACTED], **protected** witness, testified on 15, 16 and 17 April 2008;
9. VS-1120, Đuro Matovina, testified on 13 and 14 May 2008;
10. VS-1106, Asim Alić, testified on 15, 20 and 21 May 2008;
11. VS-051, [REDACTED], **protected** witness, testified on 28 and 29 May 2008;
12. VS-1055, [REDACTED], **protected** witness, testified on 4 and 5 June 2008;
13. VS-1018, Perica Koblar, testified on 10 and 11 June 2008;
14. VS-1057, Safet Sejdić, testified on 12, 17 and 18 June 2008;
15. VS-1069, Fahrudin Bilić, testified on 2 and 3 July 2008;
16. VS-1105, [REDACTED], **protected** witness pursuant to Rule 92 *ter*, testified on 16 July 2008;
17. VS-1022, [REDACTED], closed session, testified on 17 July 2008;
18. VS-1024, Ibrahim Kujan, witness pursuant to Rule 92 *ter*, testified on 22 July 2008;
19. VS-061, [REDACTED], **protected** witness, testified on 24 and 25 September 2008;
20. VS-038, [REDACTED], **protected** witness, testified on 1 and 2 October 2008;
21. VS-1133, Franjo Baričević, testified on 14 and 15 October 2008;
22. VS-1134, [REDACTED], witness pursuant to Rule 92 *ter*, testified on 15 October 2008;

23. VS-018, Jelena Radošević, witness pursuant to Rule 92 *ter*, testified on 23 October 2008;
24. VS-037, ██████████, **protected** witness, testified on 28 and 29 October 2008;
25. Vesna Bosanac, witness pursuant to Rule 92 *ter*, testified on 4 and 5 November 2008;
26. VS-1131, Milorad Vojnović, witness pursuant to Rule 92 *ter*, testified on 5 and 6 November 2008;
27. VS-1119, Julka Maretić, witness pursuant to Rule 92 *ter*, testified on 6 November 2008;
28. VS-1093, ██████████, **protected** witness, testified on 12 November 2008;
29. VS-1136, Katica Paulić, testified on 19 November 2008;
30. VS-1028, ██████████, **protected** witness, testified on 9 December 2008;
31. VS-065, ██████████, **protected** witness, testified on 8 and 9 January 2009 via a video link;
32. VS-008, ██████████, **closed** session, testified on 13 and 14 January 2009;
33. VS-1035, ██████████, **protected** witness, testified on 28 and 29 January 2009;
34. VS-1066, ██████████, **closed** session, testified on 3 and 4 February 2009;
35. VS-2000 ██████████, **protected** witness, testified on 4 and 5 February 2009;
36. VS-1029, Alija Gušalić, testified on 4 March 2009;
37. VS-027, ██████████, **closed** session, testified on 7 and 8 July 2009;
38. VS-029, Vojislav Dabić, testified on 26 and 27 January 2010;
39. VS-1067, ██████████, **protected** witness, testified on 2 February 2010;
40. VS-1033, ██████████, **protected** witness, testified 10 March 2010;

41. Potential Prosecution Witness VS-1135, [REDACTED], gave a written statement to the Prosecution, and the Prosecution decided not to call this witness;

42. Potential Prosecution Witness VS-1002, [REDACTED], gave a written statement to the Prosecution, and the Prosecution decided not to call this witness;

43. Potential Prosecution Witness VS-1141, [REDACTED], gave a written statement to the Prosecution, and the Prosecution decided not to call this witness;

44. Potential Prosecution Witness VS-045, [REDACTED], gave a written statement to the Prosecution, and the Prosecution decided not to call this witness.

Therefore, a total of 23 witnesses were granted the status of protected witness, in order for their false testimony to be preserved and protected.

The criminal report against the false witnesses is only one of a string of legal initiatives by Professor Vojislav Šešelj, starting with the first one on 8 March 2007, when he asked for proceedings to be initiated for contempt of court against Carla Del Ponte and the most responsible persons in the Office of the Prosecutor, who were exerting illicit influence on potential witnesses. Although it was first decided that a decision would be made on this after the end of the trial, in October 2010 the Trial Chamber widened its investigation of the most responsible persons with the Office of the Prosecutor and the *amicus curiae* report is expected to establish whether to initiate contempt proceedings against Carla Del Ponte and her collaborators.

#### **Witness Testimony from Transcripts of Trials in Other Cases**

The Prosecution also disclosed this material, counting on it being admitted into evidence as an automatic process. The initial intention was for this to be material that could not be contested with the justification that it was the result of both the examination-in-chief and the cross-examination in some other trial before the ICTY. The Prosecution's idea was quite strange, but especially the significance that the Prosecution assigned to this material. The Prosecution counted on a considerable amount of deception that could remain undetected. They thought that these statements were more significant than the judgements rendered in these cases, and they completely forgot that this material was, in several cases, the basis for Professor Vojislav Šešelj's cross-examination which, as a result, clarified or refuted the relevance of this material. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**V. Evidence on Which the Prosecution Counted that Was Presented with the Intention of Confirming the Prosecution Charges**

The actual document in which the Prosecution specified the charges against Professor Vojislav Šešelj is the Prosecution's Final Pre-Trial Brief of 31 July 2007. In order to establish whether the Prosecution has succeeded in proving the charges, it is also important to consider the opening statement of the Prosecution of 7 and 8 November 2007 and the Revised Final Witness List in Confidential Annex A of 29 March 2007 with summaries of the witnesses' evidence or, rather, the statements that the Prosecution filed in its submissions of 29 March 2007, 19 September 2007 and 10 December 2007 (hereinafter: summaries of testimony).

Therefore, the Prosecution's Pre-Trial Brief, the Prosecution's opening statement and the Prosecution's summaries of testimony would need to correspond or, rather, form a logical entity with the testimony of the witnesses given in court before the Trial Chamber, on condition that they stood the test of cross-examination by Professor Vojislav Šešelj. This is the only way that any reasonable person can conclude beyond any doubt whether any fact has been proved and whether it is relevant to the establishing of guilt.

Later on there will be a further analysis of what the Prosecution's task was according to the argument it maintained in this case, according to the charges, the Final Trial Brief, the summaries of testimony for Prosecution witnesses and, finally, according to what was tendered in court. Of course, we must also bear in mind the schedule for the evidentiary procedure, which was determined by the Presiding Judge of the Trial Chamber while he was a pre-trial judge, and which was not respected by the Prosecution, with the tacit agreement of the judges of the Trial Chamber.

**The Final Pre-Trial Brief**

The Final Pre-Trial Brief should have been a thorough synopsis that developed and explained in detail the indictment or, rather, a complete plan of the work of the Prosecution with clear arguments for the charges, and should have contained "for each count, a summary of the evidence which the Prosecutor intends to bring regarding the

commission of the alleged crime and the form of responsibility incurred by the accused.”

The Prosecution’s Final Pre-Trial Brief clearly showed the Prosecution’s argument in its chapter headings:

II. Šešelj’s Participation in the JCE

Witnesses:

**VS-008** ( [REDACTED], false witness)

VS-010 (Zoran Dražilović, defence, did not testify);

VS-014 ( [REDACTED], defence, did not testify);

VS-011 (Ljubiša Petković, did not testify);

VS-026 ( [REDACTED], defence, did not testify);

**VS-017 (Zoran Rankić, more for the defence);**

VS-031 ( [REDACTED], defence, did not testify);

**VS-027** ( [REDACTED], false witness);

**VS-2000** ( [REDACTED], false witness);

**VS-038** ( [REDACTED], false witness);

VS-1141 ( [REDACTED], false, the Prosecution decided not to call him);

VS-1008 (Stevan Todorović, [REDACTED]);

**VS-1133 (Franjo Baričević, false witness);**

**VS-1136 (Katica Paulić, false witness);**

**VS-007** ( [REDACTED], false witness).

A. Šešelj’s Role as Chief Propagandist of “Greater Serbia”

Witnesses: **VS-035 (Aleksa Ejčić);**

VS-043 (Milan Babić, deceased).

B. Šešelj Recruited and Coordinated SRS /Serbian Radical Party/ or SČP  
/Serbian Chetnik Movement/ Volunteers

Witnesses:

VS-011 (Ljubiša Petković, defence, did not testify);

**VS-027** ( [REDACTED], false witness);

VS-026 ( [REDACTED], defence, did not testify);

**VS-015 (Goran Stoparić, false witness);**

**VS-017 (Zoran Rankić, more for the defence);**

**VS-032 (Nenad Jović, more for the defence);**

VS-004 ( [REDACTED], more for the defence);  
VS-002 ( [REDACTED], more for the defence);  
VS-043 (Milan Babić, deceased);  
VS-008 ( [REDACTED], false witness);  
VS-045 ( [REDACTED], did not testify);  
VS-007 ( [REDACTED], false witness);  
VS-034 ( [REDACTED], defence, did not testify);  
VS-018 (Jelena Radošević, false witness);  
VS-012 (Aleksandar Filković, deceased);  
VS-1058 ( [REDACTED], more for the defence);  
VS-025 (unknown).

C. Šešelj's Intent to Participate in the JCE

Witnesses:

VS-017 (Zoran Rankić, more for the defence);  
VS-024 (unknown);  
VS-011 (Ljubiša Petković, did not testify);  
VS-027 ( [REDACTED], false witness);  
VS-034 ( [REDACTED], defence, did not testify);  
VS-045 ( [REDACTED], did not testify);  
VS-032 (Nenad Jović, more for the defence);  
VS-1141 ( [REDACTED], the Prosecution decided not to call him);  
VS-038 ( [REDACTED], false witness);  
VS-1058 ( [REDACTED], more for the defence);  
VS-008 ( [REDACTED], false witness);  
VS-1133 (Franjo Baričević, false witness);  
VS-015 (Goran Stoparić, false witness);  
VS-007 ( [REDACTED], false witness);  
VS-026 ( [REDACTED], defence, did not testify);  
VS-004 ( [REDACTED], more for the defence);  
VS-050 ( [REDACTED], defence, did not testify);  
VS-033 ( [REDACTED], false witness);  
VS-013 (Mladen Kulić, false witness);  
VS-018 (Jelena Radošević, false witness);

**VS-002** ( [REDACTED], more for the defence).

### III. Implementing the JCE in Croatia, BH and Serbia

#### A. Implementation of the JCE in Croatia

##### 1. Republic of Serbian Krajina:

Witnesses:

VS-043 (Milan Babić, deceased), plea bargain;

**VS-037** ( [REDACTED], more for the defence), he is for the Zvornik location, nothing to do with Croatia.

##### 2. Croatian Serb Parallel structures in the SAO /Serbian Autonomous District of/ Krajina:

Witness:

VS-043 (Milan Babić, deceased) plea bargain.

##### 3. SAO Slavonia, Baranja and Western Srem:

No witnesses.

##### 4. SAO Western Slavonia:

Witnesses:

VS-050 ( [REDACTED], defence, did not testify);

**VS-004** ( [REDACTED], more for the defence).

##### 5. Croatian Serb Police and Military Structure:

Witnesses:

VS-043 (Milan Babić, deceased) plea bargain;

**VS-027** ( [REDACTED], false witness);

**VS-004** ( [REDACTED], more for the defence);

**VS-002** ( [REDACTED], more for the defence);

VS-034 ( [REDACTED], defence, did not testify);

**VS-1126 (Redžep Karišik)** nothing to do with Croatia;

VS-022 ( [REDACTED], did not testify, the Prosecution decided not to call him);

**VS-020 (Vilim Karlović, more for the defence);**

**VS-021** [REDACTED]

#### B. Implementation of the JCE in Bosnia and Herzegovina:

Witnesses:

VS-043 (Milan Babić, deceased) plea bargain;  
**VS-037** ( [REDACTED], more for the defence);  
VS-1061 (unknown);  
VS-026 ( [REDACTED], did not testify).

C. Implementing the JCE in Serbia:

Witnesses in relation to Hrtkovci.

IV. The Creation and Structure of the SRS:

Witnesses:

**VS-009** (Aleksandar Stefanović, more for the defence);  
**VS-017** (Zoran Rankić, more for the defence);  
VS-010 (Zoran Dražilović, defence, did not testify);  
VS-026 ( [REDACTED], defence, did not testify);  
VS-011 (Ljubiša Petković, defence, did not testify);  
VS-043 (Milan Babić, deceased) plea bargain.

V. Factual Summaries of the Crimes Alleged

A. Crimes in Croatia

1. Vukovar, November 1991:

Witnesses:

VS-011 (Ljubiša Petković, did not testify);  
**VS-1126** (Dragutin Berghofer);  
**VS-015** (Goran Stoparić, false witness);  
**VS-021** [REDACTED]

[REDACTED]

**VS-008** ( [REDACTED], false witness), he was not in Vukovar and does not even know where Vukovar is;

**VS-1127** (Emil Čakalić);

**VS-017** (Zoran Rankić, more for the defence);

**VS-020** (Vilim Karlović, more for the defence);

**VS-027** ( [REDACTED], false witness);

**VS-002** ( [REDACTED], more for the defence);

**VS-1139** (Ljubiša Vukašinović, more for the defence);

VS-022 ( [REDACTED], did not testify, the Prosecution decided not to call him);

VS-1129 ([REDACTED], did not testify, the Prosecution decided not to call her);

**VS-051 ([REDACTED], false witness).**

2. Voćin, August - December 1991:

Witnesses:

**VS-1119 (Julka Maretić, false witness);**

VS-026 ([REDACTED], defence, did not testify);

VS-031 ([REDACTED], defence, did not testify);

**VS-1120 (Đuro Matovina, false witness);**

VS-050 ([REDACTED], defence, did not testify);

**VS-013 (Mladen Kulić, false witness);**

**VS-018 (Jelena Radošević, false witness);**

**VS-004 ([REDACTED], more for the defence);**

**VS-007 ([REDACTED], false witness);**

VS-010 (Zoran Dražilović, defence, did not testify).

B. Crimes in Bosnia and Herzegovina

1. Bijeljina:

Witnesses:

**VS-1029 (Alija Gušalić, false witness);**

**VS-1035 ([REDACTED], false witness);**

**VS-1028 ([REDACTED], false witness).**

2. Brčko:

Witnesses:

**VS-029 (Vojislav Dabić, more for the defence, and false witness for events before coming to The Hague),** it is not clear how he can be a witness for this location and he was not asked a single question related to the Brčko location;

**VS-1033 ([REDACTED], false witness);**

**VS-015 (Goran Stoparić, false witness).**

3. Bosanski Šamac, April 1992 - September 1993:

Witnesses:

VS-043 (Milan Babić, deceased), plea bargain;

**VS-1010 ([REDACTED]);**



VS-1063 ( [REDACTED], did not testify);  
VS-038 ( [REDACTED], false witness);  
VS-1087 ( [REDACTED], more for the defence);  
VS-1013 ( [REDACTED], false witness);  
VS-032 (Nenad Jović, more for the defence);  
VS-011 (Ljubiša Petković, defence, did not testify);  
VS-027 ( [REDACTED], false witness).

5. Greater Sarajevo:

Witnesses:

VS-1111 ( [REDACTED]);  
VS-1056 (Mujo Džafić, deceased);  
VS-1055 ( [REDACTED], false witness);  
VS-1060 ( [REDACTED]);  
VS-017 (Zoran Rankić, more for the defence);  
VS-034 ( [REDACTED], defence, did not testify);  
VS-1018 (Perica Koblar, false witness).

It is interesting that nobody even counted on Witness Safet Sejfić.

6. Mostar:

Witnesses:

VS-1020 ( [REDACTED]);  
VS-1068 ( [REDACTED]);  
VS-029 (Vojislav Dabić, more for the defence, [REDACTED]  
[REDACTED]);  
VS-1069 (Fahrudin Bilić, false witness);  
VS-1067 ( [REDACTED], false witness);  
VS-1026 (Redžep Karišik);  
VS-1009 (Zoran Tot, deceased);  
VS-1022 ( [REDACTED], false witness);  
VS-015 (Goran Stoparić, false witness).

7. Nevesinje:

Witness:

VS-015 (Goran Stoparić, false witness);  
VS-1025, ( [REDACTED], did not testify);

**VS-1022** (██████████, false witness);

**VS-1024** (Ibrahim Kujan, false witness);

**VS-1052** (██████████);

**VS-029** (Vojislav Dabić, more for the defence, ██████████  
██████████);

**VS-1051** (██████████);

**VS-1067** (██████████, false witness);

**VS-1025** (██████████, did not testify), proposed twice;

**VS-1020** (██████████████████████).

### C. Crimes in Serbia

#### 1. Hrtkovci, May - August 1992:

Witnesses:

**VS-026** (██████████, defence, did not testify);

**VS-015** (Goran Stoparić, false witness);

**VS-1141** (██████████, false, the Prosecution decided not to call him);

**VS-017** (Zoran Rankić, more for the defence);

**VS-1136** (Katica Paulić, false witness);

**VS-1135** (██████████, false, did not testify);

**VS-1134** (██████████, false witness);

**VS-034** (██████████, defence, did not testify);

**VS-1133** (Franjo Baričević, false witness);

**VS-007** (██████████, false witness);

**VS-067** (██████████████████████);

**VS-035** (Aleksa Ejić);

**VS-043** (Milan Babić, deceased) plea agreement.

### VI. Legal Analysis

1. General Requirements of Article 3 of the Statute and Common Article 3

2. General Requirements of Article 5 of the Statute

3. Elements of Specific Crimes

Witnesses mentioned in part VI., under 1, 2 and 3 are:

**VS-015** (Goran Stoparić, false witness);

**VS-007** (██████████, false witness);

**VS-026** (██████████, defence, did not testify);

VS-011 (Ljubiša Petković, defence, did not testify);

**VS-1133 (Franjo Baričević, false witness);**

**VS-017 (Zoran Rankić, more for the defence);**

**VS-027 (██████████, false witness);**

VS-034 (██████████, defence, did not testify).

The codes of witnesses who testified *viva voce* and testified pursuant to Rule 92 *ter* are in bold.

On the basis of the structure presented by the Prosecution, it follows that what is known as crime base can be found in the part entitled “V. Factual Summaries of the Crimes Alleged” and is presented in chapters:

**A. Crimes in Croatia**

1. Vukovar, November 1991
2. Voćin, August - December 1991

**B. Crimes in Bosnia and Herzegovina**

1. Bijeljina
2. Brčko
3. Bosanski Šamac, April 1992 - September 1993
4. Zvornik, April 1992 - 1993
5. Greater Sarajevo
6. Mostar
7. Nevesinje

**C. Crimes in Serbia**

1. Htrkovci, May – August 1992

It has to be noted here that the Final Pre-Trial Brief of the Prosecution did not follow the shortening of the indictment that was carried out in line with the decision of the Trial Chamber of 8 November 2006. This is why all the places in the Indictment and the Pre-Trial Brief continue to be listed as a crime base, although some must be for the consistent pattern of conduct of the Accused.

**Revised Final Witness List with Confidential Annex A  
of 29 March 2007 – Summary of Prosecution Witness' Evidence**

The structure of the of the Prosecution's Final Pre-Trial Brief must correspond to the structure of the Revised Final Witness List of the Prosecution. However, where Professor Vojislav Šešelj's case is concerned, this is not the case and this is clear from

the structure of the Revised Final Witness List of Prosecution witnesses, and Annex A is entitled "Witness List and Summary of the Facts on Which the Witnesses Will Testify."

**Insider Witnesses:**

**VS-004** ([REDACTED], more for the defence), **VS-007** ([REDACTED], false witness), **VS-009** (Aleksandar Stefanović, more for the defence), **VS-010** (Zoran Dražilović, defence), **VS-011** (Ljubiša Petković, defence), **VS-012** (Aleksandar Filković, deceased), **VS-013** (Mladen Kulić, false witness), **VS-014** ([REDACTED], defence), **VS-015** (Goran Stoparić, false witness), **VS-017** (Zoran Rankić, more for the defence), **VS-026** ([REDACTED], defence), **VS-027** ([REDACTED], false witness), **VS-032** (Nenad Jović, more for the defence), **VS-034** ([REDACTED], defence), **VS-043** (Milan Babić, deceased, plea bargain), **VS-048** (Nebojša Stojanović, more for the defence, and he is not mentioned in the Pre-Trial Brief of the Prosecution), **VS-1061** (unknown witness).

**Expert Witnesses:**

Colonel Ivan Grujić, Professor **Anthony Oberschall**, Dr **András Riedlmayer**, Dr **Zoran Stanković**, Dr **Davor Strinović**, Osman Kadić, Dr **Ewa Tabeau**, **Reynaud Theunens**, **Iv Tomić**, **VS-1112** ([REDACTED]).

**Witnesses on Consistent Pattern of Conduct for Voćin:**

**VS-018** (Jelena Radošević was also proposed as witness for Count 2, which does not exist in the indictment, to testify on the murder of civilians), **VS-031** ([REDACTED], [REDACTED] he did not testify), **VS-033** ([REDACTED], false witness, hearsay witness), **VS-050** ([REDACTED], [REDACTED] **VS-1119** (Julka Maretić, false witness, to testify about Counts 2, 3, 5 and 7 which no longer exist in the indictment, to testify about expulsion and murder), **VS-1120** (Đuro Matovina, false witness).

**Crime Base Witnesses for Vukovar:**

**VS-002** ([REDACTED], testified more as a defence witness), **VS-008** ([REDACTED], false witness), **VS-016** ([REDACTED], false witness, this witness was not included in the Final Pre-Trial Brief of the Prosecution), **VS-020** (Vilim Karlović, to testify about counts that do not exist in the indictment), **VS-021**

██ VS-022 (████████████████████), the Prosecution decided not to call him), VS-045 (████████████████████), this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-051** (████████████████████), false witness, to testify about Count 2 that no longer exists in the indictment), **VS-1126** (Dragutin Berghofer), **VS-1127** (Emil Čakalić), VS-1128 (Josip Čović, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), VS-1129 (████████████████████), the Prosecution decided not to call her), VS-1130 (████████████████████), defence witness, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1131** (Miodrag Vojnović, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1139** (Ljubiša Vukašinović, was a defence witness in every sense).

**Crime Base Witnesses for Hrtkovci;**

**VS-035** (Aleksa Ejić), **VS-067** (████████████████████), **VS-054** (████████████████████), this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1133** (Franjo Baričević, false), **VS-1134** (████████████████████), false), VS-1135 (████████████████████), false, the Prosecution decided not to call her), **VS-1136** (Katica Paulić, false), VS-1141 (████████████████████), formerly ████████████████████, the Prosecution decided not to call him).

**Witnesses on consistent pattern of conduct for Bosanski Šamac:**

**VS-1000** (████████████████████), VS-1002 (████████████████████), false, the Prosecution decided not to call him), VS-1004 (████████████████████), the Prosecution decided not to call him), **VS-1007** (Sulejman Tihić, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), VS-1008 (Stevan Todorović, ████████████████████), **VS-1010** (████████████████████), VS-1058 (████████████████████), defence witness, to testify on Counts that no longer exist in the indictment).

**Crime Base Witnesses for Zvornik;**

VS-036 (████████████████████), **VS-037** (████████████████████), defence witness), **VS-038** (████████████████████), false), VS-039 (Matija Bošković, deceased), **VS-1012** (████████████████████), **VS-1013** (████████████████████), false), **VS-1014** (Fadil Kopic, false), **VS-1015** (████████████████████), false witness, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1016** (Fadil Banjanović), **VS-1062** (████████████████████), false), VS-1063, **VS-1064** (████████████████████), this witness does not exist in the Final Pre-Trial Brief of the

Prosecution), **VS-1065** (██████████), **VS-1066** (██████████, false), **VS-1087** (██████████, defence witness), **VS-1093** (██████████, false), **VS-2000** (██████████████████████, false witness), **VS-1105** (██████████, false), **VS-1106** (Asim Alić, false, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1132** (██████████, this witness does not exist in the Final Pre-Trial Brief of the Prosecution and the Prosecution decided not to call him).

Witnesses on the consistent pattern of conduct for **Bijeljina and Brčko**:

**VS-1028** (██████████, false), **VS-1029** (Alija Gušalić, false), **VS-1033** (██████████, false), **VS-1035** (██████████, false).

Crime Base Witnesses for **Nevesinje/Mostar**:

**VS-029** (Vojislav Dabić, defence, false), **VS-1009** (Zoran Tot, deceased), **VS-1020** (██████████), **VS-1022** (██████████, false), **VS-1024** (Ibrahim Kujan, false), **VS-1025**, (██████████, did not testify), **VS-1026** (Redžep Karišik), **VS-1051** (██████████), **VS-1052** (██████████), **VS-1067** (██████████, false), **VS-1068** (██████████), **VS-1069** (Fahrudin Bilić, false).

Crime Base Witnesses for **Greater Sarajevo**:

**VS-1018** (Perica Koblar, false), **VS-1055** (██████████, false), **VS-1056** (Mujo Džafić, deceased), **VS-1057** (Safet Sejdić, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1060** (██████████), **VS-1111** (██████████).

The codes of witnesses who testified *viva voce* and testified pursuant to Rule 92 *ter* are in bold.

If we compare the aforementioned Prosecution submissions that must constitute the argument for the indictment, we can see that there is complete chaos, messiness and lack of a systematic method. If all of this is put into the context of the witness testimony in the courtroom, then the witnesses have not even succeeded in repeating what was noted in the summaries of their supposedly expected testimony. In order to avoid confusion, it must be noted that even what was said by the witnesses in the courtroom during the examination-in-chief by the Prosecution and during the cross-examination by Professor Vojislav Šešelj has been amended, although it must also be noted that Professor Vojislav Šešelj never had time to clarify all the

imprecisions during the cross-examination because he insisted on giving priority to establishing the relevant facts in the indictment.

At this point it must be noted that during the initial phase of the trial, when the Prosecution presented its evidence, the Prosecution did not respect schedule imposed by the Trial Chamber. The schedule was not respected in relation to the locations, to the crime-base evidence and the consistent pattern of conduct, nor in relation to the evidence of involvement in the JCE. Using various excuses, the Prosecution simply brought in witnesses at random. This was done deliberately so that, for example, all the evidence relating to one location would not be presented continuously during one period before moving on to the presentation of evidence relating to another location, because if the order of the Trial Chamber had been respected the counts of the indictment and location would have fallen one by one due to lack of evidence. When the evidence is presented randomly instead of in defined units, then the charges remain uncertain until the very end of the presentation of Prosecution evidence.

This essentially makes assessment of the evidence presented by the Prosecution all the more difficult, but when the Prosecution evidence is grouped by location it can be concluded that none of the charges has been proved and nothing fits into the Prosecution argument, if such an argument even exists.

#### **VI. Whether the Conditions for Modes of Responsibility under Paragraph 5 of the Indictment Have Been Fulfilled**

Professor Vojislav Šešelj is being charged for almost all modes of responsibility pursuant to Article 7 (1) of the Statute.

##### **Planning**

It follows from the indictment that Professor Vojislav Šešelj planned and carried out all nine crimes, with special focus on persecutions, murder, torture and cruel treatment, deportation and forcible transfer, wanton destruction and plunder.

In the indictment they appear in paragraphs 5, 10, 11, 15, 18, 28, 31 and 34.

In the Prosecution's Pre-Trial Brief they appear in paragraphs 142 and 143 (with footnote 487), which list witnesses who will confirm that Professor Vojislav Šešelj was responsible for planning. These witnesses were: **VS-015** (Goran Stoparić, false witness), **VS-026** (██████████, did not testify, but he wanted to be a defence witness), **VS-1033** (Franjo Baričević, testified, false witness).

The Prosecution alleges the following:

“Planning” implies that “one or more persons design the commission of a crime at both the preparatory and execution phases.”

- In order to prove a person’s criminal responsibility on the basis of “planning”, the Prosecution must demonstrate that the Accused had the *mens rea* of the crime or was aware of the substantial likelihood that the crime committed would be an adequate consequence of carrying out the plan. Planning may also include organising. The existence of a plan can be proved through circumstantial evidence. With respect to the Accused’s *mens rea* for planning the crimes in Vukovar and Zvornik, the Accused’s awareness that such crimes would likely occur may be inferred from:

- (1) his inflammatory speeches;
- (2) the fact that he approved the dispatch of volunteers to these areas with the knowledge that the volunteers often committed crimes at the battlefields; and
- (3) the fact that the crimes occurred.

#### Professor Vojislav Šešelj’s Comment

As an opposition politician he was not in a position to plan either in the preparatory phase or in the commission phase any of the crimes with which he is charged. It is nonsensical even to think that an opposition politician plans to use armed forces. Not only was there no inflammatory speech, but there was never any speech like that claimed in the indictment in Vukovar or in Mali Zvornik. In addition, there is no convincing evidence, apart from the insinuations of false witnesses, that any volunteer sent by Professor Vojislav Šešelj committed any crime as claimed in the indictment. Therefore the planning by Professor Vojislav Šešelj in relation to the principal perpetrator is invented and a pure fiction of the Prosecution. If any crime has been committed, in order to establish responsibility for planning, there has to be some minimal link between the originator of the plan and the principal perpetrator, or between the originator of the plan and a mediator with the principal perpetrator, because planning is a form of co-perpetration which, in a more general sense, exists within the framework of aiding and abetting.

The Prosecution claimed that:

“With respect to Šešelj’s *mens rea* for planning the crimes in Hrtkovci, the Accused’s intent is evident from his statements during meetings with SRS supporters and members prior to and during the persecution campaign in Hrtkovci, as well as the

fact that the criminal actions encouraged by Šešelj during those meetings eventually took place in Hrtkovci.”

#### Professor Vojislav Šešelj's Comment

There is no evidence that Professor Vojislav Šešelj had meetings with supporters at which a plan was developed for the alleged commission of crimes in Vojvodina and Hrtkovci, and it is not at all clear what the Prosecution meant when it claimed the criminal actions took place and that Professor Vojislav Šešelj had encouraged them during earlier meetings. There is not a single shred of evidence for these meetings, for the alleged encouragement, which would be more like instigating and aiding and abetting, and so the Prosecution resorts to invention, which is why no distinction is made between *actus reus* and *mens rea*. This is simple guesswork and an attempt to mislead the judges.

The Prosecution counted on the following witnesses:

**VS-015** (Goran Stoparić, proven false witness) told an unbelievable story about Vojvodina, and on the order of the judges, [REDACTED]

**VS-026** ([REDACTED], did not testify) submitted several statements that he only wanted to testify for the defence.

**VS-1033** (Franjo Baričević, proven false witness), everything that he said during his testimony about Professor Vojislav Šešelj's speech is false, which is proved by the text of the speech in Hrtkovci which was published a long time ago.

Although the charge of planning is unfounded and Professor Vojislav Šešelj's speeches have been manipulated or given a significance they did not have in reality, the Prosecution did not present any evidence to support the charges for this mode of responsibility.

#### Ordering

It follows from the indictment that Professor Vojislav Šešelj ordered the commission of all nine crimes, and special emphasis is given to persecution, murder and cruel treatment, wanton destruction and plunder.

In the indictment, they appear in paragraphs 5, 10, 11, 15, 18, 28 and 34.

In paragraphs 144 and 145 and in footnotes 495 and 496 of the Prosecution Pre-Trial Brief, witnesses are mentioned who will confirm that Professor Vojislav Šešelj issued orders, and these witnesses are as follows: **VS-027** ([REDACTED],

false witness), **VS-015** (Goran Stoparić, false witness), **VS-026** ( [REDACTED], did not testify), **VS-1033** (Franjo Baričević, false witness).

The Prosecution claims that:

“‘Ordering’ entails a person in a position of authority using that position to convince another to commit an offence. No formal superior-subordinate relationship is required for a finding of ‘ordering’ as long as the accused possessed the authority to order.”

#### Professor Vojislav Šešelj’s Comment

Therefore, ordering can be proved through circumstantial evidence, circumstances and the criminal intent of the superior. This is the construction of the Prosecution because the circumstance can be interpreted too widely, like a speech in a place where the crimes were committed before their commission, but if there is no clear order then conclusions are drawn from the criminal intent of the superior. This raises the question of superiority as a formal and factual issue. Here, the Prosecution is clearly drawing some sort of conclusion from the fact that Professor Vojislav Šešelj had “some” authority, but is this enough to draw the conclusion about the alleged ordering on the basis of a criminal intent? What sort of authority did Professor Vojislav Šešelj have from the moment the volunteers entered a JNA /Yugoslav People’s Army/, VRS /Army of Republika Srpska/, VRSK /Army of Serbian Republic of Krajina/ or TO /Territorial Defence/ unit, and was he able to influence the armed operations in the field? None of the Prosecution witnesses uttered a single word about Professor Vojislav Šešelj ordering, issuing orders or having the authority to order, nor did the expert witnesses claim that Professor Vojislav Šešelj issued orders.

The Prosecution claims that:

“A person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing liability under Article 7(1) pursuant to ordering.”

#### Professor Vojislav Šešelj’s Comment

If it has been proved that Professor Vojislav Šešelj did not issue orders to commit crimes, and it is well-known that he continually appealed, requested and stated in public that crimes should not be committed, then the awareness of the significant possibility that respecting his words not to commit crimes would lead to crimes raises the question not only whether it is at all possible to discover whether

Professor Vojislav Šešelj had a criminal intent, but whether Professor Vojislav Šešelj had the tools, means and way of ensuring that his words be respected in a given location. In addition, it is also debatable how Professor Vojislav Šešelj could have had an awareness of the significant possibility in relation to the volunteers who were members of the regular army units under the command of the JNA, VRS, VRSK and TO, and especially on what basis would one establish that he was aware of a significant possibility? These are incredible constructions: the Prosecution concludes from the fact that the Serbian Radical Party sent people who wanted to be volunteers to the relevant state organs that Professor Vojislav Šešelj issued orders.

The Prosecution claims that:

“It is not necessary to prove that the subordinate who executed the order shared the *mens rea* of the accused; it is therefore irrelevant whether the order was illegal on its face.”

#### Professor Vojislav Šešelj's Comment

This is the corrective factor. When there is no order from Professor Vojislav Šešelj, then the matter of unlawfulness of the order is irrelevant, but it is significant there were no witnesses during the trial who had carried out this alleged order and, therefore, there is no evidence about his *mens rea* as a subordinate, which means that the subordinate is, in fact, not important. To this we must add the fact that the Prosecution did not even attempt to show the existence of a relationship between Professor Vojislav Šešelj as the superior and any specific person as the subordinate. In fact, it is not clear who the subordinate is, and the Prosecution does not even need a subordinate with a first and last name. At times the Prosecution insinuates that this concerns an unidentified volunteer of the Serbian Radical Party, but more often it presents the subordinate as an unidentified member of the colloquially named “Serbian forces”. Therefore, the condition requires the superior to belong to the chain of command. Professor Vojislav Šešelj was never in the chain of command, except for the false witnesses who made insinuations regarding participation in a JCE.

The Prosecution claims that:

“The giving of an order may be proven circumstantially, and the order need not be in writing, need not be given by the superior directly to the person who commits the crime, and may be express or implied.”

#### Professor Vojislav Šešelj's Comment

There is no evidence, either written or oral, about direct or indirect ordering, but there are insinuations by the Prosecution concerning allegedly inflammatory speeches, from which the conclusion is fabricated that this “speech” was allegedly ordering. No evidence has been presented or exists about the direct, indirect or any other form of ordering.

The Prosecution claims that:

“In addition to the other modes of criminal liability contained in Article 7 (1), the Accused ordered the crimes of persecution, murder, torture and other inhumane acts, cruel treatment and forcible transfer in Vukovar (Counts 1 to 9 and 11, paragraphs 15 to 18, 20, from 28 to 32 of the indictment) by his instruction that ‘not one Ustasha must leave Vukovar alive!’”

#### Professor Vojislav Šešelj’s Comment

This sentence was never uttered and there is no evidence that it was in the case against Professor Vojislav Šešelj, nor is there any evidence in the case of the Vukovar Three: Mrkšić, Šljivančanin and Radić.

The Prosecution claims that:

“In addition, the Accused ordered the crimes of persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15 to 17, 27, and 31 to 33 of the indictment) during his meetings with associates and supporters in Vojvodina in 1991 and 1992, and, implicitly, in his speech in Hrtkovci on 6 May 1992. The intent of Šešelj to order the crimes in Vukovar and Hrtkovci can be inferred from the content of:

- his speeches and discussions, and
- from the fact that the crimes subsequently occurred.”

#### Professor Vojislav Šešelj’s Comment

There is no evidence for 1991, and the speech in Hrtkovci on 6 May 1992 was falsely interpreted, but immovable property was exchanged even before the speech, after the speech and many years later. Did anyone actually order this? The content of the speech cannot be considered as ordering by any means, because the exchange of immovable property in Hrtkovci was a process that lasted from the second half of 1991 until, approximately, the end of 1995. The speech of 6 May 1992 was used for elections and could not influence the exchange of immovable property from the second half of 1991 to 6 May 1992. It is unclear how the speech of 6 May 1992 could

have been an order to exchange immovable property, which took place and depended only on whether the participants in the exchange reached an agreement starting from 6 May 1992 until, approximately, the end of 1995. Let us recall that Professor Vojislav Šešelj was arrested three times between 6 May 1992 and the end of 1995, and was imprisoned by Slobodan Milošević's regime. It is therefore difficult to infer logically that Professor Vojislav Šešelj's word and speech could have been ordering and everything else that the Prosecution has fabricated against him.

The Prosecution counted on the following witnesses:

**VS-027** ( [REDACTED], proven false witness), [REDACTED]  
[REDACTED]  
[REDACTED].

**VS-015** (Goran Stoparić, false witness), told an unbelievable story about Vojvodina and, at the order of the judges, the Prosecution obtained documentation that proved that he had testified falsely.

**VS-026** ( [REDACTED], did not testify), submitted several statements as a defence witness.

**VS-1033** (Franjo Baričević, false witness), everything that he said during his testimony about Professor Vojislav Šešelj's speech is false, as proved by the text of the speech in Hrtkovci which was published a long time ago.

Although the charges of ordering are unfounded and Professor Vojislav Šešelj's speeches have been manipulated or given a significance they did not have in reality, the Prosecution did not present any evidence that could support the charges for this mode of responsibility. Hence, the Prosecution's evidence consists of two witnesses (Stoparić [REDACTED]) whose testimony was not accepted as relevant and was not given any probative value by any court (in The Hague or in Belgrade), a witness ([REDACTED]) who did not testify in court, although the judges and the Prosecution were informed that he wanted to be a defence witness, and a man (Franjo Baričević) who seemed even to the judges to be a rude liar when he interpreted the speech in Hrtkovci, even though this speech had been published. With such evidence, the charges are obvious, but this is also a true picture of the the Prosecution's methods.

### **Instigation**

It follows from the indictment that Professor Vojislav Šešelj instigated persecution (all locations in the indictment), murder (Vukovar, Zvornik, Sarajevo, Mostar and Nevesinje), torture and cruel treatment (Vukovar, Zvornik, Sarajevo, Mostar and Nevesinje), deportation and forcible transfer (Vukovar, Zvornik, Sarajevo, Nevesinje and Hrtkovci), wanton destruction and plunder (Vukovar, Zvornik, Sarajevo, Mostar and Nevesinje).

In the indictment they appear in paragraphs 5, 10, 11, 15, 18, 28, 31 and 34.

In the Prosecution Pre-Trial Brief, they appear in paragraphs 146, 147 and 148, and in footnote 506 interviews with Professor Vojislav Šešelj are given as evidence of instigation.

The Prosecution claims that:

“Instigating” requires that Šešelj provoked, prompted or otherwise induced the conduct of another. Instigation is a contribution to the crime as a co-perpetrator either before or during the commission of the crime. Thus, instigation may take many forms such as promises, threats or abuse of power.

#### Professor Vojislav Šešelj’s Comment

Was Professor Vojislav Šešelj in a position to promise something? Was he able to threaten, and how, and what sort of power did he have when he was able to abuse it in the sense of the Prosecution’s claims about instigation, and all of this in relation to the principal perpetrator of the crime? It is not possible to find answers to these questions that would resemble some reasonable conclusions. The Prosecution knows that this does not exist and, therefore, does not present as evidence a witness who has been instigated, a witness who was the principal perpetrator, or an eye-witness to the act of instigation but, instead, infers from Professor Vojislav Šešelj’s speech and statements in which he was presenting his position on certain matters or events. It therefore follows that this concerns uniting the *actus reus* and *mens rea*. A word or a speech is taken as the *actus reus* and that same word or speech as the *mens rea*. The speech was an act of instigation and the same statement represents the psychological approach to a crime, and in the statement there is no mention of the crime. Therefore, the Prosecution wants the judges to put an index finger to their forehead, and to create in their mind an image of the statements, words and speeches of Professor Vojislav Šešelj in order to imagine some event which the Prosecution claims is a crime. This is the only way that this situation - where members of the Serbian forces sit in some muddy trench listening to the radio just waiting for

Professor Vojislav Šešelj to address them over the radio, instigating them to commit a crime - could be real. The battles, the shooting, the shells, none of this is important for the Serbian forces in comparison to hearing Professor Vojislav Šešelj's voice on the radio, while Professor Vojislav Šešelj is being arrested and is subjected to a media blackout by Slobodan Milošević's regime.

The Prosecution claims that:

"The conduct of the Accused must have been a clear contributing factor to the conduct of the other person(s)."

#### Professor Vojislav Šešelj's Comment

The Prosecution did not present any evidence showing that Professor Vojislav Šešelj instigated others to commit crimes. Instead, it engaged in interpreting his words and attributed to these words the significance of being simultaneously the basis for all modes of responsibility. Therefore, Professor Vojislav Šešelj's statements were clearly a contribution to the principal perpetrators of the crime. How does the Prosecution know this when it has not called a single witness who perpetrated a crime?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Prosecution claims that:

"However, it is not necessary to prove that the crime would not have been committed at all if the Accused had not instigated it. In addition, there is no requirement that instigation be direct or public. For example, in cases where instigation occurs through communications in the media, causation of crimes will necessarily be effected by an immediately proximate cause in addition to the communication itself. This does not diminish the causation to be attributed to the media, or the criminal accountability of those responsible for the communication. The Accused must also have intended to 'bring about' the commission of the crime, or have been aware of the substantial likelihood that the commission of a crime would be a probable consequence of his or her conduct. Making inflammatory and discriminatory public statements may constitute instigation. Instigation does not require any relationship of authority between the Accused and the physical perpetrator. The Accused's acts or statements directed at those over whom he had no

authority to order may also be considered instigation. A superior's failure to punish past crimes may constitute instigation of future crimes.

"In addition to the other modes of criminal liability contained in Article 7 (1), the Accused instigated the crimes of persecution, murder, torture, cruel treatment, and forcible transfer in Vukovar (Counts 1, 4, 8 to 9 and 11, paragraphs 15 to 18, 20 and 28 to 32 of the indictment), the crimes of persecution, murder, torture, other inhumane acts, cruel treatment, deportation, forcible transfer, wanton destruction and plunder of public or private property in Zvornik (Counts 1, 4, 8 to 9, 10 to 14, paragraphs 15 to 18, 22, 28 to 34 of the indictment) and the crimes of persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15 to 17, 31 to 33 of the indictment) by his inflammatory speeches given when he visited those locales or places close to them, such as Mali Zvornik. The Accused's intention to instigate these crimes can be inferred from the same evidence with respect to the Accused's intent to commit persecution and from the Accused's acknowledgements of his ability to incite persons."

#### Professor Vojislav Šešelj's Comment

Instigation, according to the Prosecution's argument, is manifested mainly through Professor Vojislav Šešelj's speeches, and the same speech is found as instigation as a special mode of responsibility, speech as instigation as part of participation in the JCE, and a form of direct perpetration of the crime.

Judging by the Prosecution Pre-Trial Brief as evidence of instigation, regardless of the form of responsibility, only Professor Vojislav Šešelj's statements, interviews, books, video footage of speeches, newspaper articles and testimony in the Milošević case are being relied on. However, the issue of speech as instigation is an extremely broad area that enables the Prosecution to use the testimony of any witness as evidence of instigation. Therefore, it should be noted that in the strictly legal context instigation does not appear in some paragraphs of the indictment, but it is present in every paragraph in which the Prosecution refers to the word or speech of Professor Vojislav Šešelj. In this sense, speech as supposed incrimination dominates the indictment.

Considering that Professor Vojislav Šešelj's speeches will be processed in particular in the form of responsibility for commission through the direct commission of a crime under Counts 1, 10 and 11 of the indictment, it suffices to cite in this part paragraph 827 of the Trial Chamber's Judgement in the Kordić case:

“827. The Trial Chamber has already held that the allegations relating to the encouragement and promotion of hatred, etc., and the dismissal of Bosnian Muslims from employment do not amount to persecution for the purposes of this case or, in the case of the latter allegation, at all.”

Although the charges of instigation are unfounded and Professor Vojislav Šešelj’s speeches have been manipulated or given a significance they did not have in reality, the Prosecution did not present any evidence to support the charges for this mode of responsibility.

### **Aiding and Abetting**

It follows from the indictment that Professor Vojislav Šešelj aided and abetted the commission of all nine crimes, with a special emphasis on persecution, murder, torture or cruel treatment, deportation and forcible transfers, destruction and plunder.

In the indictment they appear in paragraphs 5, 11, 15, 18, 28, 31 and 34.

In the Prosecution Pre-Trial Brief they appear in paragraphs 149, 150, 151, 152 and 153 and in footnote 520, which mention Professor Vojislav Šešelj’s interviews and witnesses **VS-007** [REDACTED], **VS-011** Ljubiša Petković, **VS-015** Goran Stoparić, **VS-017** Zoran Rankić, **VS-026** [REDACTED], **VS-027** [REDACTED] and **VS-034** [REDACTED].

The Prosecution claims that:

“Aiding and abetting” consists of “practical assistance, encouragement or moral support” to another person perpetrating a crime. Aiding and abetting may assume different forms of assistance, including omissions. The use of inflammatory, threatening and/or discriminatory statements may constitute aiding and abetting. Aiding constitutes contributing, while abetting would consist of supporting an act by expressing sympathy.

### **Professor Vojislav Šešelj’s Comment**

There is absolutely no evidence that Professor Vojislav Šešelj expressed sympathy for an act that constituted a crime, but there is much evidence that he publicly criticised and publicly called to account those who committed crimes (with respect to Zvornik, he welcomed the arrest of the Yellow Wasps, with respect to Bijeljina, the statement regarding the activities of Ljubiša Savić aka Mauzer against Bijeljina Muslims, constant public criticism of Arkan, etc.). If he did not support but only criticised, it is hard to draw from this the conclusion that he aided.

The Prosecution claims that:

Aiding and abetting may assume different forms of assistance, including omissions. The use of inflammatory, threatening and/or discriminatory statements may constitute aiding and abetting. "Proof that the conduct of the aider and abettor had a causal effect on the act of the principal perpetrator is not required," but the Accused's act "must have had a substantial effect on the commission of the crime." There is no requirement of a pre-existing plan. Aiding and abetting can take place before, during or after the event. The Accused's knowing presence when a crime is committed can constitute the act of aiding and abetting if it encourages the perpetrators.

#### Professor Vojislav Šešelj's Comment

There is no evidence that Professor Vojislav Šešelj was present when a crime was committed or that he was at the location at the time when the crime was found to have taken place. The only things left are Professor Vojislav Šešelj's speeches and statements as suspicious acts of having committed a crime, on condition that they had a "substantial effect". More on this effect could be heard in the courtroom during the cross-examination of the expert witness Anthony Oberschall, who was surprised by some of the facts that the judges of the Trial Chamber told him.

The Prosecution claims that:

An omission by a superior can contribute to the commission of a subordinate's crime, "for example by encouraging the perpetrator."

#### Professor Vojislav Šešelj's Comment

There is absolutely no evidence that Professor Vojislav Šešelj had the status of a superior, especially not for any of the people who were alleged to have been members of the JCE or the principal perpetrator of the crime, if the principal perpetrator is even known (he could not have had the status of a superior under any count of the indictment). It seems that the Prosecution claims that Professor Vojislav Šešelj was an unfettered authority and supreme superior for everyone, that he could even choose when he would be arrested and go to prison during the period covered by the indictment. It seems that the real orders for his imprisonment were written by Professor Vojislav Šešelj in person, and that through his words and speeches he aided and abetted Slobodan Milošević's regime in its persecution of Professor Vojislav Šešelj. It is as if there are two Professor Vojislav Šešeljs, one who aids and abets, and the other Professor Vojislav Šešelj who is politically persecuted.

The Prosecution claims that:

For the required *mens rea*, the accused must make a conscious decision to act,  
(1) either knowing that his conduct will contribute to the commission of a specific crime committed by another, or  
(2) being aware of the substantial likelihood that it will do so.

An aider or abettor of a “special intent” crime, such as persecution, must not only have knowledge of the crime he is assisting, but he must also be aware that those crimes are committed with that specific intent.

Thus, an aider and abettor of persecution “need not share the principal’s discriminatory intent, but must be aware of the broader discriminatory context and know that his acts of assistance or encouragement have a significant effect on the commission of the crimes”.

Alternatively to the other modes of criminal liability contained in Article 7 (1), the Accused aided and abetted all of the crimes charged in the indictment (Counts 1 to 14, paragraphs 15 to 32) by his wilful and knowing contribution to the commission of the crimes. The intention of the Accused to aid and abet these crimes is evidenced by:

- his own acknowledgement that he encouraged and boosted the morale of Serb forces;
  - the inflammatory content of his speeches calling for violence against non-Serbs, his repeated visits to the battlefields and towns in Vojvodina such as Hrtkovci;
  - his continuing, in collaboration with other JCE participants, to dispatch volunteers to the front lines even while knowing they were inclined to commit crimes;
- and
- his ordering the volunteers and other Serb forces to commit crimes;
  - and his failure to discipline volunteers for the commission of crimes.

#### Professor Vojislav Šešelj’s Comment

These are standard grounds that are repeated with every mode of criminal responsibility, with the aim of establishing a *mens rea* through fictions about a psychological relationship.

Aiding and abetting must be specific, causally linked between the aider and the principal perpetrator, and must be deliberate by the aider, who knowingly aids and protects through abetting. In this sense, the consequences of the crime are identical both with regard to the aider and the principal perpetrator. If the Prosecution is offering Professor Vojislav Šešelj’s speeches that do not contain any aiding of crime

as a substitute for all these elements, then there is no need to philosophise about the psychological relationship.

The Prosecution Pre-Trial Brief lists the following witnesses who will confirm that Professor Vojislav Šešelj aided and abetted:

- the inflammatory content of his speeches calling for violence against non-Serbs, his repeated visits to the battlefields and towns in Vojvodina such as Hrtkovci (Witness **VS-007**, ██████████, false, discredited; Witness **VS-011**, Ljubiša Petković, did not testify and was a defence witness; Witness **VS-015**, Goran Stoparić, false, discredited; Witness **VS-017**, Zoran Rankić, defence witness);

- his continuing, in collaboration with other JCE participants, to dispatch volunteers to the front lines even while knowing they were inclined to commit crimes (Witness **VS-017**, Zoran Rankić, defence witness), and

- his ordering the volunteers and other Serb forces to commit crimes (Witness **VS-007**, ██████████, false, discredited; Witness **VS-026**, ██████████, did not testify and was a defence witness; Witness **VS-027**, ██████████, false, discredited);

- and, his failure to discipline volunteers for the commission of crimes (Witness **VS-017**, Zoran Rankić, defence witness; Witness **VS-026**, ██████████, did not testify and was a defence witness; Witness **VS-034**, ██████████, was not allowed to testify).

The Prosecution is simply piling up slogans and conclusions, and would not even be able to answer the question of how and in what way could Professor Vojislav Šešelj have disciplined SRS volunteers? Witnesses ██████████, Stoparić and ██████████ have been proved to be false witnesses to such an extent that their assertions do not have any factual basis that reflects the truth, which will be discussed in more detail in the analysis of their testimony. Other witnesses that were mentioned were defence witnesses who claim that there was no aiding and abetting in the way that the Prosecution asserts, and that it pressured and forced them to sign statements with a content that did not correspond to a true interpretation of their interview with Prosecution investigators.

Although the charges of aiding and abetting are unfounded and Professor Vojislav Šešelj's speeches have been manipulated or given a significance they did not have in reality, the Prosecution did not present any evidence to support the charges for

this mode of responsibility. In essence, there is no evidence for the Prosecution's assertions, and the Prosecution admits this through cumulative charges and by cumulating modes of responsibility for the same word, same speech or same statement, which it moves from one location to another.

### **Commission as Participation in a JCE**

It follows from the indictment that Professor Vojislav Šešelj participated in the JCE and therefore is responsible for the commission of all nine crimes.

In the indictment, they appear in paragraphs 5 to 34.

In the Prosecution Pre-Trial Brief they appear in paragraphs 131 to 140 and footnotes 458 and 482, in which ICTY case law is cited.

The Prosecution claims that:

“Committing” covers “physically perpetrating a crime or engendering a culpable omission in violation of criminal law,” whether alone or jointly with co-perpetrators. Several perpetrators may “commit” the same crime if each individual fulfils the requisite elements of the crime.

The requisite *mens rea* is that the Accused acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct.

The principles of a common criminal plan, design or purpose, i.e., JCE, articulate a mode of individual criminal responsibility encompassed by Article 7 (1).

The *actus reus* of a JCE requires three elements.

- First, there must be two or more persons, who need not be organised in a military, political or administrative structure.

- Second, there must be a common plan, design, or purpose that amounts to or involves the commission of a crime. The plan need not be previously arranged or formulated, but may “materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a JCE.”

Thus, the plan can be agreed upon either from the beginning or develop through the acts performed by the persons involved. Its objective may also change over time.

-Third, the Accused must participate in the enterprise. This participation need not involve the commission of a crime but may take the form of assistance in or

contribution to the execution of the common plan or purpose. It is sufficient for the participant to perform acts that in some way actively furthers the plan or purpose.

Institutional coordination can form the basis of a JCE among those individuals who control the institutions that are engaged in coordinated action.

It is settled law that the physical (or principal) perpetrators of a crime for which Šešelj is alleged to be criminally responsible as a participant in a JCE need not themselves be members of the enterprise. Rather, JCE members are criminally responsibly when they use the principal perpetrator to carry out the *actus reus* of a crime.

Thus, even where the evidence fails to show that the physical/principal perpetrator is a member of the JCE, the crime can still be imputed to at least one member of the JCE where the member - in using the physical/principal perpetrator - acted in accordance with the common purpose.

The existence of this link is to be assessed on a case-by-case basis.

What matters is whether the crime in question falls within the common purpose, not whether the person who carried out the *actus reus* of a crime is a member of the JCE.

Tribunal case law regarding JCE has identified three categories of responsibility for which the mental state differs.

All three categories may be present in the same case.

In the first situation, the accused intends to commit a certain crime, this intent being shared by all members of the JCE.

To prove liability, the Prosecution must show that the accused “voluntarily participated in one aspect of the common design” and the accused, “even if not personally effecting the [criminal act], must nevertheless have intended this result.”

In the second situation, the accused has knowledge of a system of ill-treatment, such as a concentration camp, and intends to further this system. Knowledge may be established expressly or reasonably inferred **from the position of authority** held by the accused at the relevant time. The Accused need only know the nature of the system and intend to further the joint criminal enterprise.

In the third situation, one of the participants in the joint criminal enterprise commits a crime “other than the one agreed upon in the common plan”.

The accused may be held responsible for that crime if, under the circumstances, it was “foreseeable” that such a crime might be perpetrated by some member of the group and the accused knew of and willingly took that risk.

“Foreseeability” involves the concept that a crime is a “possible” consequence of the enterprise.

The accused must intend to participate in and further the criminal activity or plan agreed upon “and to contribute to the joint enterprise, or in any event to the commission of a crime by the group.”

Professor Vojislav Šešelj actual participation is described in paragraph 10 of the indictment, and in the Pre-Trial Brief it is all developed in paragraphs entitled:

- II. Šešelj’s Participation in the JCE
  - A. Šešelj’s Role as Chief Propagandist of Greater Serbia
  - B. Šešelj Recruited and Coordinated SRS/SČP Volunteers
  - C. Šešelj’s Intent to Participate in the JCE
- III. Implementing the JCE in Croatia, BiH and Serbia
  - A. Implementing of the JCE in Croatia
    - 1. Republic of Serbian Krajina
    - 2. Croatian Serb parallel Structures in the SAO Krajina
    - 3. SAO Slavonia, Baranja and Western Slavonia
    - 4. SAO Western Slavonia
    - 5. Croatian Serb Police and Military Structures
  - B. Implementation of the JCE in Bosnia and Herzegovina
  - C. Implementing the JCE in Serbia
- IV. The Creation and Structure of the SRS.

#### Professor Vojislav Šešelj’s Comment

If we analyse the plurality of persons requirement, the Prosecution did not present any evidence to show any type of link between Professor Vojislav Šešelj and all the people mentioned as having participated with him in a JCE in paragraph 8 (a) of the indictment: Slobodan Milošević (indicted, deceased), General Veljko Kadijević (not indicted), General Blagoje Adžić (not indicted), Colonel Ratko Mladić (indicted for genocide), Radmilo Bogdanović (added subsequently, but not indicted), Jovica Stanišić (indicted), Franko Simatović aka Frenki (indicted), Radovan Stojčić aka Badža (deceased), Milan Martić (indicted and convicted), Goran Hadžić (indicted), Milan Babić (indicted, convicted in plea bargain, added subsequently, deceased),

Radovan Karadžić (indicted for genocide), Momčilo Krajišnik (indicted, convicted on the basis of having participated in a JCE), Biljana Plavšić (indicted and convicted in plea bargain), Željko Ražnatović aka Arkan (indicted, deceased), as well as other political figures from the (S)FRY, Republic of Serbia, Republic of Montenegro and the Bosnian and Croatian Serb leadership. Participants in the JCE also included “Serbian Forces” (added subsequently), which is the joint name.

In addition to the obviously arbitrary way in which the Prosecution decided who was a participant in the JCE and the fact that some of them have not had indictments raised against them, but are mentioned as participants in the JCE, it must also be noted that Professor Vojislav Šešelj is not mentioned as a participant in the JCE for some of the people who have been indicted and convicted. A simple examination provides the following facts:

a) Veljko Kadijević, Blagoje Adžić, Radmilo Bogdanović and Radovan Stojčić aka Badža have never been indicted by the ICTY;

b) Željko Ražnjatović aka Arkan was indicted for war crimes committed in September 1995 in Sanski Most, BH, and the indictment was raised on 23 September 1997. The indictment does not mention participation in a JCE, but the locations of Bijeljina, Zvornik, Eastern Slavonia are mentioned, and it is particularly stressed that his units operated together with the JNA and other Serbian forces, but that he was the sole and exclusive commander of his own units. In the indictment he is also charged under Articles 7 (1) and 7 (3) of the Statute. Neither Professor Vojislav Šešelj nor the SRS volunteers are mentioned at any point.

c) It states that the participants in the JCE from the indictment against Professor Vojislav Šešelj participated in the JCE with some other persons:

1. **Slobodan Milošević** is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Goran Hadžić; Milan Babić; Momčilo Krajišnik and Biljana Plavšić; Professor Vojislav Šešelj.

2. **Veljko Kadijević** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Professor Vojislav Šešelj.

3. **Blagoje Adžić** (never indicted) is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Milan Babić; Professor Vojislav Šešelj.

**4. Ratko Mladić** is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Milan Babić; Radovan Karadžić (not for participation in JCE); Momčilo Krajišnik and Biljana Plavšić; Professor Vojislav Šešelj.

**5. Radmilo Bogdanović** (never indicted) (added to the Second Amended Indictment against Professor Vojislav Šešelj) is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Professor Vojislav Šešelj.

**6. Jovica Stanišić and Franko Simatović aka Frenki** are mentioned as participants in the JCE in: Slobodan Milošević (deceased); Milan Martić; Goran Hadžić; Milan Babić; Professor Vojislav Šešelj.

**7. Radovan Stojčić aka Badža** (never indicted) (added to the Second Amended Indictment against Professor Vojislav Šešelj) is mentioned as a participant in the JCE in: Slobodan Milošević (deceased), Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Goran Hadžić; Professor Vojislav Šešelj.

**8. Milan Martić** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Jovica Stanišić and Franko Simatović aka Frenki; Goran Hadžić; Milan Babić; Professor Vojislav Šešelj.

**9. Goran Hadžić** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Milan Martić; Milan Babić; Professor Vojislav Šešelj.

**10. Milan Babić** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Milan Martić; Professor Vojislav Šešelj.

**11. Radovan Karadžić** is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Momčilo Krajišnik and Biljana Plavšić; Professor Vojislav Šešelj.

**12. Momčilo Krajišnik** is mentioned as a participant in the JCE in: Milan Martić; Biljana Plavšić; Professor Vojislav Šešelj. He is mentioned in Radovan Karadžić, but not as a participant in the JCE.

**13. Biljana Plavšić** is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Radovan Karadžić; Momčilo Krajišnik; Professor Vojislav Šešelj. She is mentioned in Radovan Karadžić, but not as a participant in the JCE.

**14. Željko Ražnatović aka Arkan** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Jovica Stanišić and Franko Simatović aka Frenki;

Milan Martić; Goran Hadžić; Momčilo Krajišnik and Biljana Plavšić; Professor Vojislav Šešelj.

There needs to be a link between the people participating in a joint criminal enterprise, and what links them is probably the aim of the JCE. However, it must be said that it is impossible to establish any sort of link between these people, and between these people and Professor Vojislav Šešelj. When did some of them meet, when did they get to know each other, when did they talk, when and where did they communicate with each other, directly or indirectly, and a string of questions about any possible or even potential contacts linking them to Professor Vojislav Šešelj, for which the Prosecution did not manage to present any evidence. However, the court record is full of evidence that there was antagonism between Professor Vojislav Šešelj and these people, that they criticised, accused and argued with each other in public, and there is too much evidence that communication was not possible, let alone any sort of agreement.

For example, the Prosecution obtained the documentation of the Serbian State Security Service, around 4,000 pages of material, showing that Professor Vojislav Šešelj was continuously followed and that he was the subject of various measures of this service continuously from 1982 to 23 February 2003, as the most dangerous political opponent of all the authorities in the SFRY, FRY and Republic of Serbia, and even between 24 March 1998 and 25 October 2000, when he was Deputy Prime Minister of the Republic of Serbia. With regard to the period relevant to the indictment, from before August 1991 to September 1993, Professor Vojislav Šešelj was a politician in opposition and a political opponent of all the people mentioned as having participated with him, or he with them, in the JCE.

Therefore, despite the fact that the purpose of the JCE should be the dominant factor in the internal link between these alleged participants in the JCE, we should also bear in mind other factors, such as circumstance, status, position and mutual relationships.

It may be worth mentioning as part of the analysis of whether a common purpose of the JCE existed, and within the framework of the analysis of the plurality of persons requirement – due to the special overlap of these requirements – that in its decision of 10 November 2005, while ruling on the Prosecution's motion for joinder of the cases of Milan Martić, Jovica Stanišić and Franko Simatović and Professor

Vojislav Šešelj, Trial Chamber III denied this Prosecution motion and stated the following:

“The JCE set out here is not identical in all of the indictments, and it should be noted that there is only a partial overlap between the counts of the indictment, mode of liability, time frame and location of the crimes.”

Therefore, before the start of the trial, it was debatable for the ICTY judges whether the JCE was even possible between the aforementioned persons since the Prosecution did not describe in the same way the JCE for these three persons in their indictments. This doubt was not removed by the Prosecution during the presentation of the Prosecution evidence in the case against Professor Vojislav Šešelj.

At the trial against Professor Vojislav Šešelj, the phrase “related cases by geographical area” was also used. The following cases are listed within this:

- Milan Babić IT-03-72 (indicted, convicted in plea bargain, deceased);
- Slavko Dokmanović IT-95-13A “Vukovar Hospital” (deceased);
- **Stanislav Galić** IT-98-29 “Sarajevo” (indicted and convicted);
- Goran Hadžić IT-04-75 (indicted, proceedings ongoing );
- Radovan Karadžić IT-95-5/18, “Bosnia and Herzegovina” and “Srebrenica” (indicted, proceedings ongoing);
- **Momčilo Krajišnik** IT-00-39 & 40 “Bosnia and Herzegovina” (indicted and convicted);
- **Milan Martić** IT-95-11, RSK /Republic of Serbian Krajina/ (indicted and convicted);
- Slobodan Milošević IT-02-54 “Kosovo, Croatia and Bosnia” (indicted, died while the trial was ongoing);
- Ratko Mladić IT-95-5/18 “Bosnia and Herzegovina” and “Srebrenica” (indicted, proceedings ongoing);
- **Mile Mrkšić, Veselin Šljivančanin and Miroslav Radić** IT-95-13/1 “Vukovar Hospital” (Mrkšić: indicted and convicted; Šljivančanin: indicted and convicted; Radić: indicted and acquitted);
- Mladen Naletilić and Vinko Martinović IT-98-34 “Tuta and Štela” (indicted and convicted);
- Momčilo Perišić IT-04-81 (indicted, proceedings ongoing);

- Biljana Plavšić IT-00-39 & 40 “Bosnia and Herzegovina” (indicted, plea bargain, convicted, served her sentence and has been released);
- Jadranko Prlić et al. IT-04-74 (indicted, proceedings ongoing);
- **Blagoje Simić et al.** IT-95-9 “Bosanski Šamac” (indicted and convicted);
- Milan Simić IT-95-9/2 “Bosanski Šamac” (indicted, plea bargain, convicted, served his sentence and has been released);
- Jovica Stanišić and Franko Simatović IT-03-69 (indicted, proceedings ongoing);
- Mićo Stanišić IT-04-79 (indicted, proceedings ongoing);
- Stevan Todorović IT-95-9/1 “Bosanski Šamac” (indicted, plea bargain, convicted, served his sentence and was released, deceased);

As can be seen, these cases are significant for two reasons. First, because they involve locations that are also in the indictment against Professor Vojislav Šešelj and, in the factual sense, should help establish the truth of what happened in these locations. Second, because the Prosecution’s indictment against Professor Vojislav Šešelj claims that Professor Vojislav Šešelj participated with these people in a JCE. Therefore, through cases related by geographical area, the Prosecution needs to show the identical nature of events at a specific location and the link between these persons who allegedly participated in the JCE, that crimes were committed in these areas and that each of the JCE participants should naturally bear individual responsibility for each of these locations based on their participation in the same JCE. From the Prosecution’s erroneous argument, based on the alleged JCE, an entire string of factual and legal fabrications follow that simply negate the possibility of charging Professor Vojislav Šešelj. This is the situation in this case, before we take a look at the debacle that the Prosecution suffered when presenting its evidence in the courtroom.

The cases that have ended in convictions based on a plea bargain between the accused and the Prosecution do not factually deserve any attention in the case of Professor Vojislav Šešelj because a plea bargain also means that the accused is pleading guilty, and therefore they cannot be significant in respect of establishing facts. No evidence was presented on the basis of which the relevant facts could be established. Therefore, cases that have ended, which the Prosecution claims are related to the case against Professor Vojislav Šešelj in terms of location and

participation in a JCE, simply imply the existence of identical responsibility on the basis of participation in a JCE.

The focus must be given in every respect to the cases for which the ICTY has rendered a final judgement, because it is precisely these judgements that must be binding both for the ICTY judges and for the Prosecution. These cases are marked in bold in the parts where they are mentioned.

#### **Stanislav Galić**

The Trial Chamber declared Stanislav Galić guilty under Article 7 (1) of the Statute, with one judge dissenting, for:

Acts of violence whose predominant purpose was the infliction of terror upon the civilian population as defined by Article 51 of Additional Protocol I of the Geneva Conventions from 1949 (violations of the Laws and Customs of War, Article 3);

Murder and inhumane acts that are not murder (Crimes Against Humanity, Article 5).

The Appeals Judgement only changed the 20-year prison sentence to life imprisonment.

He was indicted as the Commander of the Sarajevo Romanija Corps of the Army of Republika Srpska (VRS), which was positioned around Sarajevo, for the period from September 1992 to August 1994, pursuant to Article 7 (1) and 7 (3) of the Statute, on seven counts of the indictment, for the location of Sarajevo, but **there are no charges nor any conviction for participation in a JCE.**

An almost identical judgement was rendered for Dragomir Milošević as the Commander of the Commander of the Sarajevo Romanija Corps, which was positioned around Sarajevo, covering the period from August 1994 to November 1995, finding him guilty under Article 7 (1) and 7 (3) of the Statute on seven counts of the indictment, for the location of Sarajevo, but **there are no charges nor any conviction for participation in a JCE.**

#### **Momčilo Krajišnik**

Momčilo Krajišnik was a member of the Bosnian Serb leadership during the war (later of Republika Srpska), a member of the Main Board of the SDS /Serbian Democratic Party/ of Bosnia and Herzegovina and President of the Bosnian Serb Assembly. In the Final Judgement he was sentenced to 20 years in prison. The crimes for which he was convicted were:

Persecution on political, racial or religious grounds, deportation, inhumane acts (forcible transfer) (crimes against humanity).

Momčilo Krajišnik was found guilty pursuant to Article 7 (1) of the Statute on grounds of having participated in a JCE of deportation in Zvornik, Banja Luka and Prnjavor, and forcible transfer in Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac. These crimes encompassed forcible displacement of several thousand civilians – Muslims and Croats, including women, children and the elderly – during the period from April to December 1992.

The indictment of 7 March 2002 against Momčilo Krajišnik and Biljana Plavšić states that in the JCE they “worked in concert with other members of the joint criminal enterprise, including Radovan Karadžić and Nikola Koljević”. Other members of the JCE included: Slobodan Milošević, Željko Ražnatović (aka Arkan), General Ratko Mladić, General Momir Talić, Radoslav Brdanin and Serbian forces. Professor Vojislav Šešelj is not expressly mentioned.

Their participation in the JCE is also described as:

“directing, supporting or encouraging the incorporation into the Bosnian Serb Forces members of paramilitary forces and volunteer forces known to have participated or suspected of having participated in crimes;

“aiding or abetting or instigating the commission of further crimes by failing to investigate, to follow up on investigations, and to punish subordinates in the Bosnian Serb Forces for crimes committed against Bosnian Muslims, Bosnian Croats or other non-Serbs throughout the period described in this indictment.”

In the Trial Chamber’s Judgement in the Krajišnik case, and in connection with the charges against Professor Vojislav Šešelj, the following paragraphs are important:

“**213.** In Zvornik, in the period April to May 1992, the Yellow Wasps, a paramilitary unit consisting of around 100 heavily armed men, cooperated closely with the TO and was even issued arms by the TO’s logistics staff. Once the VRS was established and the Zvornik Brigade formed towards the end of May, the Yellow Wasps were subordinated to it. (454) Witness 682, T. 16864-6, 16869-70, 16875, 16877, 16879, 16881-6, 16897-8, 16904, 16915, 16918, 16954-7; P865.A (Order of incorporation of TO into VRS, 30 May 1992); P922 (Zvornik Brigade command, information report, 17 June 1992); P932 (Bijeljina CSB report, 20 July 1992), p. 1.

“This paramilitary unit had direct contact with the Pale leadership. On 11 July 1992, the leader of the Yellow Wasps, Vojin (Žučo) Vučković, went to the Pale SJB to collect arms and ammunition. While in Pale, Vučković met with Plavšić. (455) Witness 682, T. 16918-19, 16920-2, 16986-95, 16999-17001; P927 (Pale SJB certificate, 11 July 1992); C7 (Plavšić statement), para. 43.

“He also met with the Minister of Defence Subotić. At this meeting, Subotić explained to Vučković that whoever took orders from VRS officers was considered to be a full member of the VRS, irrespective of whether that person was a reservist, a Serbian volunteer, or a member of a paramilitary. (456) Subotić, T. 26427, 26572; C3 (Subotić statement), para. 37.

“**215.** Local SDS boards, crisis staffs, and regional (SAO) governments often invited and assisted paramilitary groups. This occurred, for example, with the Yellow Wasps, the Red Berets, Mauzer’s men, and Arkan’s men, operating in north-eastern Bosnia-Herzegovina (Bijeljina, Brčko, and Zvornik). (459) Davidović, T. 14260-1, 15290-6; P764 (Davidović statement), pp. 19-21, 24-31, 29; P727, tab 7

(Transcript of TV interview with Ljubiša Savić, 1 July 1992), p. 2; P882 (indictment against Duško (Repić) Vučković and Vojin (Žuča) Vučković, 28 April 1994), p. 5; P883 (judgement of Šabac district court against Duško (Repić) Vučković and Vojin (Žuča) Vučković, 8 July 1996), pp. 9-10; Witness 165, T. 15794-5; P865.D (Bijeljina CSB official record of interview with Duško (Repić) Vučković, 9 August 1992); P865.E (statement of Vojin (Žučo) Vučković, 6 August 1992); P944 (Witness 674 statement), p. 6.

Crisis staffs only ceased to tolerate the paramilitaries when they lost control of them. (460) Davidović, T. 14246-50, 15290-1; P764 (Davidović statement), p. 19, 24-31.

“**216.** On 28 July 1992, and as a result of the VRS Main Staff Intelligence report mentioned earlier, Mladić issued an order regarding the disarmament of paramilitary formations. The order noted that paramilitaries engaged in looting were operating in all territories under the VRS. It ordered all paramilitary formations with ‘honourable’ intentions to place themselves under the command of the VRS. No individual or group responsible for crimes was to be incorporated into the army, and any member of a paramilitary unit who refused to submit to the unified command of

the VRS was to be disarmed and arrested. (461) P819 (Order from Ratko Mladić on disarmament of paramilitary formations, 28 July 1992).

“217. The report, while aimed at bringing law back to areas now under Bosnian-Serb control, also shows that the VRS was more concerned with looting and the breakdown of order than with the widespread crimes committed by the paramilitaries, as described in more detail in part 4 of the judgement. The report also does not account for the fact that incorporation of paramilitaries had already been the rule even before July 1992 and that crimes were committed, and were continuing to be committed, by the paramilitaries under the auspices of the Bosnian-Serb armed forces. (462) Brown, T. 16310-11.”

In one of the previous paragraphs, as part of footnote 447, the following are mentioned as evidence: “Poplašen, T. 20914-15, 20917, 21105-6; 21119, 21125-6; Mandić, T. 9025-9; P460.A (Telephone conversation between Momčilo Mandić and “Igor”, 21 April 1992); P1090 (Video clip); P1095 (Authorisation for Nikodin Čavić to sign up volunteers, 13 December 1991; P892, tab 54 (Report on paramilitary formations from Colonel Zdravko Tolimir, 28 July 1992), p. 3.”

All the locations mentioned in the indictment against Professor Vojislav Šešelj were also be examined in the Krajišnik Judgement.

In the indictment against Momčilo Krajišnik, Professor Vojislav Šešelj was not a participant in the JCE with Momčilo Krajišnik, and in the indictment against Professor Vojislav Šešelj, Momčilo Krajišnik was allegedly a participant in the JCE with Professor Vojislav Šešelj. This discrepancy is not a consequence of the simple fact that the indictments against Momčilo Krajišnik and Professor Vojislav Šešelj were not raised on the same day, but a consequence of the fact that in February 2003 Zoran Đinđić demanded that Prosecutor Carla Del Ponte take Professor Vojislav Šešelj and not bring him back, and it was therefore necessary to put all and sundry into the indictment against Professor Vojislav Šešelj. This is why there is a real confusion with respect to the participants of the JCE and huge differences also in the purpose of the JCE. The purpose of the JCE is thus set out differently for the same people who are alleged participants in the same JCE, and it is simply impossible to imagine how different are the elements that should, in this made-up theory of JCE, be the same.

In addition to the named JCE participants, the indictment against Momčilo Krajišnik also provides a classification of the “leadership” component and “local” component of the participants in the same JCE. During the trial, the judges also became involved in establishing the purpose of the JCE, and thus the general purpose of the JCE was to “ethnically recompose the territories under its control by expelling and thereby drastically reducing the proportion of Bosnian Muslims and Bosnian Croats living there”. The Chamber found that the crimes of deportation and forcible transfer represented the initial crimes within this general purpose.

For the mode of responsibility of JCE, and Momčilo Krajišnik was convicted on this ground, it is important to note the position of the Appeals Chamber:

“The Trial Chamber indeed erred because it failed to specify whether all or only some of the local politicians, soldiers, police commanders and paramilitary leaders mentioned in paragraph 1087 of the Judgement were members of the JCE. This is why these sub-grounds of Krajišnik’s Appeal were granted.

“The Trial Chamber made an error of law when it failed to reach conclusions necessary for the Krajišnik judgement of guilty regarding the following crimes that were not included in the original common purpose of the JCE:

“Persecution (Count 3), excluding the underlying crimes of deportation and forcible transfer;

“Extermination (Count 4); and

“Murder (Count 5).

“The Appeals Chamber therefore grants in part this sub-ground for appeal and denies the remainder. The conviction for Counts 3, 4 and 5 in the Judgement were quashed.”

Therefore, in relation to the indictment against Professor Vojislav Šešelj, if the Prosecution’s argument on the existence of a JCE and Professor Vojislav Šešelj’s participation therein were to be accepted, everything that comes under persecution, apart from forcible transfers and deportation as the main objective of the JCE, was dropped from Bijeljina, Greater Sarajevo, Zvornik and Nevesinje (Šamac and Mostar were not in the indictment against Krajišnik). Extermination and murder as crimes against humanity were also dropped. If Momčilo Krajišnik was not convicted for this, then Professor Vojislav Šešelj cannot be held accountable for this either. Of course, all of this is presented purely hypothetically, if we were to believe the Prosecution that Professor Vojislav Šešelj participated in some JCE together with Momčilo Krajišnik.

However, since the final Judgement against Momčilo Krajišnik and the evidence presented by the Prosecution at the trial of Professor Vojislav Šešelj both show that Professor Vojislav Šešelj cannot be included either in the leadership or the local component of JCE participants, for which Momčilo Krajišnik was charged, the question arises of whether Professor Vojislav Šešelj could even be indicted? Therefore, when the Prosecution refers to the related case of Momčilo Krajišnik based on the same locations and participation in the JCE, it has completely missed the point and given Professor Vojislav Šešelj the opportunity to use the Momčilo Krajišnik case and its judgements as exculpatory material in the question of how it is at all possible that someone thought of charging Professor Vojislav Šešelj? This is a consequence of the definitive nature of a judgement, which is completely binding, especially for the Prosecution and the ICTY judges.

The following position of the Appeals Chamber in the Krajišnik case is important not only for the responsibility of participating in the JCE with Momčilo Krajišnik or others at locations in Bosnia and Herzegovina, but also for all other locations in the indictment against Professor Vojislav Šešelj:

“The Appeals Chamber notes that the Trial Chamber failed to conclude on many occasions on the link between the principal perpetrators of the original crimes of deportation, forcible transfer and persecution that are based on these crimes, and the members of the JCE. Therefore, the Appeals Chamber concluded that the Trial Chamber only concluded that the members of the JCE committed the following original crimes using the principal perpetrators in order to achieve a common purpose:

“Persecution through deportation, Count 3: Bratunac, Sanski Most, Banja Luka, Bijeljina and Prnjavor;

“Persecution through forcible transfer, Count 3: Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac;

“Deportation, Count 7: Bratunac, Zvornik, Sanski Most, Banja Luka, Bijeljina and Prnjavor; and

“Inhumane acts through forcible transfer, Count 8: Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac.

“Krajišnik’s convictions for the remainder of the original crimes under Counts 3, 7 and 8 are thus quashed.”

Therefore, as part of the mode of liability for participation in the JCE, due to a lack of the required link between Krajišnik or a leading participant in the JCE and the

local participant in the JCE or principal perpetrator of the crime, persecution as deportation, persecution as forcible transfer, deportation and forcible transfer for the Zvornik and Bijeljina municipalities was dropped.

If this standard is applied, it can be concluded that the Prosecution has not presented evidence for any of the locations in the indictment against Professor Vojislav Šešelj that would establish either that link or any other link required by ICTY case-law to establish participation in the JCE. Therefore, there is no evidence on this vital connection between Professor Vojislav Šešelj and the other participants in the JCE with which he is charged, nor has any evidence been presented showing the link between Professor Vojislav Šešelj and any other person who would have had the status of a “local” component in the JCE. Equally, there is no evidence to show any other link between other JCE participants and a local component. In addition, there is no evidence linking either Professor Vojislav Šešelj or any other alleged participants in the JCE with which he is charged to the principal perpetrator of the crime.

Therefore, with regard to the plurality requirement in the JCE, in the indictment against Professor Vojislav Šešelj this is presented as a fiction, premise or supposition and not as a fact to be proved. This is why, when presenting its evidence, the Prosecution did not even offer evidence on this link relating to the plurality of persons requirement.

### **Milan Martić**

When discussing the connection with this case on the basis of geographical origin and alleged participation in the JCE, the Trial Chamber decision on the motion for joinder is important. It must be emphasised that none of the locations mentioned in the indictment against Milan Martić can be found in the indictment against Professor Vojislav Šešelj. In addition, the time frame of the indictment against Professor Vojislav Šešelj (narrower) and Milan Martić (wider) only partially overlap, and it follows that this depended on the relationship between Professor Vojislav Šešelj and Slobodan Milošević.

On 30 May, 1 June and 19 July 2005, the Prosecution filed three identical motions for joinder of the cases against Milan Martić, Jovica Stanišić, Franko Simatović and Professor Vojislav Šešelj. All four accused filed replies to the motions.

In Rule 48 of the Rules of Procedure and Evidence of the International Tribunal it states that “Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.” “Transaction” is defined in the Rules of Procedure and Evidence as “A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan.”

If the Chamber decides that the requirements have been met, it may grant joinder or leave the cases to be tried separately. According to the case-law, the following factors may be taken into account in making this determination:

- (1) promoting judicial economy;
- (2) avoiding conflicts of interest that might cause serious prejudice to the accused;
- (3) protecting the interest of justice, *inter alia*, by safeguarding the rights of the accused to a fair and expeditious trial;
- (4) minimising hardship to witnesses; and
- (5) ensuring consistency of verdicts.

In the Decision of 10 November 2005, the Trial Chamber concluded that the crimes mentioned in the indictments against Milan Martić, Jovica Stanišić and Franko Simatović and Professor Vojislav Šešelj were indeed committed during the “same transaction” and that they can therefore be examined as a joint indictment and trial. Nevertheless, the judges of the Chamber also deemed that there is no other factor that can be seen as a factor in favour of joinder of the three cases. The judges deemed that the factors of judicial economy and the right of the accused militate strongly against granting joinder because it would extend significantly the length of the trial of each of the accused and, in the case of Milan Martić, would additionally delay the start of the trial. Therefore, the Trial Chamber decided to deny the motion for joinder and allow the three cases to be tried separately.

If we ignore, for the moment, the issue of participation in the JCE, although this decision does not even deal with this matter and only mentions that there is a likelihood that these crimes were committed in the mentioned locations, this decision is significant because it shows the position of the judges on the right to a fair and expeditious trial, and in this context the following should be kept in mind:

The indictment against Milan Martić: Initial Indictment of 25 July 1995; Amended Indictment of 13 December 2001; Second Amended Indictment of 5 September 2003;

Date of surrender: 15 May 2002

Transferred to the ICTY: 15 May 2002

Initial and further appearances before the court: 21 May 2002, pleaded not guilty to all counts of the indictment; 28 January 2003, pleaded not guilty;

Start of trial: 13 December 2005

Closing arguments: 10 to 12 January 2007;

Trial Chamber Judgement: 12 June 2007, sentenced to 35 years in prison;

Appeals Chamber Judgement: 8 October 2008, sentence upheld.

Therefore, Milan Martić came to the ICTY on 15 May 2002, and his trial started on 13 December 2005. This means that the pre-trial phase lasted 42 months, and the judges concluded in November 2005 that to extend this period by even a day would represent a significant prolongation of the trial that could not be justified. In the case against Professor Vojislav Šešelj, this phase lasted 56 months, from 24 February 2003 to 7 November 2007, and on the basis of the aforementioned Trial Chamber's position, it can only be concluded that Professor Vojislav Šešelj's right has been fundamentally and clearly violated.

It is also worth noting that the entire trial ended with the Appeals Chamber Judgement on 8 October 2008, which was 66 months after he first arrived in the Detention Unit. In the case against Professor Vojislav Šešelj, taking July 2011 as the cut-off date, more than 100 months have passed, but only the presentation of the Prosecution evidence in the trial phase has ended. Therefore, Professor Vojislav Šešelj's rights are being violated in all the phases of the trial (pre-trial and trial phase) by both the Prosecution and the Trial Chamber.

In the Amended Indictment against Milan Martić of 14 July 2003, it states that the following participated with him in the JCE: Slobodan Milošević; Borisav Jović; Branko Kostić; Veljko Kadijević; Blagoje Adžić; Milan Babić; Goran Hadžić; Jovica Stanišić; Franko Simatović aka Frenki; Tomislav Simović; Professor Vojislav Šešelj; Momir Bulatović; Radovan Stojčić aka Badža; Željko Ražnatović aka Arkan; Radovan Karadžić; Momčilo Krajišnik; Biljana Plavšić; Momir Talić; Ratko Mladić.

It should be noted that Jović, Kostić, Bulatović and Simović were never indicted by the ICTY.

In the judgements of the Trial Chamber and the Appeals Chamber in the Martić case there is practically no evidence at all for the fact asserted by the Prosecution that Professor Vojislav Šešelj participated in this alleged JCE. Both judgements in the Martić case are completely unfounded, especially with regard to the existence of the JCE, especially as Martić was convicted only for this mode of responsibility. From January 1992, RSK territory was effectively under the control of the UN and the time frame of the JCE is therefore untenable. In addition, one of the alleged participants of this JCE, Slobodan Milošević, was in constant contact with Franjo Tuđman, either directly or through UN mediators, and there is a lot of footage showing how Slobodan Milošević pressurised, hindered and forced the Serbian leadership in the RSK to seek peaceful solutions under the auspices of the UN. Operations Flash and Storm happened as a consequence of this. This is why the participants, time frame, length and the very existence of the JCE in the case against Professor Vojislav Šešelj are untenable claims of the Prosecution.

The Judgement of the Trial Chamber in the Martić case states the following in paragraph 329:

“The President of Serbia, Slobodan Milošević, publicly supported the preservation of Yugoslavia as a federation of which, *inter alia*, the SAO Krajina would form a part. However, Slobodan Milošević covertly intended the creation of a Serb state. Milan Babić testified that Slobodan Milošević intended the creation of such a Serb state through the establishment of paramilitary forces and the provocation of incidents in order to allow for JNA intervention, initially with the aim to separate the warring parties but subsequently in order to secure territories envisaged to be part of a future Serb state. In Milan Babić’s view, Slobodan Milošević advocated this political objective from the summer of 1990 until the end of 1991.”

Therefore, Milan Babić’s testimony is presented as evidence, only a few days before he hanged himself in the Detention Unit in Scheveningen. He was convicted in a plea bargain with the Prosecution. What Milan Babić actually said is given in footnote 1025, which states that on 16 February 2006 Milan Babić testified that Slobodan Milošević endorsed a “firm type of federation” along with the preservation of the right of self-determination of people who were in majority in an area. Therefore, there is no mention in the footnote of a public and an alleged secret goal. This is simply a fabrication of the Prosecution and the judges of the Trial Chamber. There is no evidence to support this conclusion, especially when you bear in mind that

Milan Babić said when he testified that “Slobodan Milošević advocated this political objective from the summer of 1990 until the end of 1991.”

**Mile Mrkšić, Veselin Šljivančanin and Miroslav Radić**

This final verdict rendered by the ICTY is the most important for the trial of Professor Vojislav Šešelj and not simply on the grounds of being related by geographic area but also on all other grounds – the existence of the JCE, the perpetrators, the crimes, etc. If we recall the position of the Trial Chamber in the Martić case with respect to the JCE and how long Slobodan Milošević allegedly encouraged some goal, and we add to this everything that follows from the Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin case, it is clear that the Prosecution has no arguments for the charges against Professor Vojislav Šešelj.

With respect to JCE, the indictment against Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin of 15 October 2004 states the following:

“Individuals participating in this joint criminal enterprise included Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin, Miroljub Vujović and Stanko Vujanović, and other known and unknown participants. Each member of the joint criminal enterprise worked in concert with each other and with other members of the joint criminal enterprise and acted either directly or through their subordinates, which included members of the JNA, the TO of the so-called 'Serbian Autonomous District Slavonia, Baranja and Western Srem' ('SAO SBWS'), TO of the Republic of Serbia ('Serbia'), and volunteer and paramilitary units including those organised by Vojislav Šešelj, all acting under the command of the JNA (collectively 'Serb Forces').”

It gives the role of individual members of the JCE:

“(a) Miroljub Vujović, during the time relevant to this indictment, was the commander of the Serb TO detachment called Petrova Gora in Vukovar.

“(b) Stanko Vujanović, during the time relevant to this indictment, was the commander of a TO unit in Vukovar. His property at Nova Ulica 81 in the Petrova Gora section of Vukovar served as the command post for Serb forces operating in the area.

“(c) Both Miroljub Vujović and Stanko Vujanović had command over units of the TO of the 'SAO SBWS' responsible for the mistreatment and killing of non-Serbs taken from Vukovar Hospital to Ovčara farm.”

All of these completely collapsed in the courtroom during the trial. This was a completely erroneous argument of the Prosecution even when indicting Mrkšić, Šljivančanin and Radić.

A summary of this case, seen from the aspect of its connection with the charges against Professor Vojislav Šešelj, could be presented as a final summary for the location of Vukovar as follows:

**Slavko Dokmanović**

Indictments: 3 April 1996 and 2 December 1997;

Arrested: 27 June 1997

Initial court appearance: 4 July 1997

Died on 29 June 1998

Related case: Mrkšić et al. – Vukovar Hospital

Counts of indictment:

- inhumane acts, murder (crime against humanity)
- cruel treatment, murder (violation of the Laws or Customs of War)
- wilfully causing great suffering, wilful killing (grave breaches of the Geneva Conventions).

**Mrkšić, Radić and Šljivančanin**

Indictments: 7 November 1995, 3 April 1996, 2 December 1997, 1 November 2002, Third Consolidated Amended Indictment of 9 March 2005.

Trial: 11 October 2005

Related cases: Dokmanović, Vukovar Hospital

Trial Chamber Judgement: 27 September 2007

Appeals Chamber Judgement: 5 May 2009

Charges:

Count 1 – Persecution on political, racial and religious grounds, crime against humanity, punishable under Articles 5 (h), 7 (1) and 7 (3) of the Statute of the Tribunal.

This persecution was based on political, racial or religious grounds, and included the following:

- (a) Extermination or the murder of approximately 264 Croats and other non-Serbs, including women and the elderly;

(b) Cruel or inhumane treatment of Croats and other non-Serbs, including torture, beatings, sexual assault and psychological abuse;

(c) Denial of medical care to the sick and wounded Croats and other non-Serbs.

Count 2: Extermination, a crime against humanity, punishable under Articles 5 (b), 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 3: Murder, a crime against humanity, punishable under Articles 5(a), and 7(1) and 7(3) of the Statute of the Tribunal.

Count 4: Murder, a violation of the Laws or Customs of War, as recognised by Common Article 3 (1) (a) of the Geneva Conventions of 1949, punishable under Articles 3, 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 5: Torture, a crime against humanity, punishable under Article 5 (f), Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 6: Inhumane acts, a crime against humanity, punishable under Article 5(i), Article 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 7: Torture, a violation of the Laws or Customs of War, as recognised by Common Article 3 (1) (a) of the Geneva Conventions of 1949, punishable under Article 3 and Article 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 8: Cruel treatment, a violation of the Laws or Customs of War, as recognised by Common Article 3 (1) (a) of the Geneva Convention of 1949, punishable under Article 3 and Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

The Prosecution started by alleging that the accused participated in a JCE whose purpose was to persecute Croats or other non-Serbs who found themselves in the Vukovar Hospital after the fall of Vukovar, and also through murder, torture and cruel treatment, extermination and inhumane acts.

**The Trial Chamber found that there was no immediate evidence for the existence of such a JCE. This was upheld by the Appeals Chamber Judgement.**

The evidence does not show that Veselin Šljivančanin or Miroslav Radić participated at any point in this process in which Mile Mrkšić reached the decision that the JNA should no longer keep guard over the prisoners-of-war and withdraw the military police who were guarding them. These facts exclude any conclusion that Mile Mrkšić, Veselin Šljivančanin and Miroslav Radić acted together in a JCE.

Therefore, it was definitively established that there was no JCE in the Vukovar location and that there could therefore be no participants in any JCE there. If this has been established by the judges of the Trial Chamber dealing with the most responsible military people and commanders, then what is unclear is the mental state of the person who thought in the indictment against Professor Vojislav Šešelj to charge Professor Vojislav Šešelj on the basis of participation in any JCE at all, let alone for Vukovar. A final judgement is supposed to be binding for ICTY judges and this is why they must especially keep in mind all that the Prosecution has done when piling up charges against Professor Vojislav Šešelj from the point of view of abuse of proceedings. In any case, what can be said about the situation when charges of participating in a JCE in the Vukovar location are dropped in a final decision, but the Prosecution persists with charges against Professor Vojislav Šešelj for participation in a JCE.

#### **Mrkšić**

The Trial Chamber concluded that Mile Mrkšić was responsible under Article 7 (1) of the Statute for aiding and abetting the crime of murder.

Mile Mrkšić was therefore found responsible under Article 7 (1) of the Statute for aiding and abetting the crimes of torture and cruel treatment.

#### **Radić**

For the reasons given while analysing the responsibility of Mile Mrkšić, there is no evidence that Miroslav Radić participated in the JCE. Two witnesses gave completely different statements that suggest that Miroslav Radić was informed about the soldiers under his command having participated in the mistreatment and killing of prisoners at Ovčara. The Trial Chamber did not deem these witnesses to be sincere and did not consider the third witness reliable. Therefore, for reasons that are described in detail in the written Judgement, the Trial Chamber concluded that it had not been proved that Miroslav Radić knew or had reasons to know that the soldiers under his command committed crimes at Ovčara.

If it was decided with regard to Radić that it has not been established that he “knew or had reason to know that his subordinates had committed offences at Ovčara”, and Radić was a JNA captain who commanded a JNA unit in Vukovar, how could anyone even think of charging Professor Vojislav Šešelj, an opposition politician who was in Banja Luka and Western Slavonia at the time that Ovčara happened?

### Šljivančanin

The Trial Chamber notes that the responsibility of Veselin Šljivančanin was established under Article 7 (1) for aiding and abetting the crimes of torture and cruel treatment.

On 27 September 2007, the Trial Chamber rendered its judgement and sentenced the accused as follows:

Mile Mrkšić, on the basis of individual criminal responsibility (Article 7 (1) of the Statute of the Tribunal) for:

- Murder (violation of Laws or Customs of War, Article 3);
- Torture (violation of Laws or Customs of War, Article 3);
- Cruel treatment (violation of Laws or Customs of War, Article 3).

Sentence: 20 years in prison.

Veselin Šljivančanin, on the basis of individual criminal responsibility (Article 7 (1) of the Statute of the Tribunal) for:

- Torture (violation of Laws or Customs of War, Article 3).

Sentence: five years in prison.

Miroslav Radić was acquitted of all charges.

The Judgement of the Trial Chamber established the following:

“While there may have been a small number of civilians among the 194 identified murder victims charged in the Indictment, in the Chamber’s finding, the perpetrators of the offences against the prisoners at Ovčara on 20/21 November 1991 charged in the Indictment, acted in the understanding that their acts were directed against members of the Croatian forces. The possibility now identified that a small number of civilians may have been among the prisoners, therefore, does not change the finding which the Chamber makes that the crimes charged in the present Indictment **do not qualify as crimes against humanity in the particular circumstances of this case.**”

### Conclusion

The Trial Chamber concluded that the prerequisites in connection with its power under Article 5 of the Statute had not been met in this case.

If Mrkšić, Radić and Šljivančanin were not mutually involved in the JCE, it is impossible that Professor Vojislav Šešelj was involved with any of them and the JNA in the JCE. If the Vukovar location was not included in the JCE for Mrkšić, Radić and

Šljivančanin, then it cannot be included for Professor Vojislav Šešelj either, as established in the final judgement. It is unclear how the indictment against Professor Vojislav Šešelj includes locations as part of the JCE when the JNA and its officers were evidently not participants in the JCE? Moreover, the Vukovar location was also reviewed from the aspect of crimes against humanity and, as the final judgement established that such crimes had not been committed, it is simply not possible that the indictment against Professor Vojislav Šešelj for Vukovar includes the JCE and crimes against humanity.

The situation with the charges for destruction, plunder, devastation and other crimes is interesting because, if the Prosecution did not charge Mrkšić *et al* with these crimes, it is unclear how it could charge Professor Vojislav Šešelj, an opposition politician, with these crimes?

Miroslav Radić was acquitted under all counts of the indictment and, interestingly enough, he was acquitted of responsibility under Article 7 (1) of the Statute for aiding and abetting killings, torture and cruel treatment under Article 3 of the Statute – violating the laws and customs of war. Therefore, the completion of the trials of Mrkšić, Šljivančanin and Radić and the judgements in that case are binding and exculpatory material for Professor Vojislav Šešelj.

### **Blagoje Simić *et al***

From the aspect of the charges against Professor Vojislav Šešelj, Bosanski Šamac is listed as a location not for the crime base, but for a consistent pattern of conduct. By the same logic, it should constitute responsibility on the basis of participation in the JCE.

This case is also interesting in view of the conclusion of the Appeals Chamber:

“The Appeals Chamber rendered its judgement on 28 November 2006. The Appeals Chamber revised the finding of the Trial Chamber that Blagoje Simić participated in the JCE, with the purpose of persecuting non-Serbs in the municipality of Bosanski Šamac, northern Bosnia. The Appeals Chamber established that Simić had not been provided with notice that he was charged as a participant in a JCE prior to the end of the presentation of the Prosecution’s case, because of which the trial was unfair. The Appeals Chamber also revised the judgement of guilty against Simić for persecutions based upon cruel and inhumane treatment in the form of torture and

beatings. However, the Appeals Chamber affirmed the verdict of guilty for aiding and abetting persecutions in the form of unlawful arrests and detention of non-Serb civilians, confinement of non-Serb civilians under inhumane conditions, forced labour of Bosnian Croats and Muslims and forcible transfer of non-Serb civilians. The Appeals Chamber commuted the sentence of Blagoje Simić to 15 years imprisonment.”

Therefore, participation in a JCE was not defined as an aspect of responsibility in the case against the Šamac Group, and if it did not exist then, it is unclear how it appears as a consistent pattern of conduct in the indictment against Professor Vojislav Šešelj. The conclusion of the Trial Chamber in the case *Simić et al – Bosanski Šamac* is interesting with respect to the charges against Professor Vojislav Šešelj:

“With respect to the forcible takeover of power, charged with being responsible for persecutions under Count 1, the Trial Chamber found that this crime did not reach the level of gravity as other crimes against humanity, and as such, did not constitute persecution.”

Consequently, the case *Simić et al – Bosanski Šamac* in fact constitutes an erroneous thesis in the Prosecution’s charges against Professor Vojislav Šešelj. This means that no one can allege that the events in Bosanski Šamac were the result of a JCE, and if *Simić et al* did not participate in a JCE, it is therefore impossible to charge Professor Vojislav Šešelj with participating in a non-existent JCE, and thereby complicity with *Simić et al*. Hence, in the case against Professor Vojislav Šešelj, the Prosecution unnecessarily hounded the witnesses for Bosanski Šamac in its effort to prove a pattern of conduct consistent with participation in the JCE, although the final judgement had established that there was no JCE in Bosanski Šamac.

#### **Other Cases Linked According to Geographical Area**

From the aspect of plurality of persons, other cases which are said to be geographically linked are also of interest but there is no final ICTY judgement. These cases are analysed for the existence of JCE according to all criteria:

- **Milan Babić** IT-03-72 (indicted, plea-bargain, convicted, died). It does not require analysis since the relevant facts are not established in a plea-bargain and a plea-bargain agreement has no probative value in terms of relevance to the charges against Professor Vojislav Šešelj.

- **Slavko Dokmanović** IT-95-13A Vukovar Hospital (died). The case was not completed because the accused killed himself, but all relevant facts were established in the Mrkšić case and the final judgement in this case constitutes exculpatory evidence for Professor Vojislav Šešelj.

- **Goran Hadžić** (IT-04-75 (indicted and currently in detention). A case which is absolutely irrelevant with respect to the charges against Professor Vojislav Šešelj in the light of the final judgement in the Mrkšić case.

- **Radovan Karadžić** IT-95-5/18 Bosnia and Herzegovina and Srebrenica (indicted and proceedings are underway). As the trial is in the initial stage, practically nothing can be established with respect to the accusations against Professor Vojislav Šešelj beyond what has already been established by the final judgement in the Krajišnik case, rendering this case irrelevant.

- **Ratko Mladić** IT-95-5/18 Bosnia and Herzegovina and Srebrenica (indicted and proceedings are underway). It does not contain anything useful for the proceedings against Professor Vojislav Šešelj other than lots of exculpatory material.

- **Mladen Naletilić and Vinko Martinović** IT-98-34 Tuta and Štela (indicted and convicted). The relevance of this case is unclear as it deals with the opposite side and the location is Herzegovina, and therefore no one knows how it ended up in the indictment against Professor Vojislav Šešelj.

- **Biljana Plavšić** IT-00-39 and 40 Bosnia and Herzegovina (indicted, plea-bargain, convicted, served her sentence and released). It does not require analysis since the relevant facts are not established in a plea-bargain and a plea-bargain agreement has no probative value in terms of relevance to the charges against Professor Vojislav Šešelj.

- **Jadranko Prlić et al** IT-04-74 (indicted and proceedings are underway). The relevance of this case is unclear as it deals with the opposite side and the location is Herzegovina, and therefore no one knows how it ended up in the indictment against Professor Vojislav Šešelj.

- **Milan Simić** IT-95-9/2 Bosanski Šamac (indicted, plea-bargain, convicted, served his sentence and released). It does not require analysis since the relevant facts are not established in a plea-bargain and a plea-bargain agreement has no probative value in terms of facts relevant to the charges against Professor Vojislav Šešelj.

- **Stevan Todorović** IT-95-9/1 Bosanski Šamac (indicted, plea-bargain, convicted, served his sentence and died after he was released). It does not require analysis since the relevant facts are not established in a plea-bargain and a plea-bargain agreement has no probative value in terms of relevance to the charges against Professor Vojislav Šešelj.

- **Momčilo Perišić** IT-04-81 (indicted and proceedings are underway). The indictment of 22 February 2005 against Momčilo Perišić for the locations of Sarajevo, Zagreb and Srebrenica does not mention his criminal responsibility on the basis of a JCE. It is unclear how the Momčilo Perišić case has any relevance to the charges against Professor Vojislav Šešelj.

- **Jovica Stanišić and Franko Simatović** IT-03-69 (indicted and proceedings are underway). As officials of the State Security Service, they implemented measures of surveillance, monitoring, restraining and aggravating the political activities of Professor Vojislav Šešelj, even while Professor Vojislav Šešelj was the Deputy Prime Minister of the Republic of Serbia. It is unclear how someone could assume that they were participants in a fabricated JCE with Professor Vojislav Šešelj. Moreover, the Trial Chamber rejected an application for a joinder of the trial of Professor Vojislav Šešelj with them since the Prosecution tried to present different texts of the alleged JCE from the indictments as a single transaction and with an identical objective.

- **Miće Stanišić** IT-04-79 (indicted and proceedings are underway). The indictment against Miće Stanišić does not even list Professor Vojislav Šešelj as a participant in the JCE, making it unclear according to which criteria they were linked.

- **Slobodan Milošević** IT-02-54 Kosovo, Croatia and Bosnia (indicted, died during the trial). Since Milošević is listed as the central figure of the JCE with which Professor Vojislav Šešelj is charged and as there is no judgement in the Milošević case, the indictments against him must be analysed as to the conditions for the existence of a JCE.

**Croatia:** the Second Amended Indictment of 23 October 2002 was brought only against Slobodan Milošević and it lists the following participants in the JCE:

“This joint criminal enterprise came into existence before 1 August 1991 and continued until at least June 1992. Individuals participating in this joint criminal enterprise included Slobodan Milošević, Borisav Jović (not indicted), Branko Kostić (not indicted), Veljko Kadijević (not indicted), Blagoje Adžić (not indicted), Milan

Babić, Milan Martić, Goran Hadžić, Jovica Stanišić, Franko Simatović, also known as Frenki, Tomislav Simović (not indicted), Vojislav Šešelj, Momir Bulatović (not indicted), Aleksandar Vasiljević (not indicted), Radovan Stojičić, also known as Badža, Željko Ražnatović, also known as Arkan, and other known and unknown participants.

“In order for the joint criminal enterprise to succeed in its objective, Slobodan Milošević worked in concert with or through several individuals in the joint criminal enterprise. Each participant or co-perpetrator within the joint criminal enterprise played his own role or roles that significantly contributed to the overall objective of the enterprise.” Unlike the other indictments, it precisely lists the roles of every participant in the JCE, stating the following for Professor Vojislav Šešelj:

“13. Professor Vojislav Šešelj, as President of the Serbian Radical Party, from at least February 1991 throughout the time relevant to this indictment, recruited or otherwise provided substantial assistance or support to Serb volunteers, commonly known as Chetniks, *Šešeljevci* or Šešelj’s men, who perpetrated crimes as specified in this indictment. In addition, he openly espoused and encouraged creation of a ‘Greater Serbia’ by violence and other unlawful means, and actively participated in war propaganda and spreading inter-ethnic hatred.”

The following statement from the indictment against Slobodan Milošević is important for the case against Professor Vojislav Šešelj:

“Controlled, contributed to, or otherwise utilised Serbian state-run media outlets to manipulate Serbian public opinion by spreading exaggerated and false messages of ethnically based attacks by Croats against Serb people in order to create an atmosphere of fear and hatred among Serbs living in Serbia and Croatia. The propaganda generated by the Serbian media was an important tool in contributing to the perpetration of crimes in Croatia.”

The Prosecution’s problem is that the indictment against Professor Vojislav Šešelj with respect to Croatia mentions the location of Vukovar where, according to the final judgement in the Mrkšić case, the existence of a JCE was not established, and the Prosecution’s allegations of the existence of a JCE therefore fall through. Moreover, in view of the time frame of the charges, it is implied that Professor Vojislav Šešelj participated in the JCE (February 1991) before the date when Slobodan Milošević is said to have become a participant in the JCE (August 1991).

The Prosecution's allegations in the Croatia indictment against Slobodan Milošević, that Professor Vojislav Šešelj participated in the JCE by espousing and encouraging "the creation of a Greater Serbia by violence and other unlawful means, and actively participated in war propaganda and spreading inter-ethnic hatred" also fall through for Croatia and Vukovar. Of the 16 known alleged perpetrators of the JCE, eight were never indicted and they testified in court as witnesses of the Prosecution. These eight were state officials, unlike Professor Vojislav Šešelj, who was the sole opposition politician.

The **Bosnia** indictment of 22 November 2002 says:

"The joint criminal enterprise was in existence by 1 August 1991 and continued until at least 31 December 1995. The individuals participating in this joint criminal enterprise included Slobodan Milošević, Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, General Ratko Mladić, Borisav Jović (not indicted), Branko Kostić (not indicted), Veljko Kadijević (not indicted), Blagoje Adžić (not indicted), Milan Martić, Jovica Stanišić, Franko Simatović, also known as Frenki, Radovan Stojičić, also known as Badža, Vojislav Šešelj, Željko Ražnatović, also known as Arkan, and other known and unknown participants."

The roles of these participants or co-perpetrators include, but are not limited to, the following:

"13. Vojislav Šešelj, as President of the Serbian Radical Party (SRS), from at least February 1991 throughout the time relevant to this indictment, recruited or otherwise provided substantial assistance or support to Serb paramilitary units, commonly known as *Šešeljevci* or Šešelj's men, who perpetrated crimes as specified in this indictment. In addition, he openly espoused and encouraged the creation of a Greater Serbia by violence and other unlawful means, and actively participated in war propaganda and spreading inter-ethnic hatred."

In the indictment against Professor Vojislav Šešelj, the Prosecution alleges that Professor Vojislav Šešelj participated in the JCE until September 1993, when he came into conflict with Slobodan Milošević, but the indictment against Slobodan Milošević states that Professor Vojislav Šešelj was a participant in the same JCE until 31 December 1995. Does anyone understand what the Prosecution wants?

Does the Prosecution allege that Clinton, Chirac, Kohl and other officials of the so-called international community signed agreements with the war criminals

Milošević, Tudman and Izetbegović in Dayton and Paris in December 1995? Does that mean that the JCE ended in Paris in 1995 and that the party which finally ended the JCE in Paris is the same party which conceived, planned, established and set the JCE in motion? After all, top NATO officials are thankful to Bosnia and Herzegovina to this day because, had there not been a conflict in 1992, they would not have known how to define the role of NATO following the dissolution of the Warsaw Treaty. NATO therefore boasts that it needed a crisis to survive as a military alliance whose function changed after the Cold War. One can easily guess that, since NATO needed a crisis, it created one and has been controlling it to this day for its own purposes. This is also why the ICTY is a screen, to cover up and mask the interests of others. Slobodan Milošević's involvement in the following, as part of the JCE, is of importance in relation to Professor Vojislav Šešelj:

“He provided financial, logistical and political support for the regular and irregular military forces. These forces subsequently participated in the execution of the joint criminal enterprise through the commission of crimes which are in violation of Articles 2, 3, 4 and 5 of the Statute of the International Tribunal. /.../

“He controlled, manipulated or otherwise utilised Serbian state-run media to spread exaggerated and false messages of ethnically based attacks by Bosnian Muslims and Croats against Serb people intended to create an atmosphere of fear and hatred among Serbs living in Serbia, Croatia and Bosnia and Herzegovina which contributed to the forcible removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of Bosnia and Herzegovina.”

All this is cited to show the tendency of the Prosecution to haphazardly lump together concepts, empty phrases, qualifications and conclusions, which are basically nonsensical and are more an indicator of the psychological state of the author of the indictment than a serious bill of indictment. It appears that Professor Vojislav Šešelj, as an opposition deputy, participated with Slobodan Milošević in an invented JCE in Croatia and Bosnia and Herzegovina up until December 1995, but Milošević arrested Professor Vojislav Šešelj as a political opponent at least three times during the course of those five years. Also, Professor Vojislav Šešelj, who was the Deputy Prime Minister of the Republic of Serbia between 1998 and 2000, did not participate with Milošević in the JCE according to the Kosovo indictment. This speaks volumes about the Prosecution's logic and motives, and basically shows that no JCE ever existed on the Serbian side. A JCE on the Serbian side is simply not possible.

Regarding Professor Vojislav Šešelj's specific involvement in the JCE, the Prosecution states the following in paragraph 10 of the indictment against Professor Vojislav Šešelj:

"10. Professor Vojislav Šešelj participated in the joint criminal enterprise in the following ways:

a. Professor Vojislav Šešelj participated in the recruitment, formation, financing, supply, support and direction of Serbian volunteers connected to the SRS and/or SČP through and/or with the assistance of the SRS Crisis, then War Staff. These volunteer units were created and supported to assist in the execution of the joint criminal enterprise through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal.

b. Professor Vojislav Šešelj made inflammatory speeches in the media, during public events, and during visits to the volunteer units and other Serb forces in Croatia and Bosnia and Herzegovina, instigating those forces to commit crimes in violation of Articles 3 and 5 of the Statute of the Tribunal.

c. Professor Vojislav Šešelj espoused and encouraged the creation of a homogeneous "Greater Serbia", encompassing the territories specified in this indictment, by violence, and thereby participated in war propaganda and incitement of hatred towards non-Serb people.

d. In public speeches Professor Vojislav Šešelj called for the expulsion of Croat civilians from parts of the Vojvodina region in Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia) and thus instigated his followers and the local authorities to engage in a persecution campaign against the local Croat population.

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Districts in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

f. Professor Vojislav Šešelj participated in the provision of financial, material, logistical and political support necessary for such take-overs. He obtained this support, with the help of Slobodan Milošević, from the Serbian authorities and from

Serbs living abroad where he collected funds to support the aim of the joint criminal enterprise.

g. Professor Vojislav Šešelj recruited Serbian volunteers connected to the SRS and indoctrinated them with his extreme ethnic rhetoric so that they engaged in the forcible removal of the non-Serb population in the targeted territories through the commission of the crimes in this indictment with particular violence and brutality.”

Since the specific participation of Professor Vojislav Šešelj in the JCE is listed as a set of his activities, conduct and especially “personal views”, they will be discussed in more detail in the subsequent parts of this submission, with regard to the locations and conditions under Articles 3 and 5 of the Statute and each individual crime with which he is charged.

#### **Conclusion on Charges of Participation in a JCE**

The Prosecution completely missed the mark when it made participation in a JCE the basic premise of all charges against Professor Vojislav Šešelj. In addition to the fact that the final judgements in the Mrkšić and Krajišnik cases, which are binding for the Prosecution and the judges at the ICTY, negate the charges against Professor Vojislav Šešelj with respect to his participation in a JCE, one must bear in mind that all the requirements with respect to the existence and participation in the alleged JCE, based on a fabricated theory developed by the Prosecution of the Hague Tribunal, are inapplicable and nonexistent in the case against Professor Vojislav Šešelj.

The requirement of plurality of persons is completely implausible, not only from the selective aspect with regard to the charges against them, but also with respect to the overall circumstances such as their status, position of authority and interpersonal relations between the alleged participants of the same JCE.

The requirement in the indictment against Professor Vojislav Šešelj for a common criminal goal or criminal means to achieve the common goal is totally implausible. The Prosecution did not provide a single piece of relevant evidence of the existence of a common goal. The Prosecution and judges at the ICTY have presented the goal of the JCE differently for various persons, locations and events, dealing with custom-made constructions, expecting to somehow sneak it all into the case against Professor Vojislav Šešelj. For this reason, the Prosecution’s thesis is unfathomable.

In the case of *Simić et al Bosanski Šamac*, the Trial Chamber presented the position that the goal was unification with other areas with a similar ethnic structure, which in itself, pursuant to Article 7 (1) of the Statute, does not constitute a common goal for a JCE in the legal sense. However, if the intent to create such territories involves commission of crimes punishable under the Statute, it can be sufficient to represent a common criminal goal.

This view is important because it demonstrates that the theory of the JCE should not exist. The commission of crimes and the organising of groups for the commission of crimes should be punished, but that is different from the controversial theory about a JCE which even declares valid political goals as incriminatory and, consequently, automatically declares every act a crime. This is something that even Machiavelli would envy.

Despite this excessively broad concept of the JCE, a report on the JCE submitted several years ago as a specific form of defence of Professor Vojislav Šešelj contains important elements which show that the theory is inapplicable in the ICTY, and therefore also in the case against Professor Vojislav Šešelj.

1. Analysing who participated with whom in the JCE is an indication of the arbitrariness of the Prosecution rather than the existence of a system based on the theoretical premises of the alleged JCE. The indictments themselves are lacking in logic, and this is manifested with regard to the judgements and indictments against other alleged participants in the same JCE. If it is based on a theory of criminal law, there should be no such differences. Naturally, the question remains of why indictments were not brought against some alleged participants in the JCE, some of whom have even testified as witnesses of the Prosecution.

An example of alleged participation in the JCE with which Professor Vojislav Šešelj is charged is recruitment. Other persons also supervised or helped recruitment, but they have not been indicted, although they did it *ex officio*, that is, from positions of authority and as part of their job. Thus, recruitment is not in itself a criminal activity and this is a generally accepted principle. The fact is that an act which is not regarded as criminal by national legislation may be declared as a crime against humanity and this is probably the case with the act of recruitment, that is, a set of actions which are called recruitment. If Professor Vojislav Šešelj is charged with recruitment, as organising or supervising recruitment, what about the others (authorised officials, state officials or Vuk Drašković) who also supervised and

organised recruitment? Moreover, the term recruitment is used erroneously because it refers to a set of acts to register a person in the list of military conscripts and send him to do military service. Therefore, persons who were allegedly recruited by Professor Vojislav Šešelj had completed their military service, since recruitment precedes military service, and they could not have been recruited a second time. It is impossible that their recruitment for the JNA was invalid since they had already done their military service and there was no need for additional recruitment to allegedly “do their military service in the JNA, TO, the SČP or something else.” For the record, the JNA cannot be likened to the SČP. The JNA is an armed force, while the SČP is a political movement without a military doctrine, weapons or uniforms. Although it may seem strange, the recruitment with which Professor Vojislav Šešelj is charged seems like enlisting for a private army, an army belonging to a political party or something of the sort. This is impossible since no authorities would agree to having two types of recruitment for different armies. Therefore, the term recruitment in the indictment against Professor Vojislav Šešelj does not in fact mean anything.

When persons who did their military service are called up to fulfil their military obligation this is called “mobilisation” according to wartime assignment and it also includes assignment to units of the TO. This means that everything which might be interpreted as calling up people and making lists cannot be called recruitment or mobilisation, but a type of activity held for the purpose of fulfilling obligations to relevant state organs. Up until May 1992, this was part of permissible assistance to the JNA which every citizen and organisation was obliged to offer.

Therefore, it cannot be done independently and this is proven by relevant regulations which practically enabled and legalised mobilisation of volunteers who signed up through the Serbian Radical Party. Sending volunteers through an association to serve in state institutions is neither prohibited nor unlawful. After all, regardless of how someone became a member of an armed formation, he became a person protected by conventions regulated by the Law of War, i.e. International Humanitarian Law, through the JNA, the TO and other official armed forces.

2. The Prosecution’s problem in the case against Professor Vojislav Šešelj is its attempt to portray every single volunteer as a member of a criminal unit and, in general, inevitably turning all Serbian armed formations into criminal organisations. This is completely implausible. From the aspect of International Humanitarian Law, this would involve declaring all armed formations of Serbs as criminal organisations,

which is not permitted by the ICTY Statute. Unlike the Statute of the International Military Tribunal in Nuremberg, the ICTY Statute does not require organisations to be declared criminal because it deals with the individual criminal responsibility of persons who have breached the provisions of International Humanitarian Law. It must be noted here that there is a big difference between conspiracy under the Statute of the International Military Tribunal in Nuremberg and the invented and alleged JCE under the ICTY Statute, if there is any mention at all of the JCE in Article 7 (1) of the ICTY Statute. Article 7 (1) of the ICTY Statute does not include, within the scope of commission, participation in a JCE as an act of commission of a crime.

Without elaborating in detail Article 6 of the Statute of the International Military Tribunal in Nuremberg, conspiracy appears as an element of the crime against peace. The same article also contains co-conspiracy in the narrow sense as a form of individual criminal responsibility for all crimes. In its jurisprudence, the ICTY resolved these issues contrary to the rules which were applicable in Nuremberg, but also contrary to the Rome Statute. For this reason, the criminal plan, or the existence of a criminal plan, is improvised in cases before the ICTY. The best example of this was the case against Duško Tadić.

In general, there is a big difference between the text of Article 6 of the International Military Tribunal in Nuremberg and Article 7 of the ICTY Statute.

This is particularly stressed because some ICTY judgements treat Article 7 (1) of the ICTY Statute as a provision concerning the forms of individual criminal responsibility, while other judgements treat it as an act of commission of a crime. There is a similar situation with regard to the existence of an armed conflict, which is in some instances a question of the jurisdiction of the ICTY, but in others an element of the crime. This is because the invented theory of the JCE is experienced as a unique form of improvisation in proceedings before the ICTY.

3. The following may be used to show that a parallel cannot be drawn between the trials in Nuremberg and the ICTY:

- The criminal plan in Nuremberg allegedly existed since 1919 and as a count of the indictment it referred to the period between January 1933 and April 1945. It existed for six years before the first combat operation and all combat operations were acts of aggression, but in cases before the ICTY, it is unknown when the criminal plan appeared (it is said that it can materialise extemporaneously on the spot, and also that it changes and develops), and there are no crimes against peace, i.e. no aggression, in

cases before the ICTY. This is sufficient to establish that it is erroneous to refer to conspiracy at Nuremberg as representing the JCE at the ICTY and as allegedly a heritage of customary international law.

- In Nuremberg, the criminal plan was defined as consisting of five points of the 25-point programme of the Nazi Party, although only two or perhaps three were viewed as criminal. The criminal plan was to:

- a) destroy the Treaty of Versailles;
- b) acquire the territories lost by Germany as a result of the war;
- c) create "living space" in Europe for the Germans.

The remaining two points were for all Germans to live in one state and to realise their right to self-determination. These two goals are not contained in the commentaries of the Nuremberg judgements or are not described as criminal. According to the theory of the JCE which was invented at the ICTY, Serbs are being tried for wanting the right to self-determination and wanting to live in one state without having to leave their homes, and the enemies of the Serbs are simultaneously being rewarded for forcibly achieving the three goals for which Germans stood trial in Nuremberg. Everyone except the Serbs violated the UN Charter and the documents on security and unchangeability of borders in Europe, and they gained the territories they had lost in 1945 for helping Hitler, and they are now creating their living space and spreading out in their newly-formed states at the expense of the Serbs. Are Serbs being put on trial at the Hague Tribunal by those who lost and were defeated in the Second World War?

These three points were the criminal plan of an aggressive war in every respect and which involved the redrawing of internationally recognised borders. The criminal plan in Nuremberg involved aggression and it was a crime against peace.

The JCE which is ascribed to the Serbs is founded on an invented criminal plan or goal.

What the Serbs sought from 1990 did not involve overturning the international order or territorial expansion in violation of the principle of the unchangeability and inviolability of borders in Europe. What the Serbs wanted did not even constitute a threat to peace in Europe, unless someone from the outside with territorial claims to parts of the SFRY were to interfere. In general, the Serbs were the only ones insisting on the principle of unchangeability of internationally recognised borders. That is why it is important whether what the Serbs wanted, which is not unlawful from the aspect

of national legislation and international law, falls under crimes against humanity with no requirement of illegality? Is it possible that Cutileiro's plan, which preceded the armed clashes in Bosnia and Herzegovina, is the embodiment of a criminal plan? Is it possible that Cutileiro formulated the JCE on the Serbian side? If the principle of consensus was not respected in the Assembly of Bosnia and Herzegovina on, let's say, 15 October 1991, why was an anachronistic form of decision-making by consensus of the three peoples promoted by the Dayton Agreement in the Constitution of Bosnia and Herzegovina? What and where are the international principles and standards, if they are not to impose the interests of the West? How is it that the Serbs are guilty when they did the exact same thing as the Slovenes, Croats and Muslims, who were rewarded for the act of secession?

If one were to apply the logic from Nuremberg, the situation is similar with regard to the acquisition of territories for the Serbs. They did not want to acquire new territories where Serbs had not been present for centuries, and the very term acquisition of territory is inapplicable with regard to the SFRY and the 1991 political crisis, which later turned into an imposed armed conflict as a way to resolve the situation. The Serbs were against an armed conflict as a way to resolve the problem because they already had all Serbs living in one common state, Yugoslavia. Only by imposing an armed conflict could one take away from them what the Serbs and other nations in Yugoslavia already had.

The Serbs showed what they wanted at the elections. This is a fact which cannot be overlooked. Professor Vojislav Šešelj's political programme is one thing, but the facts, or rather reality, is something else. At the elections, the Serbs voted for the political programmes which clearly showed them what they needed.

In urban areas of Croatia, where there were no organisations of the SDS or where there were no SDS candidates, the Serbs mainly voted for Račan in the first round of elections – at the time Račan was not talking about a Croatia without Serbs – and not establishing the RSK or unification of the RSK and Serbia. It later turned out that Račan had deceived the Serbs who voted for him, handing over the votes of Serbs to the new Ustasha *poglavnik* /chieftain/, Franjo Tuđman.

The situation was similar with some socialist and communist parties in Bosnia and Herzegovina, which deceived Serbs who declared themselves as Yugoslavs. It must be said that the deception of Serbian voters in Bosnia and Herzegovina was not so marked and devastating because most Serbs voted for the SDS. At that time the

SDS was closer to the Democratic Party in Belgrade than any other party. Karadžić, Tadić, Mićunović, Klara Mandić, Čosić and others were constantly in the focus of media attention. None of them ever demanded the acquisition of territories for the Serbs or Serbia, and this went on probably until the end of 1993. If everyone else who was accused by the ICTY of trying to acquire territory for the Serbs or, as some members of the Prosecution want to say, for Serbia (this distinction is very important), how is it possible that the persons who had their pictures taken with Karadžić are to this day treated as “good Serbs”? Let us recall that the category of “good German” did not exist at Nuremberg.

Besides, what territory was lost by the Serbs in the past which they wanted to reclaim in 1991? The reason for mentioning this is because a conspiracy is unacceptable except in case of aggression. No comment will be made about the crimes of genocide as they have not been included in the indictment against Professor Vojislav Šešelj.

No comment will be made about the creation of living space for the Serbs since that would be a waste of time.

However, the issues which must be addressed are the points which were included in the Nuremberg indictment but which the Tribunal did not interpret as criminal (self-determination of the German people and for all Germans to live in one state), which are treated as part of the criminal plan in the indictments and judgements of the ICTY against the Serbs, although there are no grounds for this in customary international law and it is contrary to the UN Charter.

- The next element which requires analysis and was also present in Nuremberg is the means of achieving the criminal plan, i.e. “by the use, if necessary, of armed force, or aggressive war”. This is important because of the character of the armed conflict, not only because of the applicability of the rules of international humanitarian law or determination of the type of crime, but also to determine the existence of a conspiracy, that is, the invented JCE before the ICTY. Stated otherwise, the use of armed force and waging of aggressive war still indicate that conspiracy as customary international law is possible only in the event of aggression or a crime against peace, and these crimes do not fall under the jurisdiction of the ICTY. In this respect, the ICTY Prosecution’s Final Report on the 1999 NATO bombing is very important. Having made an analysis, the Prosecution announced that the NATO bombing of the Federal Republic of Yugoslavia might be a crime against peace which

did not fall under the jurisdiction of the ICTY, which is still more proof that, if the Prosecution insists on a JCE in the indictment against Professor Vojislav Šešelj, it is admitting that he is being prosecuted for crimes against peace which do not fall under the jurisdiction of the ICTY. The Prosecution therefore did not review the 1999 NATO bombing either alternatively or cumulatively, as was done in Nuremberg (four counts of the indictment). This is not brought into question by the fact that some new crimes have been adduced from this since 1949.

In this respect, the difference between the “right to wage war” and “law of war” is of vital importance for the very existence of a criminal plan, i.e. the JCE. In the initial stage of its work, the ICTY defined the armed conflict or armed conflicts in the territory of the former SFRY as internal, international or a unique mixture up to a certain date, and as internal after a certain date, all because it was looking for a way to break through the grey area in order to implement the invented theory of the JCE. According to the practice of the Nuremberg trials, the theory of the JCE is unlikely to be applicable in an internal conflict because there is no aggression, and with the exception of the crime of aggression, other crimes cannot be regarded as conspiracy, but must be dealt with as straightforward perpetration of crimes or complicity in the narrow sense, but this is another subject, the true subject, which is of no interest to the ICTY.

An important detail is that the SFRY was authorised and obliged to respond with armed force as a form of self-defence, because what else should one do when JNA soldiers and army barracks come under fire other than reply to the attack? Is protecting army barracks from attacks, that is, defending army barracks, a part of the Serbs’ criminal plan? What about persons who open fire at US soldiers or soldiers of a NATO-member state? There has been no registered evacuation of NATO army barracks and pullout of soldiers to other territories, and particularly no case where a withdrawing army leaves behind weapons and ammunition to the enemy. This is what the JNA was asked to do, something that no one in his right mind would have even thought, let alone accepted, fearing charges of high treason.

- Pursuant to the Statute of the International Military Tribunal, the Tribunal in Nuremberg was authorised to establish whether an organisation was criminal. Thus, the Nazi Party was labelled an “instrument of cohesion among the accused” which instigated them to achieving the goals of the conspiracy. However, other criminal organisations emerged from the Nazi Party: the Nazi Party leadership, the Gestapo,

the SD and the SS, and the participants in the conspiracy were only officials of these organisations up to a certain level. That is why the Government, Army and Command were not defined as criminal. There is some reason in this because the criminal plan was viewed in the context of 25 years and, naturally, within the framework of the crime of aggression.

In cases before the ICTY, there is no logical parallel with Nuremberg from which to draw the alleged criminal plan of the Serbs (which appears to be genetically incorporated from Vuk Karadžić, according to the findings and opinion of the self-styled expert Yves Tomić), where it was formulated, or its elementary institutional cohesion or strength for it to be possible to say that a plan exists, who formulated it and where, who was involved in its formulation (the formulation concept is intentionally emphasised), how the JNA could have been the armed force that served the criminal plan when, institutionally, the JNA was until May 1992 the army of Yugoslavia under the command of others, least of all Serbs. How could anyone count on the JNA as an armed force to implement a criminal plan when the JNA was defending its barracks or standing on the lines of separation between the warring parties? Why would participants in the JCE within the JNA include Macedonians, Muslims and all others except Serbs if, according to the Prosecution, the original goal of the Serbian JCE was to create a new Serb-dominated state. Of course, the goal of the JCE is given too superficially and broadly here, because the JCE has not been specifically explained before the ICTY with regard to the Serbs, that is, it varies from one indictment against a Serb to the next.

Thus, the Nuremberg trials did not have an allegedly horizontal and vertical perception of the JCE (with respect to its goals and participants).

It must be noted that the ICTY is explicitly prohibited from declaring an organisation to be criminal and holding someone criminally responsible on the basis of his voluntary membership in an organisation. In this respect, ICTY practice has gone even further than the norms of Control Law no. 10.

In making comparisons it is important to note that, from the very beginning, the ICTY declared everything falling within the term "Serbian forces" as an armed force implementing the JCE. In the final score, this means that no Serb should have held a rifle from 1991, even when he was attacked on his doorstep and as his family was being killed. The Prosecution supports the opinion that the only legitimate armed forces in the territory of the SFRY since 1991 were the forces which had no Serbs,

because that is the only way a Serb can be relieved of responsibility for participating in the JCE. Ultimately, this means that it negates the very existence of Serbs and Serbia and this view is derived from the indictments for Kosovo and Metohija in the case against Slobodan Milošević.

- If the Nuremberg Trials are cited with regard to the JCE, it should also be known that the persons convicted there all held positions of authority, either as state officials or employees. It should also be known that some persons were acquitted in Nuremberg. The Nuremberg trials did not convict a single opposition politician or person who was only a member of the legislative authorities. In the proceedings against Professor Vojislav Šešelj, this Nuremberg principle is overlooked. He is the only accused who was an opposition deputy during the time frame covered by the indictment and the only member of the Serbian Radical Party. It should be known that the Democratic Party participated in the Government of Prime Minister Milan Panić from June 1992 to February 1993 and if Professor Vojislav Šešelj was a participant in the JCE with the top FRY and Serbian officials at the time, how could he have been a participant as an opposition deputy, while the Democrats who were in power were not? After all, they were all present at the joint session of the Assembly of all Serbian Lands held at the *Sava* Centre in May 1993 (including the Democratic Party deputies who are the favourites of the Western countries), while only Professor Vojislav Šešelj and deputies of the Serbian Radical Party were against this and left the session. How could he have been a participant in the JCE with those who were present at the *Sava* Centre, when he showed his disagreement by demonstratively leaving the gathering? It was then that the initiative was launched to topple the Government of Nikola Šainović, and several months later, when a debate was launched for a vote of no confidence, everyone joined the campaign of political persecution of the Serbian Radical Party with accusations against volunteers of the Serbian Radical Party in the media, surveillance by the secret police, searches of flats belonging to members of the Serbian Radical Party in Serbia, allegedly to find weapons brought from the fronts due to fears they might seize power in Serbia by force, and police arrests during preparations for the elections which were held in December 1993. During the campaign there were clear indications about a possible coalition between the SPS /Socialist Party of Serbia/ and the DS /Democratic Party/. Everything was done to reduce the number of deputies of the Serbian Radical Party and prevent it from coming to power in the elections. This shows that there never was a goal of a JCE,

and Professor Vojislav Šešelj could not have been a participant in the Prosecution's alleged JCE along with with no less than Slobodan Milošević.

The purpose of this abridged chronology (of dates and events) is to describe the Prosecution's view on participation in the JCE. Namely, the Prosecution asserts that there was a conflict between Milošević and Professor Vojislav Šešelj in September 1993, after which Professor Vojislav Šešelj stopped being a participant in the JCE. A similar principle was used for Milan Babić, i.e. he was expelled from the JCE by Slobodan Milošević. The Prosecution believes that participation in the JCE depends on personal relations with Milošević, not on the goals of the enterprise, engagement, participation or some other factors in connection with the criminal plan, contained in the theory of the JCE invented by the Prosecution. If one was to apply this logic, then all the politicians in Serbia who cooperated politically with Slobodan Milošević at any time between 1991 and December 1995 were participants in the JCE. An interesting point which can be derived as an inevitable conclusion from the Prosecution's concept, is that Professor Vojislav Šešelj appears to have been in the JCE with Slobodan Milošević even when Milošević, under pressure from the West, erected a border on the Drina and arrested Professor Vojislav Šešelj. These details are important because they are the most striking example of the Prosecution's ridiculous attempts to present transcripts of Professor Vojislav Šešelj's testimony in the Milošević case as a confession by Professor Vojislav Šešelj or proof of his tendency for manipulation.

4. An important moment is that Professor Vojislav Šešelj did not hold a position of authority and that he was constantly engaged in opposition struggle. In addition, Professor Vojislav Šešelj dealt with some matters as part of his academic work, and later as an opposition politician. The foundation of his political views must not be overlooked and it must be presented scholastically. An example is that many nations in Europe do not live in nationally consolidated states and the reason for this is often that territory was lost as a form of punishment. The Hungarians are perhaps a good example. In the Austro-Hungarian Empire, they all lived in one state but after the defeat in WWI, new borders were drawn and Hungary as a state was punished.

Croatia as a state and a nation should have been punished, although they were not punished, after WWI or WWII. The Croats should have been punished for genocide against the Serbs between 1941 and 1945. Croatia was in fact rewarded in 1991 when it first came into existence, even in the area which was never under its rule

in history, like in Dubrovnik for example. Croatia was rewarded following the disintegration of the SFRY, according to the colonial principle of creating new states (the Badinter Commission – opinion) at a time when Europe is becoming united, allegedly on the principle of “abolishing” borders between countries. The Germans were reunited, but the Serbs were punished. No one could compare the SFRY with the Austro-Hungarian Empire or parts of Africa where no states existed before the arrival of the colonial powers. These and similar views which were critically set out by Professor Vojislav Šešelj must be presented as the result of free and unencumbered academic work and expression of opinion.

These views must be presented as scholastic even for the subsequent period, not covered by the indictment, citing examples from news conferences at which Professor Vojislav Šešelj not only criticised the division, but also proposed compromise solutions to stop the armed conflict and ensure just peace. Professor Vojislav Šešelj reviewed and analysed many of the plans on how to end the armed conflict, all of which have been published.

Therefore, Brdanin’s or Krajišnik’s view of events cannot be identical to the statements made by Professor Vojislav Šešelj, not only because of the offices they held, but also in view of the way they were made public and their contents. This is where lies the difference, why everything that had been applicable in those cases from the aspect of the JCE cannot simply be copied and used in the case against Professor Vojislav Šešelj.

### **I n c o n c l u s i o n**

Since there was no JCE, the charges involving participation in the JCE do not hold up. If the JNA was not a participant with Professor Vojislav Šešelj in the JCE in Vukovar, it is therefore impossible that the JNA was a participant in the JCE with Professor Vojislav Šešelj at some other location. As far as Hrtkovci is concerned, there is no evidence that a JCE existed, and no evidence of other participants in the JCE, regardless of how the Prosecution would have defined the goal of the JCE. Hrtkovci is located in the AP Vojvodina, which is a part of the Republic of Serbia, and therefore, allegations about the “cleansing of territory to ensure dominance” is just another ludicrous idea of the Prosecution.

It is therefore impossible to define a goal of the JCE, determine its participants and establish its time frame. Since these conditions do not exist, except in the Prosecution's insinuations, all charges based on participation in the JCE do not hold up.

### **Commission as Physical Commitment Through Speech**

The Prosecution alleges that Professor Vojislav Šešelj physically committed the crimes of persecution, deportation and forcible transfer with his speeches.

This is alleged in paragraphs 5, 15, 17 (k), 17 (i), 31 and 33 of the indictment.

The indictment reads:

“Physical commitment is pleaded only in relation to the charges of persecutions (Count 1) by direct and public ethnic denigration (paragraphs 15 and 17(k)) with respect to the Accused's speeches in Vukovar, Mali Zvornik and Hrtkovci, and by deportation and forcible transfer (paragraphs 15 and 17(i)) with respect to the Accused's speech in Hrtkovci, and in relation to the charges of deportation and inhumane acts (forcible transfer) (Counts 10 – 11, paragraphs 31 - 33), with respect to the Accused's speech in Hrtkovci.”

It is mentioned in the Prosecution's Pre-Trial Brief in paragraph 141 and footnote 483, the only evidence being a report by expert witness Anthony Oberschall.

The Prosecution's Pre-Trial Brief reads:

“The Prosecution alleges that Professor Vojislav Šešelj physically committed the crime of persecution in Vukovar (Count 1, paragraphs 15 – 17 and 20), Zvornik (Count 1, paragraphs 15 – 17 and 22 of the indictment) and Hrtkovci (Count 1, paragraphs 15 – 17 and 33 of the indictment), through his use of ‘hate speech’ targeted at the non-Serb populations of those localities. The intent of the Accused to commit persecution in these locales is evidenced by:

- (1) the derogatory, violent and ethnic content of his speeches,
- (2) the environment of violent ethnic conflict in which the Accused made his speeches and
- (3) the fact that (as described above) such crimes occurred shortly after the Accused made his speeches.”

Besides expert witness Anthony Oberschall, the Prosecution also relied on witnesses mentioned in the section entitled instigating. In addition to the dilemma

whether it is possible to physically commit a crime through speech, there is also a dilemma whether one and the same speech can constitute committing and instigating a crime as well as aiding and abetting. A cumulative listing of the modes of liability in fact shows that the Prosecution relies on “deception”. For this reason, it is better to cite completed cases and final judgements and try to determine a location for it all. It must be borne in mind there was no speech in Mali Zvornik in March 1992 and no gathering, rally, public or private speech, as alleged by the Prosecution, in Vukovar in November 1991. Nevertheless, since this section analyses commission as a form of liability for what has been said, emphasis is placed on speech in general.

The view taken by the Trial Chamber in the Kordić case became binding for all judges at the ICTY. Of interest are paragraph 209 and footnote 272), which read:

**“a. Encouraging and promoting hatred on political etc. grounds**

“209. The Trial Chamber notes that the indictment against Dario Kordić is the first indictment in the history of the International Tribunal to allege this act as a crime against humanity. The Trial Chamber, however, finds that this act, as alleged in the indictment, does not by itself constitute persecution as a crime against humanity. It is not enumerated as a crime elsewhere in the International Tribunal Statute, but most importantly, it does not rise to the same level of gravity as the other acts enumerated in Article 5. Furthermore, the criminal prohibition of this act has not attained the status of customary international law. Thus to convict the accused for such an act as is alleged as persecution would violate the principle of legality.”

Footnote 272: “The criminal prosecution of speech acts falling short of incitement finds scant support in international case law. In the Streicher case, the International Military Tribunal /IMT/ convicted the accused of persecution because he incited the German people to active persecution. The IMT found that his acts (publishing a virulently anti-Semitic journal) amounted to incitement to murder and extermination.

“Similarly in the Akayesu Trial Judgement /.../, the ICTR found the accused guilty of direct and public incitement to commit genocide under Article 2(3)(c) of the Statute of the ICTR. Furthermore, the only speech act explicitly criminalised under the statutes of the International Military Tribunal, Control Council Law No. 10, the ICTY, ICTR and ICC Statute, is the direct and public incitement to commit genocide. The sharp split over treaty law in this area is indicative that such speech may not be

regarded as a crime under customary international law. The International Convention on the Elimination of All Forms of Racial Discrimination, for example, states that parties to the Convention shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, and incitement to racial discrimination. Article 20 of the International Convention on Civil and Political Rights /ICCPR/ (Prohibitions of Propaganda for War) provides that (1) any propaganda for war shall be prohibited by law. (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Although initial drafts of Article 20 made incitement to racial hatred a crime, only the obligation to provide for a prohibition by law prevailed. This formulation does not require a prohibition by criminal law. /.../ The broad spectrum of legal approaches to the protection and prohibition of encouraging, instigating and promoting hatred, distrust and strife on political, racial, ethnic or religious grounds, by propaganda, speeches or otherwise also indicates that there is no international consensus on the criminalisation of this act that rises to the level of customary international law. Germany and Canada mark the opposite ends of this spectrum, although various other countries, including the former Yugoslavia and the USA, have provided for some form of regulation of hate speech.

“South Africa Constitution (1996), Art. 16(c) (excluding advocacy of hatred that is based on race, ethnicity, gender and religion, and that constitutes incitement to cause harm), Canadian Criminal Code, section 319(2) (prohibiting the communication of statements that wilfully promote hatred against any identifiable group distinguished by colour, race, religion or ethnic origin), and French Criminal Code, article 32 (Those, who by publication by any of various means, provoke discrimination, hatred, or violence with regard to a person or a group of persons by reason of their origin or their membership or nonmembership in an ethnic group, nation, race, or particular religion, shall be punished by a term of imprisonment of one year and by a fine). Article 133 of the Yugoslav Federal Criminal Code prohibited the publication of information that could disrupt the brotherhood, unity and equality of nationalities. The German Criminal Code provides for the punishment of those who incite hatred, or invite violence or arbitrary acts against parts of the population, or insult, maliciously degrade, or defame part of the population, in a manner likely to disturb the public peace. /.../ The United States, in contrast, is exceptional in the extent of its free speech guarantees. Hate speech finds protection in the United States constitutional

regime provided it does not rise to the level of incitement, a very high threshold in American jurisprudence.”

It follows that speech, for which punishment is sought from the point of view of the ICTY, has not yet reached the level of international customary law. Discriminatory or hate speech was not listed as a crime in the ICTY and, the important point is that it does not reach the same degree of gravity as other acts listed in Article 5 of the Statute. Therefore it is impossible to indict someone for physical commission through speech, and most significantly, speech cannot constitute a crime against humanity, that is, the charges against Professor Vojislav Šešelj for his speeches as constituting physical commitment of persecution, deportation and forcible transfer do not hold. There will be more mention of speech being used for inciting, aiding and abetting in the section on his contribution as a co-perpetrator, which is possible only under certain circumstances.

#### **Additional Elements for Speech**

Since all of Professor Vojislav Šešelj’s speeches, statements and phrases (speeches) have been analysed at the ICTY, they must be sorted out according to several criteria.

The starting point in view of the time frame criterion would have to be the moment when Professor Vojislav Šešelj became a public figure, meaning that the starting point would be 1982, if not earlier, extending to the present. During this time, his speeches could be grouped into periods, depending on the status of Professor Vojislav Šešelj at the time. This would result in the following periods: from 1982 to 1986, when he moved from Sarajevo to Belgrade; from 1986 to 31 December 1990; from 1 January 1991 to July 1991; from August 1991 to September 1993; from September 1993 to 24 March 1998; from 24 March 1998 to 31 December 2000; from 1 January 2001 to 24 February 2003; and from 24 February 2003 until the present.

A common denominator for all these periods is that Professor Vojislav Šešelj was constantly under surveillance by the State Security Service, as the biggest opponent of everyone who was in power during this very long period. His four books entitled “Police File” are proof of this as they contain all the documents showing the covert surveillance of Professor Vojislav Šešelj and his activities. Therefore, everything he said was the subject of daily analysis by the authorities who were not inclined to Professor Vojislav Šešelj. As an anti-communist, Professor Vojislav Šešelj

was publicly favoured by Western democracies and intellectuals until 1986 and certainly after that, until a multi-party system was established in the SFRY in 1990. Therefore, what Professor Vojislav Šešelj said could not have been interpreted as inciting national, racial, religious or any other form of discrimination and it was not viewed as such by Western democracies, nor by the authorities although it was in their political interest to curb Professor Vojislav Šešelj's political activities. This is also important since his prison sentence for inciting intolerance or discrimination was reduced from 10 to 5 years in 1990, since the description of the nature of the crime leaned on the crime of verbal offence which cannot be defined as a crime since it brings into question the freedom of expression, thought and presenting scholarly opinions, i.e. bringing into question political freedoms. If the existence of such a crime could be justifiable in a one-party system, its existence cannot be justified in a multi-party system for threatening political freedoms.

The best way of illustrating those times is by giving examples. Imagine Professor Vojislav Šešelj in Belgrade's main pedestrian zone, standing next to a small table covered by the Serbian flag (which is now the official flag) and a cassette-player is playing the song *Bože pravde* /God of Justice/ (now the anthem of the Republic of Serbia). If a retired communist were to pass by and then go up to the first policeman and tell him that the actions of Professor Vojislav Šešelj were disrespectful of his feelings, the policeman could take Professor Vojislav Šešelj into custody to a police station under the Law Protecting the Name and Works of Comrade Tito and launch misdemeanour proceedings which would have landed him in prison for several dozen days. That might have been the case according to the laws at the time, but it was strange because expressing resistance to the communist regime in other republics was not prohibited, it was encouraged. If this event were viewed from present-day circumstances, there is no adequate reply to the question what was Professor Vojislav Šešelj's mistake?

Everyone today salutes the flag of the Republic of Serbia and stands at attention during the rendering of the anthem *Bože pravde*. It appears that Professor Vojislav Šešelj was always ahead of his time and others. What did he see that the others did not and why was it not seen by the others? After all, what could those others, or everyone today for that matter, have seen or felt had it not been for individuals like Professor Vojislav Šešelj who broaden horizons.

How can a person who enlightens others by example be guilty? Today we are taught that Galileo is not guilty. How can scientific thought be controlled in natural and social sciences? To prevent persecution for scientific thought, people have been granted freedom of thought, creativity and exchange of thought. Civilisation must not allow the worst to kill off the best. The best are respected and protected even if one disagrees with their thoughts. History is full of examples when the majority was wrong which is why the minority is always protected.

One need only recall the fact that Professor Vojislav Šešelj appeared on television to present his program at the presidential elections in the Republic of Serbia in 1990, practically straight from prison. He was a fierce political opponent although the authorities described his ideology as entertaining folklore and an impossible mission. In 1990, few knew that the words "Greater Serbia" had any meaning which is why Milošević and nearly everyone on the political scene described the things Professor Vojislav Šešelj was talking about as an impossible mission, something found in history books, unrealistic and out of date, something one should not pay attention to because Serbs are moving towards a Western-style democracy.

That is why it is now ludicrous when persons, who used to be Professor Vojislav Šešelj's fierce opponents in the past, support the ideology of Greater Serbia, and the situation culminates and becomes hilarious when the ideology of an opposition politician, Professor Vojislav Šešelj, is presented as a dominant and cohesive factor in the JCE, when politicians in power held completely opposite views and constantly persecuted Professor Vojislav Šešelj on political grounds as their fierce political rival.

Added to this should be the fact that Professor Vojislav Šešelj was the only one who never reneged on or abandoned his ideology during the period covered by the indictment, to this day. If the ideology of the Serbian Radical Party had been criminal, it would have been banned at the time, during the period covered by the indictment and as well as now. However, no one (not even expert witness Yves Tomić) established that the ideology of the Serbian Radical Party was criminal, banned or in contradiction to the Constitution, the laws and international standards. The ideologies of the HDZ /Croatian Democratic Union/, the SDA/Party of Democratic Action/, the SDS, the SPS and the SRS are in existence to this day. From the aspect of Western democracy, all these ideologies are now acceptable, except the ideology of the SRS. However, the ICTY has convicted representatives of some of

these ideologies, but there have not yet been convictions of persons who support the ideology of the SRS. Since the impression is that the ideologies are not on trial at the ICTY, it is peculiar why are the ideology of the SRS and Professor Vojislav Šešelj on trial in the proceedings against Professor Vojislav Šešelj?

Notwithstanding what may be deduced about his activities, Professor Vojislav Šešelj is first and foremost an accomplished scholar. He was always the best pupil and student, the best Master of Arts and holder of a doctorate. He was the best and the youngest person when he acquired his titles. He is talented and predestined for scholarly work and for broadening horizons. It is therefore unclear how anyone could dare put a scholar on trial for his scholarly work, for his discoveries, his knowledge and quest for truth. People engaged in scholarly work incorporate the scientific methods of gaining knowledge and making conclusions so deeply that it becomes a part of their nature to constantly check, doubt, search and espouse their views. He demonstrated this during his incarceration, by reviewing, searching and looking for the truth, which is why he does not have a problem with correcting those who make mistakes in the courtroom or accepting everything that he believes to be indisputable. In all matters, his character does not allow him to use something that is not his, and he is particular about lying for he is against lies, even though they might sometime be helpful to him in confusing people in the courtroom. He must react to a lie and contribute to the establishment of the truth. Therefore, scientific methods of deliberation and cognition are an integral part of his personality in all respects, which is why he fascinates with his knowledge. He asks questions, investigates, studies, searches and resolves questions which are not an integral part of his primary profession with regard to translation, understanding medical findings, geography, history, statistics, media and, generally, everything that is of concern to him.

As a scholar, he fights for his discoveries, knowledge and the truth, and this is why he is critical of everything, questioning and checking his findings and his way of seeing the truth. Professor Vojislav Šešelj shows this in his work where he openly states his agreement or disagreement with an author about a matter, event or person, giving arguments and reasons for his opinion.

This is why the issue of Professor Vojislav Šešelj's state of mind and intent must never be broached because it is an area of his guaranteed freedom. It is because of this that he cannot be silent, but like any serious scholar, he has to defend his position, his truth, and always strongly confront an opinion or position he disagrees

with. This is important to know because the state of mind and intent of a scholar are not subject to being checked, evaluated and determined in the sense of criminal responsibility for a view or an opinion, because another scholar has the freedom to hold a completely opposite view or opinion, although views can sometimes be quasi-scientific primarily if the method of work was not scientific. However, even under such circumstances, it does not fall within the jurisdiction of a court except for plagiarism, where judges are assisted by scholars as experts.

In this respect, it is important to point out that it is completely unacceptable to have unqualified and incompetent individuals appear as experts, basically testifying about Professor Vojislav Šešelj's speech. Speech here is used in its broadest term to include statements, interviews, announcements, as well as newspapers, books and scholarly works of Professor Vojislav Šešelj.

At first glance it may appear that Professor Vojislav Šešelj made statements about matters which are outside the framework of his scientific thought. He is a professor of law, he was a professor at the Faculty of Political Science in Sarajevo, a professor at the Faculty of Law in Priština and Belgrade and he was actively creative in a wide variety of fields. Suffice it to say that his field of expertise was politics, so as to include all social sciences (philosophy, sociology, defence, history, law, etc.).

For this reason it is completely incomprehensible to establish the state of mind and intent of a scholar who displays in every step the methods used to establish his knowledge and creativity.

This comment is necessary in order to comprehend the absurdity in dividing this long period into stages, with respect to the events and circumstances. If one were to engage in a stage-by-stage deliberation and explain the speech, one would again encounter the problem of impunity for reviewing the state of mind and intent of a scholar for his work.

The aspect of authenticity and truth are disregarded in many statements cited by the Prosecution. Examples are alleged statements about the Ustasha hordes, the new Ustasha *poglavnik*, the danger of a repeat of the genocide against Serbs and so on. The question asked is what is discrimination, or which word causes discrimination. When Tuđman says he will restore the borders of the Croatian *banovina* without the Serbs within the borders of the NDH, and when Professor Vojislav Šešelj warns that this should not be allowed, it is unclear what is seen as discriminatory in the words of Professor Vojislav Šešelj?

In the trial against Professor Vojislav Šešelj, there is simply confusion as to the values. The following matrix appears to be in force: perhaps everything you said is the truth but someone has to be responsible for crimes committed by the Serbs and we found Professor Vojislav Šešelj to be the guilty party. Speech which contains the truth, which has been historically proven and confirmed to this day, must be instigation in the opinion of the Prosecution. The only refugees in Europe today are the Serbs and that is why Serbs must stand trial. The international community is making demands on Croatia to resolve the problem of Serbian refugees, while Professor Vojislav Šešelj is on trial for telling the truth and warning about the consequences which really came true.

Perhaps more reasons should be mentioned in this part of my submission entitled “instigation”, but since the Prosecution gives a more serious legal and criminal qualification of speech as physical commitment of a crime, it may turn out to be useful once again to state some views with respect to instigation, which we said have not been fulfilled in the charges against Professor Vojislav Šešelj, making it simply impossible for them to exist in connection with the charges for physical commitment. If aiding and abetting is not mentioned as a requirement for the speech charges, it cannot exist for a more grave form of individual criminal responsibility such as physical commitment of crime through speech. The legal analysis of instigation at the ICTY uses some standards as questions which require an answer:

**First, what could be the *actus reus*?**

**- Professor Vojislav Šešelj used all means to promote his nationalistic rhetoric.**

It is unclear whether this is prohibited. It is natural for a scholar and an opposition politician to promote the ideology of his party, his views and opinions whenever an opportunity arises. The purpose of political engagement is to promote one’s ideology in order to enlist voters and sympathisers so that a politician could come to power, respecting the electoral will of the people, and implement his ideology. In other words, this means that the goal is to win power and be elected to office in order to implement an ideology and the way to do it is by promoting this ideology, enlisting as many followers as possible and winning elections. There is nothing unlawful about promoting one’s ideology, although it may be nationalistic, both with respect to the ideology itself and the means used for its promotion. Had

Professor Vojislav Šešelj used unlawful means to promote his ideology, the authorities would have certainly prohibited its promotion. Promotions at public forums, rallies, news conferences, publications, books and other allowed means cannot be incriminating in anyway. It is therefore unclear how anyone could even think to look for elements of the *actus reus* of a crime within the framework of legal activities. In this respect, the ICTY is a creation of sorts which looks for the *actus reus* of a crime within the crime as well as within the framework of individual criminal responsibility, thus shifting the boundaries of criminal responsibility with respect to the act of commission of a crime by equating it with the act as a form of individual criminal responsibility.

**- Professor Vojislav Šešelj systematically denigrated the non-Serbian populations.**

Croats in Croatia boast of being Ustashas and because they are Ustashas they hold enviable positions in Croatian society. To Croats, the word Ustasha is not an insult and it is thus unclear why the Prosecution would regard it as an insult. Professor Vojislav Šešelj did not make generalisations that all Croats were Ustashas, worse than the Nazis, but in view of the historical context, the Serbs' accumulated experience and the fact that Croatia has not distanced itself from the Ustasha ideology, it is not an insult to say that one cannot know whether a Croat is against the Ustasha ideology. To be sure, it must be noted that the Prosecution mentioned in the indictment some words which Professor Vojislav Šešelj never said, but this was discussed during the Prosecution's presentation of evidence when witnesses recanted statements they allegedly gave to investigators of the Prosecution.

**- Professor Vojislav Šešelj spread an atmosphere of fear among the civilian population.**

If everything Professor Vojislav Šešelj said was true, the importance of whether it was experienced as intimidation by an individual is unclear. In other words, it is not alleged that he intimidated the population or that he created an atmosphere of fear, but that he spread an atmosphere of fear, meaning that everyone was justifiably afraid but only Professor Vojislav Šešelj is guilty although all he did was tell the people why they were afraid.

This would specifically mean that when people listened to Professor Vojislav Šešelj saying that killings of Serbs resembled the genocide of 1941, having already

some knowledge about this, either from others or directly from refugees, the people were rightfully afraid of war and suffering but Professor Vojislav Šešelj is guilty for spreading the atmosphere of fear. It seems that, as an opposition politician, only he was prohibited from commenting on events and it appears that his words were decisive in making the people afraid.

The crowning touch is that he spread fear among Croats and Muslims as well as the Serbs. It would be safe to assume that Croats in Serbia wondered why Serbs in Croatia and Bosnia and Herzegovina were being killed and expelled, and they would normally be afraid, or at least not be comfortable with the fact that their people were killing and expelling Serbs because, if Croats in Croatia could do that to Serbs, the inevitable question is whether Serbs might do the same thing to Croats in Serbia? It is probably the Croats in Croatia who caused fear among Croats in Serbia. If Serbs were killed and expelled from parts of Croatia which were not within the territory of the RSK, for example from Zagreb where there were no armed clashes between Croats and Serbs, what was the difference for Croats in, let's say, Belgrade? Probably what Tuđman and his Ustashas were doing caused fear among the people, both among Serbs in Croatia and Croats in Serbia. After all, since 1991 the Serbs have left whole sections of Zagreb's suburbs which they used to inhabit and Croats now live in their homes. How many former and current Croatian state officials live in flats belonging to Serbs?

Moreover, Professor Vojislav Šešelj is charged with spreading an atmosphere of fear and by the logic of things, the guilty party is responsible for this atmosphere. The person spreading the atmosphere of fear cannot be responsible, if those who created the atmosphere are not known. Those who created the atmosphere of fear are those who caused and imposed the fear, and the Prosecution admits this was not done by Professor Vojislav Šešelj.

**- Professor Vojislav Šešelj instigated volunteers of the SRS and SČP to sign up and use all means when going to the field to implement his nationalistic ideology.**

It is not prohibited to call on people to sign up as volunteers to fight in the area of conflict as part of units of the JNA, VRS, VRSK, TO and other units of the official armed formations. There is no document prohibiting the act of calling on volunteers to carry out their legal obligation. Moreover, during the Prosecution's presentation of

evidence, what Professor Vojislav Šešelj told the volunteers before going to the front was established, and there is no indication of an order or a call to commit crimes in the area of armed conflict. The Prosecution made a blunder and, unable to find a word resembling incitement or ordering, it plumps the words of Professor Vojislav Šešelj's "nationalist ideology" with "all necessary means" clearly implying that his ideology was in every respect criminal. Simply said, everything about Professor Vojislav Šešelj is criminal and this is the methodology which was used although it is more appropriate for a media war than a serious judicial institution, which the Prosecution should be. There is no point in commenting the Prosecution's allegation that the volunteers used all means necessary to implement Professor Vojislav Šešelj's ideology. The meaning of this is not known, how is it possible and what it might look like in a place where there is fighting. Other than slogans and empty phrases, the Prosecution did not offer any proof of this allegation. If it counted on any witnesses, it still remains unclear which witness confirmed the Prosecution's allegation in the courtroom.

**Second, what could be the *mens rea*?**

**- Professor Vojislav Šešelj's awareness with regard to the real probability that crimes would be committed after his acts of instigation.**

This means that the act of instigation is seen as having been perpetrated and in existence. If this thesis of the Prosecution were true, there would be no need to establish *mens rea* because it is practically premeditated intent. The condition of real probability is classified according to the Prosecution's Pre-Trial Brief into:

a) Professor Vojislav Šešelj was aware of his influence on the public opinion in Serbia, generally speaking, his sympathisers and ideology, and specifically on the trainees, volunteers, of the Serbian Radical Party and the Serbian Chetnik Movement.

It is an undisputable fact that everyone engaged in politics influences public opinion. It is indisputable that every politician is aware of this influence, but what would certainly be of importance for the fate of the charges against Professor Vojislav Šešelj is the extent of his influence on public opinion? The only way to measure influence on public opinion is popularity, position in the authorities and, of course, electoral results. They constitute the response of the public which is used to measure Professor Vojislav Šešelj's influence. Every politician wants to be an important political factor, to be a factor in political processes and, logically, to promote and even

make exaggerations about his importance and influence. This is normal for people who are politicians. However, since influence is here put in the context of individual criminal responsibility, one must resort to facts.

As a reminder, the ICTY has jurisdiction over acts, activities and conduct committed as of 1 January 1991. The presidential and parliamentary elections were held in Serbia in December 1990. The Serbian Radical Party did not participate in the parliamentary elections because it had not been founded and could therefore not have had any deputies since it had no candidates. With regard to the presidential elections in the Republic of Serbia, Professor Vojislav Šešelj was a candidate of a group of citizens because he was serving a prison sentence for a misdemeanour offence and was released just before his first televised public appearance. He won about 100,000 votes in the 1990 elections. Naturally, he was not elected president. The parliamentary and presidential election results clearly show the influence of the other politicians. The Serbian Radical Party was established on 23 February 1991 and the first important political step it made was when Professor Vojislav Šešelj was elected to the republican parliament at by-elections in Rakovica in mid 1991. Thus, Professor Vojislav Šešelj was only one of 250 deputies. As a result, Professor Vojislav Šešelj was truly aware of his political influence, unlike the Prosecution which is completely oblivious of what it wrote in the indictment and its Pre-Trial Brief. Professor Vojislav Šešelj is aware of his political influence to this day. The condition imposed by the ICTY is simply incomprehensible as it means nothing because the Prosecution could not find a single word incriminating Professor Vojislav Šešelj of inciting and calling for the commission of crimes. As it was lacking this word and in view of the disaster with its witnesses, as obvious false witnesses, the Prosecution resorted to making fabrications about the state of mind of Professor Vojislav Šešelj.

b) The Accused was aware of the context of war in which this transpired, making the crimes of incitement perpetrated by him particularly dangerous.

This refers to the context of war, awareness about the existence of the context of war and, fundamentally to the act of instigation, thereby either surmising or assuming the requirement of *mens rea*. Therefore, if *mens rea* examines the state of mind, then awareness of the context of war in Professor Vojislav Šešelj was identical to that of the UN Secretary General, the presidents of the United State, France, Germany, Italy and others who, unlike Professor Vojislav Šešelj, have not been charged with having the identical state of mind about the context of war.

c) He was aware that crimes were committed during the war; what is missing here is the allegation, as expected from the Prosecution, that he had knowledge of crimes committed during the war, about which he learned when he came to The Hague on 24 February 2003. This is the type of nonsense employed by the Prosecution.

d) He was aware that it was impossible not to know about the criminal past of volunteers which was known and that one could not have known about the existence of a greater risk that these volunteers would commit war crimes once they are armed and in a war situation. Nonsense prevails in the wording of this requirement. He was aware that the criminal past could not have been unknown. How can this be proven? How does the Prosecution intend to prove this? Awareness about two negative facts and the procedure of proving negative facts. How can this be possible and is it even possible in the legal system of a serious country?

e) He had knowledge about what was going on in the field and that crimes had been committed against civilians in the zones of combat, in areas where volunteers of the SRS and SČP had been sent. How can this be proven with respect to awareness, when there was no evidence showing that Professor Vojislav Šešelj could have known what was going on in the field?

**- The intention of the Accused to provoke and induce his audience to persecute non-Serbs on political and religious grounds.**

The intention to provoke and induce his audience to commit persecution. The audience is unknown and in presenting its evidence, the Prosecution did not find proof of anyone from the audience having committed persecution. The Prosecution did not name a single person who committed persecution by his full name and proved that this person had been a part of the audience who listened to Professor Vojislav Šešelj.

**The third condition for instigation or incitement: the existence of a significant nexus between the instigation and crimes committed by volunteers of the SČP, the SRS or followers of the ideology of the Accused**

The Prosecution failed to prove this condition during the proceedings. This is the Prosecution's biggest problem, because not a single volunteer of the Serbian Radical Party has been convicted of war crimes at any location. Therefore, more empty words of the Prosecution and no proof.

**The time frame of the charges**

The ICTY Statute covers acts committed in the territory of the former SFRY from 1 January 1991. Professor Vojislav Šešelj has been charged for events which took place between 1 August 1991 and 1 September 1993 (uninterruptedly for 25 months). Although the Prosecution claims that the JCE, of which Professor Vojislav Šešelj was a part, lasted until December 1995, under the indictment his participation practically ends in September 1993. It is interesting that the day Professor Vojislav Šešelj “left” the JCE was when he came into conflict with Slobodan Milošević. In the indictment against Milan Babić, instead using the word “left” the JCE, the Prosecution said that Milan Babić was “expelled” from the JCE. The different words are not the result of a difference in translation, they represent the Prosecution’s conjecture and arbitrariness, because in bringing charges it lumped everything together and counted on coming up with something or at least one thing which might be acceptable to the judges of the Trial Chamber.

In view of provisions of the ICTY Statute, the JCE could have started on 1 January 1991. According to the indictment against Professor Vojislav Šešelj, he joined the JCE on 1 August 1991 and he had a conflict with Slobodan Milošević in September 1993, which is when he simply “left” or was “expelled” by Slobodan Milošević.

What about his relationship with other persons who were, according to the Prosecution, allegedly in the same JCE with Professor Vojislav Šešelj? What happened before 1 August 1991 and after 1 September 1993 with respect to his participation and the existence of the JCE? How could he have “joined” and “left” the JCE which lasted until December 1995? It appears that the Prosecution alleges that the JCE continued without Professor Vojislav Šešelj, according to the principle of “those who are absent are not missed.”

From 1 August 1991 until the end of 1992, Professor Vojislav Šešelj was the sole member of the Serbian Radical Party who was also a deputy in the National Assembly of the Republic of Serbia. Although the Serbian Radical Party won 73 seats in the December 1992 election, it was still an opposition party during the period covered by the indictment (until September 1993) and Professor Vojislav Šešelj was a prominent opposition politician. As an opposition politician, Professor Vojislav Šešelj could propose, criticise and state his political views, with a view of gaining more popularity for his political party with every move, for it to win even more seats in parliament at the next elections, which is a prerequisite for winning and coming to

power or participating in the government. The Serbian Radical Party became a part of the government on 24 March 1998.

A simple analysis of the time frame of the indictment shows that as an opposition politician, Professor Vojislav Šešelj was allegedly a participant in the JCE, but as the Deputy Prime Minister from 24 March 1998, he was not a participant in the JCE in connection with the events in Kosovo and Metohija in 1999? He could allegedly be held accountable as an opposition politician within a certain time frame, but he does not come under suspicion as a member of the government in another period of time? There is probably no such case in international jurisprudence. As an opposition politician and a fierce opponent of the authorities, he is allegedly responsible for participating in the JCE with members of the authorities, but as a politician in power there is no suspicion about his participation in the JCE with other representatives of the government?

Added to this should be the fact that from 1982 until 24 February 2003, the State Security Department constantly implemented measures of surveillance against Professor Vojislav Šešelj, that is, even when he was not in politics, as a member of the opposition and when he was a part of the government. For the absurdity to be complete, as members of the JCE together with Professor Vojislav Šešelj, the Prosecution listed persons who were in charge of the State Security Department and those who were notified by the State Security Department. Their names are: Slobodan Milošević, Jovica Stanišić, Franko Simatović aka Frenki, Radmilo Bogdanović, Radovan Stojčić aka Badža.

All this shows the arbitrariness of the Prosecution in bringing the indictment against Professor Vojislav Šešelj, and like everything else, the arbitrariness is evident in the time frame of the charges.

## **VII. Satisfying the Requirements for the Crimes Charged**

### **A) General Requirements under Article 3 of the Statute and the Common Article 3**

In its Pre-Trial Brief the Prosecution alleges:

“154. The Accused has been charged with violations of Articles 3(b), 3(d) and 3(e) of the Statute, as well as with murder, cruel treatment and torture as violations of Article 3(1)(a) common to the 1949 Geneva Conventions (hereinafter: common Article 3) chargeable under Article 3 of the Statute.

“155. The general requirements for violations of Article 3 are:

- (i) that there was an armed conflict; and
- (ii) there was a nexus between the conduct and the armed conflict.

“156. An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State. The armed conflict can consist of localised areas of conflict.

“157. The nexus need not be a causal link, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. To find a nexus, it is sufficient that the alleged crimes be closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict. Crimes need not be committed in the area of armed conflict, but must at least be “substantially related” to this area, which at least includes the entire territory under control of the warring parties. It is essential, however, to establish the existence of a geographical and temporal linkage between the crimes ascribed to Šešelj and the armed conflict. Šešelj must be aware of the factual circumstances constituting the armed conflict.

“158. Crimes under common Article 3 must be committed against persons taking no part in hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat.

(i) the violation must constitute an infringement of a rule of international humanitarian law;

(ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met;

(iii) the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim;

(iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.”

The Prosecution’s problem is that in the indictment it claims that Professor Vojislav Šešelj did not commit any of the crimes he is charged with under Article 3 of the Statute, but holds him responsible for participating in the JCE and for other forms

of criminal responsibility as co-perpetrator in the commission of crimes (instigating, aiding and abetting, planning and ordering).

Therefore, the general provisions of Article 3 are of no relevance for Professor Vojislav Šešelj, but the Prosecution is trying to establish and find a link between Professor Vojislav Šešelj and one of the principal perpetrators of the said crimes. There will be more about the absolute nonexistence of this necessary link in the individual analysis of every crime with which Professor Vojislav Šešelj is charged under the indictment.

Moreover, of interest is the view about the *nexus* in connection with the general provisions of Article 3 of the Statute and the *nexus* in the sense of the general provisions under Article 5 of the Statute. This is particularly manifested with respect to locations where there were armed clashes and those where there were no armed clashes, such as the location of Hrtkovci and the Autonomous Province of Vojvodina in Serbia. Under Article 3 of the Statute, “crimes need not be committed in the area of armed conflict, but must at least be “substantially related” to this area, which at least includes the entire territory under control of the warring parties.” This definition of *nexus* is justified unlike the definition of *nexus* under Article 5 of the Statute where the Prosecution insists on the existence of crimes against humanity at the Hrtkovci location, where there is no material *nexus*, and overlooking the concept of territory under control of the warring parties. This is just another proof that the ICTY has no jurisdiction over the events in Hrtkovci because the government which was in power in the territory of Serbia, where Hrtkovci and the Autonomous Province of Vojvodina are located, did not have the status of a warring party in the armed conflict which was unfolding at the time in the territories of Bosnia and Hezegovina and Croatia.

**Count 4: Murder as a Violation of the Laws or Customs of War**

In its Pre-Trial Brief the Prosecution alleges:

“170. For ‘murder’ under common Article 3(1)(a), the Prosecution must establish:

- (i) the death of a victim;
- (ii) the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible;
- (iii) the act or omission was committed with intent to kill, or in the knowledge that death was a probable consequence of the act or omission.

“171. Omissions as well as concrete acts can satisfy the *actus reus*. The victim’s death may be proved either directly or circumstantially.”

In the indictment the Prosecution claims:

“18. From on or about 1 August 1991 until June 1992 in the territory of the SAO SBWS in Vukovar, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation, or execution of the [Removed] murder of Croat, Muslim and other non-Serb civilians as specified in paragraphs 20-22, 24, 26, and 27.

C R O A T I A [Removed]

“19. [Removed]

S A O S B W S – V u k o v a r

“20. In November 1991 while Serb forces fought to take over Vukovar, Vojislav Šešelj visited the town. On or about 8 November 1991, Vojislav Šešelj publicly pronounced, “This entire area will soon be cleared of Ustashas.” On or about 13 November 1991, Vojislav Šešelj, both publicly and privately, pronounced, “Not one Ustasha must leave Vukovar alive.” These speeches persecuted Croats and instigated the killing of Croats. On or about 20 November 1991, as part of the overall persecution campaign, Serb forces, including volunteers recruited and/or incited by Vojislav Šešelj, removed approximately four hundred Croats and other non-Serbs from Vukovar Hospital in the aftermath of the Serb take-over of the city. Approximately three hundred of these non-Serbs were transported to the JNA barracks and then to the Ovčara farm located about 5 kilometres south of Vukovar. There, members of the Serb forces beat and tortured the victims for hours. During the evening of 20 November 1991, the soldiers transported the victims in groups of 10-20 to a remote execution site between the Ovčara farm and Grabovo, where they shot and killed approximately two hundred and sixty-four non-Serbs from Vukovar Hospital. Their bodies were buried in a mass grave. The names of the murder victims are set out in Annex III attached to this indictment.

“21. After Serb forces took control of Vukovar on 18 November 1991, over one thousand civilians gathered at the *Velepromet* facility. Some were compelled to

go there by Serb forces and others went voluntarily seeking protection. By 19 November 1991, approximately two thousand people had gathered inside the *Velepromet* facility. The JNA considered about eight hundred of these persons to be prisoners of war. By the evening of 19 November 1991, shortly after the JNA began to transfer the alleged prisoners of war to their Sremska Mitrovica detention facility in Serbia, Serb forces, including volunteers recruited and/or incited by Vojislav Šešelj, separated a number of individuals from the alleged group of prisoners of war. They took these selected individuals out of the *Velepromet* facility and killed them. The bodies of some of those killed were transported to the Ovčara farm and buried there in the mass grave. The bodies of six other victims were left lying on the ground behind the *Velepromet* facility. The names of these six murder victims are set out in Annex IV attached to this indictment.

B o s n i a   a n d   H e r z e g o v i n a  
Z v o r n i k

“22. In March 1992, Vojislav Šešelj gave a speech at a rally in Mali Zvornik, located across the Drina river from Zvornik. Vojislav Šešelj said: “‘Dear Chetnik brothers, especially you across the Drina river, you are the bravest ones. We are going to clean Bosnia of pagans and show them a road which will take them to the east, where they belong.’ This speech persecuted and/or instigated the persecution of non-Serbs in Zvornik. In April 1992, Serb forces, including volunteers known as ‘Šešelj’s men’ and ‘Arkan’s tigers’, attacked and took control of the town of Zvornik and surrounding villages. During the attack, Serb forces killed many non-Serb civilians. On or about 9 April 1992, Serb forces, including members of Arkan’s unit, executed twenty Bosnian Muslim and Croat men and boys in Zvornik town. Following the take-over, non-Serbs were routinely detained, beaten, tortured and killed. From April to July 1992, hundreds of non-Serb civilians were detained in or near Zvornik in the *Standard* shoe factory, the *Ciglana* factory, the *Ekonomija* farm, the Drinjača Cultural Centre and the Čelopek Cultural Centre. On or about 12 May 1992, at the *Ekonomija* farm, Serb forces, including the leader of a group of “Šešelj’s men”, beat to death a detainee named Nesib Dautović. Between 12 and approximately 20 May 1992, Serb forces killed at least four other Muslim men at the *Ekonomija* farm. In June or July 1992, Serb forces, including volunteers known as ‘Šešelj’s men’, killed a non-Serb male detainee at the *Ciglana* factory. Between 30 and 31 May 1992, Serb forces,

including a group of 'Šešelj's men', tortured and killed 88 Bosnian Muslim males at Drinjača Cultural Centre. Between 1 and 5 June 1992, Serb forces killed more than 150 Bosnian Muslim males at Karakaj Technical School. Between 7 and 9 June 1992, Serb forces killed more than 150 detainees at Gero's slaughter-house. Between 1 and 26 June 1992, Serb forces killed more than forty non-Serb male detainees at Čelopek Cultural Centre. The names of the identified murder victims at the *Ciglana* factory, Drinjača Cultural Centre, Karakaj Technical School, Gero's slaughter-house, Čelopek Cultural Centre, and the *Ekonomija* farm are set out in Annex V to this indictment.

[Removed]

23. [Removed]

#### Greater Sarajevo

"24. Beginning in April 1992, Serb forces, including volunteers known as 'Šešelj's men', attacked and took control of towns and villages in the area of Greater Sarajevo, including the town of Ilijaš and the village of Lješevo in Ilijaš municipality, the village of Svrake in Vogošća municipality and the neighbourhood of Grbavica in Novo Sarajevo municipality. Following the take-over, non-Serbs were routinely detained, beaten, tortured and killed. On or about 5 June 1992, members of a unit of 'Šešelj's men' killed 22 non-Serb civilians in the village of Lješevo. During the summer of 1993, members of a unit of 'Šešelj's men' cut off the head of a civilian and killed four prisoners-of-war in the area of Crna Rijeka in Ilijaš municipality. In the summer of 1993, members of a unit of 'Šešelj's men' killed twenty-five non-Serb men who were being used as human shields, and two non-Serb men who refused to act as human shields, at Žuč in Vogošća municipality. On 17 July 1993, members of a unit of 'Šešelj's men' killed two prisoners-of-war, Živko Krajišnik and Rusmir Hamalukić, on Mount Igman in Ilidža municipality. The names of identified victims of murder [Removed] at Lješevo and Žuč are set out in Annex VII to this indictment.

[Removed]

25. [Removed]

#### M o s t a r

"26. Between April 1992 and June 1992, Serb forces, including volunteers known as 'Šešelj's men', attacked and took control of the town of Mostar and surrounding villages. Following the attack, non-Serbs were routinely detained, beaten, tortured, and killed. On or about 13 June 1992 Serb forces, including volunteers

known as 'Šešelj's men', arrested and transported eighty-eight non-Serb civilians from the neighbourhood of Zalik and from the villages of Potoci, Kuti Livač, Vrapčići and other nearby villages to Vrapčići football stadium, detained them in the locker room, and subsequently killed them. The bodies of these non-Serbs were found in the dump in Uborak. On or about 13 June 1992, Serb forces arrested eighteen non-Serb civilians from Zalik and transported them to the city mortuary in Sutina. They were subsequently killed in Sutina in the vicinity of the city mortuary and dumped near the Neretva River in a pit. 'Šešelj's men' participated in the detention and killings. The names of identified victims of murder [Removed] at Uborak and Sutina are set out in Annex IX to this indictment.

#### N e v e s i n j e

"27. In June 1992, Serb forces, including volunteers known as 'Šešelj's men', took control of the town of Nevesinje and attacked Muslim villages in the municipality. During this time, non-Serbs were routinely detained, beaten, tortured, and killed. On or about 22 June 1992, Serb forces, including volunteers known as 'Šešelj's men', arrested seventy-six Muslim civilians in the woods in the area of Velež and took them to the primary school in the village of Dnopolje in Zijemlje Valley. They separated the men from the women and children. The men were killed. Their bodies were found in a place known as Teleća Lastva. The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Forty-four of them were killed at the dump pit at Lipovača. 'Šešelj's men' participated in the detention and killing. Five of the women from the heating factory were further detained at the resort at Boračko Lake, part of the Konjic municipality, which was used by Serb forces, including 'Šešelj's men', as a military post. Two of the five women detained at that location, Fadila Mahinić and Mirsada Mahinić, were subsequently killed. On or about 26 June 1992, eleven Muslim civilians from the areas of Hrušta and Kljuna were arrested in Teleća Lastva. They were detained and tortured in the primary school in Zijemlje. Seven were taken away and subsequently killed. Their bodies were found in a pit in Zijemlje. 'Šešelj's men' participated in these killings. The names of identified victims of murder [Removed] at the Lipovača pit and [Removed], as well as the names of identified victims of murder [Removed] whose bodies were found at Teleća Lastva and the pit at Zijemlje are set out in Annex X to this indictment."

The main questions are whether the crimes of murders were committed, when, who is the direct or principal perpetrator of the murders and whether there was a link between Professor Vojislav Šešelj and the principal perpetrator. All this must be reviewed within the context of all presented forms of criminal responsibility (planning, ordering, instigating, aiding and abetting and participating in the JCE). Since this involves an allegation of the Prosecution that it involves commission or non-commission, the position of Professor Vojislav Šešelj must be borne in mind. Responsibility for non-commission or omission is possible for a person holding an official and legal authority to allow or prevent something from happening. In view of the time frame of the indictment, it is unclear what Professor Vojislav Šešelj omitted to do as an opposition politician, an opposition deputy and the President of the Serbian Radical Party.

Every political party and every association of citizens is a voluntary organisation of persons who obey the rules of the organisation. Those who fail to obey or intentionally disobey the rules or whose acts are damaging to the organisation are expelled from a political party and that is the only penalty which can be undertaken on the basis of membership in a party. Persons who are in units of the JNA and the TO, smaller or greater in size and organisation, are responsible to the superior in the military hierarchy and their membership in a political party is absolutely irrelevant from the aspect of responsibility.

It is thus important to start making an analysis first from the aspect of omission, that is, failure to act, because from that one may comprehend the possibility of the existence of a significant criminal and legal link between Professor Vojislav Šešelj and any persons who have been named as the principal perpetrators of the crimes of murder and all other crimes of which Professor Vojislav Šešelj stands accused under the indictment.

For the listed locations at which the crime of murder was perpetrated according to the indictment, there are final judgements from cases tried at the ICTY and these facts should be used as they are probably no longer disputable, but binding for the judges and the Prosecution.

### **Murders in Vukovar**

In the Mrkšić, Šljivančanin and Radić case, it was established that Professor Vojislav Šešelj did not hold a speech of which he stands accused, while Mrkšić and

Šljivančanin have been convicted of aiding and abetting murder as a violation of the laws and customs of war, not as participants in the JCE which did not exist, but as persons responsible for the evacuation of prisoners. In the case against Professor Vojislav Šešelj, evidence and witnesses were once again presented and were rejected (the judges did not believe them) in the final judgement in the Mrkšić, Šljivančanin and Radić case. It is unclear under which form of responsibility could Professor Vojislav Šešelj be responsible for the murders in Vukovar? There is no proof and no evidence was adduced which would link Professor Vojislav Šešelj with the murders in Vukovar. Professor Vojislav Šešelj was not in Vukovar at the time when the murders were committed, he was not at the scene of the crime, he does not know who committed the murders, he does not know who the victims were and there is no evidence of instigating, aiding and abetting, planning or ordering and there was no JCE in Vukovar. If Radić as the JNA officer who was in Vukovar, but not at the scene of the crime, did not know about the murders and was not held criminally responsible, it is unclear how Professor Vojislav Šešelj could have even been charged?

#### **Murders in Zvornik**

It must be recalled that there was no speech in Mali Zvornik in March 1992 because there was no rally. It is important for all counts of the indictment that this fabricated rally, that is, speech is in fact the detonator charge for all charges of which Professor Vojislav Šešelj stands accused for the Zvornik location. This is an opportunity to analyse the charge for murder and to mention the facts applicable to all other counts of the indictment.

The events in Zvornik were given form in the judgement of the Trial Chamber in the Krajišnik case, in the following paragraphs:

“359. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Zvornik municipality was 48,102 (59 per cent) Muslims, 30,863 (38 per cent) Serbs, 122 Croats, 1,248 Yugoslavs, and 960 persons of other or unknown ethnicity.

“360. On 3 April 1992, despite ongoing discussions between representatives of the SDA, SDS, and JNA about defence measures to be taken in case of an attack, a long convoy of Serbs left Zvornik town. On 5 April 1992, the Serb TO was mobilised pursuant to an order of the Serb crisis staff. Around this time, paramilitary forces, including the White Eagles, the Yellow Wasps and the Red Berets, began to arrive in

the municipality. They had been invited by Branko Grujić, president of the crisis staff of Zvornik, who later became a member of the Zvornik war commission on 17 June 1992 by decision of the Bosnian-Serb Presidency.

“**361.** On 5 and 6 April 1992, Serb police and paramilitary forces – mainly Arkan’s men – erected barricades throughout the municipality, the police was divided along ethnic lines pursuant to a dispatch of Momčilo Mandić, and Serb members of the Zvornik SJB relocated to Karakaj, where the Serb crisis staff was located. During the night of the 7 April, the SDA also erected barricades, on the bridge linking Zvornik to Serbia.

“**362.** When shooting broke out on 8 April 1992, the barricades were temporarily taken down, allowing hundreds of Muslims and Serbs to leave the municipality. The Serb civilians had been informed of a plan to have them killed, and some were forced by Serb paramilitaries to abandon their homes. That same day, a combination of Serb forces – the police, the TO, the JNA, and Arkan’s men – launched an attack against Zvornik town, which originated, at least partially, from inside Serbia. Many civilians were killed during the attack, and Zvornik town was taken over by the Serb forces within a day. The Serbian flag was hoisted on top of the main town mosque. On 10 April, Arkan’s men looted houses in Zvornik town and piled dozens of dead bodies – including the bodies of children, women, and elderly persons – onto trucks. More dead bodies lay in the streets and outside houses. As a result of the take-over, many Muslims withdrew to the nearby deserted village of Kula Grad, which was also attacked and taken over by paramilitaries and local police on 26 April.

“**363.** After the attack on Zvornik town, Witness 583, a member of a humanitarian organisation, saw a group of thousands of Muslims who had sought refuge in a close-by valley. Among the group were wounded persons, as well as the bodies of those who had died. The witness left the valley in order to organise a convoy of vehicles to take the displaced persons to a safer place, however when the transport vehicles returned, the Muslims had moved on. Some of the group reached Tuzla a few days later.

“**364.** On 10 April 1992, the provisional government of Zvornik instructed all persons with tenancy rights in socially owned apartments, as well as all owners of immovable property including private houses and businesses, to return and lay claim

to those properties before 15 May, or face loss of title to the municipality. On 5 May, the provisional government established a "real estate exchange agency" authorised to execute exchanges of real estate between residents of Zvornik municipality and other municipalities.

"365. By late April 1992, Serb authorities had taken control of the Muslim village of Đulići in Zvornik municipality, and the villagers surrendered their weapons to Serb forces. In order to remain employed, Muslims had to sign a pledge of loyalty to the Serb authorities. Also in late April or early May, Serb forces demanded the surrender of the Muslim village of Divič. However, before the deadline for surrender had expired, Divič was attacked by Serb forces consisting of Arkan's men, White Eagles, and reserve police officers. About 1,000 Muslims fled towards the nearby village of Jošanica. When some of them attempted to return later in May, they were turned away by Serb forces. Around 28 May, between 400 and 500 Muslims from Divič village, including women, children, and elderly persons, were forced onto buses by members of the Yellow Wasps and told that they would be taken to Muslim territory. In Crni Vrh, the captives were released and allowed to depart on foot. The same day, Major Svetozar Andrić, commander of the VRS 1st Birač Brigade, ordered the Zvornik TO to organise and co-ordinate the moving out of the Muslim population with municipalities through which they would pass. Only women and children would be moved out, while men fit for military service were to be placed in camps for exchange. In early June, Serbs were seen moving into the villages in Zvornik municipality where Muslims had been evicted. Some of them had been ordered to do so by the provisional government of the Serb municipality of Zvornik.

"366. By the end of May 1992, a large number of Muslim villagers gathered in the Muslim-majority village of Kozluk fearing paramilitaries and Serb forces who harassed them with demands to surrender arms. After the take-over of Zvornik town, paramilitary groups and local Serbs had set up barricades in nearby villages and isolated Kozluk. The police force in the village was split into Muslim and Serb parts. In the beginning of June, Muslim police officers in Kozluk were forced to surrender their uniforms and weapons to a Serb police officer. On the night of 20 June, the Serb TO under the command of Marko Pavlović attacked Kozluk. On 26 June, a large number of Serb soldiers, TO, and paramilitary units entered Kozluk in tanks and other military vehicles. Among the group were Branko Grujić, president of the Zvornik

SDS and crisis staff, Pavlović, and Jovan Mijatović, a member of the Zvornik crisis staff and a deputy to the Bosnian-Serb Assembly. They informed the Muslims that they had one hour to leave, or they would be killed. They also told them that they could not take any personal belongings with them, and forced them to sign statements surrendering their property. On the same day, a convoy of vehicles organised by the Serbs who had attacked and taken over Kozluk transported approximately 1,800 persons out of the municipality to Serbia.

“367. Most of the nineteen Muslim monuments in Zvornik municipality had been damaged or completely destroyed through shelling or explosives during the attacks on Muslim villages in April and May 1992. According to the Zvornik SJB’s own reports, during the same period the Serb police engaged in house searches and interrogations of Muslims on a massive scale, accusing the Muslims of having ‘prepared the liquidation of Serbs’. Many were detained in various locations in the municipality. For example, the Serb police, Arkan’s men, and the White Eagles detained Muslims in the *Alhos* factory in the Karakaj area of Zvornik town, where the Muslims were extensively mistreated. On 9 April 1992, Witness 674 was interrogated and beaten by Branko Grujić, and approximately eighteen other Muslim detainees were killed by Arkan’s men that same day or soon thereafter.

“368. Around the end of April 1992, several Muslim men were detained at the *Standard* factory, in Karakaj, guarded by local Serbs. Around 10 May, they were moved by the Serb police to the *Ekonomija* farm, also in Karakaj, where a lot of Muslim men were already detained. Some time later, they were moved again, to the *Novi Izvor* factory, guarded by the reserve police. This detention centre received another 186 Muslim detainees from Divič village on 27 May 1992. Armed groups, including members of paramilitaries from Serbia, frequently visited those three detention centres and severely mistreated the detainees. One detainee died in the *Ekonomija* farm.

“369. On 30 May 1992, about 150 Muslim men, women, and children from the village of Kostijerevo in Zvornik municipality were arrested by JNA soldiers. They were taken to Cultural Centre in Drinjača, where they were guarded by the JNA. Muslim detainees from other villages in the municipality were also brought there, although all women and children were soon released. The male detainees who remained were beaten by the guards and by Arkan’s men. Soon after the arrival of the

detainees, a unit of White Eagles took them out in groups of ten and shot them dead. In total, 88 people, including family members of Witness 654, were killed at the Cultural Centre.

“370. In late May 1992, Muslim representatives met with local Serbs, including a member of the Zvornik provisional government, to discuss the removal of Muslims from the municipality. A group of approximately 3,000 Muslim men, women, and children left in fear for their safety. On 1 June 1992, soon after the group had set off, Serb soldiers separated out men fit for military service from the column, and took the women, children, and elderly to Muslim-controlled territory. The men were taken, together with other Muslim men captured in the village of Klisa on the same day, to the Karakaj technical school, where they were detained in a workshop building. The facility was guarded by Serb soldiers. Within hours of arriving at the school, approximately 20 detainees had died from heat stroke and lack of water. Over the course of several days, many of the detainees were severely beaten. About 160 detainees were removed in small groups and executed by Serb guards.

“371. On 5 June 1992, a total of 550 detainees from the Karakaj technical school, including Witness 571, were taken in a lorry to a cinema hall in Pilića. From there Witness 571 together with another 63 men was taken to Gero’s slaughterhouse in Karakaj. Guards in JNA uniform forced the men to face the wall and shot them dead. The witness, who managed to escape the execution, saw two more buses arrive at the slaughterhouse. A total of 190 men were executed.

“372. From late May 1992 onwards, Muslims were detained in the Cultural Centre building in Čelopek village and subjected to severe physical and psychological abuse. In early June, a paramilitary group from Serbia assaulted the detainees with spiked metal bars and chains. Some detainees were forced to beat each other, and three were murdered by the guards. The Yellow Wasps, headed by the Vučković brothers, Repić and Žučo, arrived at the Cultural Centre on 11 June and killed at least five detainees. One man had his ear cut off, others had their fingers cut off, and at least two men were sexually mutilated. Repić’s men forced detainees to eat the severed body parts, killing two detainees who could not bring themselves to do so. On 27 June, Repić returned to the Cultural Centre alone and shot 20 detainees dead and wounded 22 others. In mid July, the remaining detainees were transferred, with the

assistance from the Serb municipal authorities of Zvornik, to Batković camp in Bijeljina municipality.

“373. In addition to the facilities mentioned above, Serb authorities detained mostly Muslim civilians at thirteen detention centres in Zvornik municipality in 1992, namely the Orahovac CS headquarters, a prison near *Novi Izvor*, the Zvornik prison, the SUP /Secretariat of the Interior/, the Zvornik town police station, the Kneževići school, a clay factory in Karakaj, an administration building entrance, the Hladnjača refrigeration plant, the youth village, the sports hall, the house of Paša Salihović and elementary school at Liplje, and the Vidikovac motel.

“374. The Chamber concludes that, in total, approximately 507 Muslim civilians were killed by Serb forces in Zvornik municipality from April to June 1992. Dozens were killed during the attack on Zvornik town on 8 April 1992 and many left the town in the direction of Tuzla. In April and May 1992, Serb forces attacked other villages in Zvornik municipality, including Divič. Most of the nineteen Muslim monuments in Zvornik municipality were either deliberately damaged or completely destroyed through shelling or explosives; Serb paramilitaries looted Muslim houses. The attack on Divič prompted about 1,000 Muslim villagers to flee. They were not allowed to return to their homes, and 400 to 500 were forced onto buses by paramilitary units and brought to Crni Vrh. Moreover, Serb soldiers separated a column of approximately 3,000 Muslims who had left in fear of their safety, bringing the women, children, and elderly to Muslim-controlled territory, and detaining the military-aged men in a hangar in the Karakaj technical school. Serbs detained mainly Muslim civilians in 25 detention facilities in Zvornik municipality, where they were severely beaten, and large groups executed. A total of 88 detainees were executed by Serb paramilitaries in the Cultural Centre on 30 May 1992. In the beginning of June 1992, about 160 detainees in Karakaj school were executed by Serb soldiers, and another 190 detainees were transported to Gero’s slaughterhouse and executed there by Serb guards.”

Thus, not a single mention of Professor Vojislav Šešelj or volunteers of the Serbian Radical Party. The principal perpetrators of the murders are known and a link with Professor Vojislav Šešelj cannot be established for any form of responsibility. This means that, pursuant to the Krajišnik case in which a final judgement has been rendered, the ICTY judges have all the binding facts about the murders in Zvornik on

the basis of which they are obliged to assess the probative value and relevance of evidence presented during the trial of Professor Vojislav Šešelj. However, since the Prosecution does not charge Professor Vojislav Šešelj as a direct perpetrator of the murders, it is important to establish whether there is a causal relationship between Professor Vojislav Šešelj and the direct or principal perpetrators of the murders. Evidence presented by the Prosecution did not prove the existence of such a link.

### **Murders in Greater Sarajevo**

This is an opportunity to analyse the charges for murder, and to mention facts applicable to all other counts of the indictment. The events in the Greater Sarajevo area are given factual form in the judgement of the Trial Chamber in the Krajišnik case, under the following paragraphs:

#### **I l i d ŷ a**

“551. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Ilidža municipality was 29,337 (43 per cent) Muslims, 25,029 (37 per cent) Serbs, 6,934 (10 per cent) Croats, 5,181 Yugoslavs, and 1,456 persons of other or unknown ethnicity.

“552. In the beginning of March 1992, a Serb SJB was created after the Muslim police officers were dismissed from their positions. In April and May 1992, various paramilitary formations arrived in the municipality, including Brne Gavrolović’s group, Bokan’s group, ‘Chetniks’ from Zvornik, and Arkan’s men, with some of whom the Ilidža crisis staff cooperated. After the establishment of the VRS, some paramilitaries remained in Ilidža and assisted the VRS and MUP /Ministry of Interior/ forces.

“553. By the end of April 1992, under the orders of Lieutenant Colonel Tadija Manojlović, JNA heavy artillery, rocket launchers, anti-aircraft guns, and tanks, fired every evening on targets in Sarajevo, including the neighbourhoods of Butmir and Hrasnica in Ilidža municipality. The Serb SJB also took part in the attacks. By early May 1992, Serb forces controlled Ilidža.

“554. In 1992, Serb authorities detained mostly Croat and Muslim civilians in ten detention centres in Ilidža municipality, namely the former health centre building, the Lužani trailer park, the cultural and sports complex, the storage building of *Energoinvest*, Kasindol hospital, the July 27 elementary school, the graphic school, the kindergarten, the Ilidža SJB, and the Blažuj military barracks. On 23 July 1992,

Witness Musić was arrested by 'Chetnik' police and detained in a small cell without windows at the Ilidža SJB. During Musić's detention in Ilidža, 'Chetnik' police officers forced him to help them loot Muslim houses in the town. All detained Muslims were interrogated in order for Serb authorities to obtain information regarding their intentions.

"555. Due to repressive measures undertaken against them, many Muslims fled and moved out of the municipality. Tomislav Kovač, the wartime chief of the Ilidža SJB, said on one occasion that the civilian authorities had declared a general policy of expelling Muslims from Ilidža. On 25 June 1992, Nedjeljko Prstojević, president of the Ilidža crisis staff, spoke with Rade Ristić, a local official from Ilidža, about the situation in the Kasindol area. Upon hearing that the Serbs were holding their ground, Prstojević told Ristić: 'All right. But have them hold on to it tightly and have them all killed there please ... Kill all the Muslims, like Alija ... I don't want to see one military aged Muslim alive there.' He went on to authorise Ristić to give Muslim apartments in the area to Serbs involved in the fighting, saying that he had printed the requisite forms for the transfer of property, and that on that same day authorities in Ilidža had already filled out 30 such forms for apartments in the Nedžarići area, east of Ilidža town.

"556. The Chamber concludes that, after Serb forces took control over Ilidža municipality in May 1992, they detained mainly Muslim and Croat civilians in twelve detention facilities in the municipality. Many Muslims left the territory of Ilidža municipality out of fear and due to repressive measures undertaken against them."

No evidence about the murders appears to have been presented and there is no mention of Professor Vojislav Šešelj and volunteers of the Serbian Radical Party. Knowing how the Prosecution works and the importance of the Krajišnik case for the ICTY, it is simply improbable that the Prosecution failed to make use of something which it mentioned in the indictment against Professor Vojislav Šešelj. That section reads as follows:

"On 17 July 1993, members of a unit of 'Šešelj's men' killed two prisoners-of-war, Živko Krajišnik and Rusmir Hamalukić, on Mount Igman in Ilidža municipality."

The Prosecution would have gladly used the last name of the alleged victim, Krajišnik, in the case against Momčilo Krajišnik but it did not, knowingly and

intentionally because it knew full well that it was not a murder which could fall under the category of a war crime since Živko Krajišnik died in battle.

### I l i j a š

“557. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Ilijaš municipality was 11,325 (45 per cent) Serbs, 10,585 (42 per cent) Muslims, 1,736 (7 per cent) Croats, 1,167 Yugoslavs, and 371 persons of other or unknown ethnicity.

“558. In March 1992, Serb flags were hoisted on the Ilijaš municipal building and on the police station and SDA and HDZ representatives stopped attending the municipal assembly meetings. Around the same time, the SJB split along ethnic lines. The Serb part called itself the ‘Serb police’ of SAO Romanija and came under the control of the Serb crisis staff. Muslim and Croat police officers, as well as Muslims and Croats employed at schools, banks, and hospitals, were dismissed. Muslims proceeded to establish their own crisis staff and police station in a village close to the town of Ilijaš.

“559. The Serb crisis staff took over all the major military and civilian institutions and facilities in the municipality, including the SDK, banks, a JNA fuel warehouse, and the media. The local SDS was assisted by a paramilitary formation. Still later, on 14 June 1992, the Serb crisis staff of the municipality invited Arkan’s men to come to its assistance with at least one platoon.

“560. Preparations to take over the majority-Muslim village of Lješevo began in March 1992 when Serbs erected checkpoints, distributed arms to the locals, and placed heavy artillery on the surrounding hills. In April 1992, the Muslims in the village organised village guards and in May they formed a crisis staff, charged with organising life and work in the village. Also in May, the Serb police ordered the Muslims to surrender their weapons. Most of the Muslims complied and 60 to 80 per cent of the Muslims left the village in fear of an attack. On 4 June, Lješevo was hit with gunfire and shells. The shells hit several houses in the Muslim part of the village where no military target was present. On the following day, Serb soldiers entered the village and killed approximately 20 Muslim villagers, after capturing them and burning their personal documents. The Serb soldiers forced other villagers from their homes and assembled them at the railway station. From there, the Serb police

transported the village residents by bus to a building in the Podlugovi area of Ilijaš, where they were detained for two months.

“561. On two occasions, in April and again on 4 June, Serb forces shelled the hamlet of Mlini. By early July, the attacks caused the majority of the village population to move to Breza municipality, to the north of Sarajevo.

“562. Around May 1992, the Muslims in the predominantly Muslim village of Gornja Bioča organised guard shifts, armed with military and hunting rifles. On 29 May, Serb forces shelled the village. Serb soldiers killed two relatives of Witness Selimović outside their house. Soon thereafter local Serb soldiers detained the Muslim village residents, including women and children, and held them for five days in the village primary school. Soldiers then moved 80 men to another school, in Podlugovi. The detainees in Podlugovi were guarded by Serbs. They slept on the floor and received very little food, on some days nothing at all. Sometime in August 1992, a representative of the Ministry of Justice of the Bosnian-Serb Republic visited the detainees and informed them that, because of the poor conditions in detention, they would be moved elsewhere. Around 17 August, the detainees were indeed transferred, to another detention centre in Semizovac, Vogošća municipality.

“563. In addition to the facilities mentioned above, Serb authorities detained mostly Croat and Muslim civilians at nine detention centres in the municipality in 1992, namely the industrial school, the former railway station, the INA gasoline storage plant, the old homes in Jamjanovići, the old pit in Podlugovi, the town police station and prison [17.7], the Nišići winter services maintenance, the MIK factory hall in Podlugovi, and a concrete bunker by the Stavanja river in Podlugovi.

“564. During 1992, Serb forces destroyed a large number of historical and religious sites in Ilijaš, including the Catholic cathedral in Taračin Do and 21 Muslim religious monuments, including the mosque in Stari Ilijaš, the mosque in Misoča, the mekhtab in Bioča, and a mosque in Srednje.

“565. The Chamber concludes that, in total, at least 22 Muslims were killed by Serb forces in the municipality of Ilijaš in May and June 1992. Serb forces attacked several Muslim-majority villages and destroyed a large number of historical and religious monuments. The attacks on the hamlet Mlini caused the majority of the population to move to Breza municipality, to the north of Sarajevo. In other villages,

Serbs forced villagers out of their houses and detained many of them in twelve detention centres in the municipality in poor conditions.”

There is no mention of Professor Vojislav Šešelj or volunteers of the Serbian Radical Party. For the charges of murder in the case against Professor Vojislav Šešelj, it is important that the judgement against Krajišnik states the following for the village of Lješevo:

“On the following day (5 June 1992), Serb soldiers entered the village and killed approximately 20 Muslim villagers, after capturing them and burning their personal documents.”

The indictment against Professor Vojislav Šešelj reads:

“On or about 5 June 1992, members of a unit of ‘Šešelj’s men’ killed 22 non-Serb civilians in the village of Lješevo.”

Paragraph 560 of the Judgement in the Krajišnik case issued by the Trial Chamber proves that this is a trumped up charge fabricated by the Prosecution.

The principal perpetrators of these murders are known (local villagers and Serbian policemen who prepared and took part in the attack) and a link with Professor Vojislav Šešelj cannot be established under any form of responsibility.

#### V o g o š ć a

“594. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Vogošća municipality was 12,499 (51 per cent) Muslims, 8,813 (36 per cent) Serbs, 1,071 (4 per cent) Croats, 1,730 Yugoslavs, and 534 persons of other or unknown ethnicity.

“595. In early March 1992, the SDS delegates withdrew from the Vogošća municipal assembly and established their own assembly. Jovan Tintor, member of SDS Main Board and president of Vogošća crisis staff, Rajko Koprivica, president of the local SDS, and other local SDS leaders wanted the municipality of Vogošća to be divided along ethnic lines. The division, as envisaged by them, would leave the Serbs with the town centre, the important communication links, and all local industry. In March, the JNA set up roadblocks around important factories in Sarajevo, including the Pretis artillery and rocket manufacturing plant in Vogošća, which was one of the largest in Europe. In late March, the police were divided along ethnic lines.

“596. A large part of Vogošća was brought under Serb control by military force between 4 and 17 April 1992 by Serb army units and the police organised by the

Vogošća crisis staff. SDS and crisis staff control did not extend to the Serb paramilitaries which appeared in the municipality in the period April until August 1992. Paramilitaries acted in collusion with some members of Vogošća's military command, police force, and municipal authorities. On 30 July 1992, the Vogošća war commission decided to remunerate the volunteers under Major Jovo Ostojić, referred to as the 'Šoša detachment'.

"597. On the basis of instructions received from the MUP and the local military command, all Serb police forces in Vogošća municipality were sent to the front lines as early as mid-April 1992. Rather than maintaining law and order, police officers engaged in combat activities. Many police officers participated in criminal activities, such as looting of Muslim houses. They also robbed the TAS factory in Vogošća, which manufactured Golf vehicles, of around 2,000 cars by June 1992. A special platoon from Sokolac, led by Duško Malović and assigned to Mićo Stanišić, was involved in the large scale theft of cars from the TAS factory in Vogošća, while the reserve police looted Muslim houses.

"598. On 1 May 1992, a Muslim police officer in Sarajevo and his colleague were arrested by the Serb TO while driving to his home in Vogošća. They were taken to the police station in Vogošća town, where they were interrogated and beaten by Jovan Tintor.

"599. On 2 May 1992, Serbs surrounded and shelled the villages of Svrake and Semizovac, in Vogošća municipality. Military aeroplanes bombed the villages, following which residents surrendered their weapons. After the take-over of Svrake and Semizovac in early May 1992, the Serbs took 470 Muslim men, women, and children to the barracks in Semizovac. The women, children, and the elderly were later released, but the men were kept. They were supposed to be exchanged for nine Serbs who had been taken prisoner by Muslim forces.

"600. On 29 May 1992, Gornja Bioča was shelled by Serb forces. Some Muslim men who had been guarding Gornja Bioča with hunting and military rifles fled into the woods. [1347] They were arrested and detained in Planjo's house in Semizovac on 31 May 1992. Since the beginning of June 1992, Serb police also detained men from the village of Lješevno, in Ilijaš municipality, in Planjo's house. [1348] On 8 July, the municipal secretariat for town planning, property rights, housing policy, and land register decided, upon request of the Ministry of Justice, to

temporarily turn over Planjo's house to the Ministry, for use as a prison. [1349] On 17 August, a group of more than 80 Muslim men who had been in detention in a school Podlugovi, in Ilijaš municipality, were transferred by police officers in camouflage uniform to Planjo's house. [C33.1.] There were a total of 113 men detained at Planjo's house, most of whom were Muslims, but also some Croats and one Serb. Women and children were held in separate quarters upstairs. They were guarded by Serb soldiers and police officers in camouflage uniform, who would often severely beat them. In October, 172 people were detained here. In the period between August and November 1992, Serbs would come from Serbia on the weekends to beat the detainees and force them to perform sexually humiliating acts.

**“601.** At the end of August 1992, Serb military personnel began to take Muslim detainees from Planjo's house to perform labour at the front lines in Ravne and Žuč. This included digging trenches, carrying ammunition, and removing the bodies of Serb soldiers killed in battle. Sometimes groups of detainees from Planjo's house were used as human shields. During the month of September 1992, at least fifteen Muslim detainees were killed while performing labour at the front lines or being used as human shields. Several detainees were also wounded.

**“602.** In May 1992, some detainees from a detention facility called “bunker” where 35 male villagers from a Muslim majority village Svrače were detained were taken out by a man called Boro Radić and also sent to dig trenches in Žuč. According to one witness, some detainees never returned. The Chamber is not in a position to further assess the fate of these detainees.

**“603.** Another detention centre in Vogošća was located in the Sonja café-restaurant. Brano Vlačo was the warden. The conditions at the detention centre were inadequate, as there was overcrowding and insufficient food.

**“604.** In addition to the facilities mentioned above Serb authorities detained mostly Croat and Muslim civilians at the following detention centres in the municipality in 1992, namely the Sonje bunker beside the Kon Tiki boarding house, a sports complex, the Krivoglavci tunnel, the Kisikana Company Building, the UPI Distribution centre, Nake's garage, the Park hotel, and the UNIS factories.

**“605.** The mosque in Svrače and the mosque at Kobilja Glava were destroyed. Also, the following places of worship were destroyed during the war in Vogošća: the mosque in Ugorsko, the masjid (mosque without minaret) in Karaula-Donja Vogošća,

the masjid in Tihovići, the masjid in Gora, the masjid in Krč, the mosque under construction in the Park Hotel vicinity, and the Catholic church in Semizovac.

“606. The Chamber concludes that at least fifteen Muslim and Croat detainees were killed by Serb forces in Vogošća municipality in September 1992. A large part of Vogošća was brought under Serb control by military force already between 4 and 17 April, but Serb forces shelled other villages in the municipalities and damaged or destroyed several mosques in the following months. Many police officers participated in criminal activities, such as looting of Muslim houses and robbing the TAS factory in Vogošća. After the take-over of villages, Serb forces arrested Muslims and Croats and detained them in ten detention centers in the municipality under harsh conditions. Some of the prisoners were used as human shields and were killed. Until November 1992, Serbs regularly came from Serbia to beat the detainees and force them to perform sexually humiliating acts.”

There is no mention of Professor Vojislav Šešelj and volunteers of the Serbian Radical Party. The principal perpetrators of the crime of murders are known and a link with Professor Vojislav Šešelj cannot be established under any form of responsibility.

#### **M o s t a r**

The events in Mostar were not of interest in the indictment against Momčilo Krajišnik.

#### **N e v e s i n j e**

This is an opportunity to analyse the charge for murder and to mention the facts applicable to all other counts of the indictment.

The events in Nevesinje were factually formulated in the judgement of the Trial Chamber in the Krajišnik case, under the following paragraphs:

“668. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Nevesinje municipality was 10,711 (74 per cent) Serbs, 3,313 (23 per cent) Muslims, 210 (1 per cent) Croats, 123 Yugoslavs, and 91 persons of other or unknown ethnicity.

“669. On 16 June 1992, soldiers in camouflage uniform led by Krsto Savić, the commissioner for SAO Eastern Herzegovina, entered the house of Witness Trebović, a Muslim resident of Nevesinje municipality. They claimed to be looking for weapons and radio equipment. During this operation, Savić shot the witness' husband, Redžep Trebović, in the leg. The Serb soldiers held the witness back from

helping her husband. When the witness and the family were allowed to bring the husband to the hospital four hours later, Redžep Trebović had died from his injury. The witness' house was burnt down.

“**670.** On 22 June 1992, Serb forces shelled Presjeka village in Nevesinje municipality. Witness 270, a Muslim, her family, and a group of about 150 to 200 other Muslim civilians from Presjeka and Kljuna fled to the Velež mountains. Sixteen elderly persons who could not keep pace, were left behind, and were later killed by a local Serb. The group wandered the mountains for three to four days before an artillery attack split the group in two. Near Mostar, the witness and 75 others were detained by Serbs in JNA uniform or mixed civilian-military clothing. They were taken to Dnopolje, in Mostar municipality. In front of a school, 29 men were separated from the women and 20 children in the group. The men, among them Witness 270's husband, were later killed at Dubravica. A total of 27 bodies of men from this group were exhumed at Teleća Lastva, to where they had been moved. On the order of Major Zdravko Kandić of the 5th JNA battalion, the women and children, including babies, were taken to the basement of a heating plant in Kilavci, in Nevesinje municipality. The basement of the heating plant was bare and had no lavatory. No food or water was given to the group, not even for the babies, and Witness 270 and the other mothers had to give urine to them to avoid dehydration. After four days, Witness 270 and four other detained women were separated from their children and taken to Boračko Lake lake resort, in Konjic municipality. The remaining women and children in the basement of the heating plant in Kilavci were killed and placed in a pit at Lipovača by the Serb military. During an official exhumation in 1999, the bodily remains of adult persons and seven children were found at Lipovača.

“**671.** In addition to the basement of the heating plant in Kilavci, Serb authorities detained mostly Muslim civilians at two detention centres in Nevesinje in 1992, namely Gornje Rakitno, and the tool factory and workshop, which was one detention facility. Also, in June 1992, Muslim men were detained and beaten at the Nevesinje police station and on 16 June, one witness observed a dead body of a Muslim man lying in front of the station. The Chamber is not in a position to assess the circumstances of his death.

“672. During the spring and summer of 1992, nine Muslim and Catholic monuments in Nevesinje municipality, including three mosques in the town of Nevesinje and the mosque in Kljuna were either heavily damaged or destroyed through fire and explosives. Already in September 1991, the Old Mosque at Odzak had been almost completely destroyed through shelling and explosions.

“673. The Chamber concludes that, in total, over 53 Muslims were killed by Serb forces in June 1992. Serb forces shelled villages in the municipality of Nevesinje and deliberately damaged or destroyed religious monuments. Mostly Muslim civilians were detained in four detention centres. Most of the women and children who had been detained in the basement of a heating plant in Kilavci in June were killed by Serb soldiers.”

Therefore, there is no mention of Professor Vojislav Šešelj and volunteers of the Serbian Radical Party. The principal perpetrators of the crime of murders are known and a link with Professor Vojislav Šešelj cannot be established under any form of responsibility.

Momčilo Krajišnik was acquitted for the charges of murder against humanity and for murder as a violation of the laws and customs of war under all forms of responsibility, especially on the basis of participation in the JCE, where the murders were presented as additional crimes as part of the purpose of the JCE, and under all other forms of individual criminal responsibility in the judgements of the Trial Chamber and the Appeals Chamber for the aforementioned locations. Therefore, the third category of JCE in the Krajišnik case was not applied for murder.

**Counts 8 and 9: Torture and Cruel Treatment as Violations of the Laws  
or Customs of War**

In its Pre-Trial Brief the Prosecution alleges:

“172. The specific requirements for “torture” under common Article 3(1)(a) are:

(i) infliction of severe pain or suffering, either physical or mental, or sexual violence, including rape, constitute torture.

(ii) the pain or suffering inflicted upon the victim are from unlawful sanctions.”

Although the following is also given:

(i) the infliction, by act or omission, of severe pain or suffering, whether physical or mental; sexual violence including rape may constitute torture;

(ii) the act or omission must be intentional and

(iii) the act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.

It is sufficient that the prohibited purpose(s) because of which the pain or suffering were inflicted are “part of what motivates actions.”

**173.** “Cruel Treatment” under common Article 3(1)(a):

The seriousness of the suffering, injury or attack on human dignity need not rise to the level of severity required for the crime of torture.”

In the indictment the Prosecution alleges:

“**28.** From August 1991 until September 1993, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of the imprisonment under inhumane conditions of Muslim, Croat and other non-Serb civilians in the territories listed above.

“**29.** Serb forces, including those volunteer units recruited and/or incited by Vojislav Šešelj, captured and detained hundreds of Croat, Muslim and other non-Serb civilians. They were detained in the following short- and long-term detention facilities:

a) The *Velepromet* warehouse, Vukovar, SAO SBWS, November 1991, run by JNA, approximately twelve hundred detainees.

b) The Ovčara farm, near Vukovar, SAO SBWS, November 1991, run by JNA, approximately three hundred detainees.

c) [Removed]

d) [Removed]

e) The *Standard* shoe factory, the *Cigлана* factory, the *Ekonomija* farm, the Drinjača Cultural Centre, the Karakaj Technical School, Gero’s slaughter-house and the Čelopek Cultural Centre in Zvornik, Bosnia and Herzegovina between April and July 1992, hundreds of detainees.

f) [Removed]

g) The *Iskra* warehouse in the village of Podlugovi, Ilijaš municipality, Planja's house in the village of Svrače, Vogošća municipality, Sonja's house in Vogošća municipality, the barracks in Semizovac village, Vogošća municipality and the tire repair garage at the Vogošća crossroad in Vogošća municipality between April 1992 and September 1993, dozens of detainees.

h) [Removed]

i) [Removed]

j) The city mortuary in Sutina, Mostar and the stadium in Vrapčići, Mostar during June 1992, more than one hundred detainees.

k) The basement of the heating factory in Kilavci, Nevesinje, the resort at Boračko Lake, Nevesinje, the primary school in Zijemlje, Nevesinje and the SUP building in Nevesinje during June 1992, more than one hundred detainees.

“30. The living conditions in these detention facilities were brutal and characterised by inhumane treatment, overcrowding, starvation, forced labour, inadequate medical care and systematic physical and psychological assault, including torture, beatings and sexual assault.”

The locations for the charges of torture and cruel treatment are the same: Vukovar, Zvornik, Greater Sarajevo, Mostar and Nevesinje.

About the Vukovar location, Mrkšić and Šljivančanin were found guilty of aiding and abetting torture and cruel treatment as responsible officers of the JNA for the Vukovar location where they were located, while Radić was acquitted because the necessary link between Radić and the acts of the principal perpetrators of the crime was not found. If it was difficult to find this connection for Radić, it is impossible to find it for Professor Vojislav Šešelj.

As far as the locations of Zvornik, Greater Sarajevo, Mostar and Nevesinje are concerned, Momčilo Krajišnik was not convicted of torture and cruel treatment or similar acts under Article 5 of the Statute under persecution, or for individual forms of criminal responsibility and for participation in the JCE. It is completely unclear how Professor Vojislav Šešelj could even have been charged, but it is absolutely clear that there is no evidence which could be used to establish a link between the acts, the principal perpetrator of torture and cruel treatment and Professor Vojislav Šešelj and any volunteer of the Serbian Radical Party.

**Counts 12, 13 and 14: Wanton Destruction, Devastation and Plunder of Public or Private Property as a Violation of the Laws or Customs of War**

In its Pre-Trial Brief the Prosecution wrote:

“**180.** Article 3(b) covers ‘wanton destruction’ or ‘devastation’ of cities, towns and villages. This crime requires that:

- (i) the destruction of property occurs on a large scale;
- (ii) the destruction is not justified by military necessity; and
- (iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.

“**181.** The destruction of a hospital may suffice to meet the large scale-requirement. Rendering houses or communal structures uninhabitable or useless would be covered by this prohibition.

“**182.** The term ‘not justified by military necessity’ may be defined with reference to the widely acknowledged definition of military objectives in Article 52 of Additional Protocol I as ‘those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage’.

“**183.** Article (3)(d) also includes as a war crime ‘seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science’.

“**184.** For this crime, the Prosecution must establish that:

(i) an act has caused damage to, or destruction of, an institution dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(ii) the damaged or destroyed institution was not used for military purposes at the time of the act; and

(iii) the act was carried out with intent to destroy or damage, or in reckless disregard of the likelihood of the destruction or damage to the institution in question.

“**185.** The crime is committed if even one item or building protected under this provision is destroyed or damaged. ‘Damage’ requires a lesser degree of impairment or loss of value or significance than ‘destruction’. Acts causing damage to protected property include desecration and vandalism.

“186. The crime of plunder is committed when private or public property is appropriated intentionally and unlawfully. Furthermore, the general requirements of Article 3 of the Statute in conjunction with Article 1 of the Statute relating to the seriousness of the crime must be fulfilled. ‘Plunder’ includes all forms of unlawful appropriation of property [...] including those acts traditionally described as ‘pillage’.

In the indictment the Prosecution alleges:

“34. From on or about 1 August 1991 until May 1992 in the territories of the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the wanton destruction and plunder of public and private property of the Croat, Muslim and other non-Serb populations, acts which were not justified by military necessity. This intentional and wanton destruction and plunder included the plunder and destruction of homes and religious and cultural buildings, and took place in the following towns and villages:

(a) SAO SBWS: Vukovar: (hundreds of homes destroyed and many homes plundered);

(b) Bosnia and Herzegovina: Zvornik (hundreds of homes plundered, and many mosques and other places of worship and a religious archive destroyed); Greater Sarajevo (homes plundered and many homes destroyed, and mosques and Catholic churches and other places of worship destroyed in the municipality of Ilijaš; homes plundered and many homes destroyed, and mosques and Catholic churches and other places of worship destroyed in the municipality of Vogošća); Mostar (many homes plundered and destroyed and several mosques destroyed) and Nevesinje (many homes plundered and destroyed and many mosques destroyed).”

In view of the repetition of the locations, it must be borne in mind that the final judgements in the Mrškić, Šljivančanin and Radić case (Vukovar) and the Krajišnik case (Zvornik, Greater Sarajevo, Mostar and Nevesinje) none of them were found guilty under any form of criminal responsibility for wanton destruction, devastation and plunder as a violation of the laws and customs of war. It is not known under what grounds Professor Vojislav Šešelj was indicted because there is no

evidence in the aforementioned cases and there is no proof that Professor Vojislav Šešelj was in any way connected to the principal perpetrators of these crimes, and no volunteers of the Serbian Radical Party are mentioned as potential perpetrators.

**B. General Provisions under Article 5 of the Statute**

“159. The Accused is charged under Articles 5(a), 5(b), 5(d), 5(e), 5(f), 5(h), and 5(i). The general requirements of Article 5 are:

(i) the existence of a widespread or systematic attack directed against a civilian population;

(ii) the crimes of the Accused formed part of the widespread or systematic attack directed against a civilian population; and

(iii) the Accused had knowledge of the wider context in which his conduct occurred.

As a jurisdictional requirement, the Statute requires, in addition, (i) the existence of an armed conflict.

“160. The attack must be widespread or systematic. The phrase ‘widespread’ refers to the large-scale nature of the attack and the number of targeted persons, while the phrase ‘systematic’ refers to the organised nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence. Only the attack, not the individual acts of the accused, must be widespread or systematic. ‘Civilian population’ means that the population must be predominantly civilian in nature, the presence within a population of members of resistance groups, or former combatants, who have laid down their arms, does not alter its civilian characteristic.

“161. The alleged crime must be part of a widespread or systematic attack directed against a civilian population.

“162. The accused must be aware of the wider context in which his or her conduct occurred. The accused must have known that there was an attack on the civilian population and that his acts comprise part of that attack, or at least that he took the risk that his acts were part of the attack. The “accused must have known that his acts fit into such a pattern.”

“163. With respect to the crimes alleged in the indictment, ‘the jurisdictional requirement that Article 5 crimes be committed in armed conflict requires the

Prosecution to establish that a widespread or systematic attack against the civilian population was carried out while an armed conflict in Croatia and/or Bosnia and Herzegovina was in progress.’ The jurisdictional requirement of Article 5 does not require the Prosecution to establish that an armed conflict existed within the State (or region) of the former Yugoslavia in which the charged Article 5 crime is alleged to have been committed. The requisite armed conflict may be international or non international. Moreover, Article 5 does not require a material nexus between the crime and the armed conflict.”

### **V u k o v a r**

Of relevance for the Vukovar location are the judgements in the Mrkšić, Šljivančanin and Radić case. This is important because the status of victim was decisive for the elimination of the existence of crime under Article 5 of the Statute in the judgement of the Trial Chamber and the judgement of the Appeals Chamber. The formulated and binding position reads:

“Under Article 5 of the ICTY Statute, a crime listed under that article can only constitute a crime against humanity when committed ‘in an armed conflict’. The nature of the conflict is irrelevant: conduct must be in a temporal and geographic link with the armed conflict, either international or non-international.

“The nexus requirement for crimes against humanity resembles the nexus requirement for war crimes described above, but is not identical. Whereas for war crimes, a sufficient link between the conduct of the accused and the armed conflict must be established, the nexus requirement for crimes against humanity is satisfied by proof that there was an armed conflict at the relevant time and place, and that, objectively, the acts of the accused were linked geographically, as well as temporally, with the armed conflict.

“An ‘attack’ within the meaning of Article 5 has been defined as a course of conduct involving the commission of acts of violence. It is not limited to the use of armed force but it may also encompass any mistreatment of the civilian population. The attack may be, but need not be, part of the armed conflict as such.

“Further, the attack must be widespread or systematic, the requirement being disjunctive rather than cumulative. The term ‘widespread’ refers to the large scale nature of the attack and the number of victims, while the phrase ‘systematic’ refers to the organised nature of the acts of violence and the improbability of their random

occurrence. This requirement only applies to the attack itself, not to the individual acts of the accused. Only the attack, not the accused's individual acts, must be widespread or systematic

“Article 5 further requires the existence of a nexus between the acts of the accused and the attack on a civilian population. According to the Tribunal's jurisprudence, the acts of the perpetrator must be objectively part of the attack, as opposed to being isolated acts. They need not be committed in the midst of that attack provided that they are sufficiently connected to that attack.

“Concerning the required mens rea in relation to the attack, the Appeals Chamber has held that in addition to the intent to commit the underlying offence charged, the accused must have known that there is an attack on the civilian population and that his acts comprise part of that attack, or at least that he took the risk that his acts were part of the attack. This requirement does not entail knowledge of the details of the attack. It is also irrelevant whether the accused intended his acts to be directed against the targeted population or merely against his victim. It is the attack, not the acts of the accused, which must be directed against the target population and the accused need only know that his acts are part thereof.

“While there may have been a small number of civilians among the 194 identified murder victims charged in the indictment, in the Chamber's finding, the perpetrators of the offences against the prisoners at Ovčara on 20/21 November 1991 charged in the indictment, acted in the understanding that their acts were directed against members of the Croatian forces. The possibility now identified that a small number of civilians may have been among the prisoners, therefore, does not change the finding which the Chamber makes that the crimes charged in the present indictment do not qualify as crimes against humanity in the particular circumstances of this case.

“The Chamber concludes that in the present case the jurisdictional prerequisites of Article 5 of the Statute have not been established.

“Other than this position in connection with jurisdiction under Article 5 of the statute which refers to the status of protected persons, that is, victims, of importance are judgements of the Trial Chamber and the Appeals Chamber with regard to all the charges for crimes against humanity. As a reminder, the Prosecution charged Mrkšić, Radić and Sljivančanin on the basis of individual criminal responsibility (Article 7

(1)) and criminal responsibility of a superior (Article 7 (3)) of the Statute, for the following:

- persecutions on political, racial, and religious grounds, extermination, murder, torture, inhumane acts; (crimes against humanity, Article 5), and
- murder, torture and cruel treatment (violations of the laws and customs of war, Article 3).”

The Trial Chamber concluded that:

“The indictment says that the JNA laid siege to the city of Vukovar by late August 1991. The siege lasted until 18 November 1991, when the Serbian forces occupied the city. During the three-month siege, the town was devastated to a large extent by the JNA shelling, in which hundreds of people were killed. When the Serbian forces occupied the city, their members killed another several hundred non-Serbs. The vast majority of non-Serbs were expelled from the city several days after the fall of Vukovar. During the last days of the siege of Vukovar, several hundred people sought refuge at Vukovar hospital, which was near the city centre, in the belief that the Vukovar hospital would be evacuated in the presence of international observers.”

The judgement of the Appeals Chamber reads:

“42. In the present case, after reviewing the evidence before it, the Trial Chamber concluded that the perpetrators of the crimes committed against the prisoners in Ovčara selected the individuals based on their involvement in the Croatian armed forces. The Trial Chamber found:

“While there may have been a small number of civilians among the 194 identified murder victims charged in the indictment, in the Chamber’s finding, the perpetrators of the offences against the prisoners at Ovčara on 20/21 November 1991 charged in the indictment acted in the understanding that their acts were directed against members of the Croatian forces.

“The Appeals Chamber concurs with the Trial Chamber’s assessment of the evidence in the trial record. The crimes in Ovčara were directed against a specific group of individuals, the victims of the crimes were selected based on their perceived involvement in the Croatian armed forces, and as such treated “differently from the civilian population”. The Prosecution’s arguments that the crimes occurred two days after the fall of Vukovar, that Ovčara was located within the geographical scope of the

attack against Vukovar, that the perpetrators of the crimes in Ovčara also participated in the attack against the civilian population in Vukovar, and that the perpetrators of the crimes 'harboured intense feeling of animosity towards persons they perceived as enemy forces', do not undermine the Trial Chamber's findings, unchallenged by the Parties, that the perpetrators of the crimes in Ovčara acted in the understanding that their acts were directed against members of the Croatian armed forces. **The fact that they acted in such a way precludes that they intended that their acts form part of the attack against the civilian population of Vukovar and renders their acts so removed from the attack that no nexus can be established.**

"43. The Appeals Chamber finds that the requirement of a nexus between the acts of the accused and the attack itself was not established and that, in the absence of the required nexus under Article 5 of the Statute between the crimes committed against the prisoners at Ovčara and the widespread or systematic attack against the civilian population of Vukovar, the crimes committed cannot be qualified as crimes against humanity. Thus, even though the Trial Chamber erred in law by adding a requirement that the victims of the underlying crimes under Article 5 of the Statute be civilians, the Appeals Chamber concurs with the Trial Chamber – albeit for different reasons – that the 'jurisdictional prerequisites of Article 5 of the Statute have not been established'."

In light of the foregoing in the Mrkšić, Radić and Šljivančanin case, in paragraph 44 of the judgement, the Appeals Chamber "dismisses the Prosecution's first ground of appeal in all other respects and upholds the acquittals of Šljivančanin and Mrkšić under Article 5 of the Statute, which specifically refers to the charges of persecutions on political, racial, and religious grounds, extermination, murder, torture, inhumane acts; (crimes against humanity, Article 5)."

#### Professor Vojislav Šešelj's Comment

With regard to the Vukovar location, the general conditions for applying Article 5 of the Statute have not been met and this must also be accepted in the case against Professor Vojislav Šešelj. If no nexus exists for the JNA officers in Vukovar, then it is not clear how this nexus could be found for Professor Vojislav Šešelj.

The established practice in the ICTY is as follows:

The nexus in question consists of two elements:

(i) commission of the crime which by its nature or consequences objectively constitutes part of the attack; together with the fact that

(ii) the accused knows that the attack on civilians was carried out and that his crime was part of this attack.

In the final judgment in the Mrkšić, Šljivančanin and Radić case, they were acquitted of the charges for persecutions committed on political, racial and religious grounds; extermination; murder; inhumane acts; (crimes against humanity, Article 5) because it is an established fact that the perpetrators at Ovčara acted in such a way as to exclude the intent for their acts to constitute part of the attack on the civilian population in Vukovar, and thus their acts become so remote from the attack that it is impossible to establish the existence of a nexus. Let us recall, what is being analysed here is only the existence of a crime and its degree for the Vukovar location in the indictment against Professor Vojislav Šešelj. This means that persecutions, forcible transfer and deportation do not exist as crimes against humanity under Article 5 of the Statute, i.e. the condition of the jurisdiction in Article 5 of the Statute does not exist and these charges must be dropped. It is really unnecessary to continue analysing the behaviour of Professor Vojislav Šešelj and the crimes with which he has been charged in the indictment, considering that there is “distance from the attack”.

#### **Locations in Bosnia and Herzegovina**

The indictment against Professor Vojislav Šešelj states that Krajišnik was a participant in the JCE, but in the indictment against Krajišnik, Šešelj is not mentioned as one of the participants in the JCE. Furthermore, the objective of the JCE has been defined differently. In Krajišnik’s indictment, the primary objective was the persecution (deportation and forcible transfer) of Muslims and Croats from territories where Serbs constituted a majority in municipalities of Bosnia and Herzegovina, hence all the other charges, extermination and murder, were dropped.

The Appeals Chamber found the following in its judgement:

“**257. Zvornik:** The Trial Chamber found that, around 28 May 1992, Major Svetozar Andrić, commander of the VRS 1<sup>st</sup> Birač Brigade, ordered the Zvornik TO to organise and co-ordinate the moving out of the Muslim population with municipalities through which they would pass. In view of the Trial Chamber’s findings on Ratko Mladić’s position within the VRS, coupled with his support for and repeated receipt of reports on forced expulsions, the Appeals Chamber is satisfied that the Trial

Chamber found that Ratko Mladić used Major Svetozar Andrić for the commission of these crimes of deportation and forcible transfer in accordance with the common purpose (deportation, Count 7; inhumane acts, Count 8).”

Professor Vojislav Šešelj’s Comment

Professor Vojislav Šešelj’s speech is not mentioned as an event, although there was no speech in Mali Zvornik in March 1992. Major Svetozar Andrić is not even mentioned in the indictment against Professor Vojislav Šešelj. The principal perpetrator and the person who issued orders are known, as is everything about this crime against humanity, but there is no mention of Professor Vojislav Šešelj anywhere. There are no indications that Professor Vojislav Šešelj aided and abetted, planned, ordered or participated through speech or action in the JCE, hence the necessary nexus cannot even be assumed for Professor Vojislav Šešelj. Furthermore, the mentioned date, 28 May 1992, cannot in any way be brought into context with the volunteers of the Serbian Radical Party or their presence in Zvornik.

Jovan Mijatović

“**265.** The Trial Chamber found that Jovan Mijatović was a member of the Zvornik crisis staff, a deputy to the Bosnian-Serb Assembly and a member of the local component of the JCE.

“**266.** The Trial Chamber found that on 26 June 1992, a large number of Serb soldiers, TO, and paramilitary units entered the village of Kozluk (Zvornik municipality) with tanks and other military vehicles. It held that Jovan Mijatović was among this group which then informed the Muslims that they had one hour to leave and to gather their personal belongings, or else they would be killed. The villagers were also forced to sign statements surrendering their property. The Trial Chamber held that on the same day, a convoy of vehicles organised by the Serbs who had attacked and taken over Kozluk transported approximately 1,800 persons out of the municipality to Serbia, constituting deportation (Count 7).

“**267.** The Appeals Chamber is satisfied that the Trial Chamber found that Jovan Mijatović arrived with the attacking forces and together with them informed the villagers that they would have to leave in one hour, or else would be killed. On the same day, the villagers were forced to sign statements surrendering their property, and the attacking forces deported about 1,800 people. In light of these findings, the Appeals Chamber is satisfied that the Trial Chamber found that Mijatović used the

principal perpetrators of the crime of deportation (Count 7) and imputed this crime to him.”

Professor Vojislav Šešelj's Comment

We are talking about 26 June 1992, which cannot in any way be brought into context with the volunteers of the Serbian Radical Party and their presence in Zvornik.

Vojin Vučković aka Žučo

“**268.** The Trial Chamber found that Vojin (Žučo) Vučković, together with his brother Dušan (Repić) Vučković, led the paramilitary unit called Yellow Wasps /*Žute osele*, which was comprised of around 100 men. While the Trial Chamber found that both brothers had several men under their command, it considered only Vojin Vučković to have been a member of local component of the JCE.

“**269.** The Trial Chamber held that from April to May 1992, the Yellow Wasps co-operated closely with the TO in Zvornik and were even issued arms by the TO's logistic staff. It further held that after the establishment of the VRS Zvornik Brigade, the Yellow Wasps were subordinated to it, and that Vojin Vučković received weapons from the Pale SJB and met with Plavšić and with the Minister of Defence Subotić, who informed him that as soon as military units took orders from the VRS, they were considered to be a member of the VRS.

“**270.** Zvornik: The Trial Chamber found that around 28 May 1992, between 400 and 500 Muslims from Divič village, including women, children, and elderly persons, were forced onto buses by members of the Yellow Wasps and were told that they would be taken to Muslim territory. In Crni Vrh, the captives were released and allowed to depart on foot. On the basis of these findings, and given that the Yellow Wasps were headed by Vojin Vučković, the Appeals Chamber is satisfied that the Trial Chamber established that he used the principal perpetrators to commit the crime of deportation (Count 7) in accordance with the common purpose.”

Professor Vojislav Šešelj's Comment

Applying the same method, the Appeals Chamber also established deportation and forcible transfer in Bijeljina in paragraphs 276, 277 and 278, from 15 June 1992, and that Ljubiša (Mauzer) Savić as a participant in the JCE used the principal perpetrators.

Hence there is no mention of Professor Vojislav Šešelj's speech anywhere and no quoting of names of persons with whom a link may be established concerning participation in the JCE.

Pursuant to the joint conditions in Article 5 of the Statute, crimes against humanity, it is necessary that the Prosecution prove the "nexus in question":

(i) The commission of a crime which by its nature or consequences objectively constitutes part of the attack; (what crime committed by Professor Vojislav Šešelj, by its nature (beginning with a speech which did not even take place in March 1992) or consequences, objectively constitutes part of an attack; if there was no speech, we do not know what other crime he committed (irrespective of the type of responsibility))?

(ii) The accused knows that an attack on civilians was carried out and that his crime was part of this attack; (Professor Vojislav Šešelj knows about the armed conflict, but it is not clear how his speech, which he did not make, can be his knowledge that his speech which he did not make is part of the alleged attack).

This surely makes no sense, but this is how the Prosecution formulated the charges of crimes against humanity in its indictment. In the Krajišnik case, the dates of crimes against humanity in Zvornik are accurately determined as the end of May 1992 and the end of June 1992. The established facts for the Zvornik location in this case concerning crimes against humanity do not show either a geographic or time component of a link or the impact of any action of Professor Vojislav Šešelj. Indeed, the indictment against Professor Vojislav Šešelj goes outside the framework established in the final judgement in Krajišnik's case relating to the above mentioned locations.

The position of the Appeals Chamber is of importance with regard to the type of responsibility for participation in the JCE:

The Trial Chamber made a mistake by omitting to state in specific terms whether all or just some of the local politicians, military and police commanders and paramilitary leaders mentioned in paragraph 1087 of the judgement had been members of the JCE. Hence this sub-ground was upheld.

The Trial Chamber wrongly applied the law when it did not adopt the conclusions necessary for the guilty verdict against Krajišnik in connection with the following additional crimes which had not been included in the original joint objective of the JCE:

Persecution (Count 3), with the exception of the underlying crimes of deportation and forcible transfer;

Extermination (Count 4); and

Murder (Count 5).

In view of this, the Appeals Chamber partially upheld this sub-ground for appeal and rejected the remaining part. Krajišnik's guilty verdicts for the additional crimes in counts 3, 4 and 5 were consequently overruled.

In relation to the charges against Professor Vojislav Šešelj, everything that pertains to persecution, as being the primary objective of the JCE, in accordance with the final judgement against Krajišnik, was dropped for Bijeljina, Brčko, Greater Sarajevo, Zvornik and Nevesinje (Šamac and Mostar were not in the indictment against Krajišnik). Extermination and murder as crimes against humanity were also dropped.

The Appeals Chamber noted that the Trial Chamber many times omitted to adopt conclusions on a link between the principal perpetrators of the original crimes of deportation, forcible transfer and persecutions, which are based on these crimes, and members of the JCE. Consequently, the Appeals Chamber concluded that the Trial Chamber only adopted the conclusions that the members of the JCE had committed the following original crimes, using the principal perpetrators for the purpose of achieving the joint objective:

Persecution through deportation, Count 3, in Bratunac, Zvornik, Sanski Most, Banja Luka, Bijeljina and Prnjavor;

Persecution through forcible transfer, Count 3, in Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac;

Deportation, Count 7, in Bratunac, Zvornik, Sanski Most, Banja Luka, Bijeljina and Prnjavor; and

Inhumane acts through forcible transfer, Count 8, in Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac.

Krajišnik's guilty verdicts for the remaining original crimes in Counts 3, 7 and 8 were hence overturned.

Within the framework of the type of responsibility, participation in the JCE due to the lack of the necessary link between Krajišnik or a leading member of the JCE and a local member of the JCE who used the principal perpetrators of the crime, persecutions through deportation, persecutions through forcible transfer, deportation and the forcible transfer of a large number of municipalities were dropped, but they remain for Zvornik (through Jovo Mijatović and Vojin Vučković aka Žučo) and Bijeljina (through Ljubiša Savić aka Mauzer).

### **Conclusion**

Both cases are important, considering that there were no words or speech of Professor Vojislav Šešelj in Vukovar and Mali Zvornik. Had there been a “speech”, this fact would definitely be established, registered or at least cited in these final judgements (Mrkšić, Šljivančanin and Radić and Krajišnik). Furthermore, it is important that there was not a single crime against humanity in Vukovar, hence it is impossible to charge Professor Vojislav Šešelj with crimes under Article 5 of the Statute. According to the judgement against Krajišnik, crimes against humanity were committed in Zvornik, and we know exactly when they were committed and by whom, and who was the “local component” of responsibility for participation in the JCE. The local components in Zvornik were therefore Major Svetozar Andrić, Jovan Mijatović and Vojin Vučković aka Žučo, who can in no way be placed within the context of a JCE with Professor Vojislav Šešelj, nor did Professor Vojislav Šešelj incite, assist or support them. Not only was not a single piece of evidence presented about this, but there simply is no evidence at all. Considering that there is no responsibility for participation in the JCE, it is interesting to note the position of responsibility for speech as means of instigating, aiding and abetting and directly physically executing a crime. Is it possible to have a situation where Professor Vojislav Šešelj’s speech incited the principal perpetrators of the crime, without knowing who they are, if it was established that the principal perpetrators were used by Major Svetozar Andrić, Jovan Mijatović and Vojin Vučković aka Žučo who were in some way connected or were allegedly recruited by the participants in the JCE who were in positions of leadership in the Republika Srpska.

How could Vojin Vučković aka Žučo or members of his unit be incited by Professor Vojislav Šešelj when they did not even recognise him, and the Vučković lot were expelled from the Serbian Radical Party back in 1991. Apart from this, Professor

Vojislav Šešelj publicly commended the authorities of the Republika Srpska for arresting the Yellow Wasps. Let us recall that the Prosecution, in respect of all crimes in Zvornik, used Professor Vojislav Šešelj's speech at a rally allegedly held in March 1992 in Mali Zvornik as the starting point for his responsibility. Let us recall that there is not a single piece of evidence of a rally in Mali Zvornik in March 1992.

In view of Bijeljina, the situation is identical. Everyone knows that Mauzer was close to Arkan and that he showed great intolerance towards Mirko Blagojević and Professor Vojislav Šešelj. Is it really possible that any speech given by Professor Vojislav Šešelj could have influenced Mauzer in such a way that he committed crimes because of what Professor Vojislav Šešelj had said?

Furthermore, the question arises as to whether it is possible, if a crime was committed as part of the JCE that Professor Vojislav Šešelj, who is not a participant in this JCE, is held accountable, with the alleged speech as the basis of the direct physical execution, instigation, aiding and abetting the same crime? How are we to appreciate that Professor Vojislav Šešelj's speech aided and abetted the local components of the JCE: Svetozar Andrić, Jovan Mijatović and Vojin Vučković aka Žučo and Ljubiša Savić aka Mauzer, who used the principal perpetrators of the crime, or as something else, although no one knows what that something else could be? In any case, on what type of individual criminal responsibility could Professor Vojislav Šešelj be indicted, on the grounds of a speech that never was?

As for the Hrtkovci location, the Prosecution imposes responsibility for alleged crimes against humanity. However, the Prosecution's problem is that it cannot establish a nexus, and that it cannot prove ICTY jurisdiction under Article 5 of the Statute.

It will be difficult to convince anyone that Professor Vojislav Šešelj's speech of 6 May 1992 was the action that was part of an extensive and widespread attack on civilians. An extensive attack implies a great number of persecuted civilians. For the Hrtkovci location, the Prosecution attempted, through an expert witness, to present the list of people born in Hrtkovci as a list of people expelled from there. However, when the Prosecution went for details from witnesses, no one could provide more than eight names of civilians who had allegedly been moved out under duress from Hrtkovci. Can eight people constitute an extensive attack on the civilian population?

The second requirement for an attack is that it be systematic or organised. The Prosecution did not present a single piece of evidence to establish the existence of any

organisation, i.e. that Serbs expelled from Croatia who sought out partners in Hrtkovci for exchanging property belonged to any organisation or that they sought out Croats in Hrtkovci with whom they could exchange property according to some previously devised plan.

Hence the requirement of systematic was not proved. The only thing which was established during the presentation of evidence by the Prosecution is that people were spontaneously exchanging real estate, and in no manner can this be considered an act of persecution.

There is no need to reiterate, but it is good to recall that the Prosecution did not succeed in establishing a nexus during the hearing in the way they were obliged to by the Appeals Chamber, considering that since 2003, the contentious issue has been whether the indictment against Professor Vojislav Šešelj should include the Hrtkovci location. Let us remind ourselves that the Trial Chamber ordered the Prosecution to remove from the indictment all charges relating to the Hrtkovci location and places in the AP /Autonomous Province/ of Vojvodina (the territory of the Republic of Serbia) because it is impossible to find a nexus, and that the Appeals Chamber, acting on the Prosecution's appeal, allowed the charges relating to the Hrtkovci location to remain in the indictment on condition that the Prosecution proves the existence of a nexus under Article 5 of the Statute and that the Appeals Chamber expressed its amazement over whether it was at all possible, but that nonetheless left it all up to the Trial Chamber before which the hearing would take place, considering that the question raised was one of proving jurisdiction under Article 5 of the Statute.

#### **Count 1: Persecution as a Crime Against Humanity**

In the pre-trial brief the Prosecution alleges:

“**164.** ‘Persecution’ under Article 5(h) requires that the accused committed an act or omission which:

(1) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*); and

(2) was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the *mens rea*).

“**165.** Persecutory acts may include all crimes enumerated elsewhere in the Statute. Non-physical acts with economic or legislative consequences may also

constitute persecution. “The persecutory act or omission may encompass physical and mental harm as well as infringements upon individual freedom.”

“There need be no link between persecution and acts of violence. The act of Persecution must be of the same level of gravity as other acts listed in Article 5 of the Statute. A single act may constitute persecution. ‘Hate speech’ which targets a population on the basis of ethnicity or other discriminatory grounds constitutes persecution.

“**166.** The International Criminal Tribunal for Rwanda has found ‘that speech constituting ethnic hatred (or “hate speech”) results from the stereotyping of ethnicity combined with its denigration.’

“The context in which a statement is made is also important when distinguishing between legitimate discussions of ethnic consciousness and the illegal promotion of ethnic hatred. An expression of ethnic generalisation provoking resentment against members of that ethnicity would have a heightened impact in the context of a violent environment and the expression would be more likely to lead to violence. At the same time, the environment would be an indicator that incitement to violence was the intent of the statement.

“**167.** The persecutory act must ‘be discriminatory in fact’. However, it is sufficient that the will to discriminate is effected. Thus a Serb mistaken for a Muslim may still be the victim of persecution directed against Muslims.

“A discriminatory mental state against a group negatively defined such as ‘non-Serb’ or ‘non-Muslim’ can satisfy the ‘discriminatory grounds’ requirement under Article 5.

“**168.** Discriminatory intent may be inferred from the fact that the crime is committed in the context of a generally discriminatory attack, a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.

“**169.** Since the accused acted with discriminatory intent, all crimes committed by him amount to persecution. Thus, persecution has been charged to encompass all crimes covered by other counts in the indictment, in addition to persecutory acts which are not in themselves crimes under the Statute. Persecution in the indictment, thus, encompasses these separately charged criminal acts: (a) murder, (b) unlawful imprisonment and confinement, (c) establishment and perpetuation of inhumane

conditions, (d) torture, beatings and killings (in detention), (e) forced labour, (f) sexual assaults, (g) imposition of restrictive and discriminatory measures, (h) torture, beatings and robbery during and after arrest, (i) deportation or forcible transfer, and (j) destruction of property and cultural and religious sites.”

In the indictment the Prosecution alleges that:

“15. From on or about 1 August 1991 until at least September 1993, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of, or physically committed, persecutions of Croat, Muslim and other non-Serb civilian populations in the territories of the SAO SBWS (Serbian Autonomous District of Slavonia, Baranja and Western Srem), and in the municipalities of Zvornik, Greater Sarajevo, Mostar, and Nevesinje in Bosnia and Herzegovina and parts of Vojvodina in Serbia.

“16. Throughout this period, the Serb forces defined in paragraph 8(a), above, including volunteers recruited and/or instigated by Vojislav Šešelj, attacked and took control of towns and villages in these territories. After the take-over, these Serb forces, in co-operation with the local Serb authorities, established a regime of persecutions designed to drive the non-Serb civilian population from these territories.

“17. These persecutions were committed on political, racial and religious grounds and included:

a. [omitted] murder of many Croat, Muslim and other non-Serb civilians, including women, children and elderly persons, in the municipality of Vukovar, in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, as described in paragraphs 18 to 27 of this indictment.

b. The prolonged and routine imprisonment and confinement of Croat, Muslim and other non-Serb civilians in detention facilities within Croatia and Bosnia and Herzegovina, including prison camps in Vukovar, and in Zvornik, Greater Sarajevo, Mostar, and Nevesinje as described in paragraphs 28 to 30 of this indictment.

c. The establishment and perpetuation of inhumane living conditions for Croat, Muslim and other non-Serb civilian detainees within the said detention facilities.

d. Killings and repeated torture and beatings of Croat, Muslim and other non-Serb civilian detainees in the said detention facilities.

e. Prolonged and frequent forced labour of Croat, Muslim and other non-Serb civilians detained in the said detention facilities or under house arrest in their respective homes in Vukovar, Zvornik, Greater Sarajevo and Mostar. The forced labour included digging graves, loading ammunition for the Serb forces, digging trenches and other forms of manual labour at the front lines.

f. Sexual assaults of Croat, Muslim and other non-Serb civilians by Serb soldiers during their capture and while detained in the said detention facilities.

g. The imposition of restrictive and discriminatory measures against the Croat, Muslim and other non-Serb civilian populations, including persons in Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, and in parts of Vojvodina, Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia), such as restriction of movement; removal from positions of authority in local government institutions and the police; dismissal from jobs; denial of medical care; and arbitrary searches of homes.

h. Torture, beating and robbing of Croat, Muslim and other non-Serb civilians.

i. Deportation or forcible transfer of tens of thousands of Croat, Muslim and other non-Serb civilians from the territories as specified above, and from parts of Vojvodina, Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia) as described in paragraphs 31 to 33.

j. Deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat, Muslim and other non-Serb civilian populations in the municipality of Vukovar in Croatia, and in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina as described in paragraph 34.

k. Direct and public denigration through “hate speech” of the Croat, Muslim and other non-Serb populations in Vukovar, Zvornik and Hrtkovci on the basis of their ethnicities as described in paragraphs 20, 22, and 33.”

Professor Vojislav Šešelj’s Comment

Under Article 5 of the Statute, the definition of the crime of persecutions is too broad. However, with regard to the indictment against Vojislav Šešelj for persecutions, we must bear in mind the case law relating to the locations which are repeated in the indictments against Mrkšić, Šljivančanin and Radić (Vukovar) and Krajišnik (municipalities in Bosnia and Herzegovina). For Vukovar, it is important

that it has been established in the final judgement that there was no crime against humanity; hence there is no need to talk about persecution in Vukovar.

With regard to municipalities within the territory of Bosnia and Herzegovina, in the Krajišnik case interesting positions were taken and factual findings made about the existence and about what constitutes persecution. In order to avoid repeating what was said in Schedule B, General Conditions Article 5(b) of the Statute, relating to the final judgement, it is necessary to state how and for what Krajišnik was indicted for persecutions, and these are the paragraphs of the indictment:

“18. Between 1 July 1991 and 30 December 1992, Momčilo Krajišnik and Biljana Plavšić, acting individually or in concert with each other and with Radovan Karadžić, Nikola Koljević and other participants in the JCE, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of persecutions of the Bosnian Muslim, Bosnian Croat or other non-Serb populations of the following municipalities: Banja Luka, Bijeljina, Bileća, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboj, Donji Vakuf, Foča, Gacko, Hadžići, Ilidža, Ilijaš, Ključ, Kalinovik, Kotor Varoš, Nevesinje, Novi Grad, Novo Sarajevo, Pale, Prijedor, Prnjavor, Rogatica, Rudo, Sanski Most, Šipovo, Sokolac, Teslić, Trnovo, Višegrad, Vlasenica, Vogošća and Zvornik (hereinafter: ‘the municipalities’).

“19. Bosnian Serb Forces and Bosnian Serb Political and Governmental Organs and their agents committed persecutions in the Municipalities upon Bosnian Muslim, Bosnian Croat or other non-Serb populations. The persecutions included:

a. the imposition and maintenance of restrictive and discriminatory measures including:

- i. the denial of freedom of movement;
- ii. the denial of employment through the removal from positions of authority in local government institutions and the police and the general dismissal from employment;
- iii. the invasion of privacy through arbitrary searches of homes;
- iv. the denial of the right to judicial process; and
- v. the denial of equal access to public services;

b. killings during and after attacks on towns and villages in the Municipalities, including those listed in Schedule A;

- c. cruel or inhumane treatment during and after the attacks on towns and villages in the Municipalities including torture, physical and psychological abuse, sexual violence and forced existence under inhumane living conditions;
- d. forced transfer or deportation;
- e. unlawful detention in detention facilities, including those listed in Schedule C;
- f. killings related to detention facilities, including those listed in Schedule B;
- g. cruel or inhumane treatment in detention facilities including those listed in Schedule C. This treatment included torture, physical and psychological abuse and sexual violence;
- h. the establishment and perpetuation of inhumane living conditions in detention facilities, including those listed in Schedule C. These conditions included the failure to provide adequate:
  - accommodation or shelter;
  - food or water;
  - medical care; or
  - hygienic sanitation facilities
- i) forced labour including digging graves and trenches and other forms of forced labour at front lines and the use of Bosnian Muslim, Bosnian Croat or other non-Serb populations as human shields;
- j) the appropriation or plunder of property during and after attacks, in detention facilities and in the course of deportations or forcible transfers. The appropriation of property included the practice of forcing Bosnian Muslims, Bosnian Croats or other non-Serbs to sign documents turning over their property to Bosnian Serb governmental authorities in order to be allowed to leave the Municipalities; or
- k) the intentional or wanton destruction of private property including homes and business premises and public property, including cultural monuments and sacred sites listed in Schedule D.”

Professor Vojislav Šešelj's Comment

Therefore persecution is out of the question for Greater Sarajevo, Zvornik, (there were no persecutions in Mostar, hence it is not included in the indictment) and Nevesinje. It must be noted that the indictment against Krajišnik states that the persecution took place between 1 July 1991 and 30 December 1992. In the case of Vojislav Šešelj, it is alleged that the persecution went on between 1 August 1991 and September 1993, and if forcible transfer and deportation are considered within

persecutions, then the forcible transfer and deportation lasted from March 1992 to September 1993 for Zvornik, from April 1992 to September 1993 for Greater Sarajevo, from June 1992 to September 1993 for Nevesinje and from May to August 1992 for Hrtkovci. This discrepancy in the charges is important both from the view of the indictments for participation in the JCE, which clearly did not happen, and consequently participation in the JCE as a type of responsibility, and from the view of the time frame of these charges which relate to other types of responsibility.

In view of this it is important to compare the charges for persecution against Vojislav Šešelj and Momčilo Krajišnik and establish what if anything remains within the framework of the charges for persecutions against Vojislav Šešelj. In Momčilo Krajišnik's case, paragraphs 18a, 18b, 18c, 18d, 18e, 18f, 18g, 18h, 18i, 18j and 18k were dropped concerning the said locations in Bosnia and Herzegovina. The text of Vojislav Šešelj's indictment in paragraphs 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i and 18j is identical to the above paragraphs in the indictment against Krajišnik. With regard to persecutions, the only comment still required concerns charges on the basis of:

**17k.** The direct and public denigration through "hate speech" of the Croat, Muslim and other non-Serb populations in Vukovar, Zvornik and Hrtkovci on the basis of their ethnicities, as described in paragraphs 20, 22 and 23.

Let us see what direct and public denigration through hate speech in Vukovar Zvornik and Hrtkovci means according to the indictment of the Prosecution:

#### **Vukovar**

**"20.** In November 1991 while Serb forces fought to take over Vukovar, Vojislav Šešelj visited the town. On or about 8 November 1991, Vojislav Šešelj publicly pronounced, 'This entire area will soon be cleared of Ustashas.' On or about 13 November 1991, Vojislav Šešelj, both publicly and privately, pronounced, 'Not one Ustasha must leave Vukovar alive.' These speeches persecuted Croats and instigated the killing of Croats."

#### **Professor Vojislav Šešelj's Comment**

The final judgement against Mrkšić, Šljivančanin and Radić proves that there was no direct and public denigration through hate speech as cited in paragraph 20, since there was no speech, either public or private. Furthermore, even when the Prosecution presented the evidence, there was not a single piece of evidence to

support the charge in paragraph 20. False witnesses and those whose testimonies were not admitted by the judges in the case of Mrkšić, Šljivančanin and Radić and the testimonies in the Ovčara case in Belgrade do not count.

#### **Zvornik**

“22. In March 1992, Vojislav Šešelj gave a speech at a rally in Mali Zvornik, located across the Drina river from Zvornik. Vojislav Šešelj said: ‘Dear Chetnik brothers, especially you across the Drina river, you are the bravest ones. We are going to clean Bosnia of pagans and show them a road which will take them to the east, where they belong.’ This speech persecuted and/or instigated the persecution of non-Serbs in Zvornik.”

#### **Professor Vojislav Šešelj’s Comment**

In March 1992, there was neither a rally nor a speech in Mali Zvornik, hence the charge of direct and public denigration through hate speech is by all means incomprehensible. The only speech or rally in Mali Zvornik was in August 1990, during a promotion of the Serbian Chetnik Movement, and not only are this event and the date not included in the indictment, but they also do not fall within the jurisdiction of the ICTY. Only one false witness testified about this alleged rally and no court on earth would admit his testimony.

#### **Vojvodina – Hrtkovci**

“33. In May 1992, Vojislav Šešelj came to Vojvodina and met with his associates in the SRS. Vojislav Šešelj instructed his associates to contact non-Serbs and threaten them with death if they did not leave the area. On 6 May 1992 Vojislav Šešelj gave an inflammatory speech in the village of Hrtkovci, Vojvodina, calling for the expulsion of Croats from the area and reading a list of individual Croat residents who should leave for Croatia. As a result of this speech, a number of Croat residents decided to leave Hrtkovci. After this speech, supporters and associates of the accused, including members of the SRS and the SČP, began a campaign of ethnic cleansing directed at non-Serbs, particularly Croats, in Hrtkovci. During the next three months, many non-Serbs were harassed, threatened with death and intimidated, forcing them to leave the area. Homes of Croats were looted and occupied by Serbs. Serb families who had been displaced from other parts of the former Yugoslavia often occupied the homes of those non-Serbs who had been compelled to leave.”

#### **Professor Vojislav Šešelj’s Comment**

It is obvious that we need to find answers to the following questions. On 6 May 1992, was there any call for expulsion or was it an election rally at which the authorities were criticised and election pledges made about what would be done when power changed hands? Did Professor Vojislav Šešelj read out a list with names? Was there any direct and public denigration through speech on ethnic grounds? We must also establish under what type of responsibility the Prosecution will place direct and public denigration of the population through hate speech on ethnic grounds.

According to paragraph 5 of the indictment, this is physical commitment through speech which does not come under the case law of the ICTY in the Kordić case, paragraph 209, and it does not rise to the same level of gravity as the other acts enumerated in Article 5 of the Statute and has not attained the status of customary international law. Consequently, the speeches which were not held in Mali Zvornik and Vukovar cannot be included in the indictment, and the speech in Hrtkovci, regardless of its interpretation, does not fulfil the conditions in Article 5 of the Statute.

Speech, or what the Prosecution refers to as “hate speech”, does not feature as a crime anywhere in the ICTY Statute and it does not rise to the same level of gravity as the other acts enumerated in Article 5. Furthermore, criminal prohibition has not attained the status of customary international law, hence the conviction of Professor Vojislav Šešelj for such an offence, formulated as a charge of persecution, would be in breach of the principle of legality.

The only speech offence which is explicitly criminalised under the IMT /International Military Tribunal/ Statute, the Control Council Law No. 10, and the Statutes of the ICTY, ICTR and ICC is direct and public incitement to commit genocide. Professor Vojislav Šešelj is not charged with genocide. The general position in conventional law in relation to this area shows that such speech does not necessarily have to be considered a crime in customary international law.

Citing all types of responsibility invoked by the Prosecution in the indictment is moot, but instigation, aiding and abetting certainly deserve attention, since prosecution for a speech offence which does not rise to the level of incitement is not supported by international jurisprudence, while the ICTY’s jurisprudence has a tendency to equate instigation with aiding and abetting. Hence the issue is whether Professor Vojislav Šešelj’s speech can rise to the level of incitement to commit the alleged crimes under Article 5 of the Statute, and as for the Hrtkovci location, from the position of the general conditions:

- whether there was a widespread or systematic attack against the civilian population, the Croats in Hrtkovci, since if we were to accept the Prosecution's stand that the existence of an attack against the civilian population is sufficient, regardless of its location in former SFRY /Socialist Federative Republic of Yugoslavia/ territory, then we would embark on a topic of why the existence of an "armed conflict" was particularly emphasised in Article 5 of the Statute;

- whether Professor Vojislav Šešelj's conduct/speech was linked to this widespread or systematic attack against the civilian population;

- whether Professor Vojislav Šešelj was aware of the broad context of his conduct/speech; and

- especially in terms of the requirements for the crime of persecution.

During the Prosecution's presentation of evidence, it was established beyond doubt that in the second half of 1991, Croats in Hrtkovci and other parts of Vojvodina undertook an exchange of property with Serbs expelled from Tuđman's Croatia. Thus, there was widespread, organised and systematic persecution of Serbs also from parts of Croatia not affected by armed conflict. The expelled and exiled Serbs from Croatia such as it was then, had to save their lives by going to Serbia or Bosnia and Herzegovina which were not yet affected by armed conflict. What is to be done with the refugees who in order to escape Tuđman's Ustahas flooded the territory not affected by armed conflict, such as Serbia? It is really interesting to see what the Prosecution and ICTY judges think they would have done with the refugees arriving in Serbia; how they would have resolved the issues of refugees. Judging by the fact that to date, no one in Croatia has been indicted for the persecution of Serbs in Zagreb and other places in Croatia in the second half of 1991, which remained free from armed conflict, we can draw a conclusion that the ICTY as a whole believes that no one expelled Serbs from Croatia. A similar situation is that of the Serbs in Western Slavonia, which was affected by armed conflict, and practically all of them were expelled by the end of December 1991. Everyone at the ICTY maintains that there were no persecutions of Serbs from Western Slavonia. What is to be done with these people who were granted a refugee status in Serbia? The International Committee of the Red Cross and UN High Commissioner for Refugees are well aware of it, as Serbia cannot take on 500,000 refugees in one batch and as many as 800,000 Serbian refugees several months later.

We now come to the fact that until 31 December 1991, property in Hrtkovci was exchanged between Serbs expelled from Croatia and the Croats in Hrtkovci. According to the Prosecution's position, this was not the persecution of Croats from Hrtkovci. Why this is not persecution, we do not know, but no one in Serbia was indicted for the persecution of the Croats from Hrtkovci as property was being exchanged with Serbs expelled and exiled from Croatia up until 31 December 1991.

This fact is important, not only as doubt about the possible arbitrariness on the part of the Prosecution when indicting, but also for establishing if the requirement for an extensive and widespread attack against the civilian population existed and on what territory?

Hence the persecution of Serbs from Croatia from places that were free of armed conflict is not incrimination according to the Prosecution.

Furthermore, the persecution of Serbs from Western Slavonia, which was affected by armed conflict, is not incrimination according to the Prosecution.

The question arises as to what invisible requirement for persecution exists when it comes to Professor Vojislav Šešelj's indictment. It is clear that Serbs cannot be the victims of persecution and it seems that Article 5 of the Statute contains an invisible criterion whereby the persecution of Serbs does not exist and that it is an impossible category. Similar to the crime of murder, it exists when victims are other people, but the category of a Serb as victim of the crime of murder does not exist in the ICTY.

These positions of the Prosecution and ICTY judges result in a new view of attack and territory. If there was no extensive, widespread, systematic and organised attack against the Serbian civilian population in Croatia, in areas free from armed conflict and in those affected by armed conflict, then no nexus, as invoked by the Prosecution, can be established in Vojvodina and Hrtkovci. Hence the position that there was an armed conflict somewhere within SFRY territory, perhaps a local one, in just one municipality, is sufficient to establish the nexus required to charge Professor Vojislav Šešelj with the persecution of Croats in Hrtkovci. Let us recall that persecution as a crime was not found in the final judgement against Mrkšić, Šljivančanin and Radić in Vukovar.

Let us recall that a cease-fire under the Vance Plan came into effect in Croatia in January 1992, of which the Prosecution is well aware. In the Third Amended

Indictment against Professor Vojislav Šešelj, in the section /Annex I/ "Additional Historical and Political Facts for Croatia," the Prosecution states the following:

"In Geneva on 23 November 1991, Slobodan Milošević, Federal Secretary of People's Defence Veljko Kadijević, and Franjo Tudman entered into an agreement signed under the auspices of the United Nations Special Envoy Cyrus Vance. This agreement called for the lifting of blockades by Croatian forces on JNA barracks and for the withdrawal of JNA forces from Croatia. Both sides committed themselves to an immediate cease-fire throughout Croatia by units 'under their command, control, or political influence' and further bound themselves to ensure that any paramilitary or irregular units associated with their forces would also observe the cease-fire.

"On 19 December 1991, the SAO Krajina proclaimed itself the Republic of Serbian Krajina (RSK) with Milan Babić as its first president. On 26 February 1992, the SAO Western Slavonia and SAO SBWS joined it in unilateral declarations by these entities.

"Under the Vance Plan, three United Nations Protected Areas (UNPAs) were created (Krajina, Western Slavonia, SBWS), corresponding with four Sectors (South, North, West and East) in the areas occupied by Serb forces. The Vance Plan called for the withdrawal of the JNA from Croatia, the return of displaced persons to their homes in the UNPAs, and the demilitarisation of these UNPAs. Although the JNA officially withdrew from Croatia in May 1992, large portions of its weaponry and personnel remained in the Serb-held areas and were turned over to the "police" of the RSK. Displaced persons were not allowed to return to their homes and those few Croats and other non-Serbs who had remained in the Serb-occupied areas were expelled in the following months and years."

Leaving aside the statement about the places occupied by Serbian forces as blatant cynicism, as it turns out that Serbs are occupiers even if they are in their own homes which they inherited from distant ancestors, some other details call for comment. Not a word about returning Serbs to Zagreb or other places in Tudman's Croatia, or returning to Western Slavonia, and yet it was an agreement signed by Vance the peacemaker. About 500,000 Serbs exiled from Croatia are not an issue for Vance the peacemaker. It is noticeable that if we look for a nexus in Hrtkovci, we must look for it in the events in Croatia and the armed conflict in Croatia. However, from January 1992 to August 1992, Serbian refugees came mainly from Western

Slavonia. Hence the systematic and widespread attack was only on Serbs as the civilian population of Western Slavonia and other places under the control of Tudman's forces. The emphasis is on Western Slavonia, since almost all those who took part in the exchange of property with the Croats in Hrtkovci were Serbs who were either expelled or exiled from Western Slavonia, Zagreb and other places where there were no armed conflicts and places in Croatia that were not under Serbian control.

When we talk about Serbs expelled from Tudman's Croatia, we mean above all the Serbs who were deported or forcibly transferred, who had to flee to save their very lives due to ceaseless continued discrimination. Discrimination against Serbs in Croatia is a permanent process. It started a long time ago, it is measured in centuries, and since 1990, after the Serbs were dropped as a constituent people of the Republic of Croatia from the Constitution when Tudman came to power, the Serbs were left outside the law in respect of every basic right. The consequences of such Croatian policy are visible in Croatia even today. Serbs were not allowed to return to their homes, Serbian singers were banned from having concerts in Croatia, cars with Serbian registration plates were vandalised, Serbian tourists harassed, the very small number of Serbs who remained in Croatia were beaten. If they did not convert to Catholicism their lives were hell every step of the way, and yet Croatia is on the threshold of becoming a member of the European Union. It is as if ICTY judges do not know that a special programme was being applied towards Serbs in Croatia for hundreds of years, i.e. the programme of resolving the Serbian issue: convert one-third of the Serbs to Catholicism, expel one-third and exterminate one-third. The problem of the Serbian issue in Croatia would then no longer exist.

From this point we need to establish whether from January 1992 to August 1992 there was a systematic and widespread attack by Serbian forces on Croats, both in the territory of the Republic of Serbian Krajina and in Serbia. There is not a single shred of evidence to support this claim, and this claim is not even given emphasis by the Prosecution, which behaves as if it is a well-known fact. Admittedly, it has to be recognised that the Prosecution replaced Colonel Ivan Grujić as a compromised expert witness with his employees Anamarija Radić and Višnja Bilić, who testified, allegedly as some kind of expert witnesses, more about the internal organisation of the service where they worked rather than being able to corroborate the thesis on Croatian refugees from Serbia.

This is an opportunity also to comment on the fact that after Operation Storm, in August 1995, a large number of Serbian refugees from the Republic of Serbian Krajina arrived in Serbia and in some situations where refugees had nowhere to go, they would move into Croatian houses in Srem. Without going into details, we must note that no one was indicted for these events, but had for any reason Professor Vojislav Šešelj's indictment stated that he was a member of the JCE until the end of 1995, the Prosecution would have claimed it to be an act of the persecution carried out by Professor Vojislav Šešelj in his election campaign speech on 6 May 1992. The Prosecution's arbitrariness, bias and cynicism in Professor Vojislav Šešelj's indictment are not worthy of any better comments.

One of the requirements being imposed is also the need to establish that Professor Vojislav Šešelj's speech on 6 May 1992 in Hrtkovci was part of a widespread and systematic attack on the civilian population, on Croats, but where in Hrtkovci or in some other place in the territory there was armed conflict /as printed/. If the criterion of an extensive and widespread attack on the civilian population is considered in relation to the Croats in Hrtkovci, then no type of behaviour or act against them is an attack which rises to the level of gravity listed under Article 5 of the Statute. One witness had trouble naming eight Croats from Hrtkovci who he claimed were expelled, and he also put his own name on the list, although he is a Serb who never left Hrtkovci. If we were to accept the number of eight Croats, is it sufficient to meet the requirement for an extensive and widespread attack on the civilian population? If the Prosecution alleges that there was an attack on Croats in Hrtkovci under Article 5 of the Statute, then we must look at the Prosecution's presentation of evidence and we must note that none of those, starting with Ostoja Sibinčić, who are recorded by their first and last names, as having taken part in these events are members of the Serbian Radical Party. Hence no systematic organisation is required for jurisdiction under Article 5 of the Statute. In fact, it has been established that those who exerted the pressure were mostly members of the Serbian Renewal Movement, people who have always been politically at odds with members of the Serbian Radical Party.

The problem that appears here is of a nexus between the actions, behaviour and speech of Professor Vojislav Šešelj and the attack itself, if what happened in Hrtkovci can be classified as an attack at all, since the alleged attackers and participants named in this fabricated attack are members of the Serbian Renewal

Movement, and therefore the Prosecution would not be able to convince anyone in the world that Professor Vojislav Šešelj's speech on 6 May 1992 in Hrtkovci was part of some activity of members of the Serbian Renewal Movement. Is it possible that Professor Vojislav Šešelj can influence members of the Serbian Renewal Movement through a speech? There is no need to waste words on the antagonism that exists between members of the Serbian Radical Party and those of the Serbian Renewal Movement. Furthermore, witness Aleksa Ejić, a local official of the Serbian Renewal Movement during his testimony mentioned the fact that in December 1992 the Serbian Radical Party candidate for deputy came in third by number of votes and that the candidates of the Serbian Renewal Movement and the Socialist Party of Serbia went through into the second round of voting. [REDACTED]

According to the positions of the ICTY, on condition that there was an attack against the civilian population in Hrtkovci, there can be no nexus between Professor Vojislav Šešelj's speech and the alleged attack, but there is no room to suspect that Professor Vojislav Šešelj's speech could have expressed his intention of being part of the attack carried out by members of the Serbian Renewal Movement. This stems from the Prosecution's presentation of evidence and this is why none of it makes sense. The speech, the behaviour and generally the acts of Professor Vojislav Šešelj which are linked to the rally in Hrtkovci on 6 May 1992 and the alleged persecution campaign which was launched at that time and went on for the next three months, as the Prosecution alleges, are so remote from the attack against the civilian population that he simply cannot be held responsible.

Up to now, the discussion has been only hypothetical, as if there were requirements imposed by the Prosecution in respect of persecution, but all of the Prosecution's positions have failed the verification test. Now we need to analyse the events in Hrtkovci, how they unfolded, and we need to establish whether there was any persecution at all.

There was no persecution, forcible transfer or deportation in Hrtkovci and in the AP /Autonomous Province/ of Vojvodina. All Croats exchanged their properties with Serbian refugees, and we must say, to both mutual satisfaction and dissatisfaction including unpleasantness. All Serbs who moved to Hrtkovci and exchanged their property in Croatia with Croats in Hrtkovci had the status of refugees

from Croatia. A refugee is an expelled or deported person, or a person who was forcibly transferred.

It is important to say that, according to the results of the Prosecution's presentation of evidence, initiative to exchange property came from the Serbian refugees, though there were cases where this initiative came from Croats in Hrtkovci.

The Prosecution's presentation of evidence showed that in the contracts on the exchange of property, as parties to the contract the Croats in Hrtkovci always had the upper hand. The Croats in Hrtkovci could chose, they could go to Croatia and check on the spot the property to be exchanged with the Serb, withdraw from the exchange and look for someone else to exchange their property with, haggle, proceed at leisure, wait until their child has completed secondary school in Serbia (the example of Prosecution witness Katica Paulić), go to Croatia a number of times and freely return to Hrtkovci, etc. A Serb taking part in an exchange of property could not afford to pick and choose, since it was not possible to go to Croatia and there was no roof over their heads in Serbia. This is why the Serbian refugees were the more vulnerable and discriminated party in this exchange of property. Even if a refugee Serb did move into an abandoned house of a Croat from Hrtkovci, he would be evicted by the police of the Republic of Serbia. Therefore the refugee Serbs from Croatia were on the receiving end of all the discrimination. Considering that the indictment against Professor Vojislav Šešelj refers to his speech of 6 May 1992 in Hrtkovci as the starting point for all persecutions as acts of discrimination and attack, it follows that the ICTY discriminates against the refugee Serbs, as it turns out that they carried out the attack in Hrtkovci. Therefore, by this imposed approach those who must be protected as victims are regarded as criminals. And this is the most important message of the entire Hrtkovci affair.

We also need to mention here the active role of the Roman Catholic church in the exchange of property between Serbs who fled from Croatia and the Croats from Hrtkovci. A Roman Catholic priest from Hrtkovci, a witness for the Prosecution, testified about this.

Also important for the act of persecution is a discriminatory foundation, i.e. discrimination, in the case of Hrtkovci, one along ethnic lines. The Prosecution did not adduce a single piece of relevant evidence in connection with this, and ICTY case law is familiar with this position from the Kordić case, in which the judgement of the Trial Chamber reads:

“827. The Trial Chamber has already held that the allegations relating to the encouragement and promotion of hatred, etc., and the dismissal of Bosnian Muslims from employment do not amount to persecution for the purposes of this case or, in the case of the latter allegation, at all.”

If we look at the events in Hrtkovci and compare them to all other locations in the territories of Croatia and Bosnia and Herzegovina where the existence of persecutions, deportation or forcible transfer were established in final judgements before the ICTY, we can in no way equate the two. Although violence is not required for the act of persecution, we have to bear in mind that everything mentioned as persecution in Hrtkovci has to rise to the same level of gravity as the other acts listed in Article 5 of the Statute. Is the same level of gravity possible, say, for the murder of civilians as a crime against humanity as for the exchange of the Croats' property in Hrtkovci, which the Prosecution defined as persecution?

With regard to the facts, the charges for Hrtkovci sank without trace. We will discuss this in more detail in the analysis of the Prosecution's presentation of evidence.

### **Counts 10 and 11: Deportation and Forcible Transfer as a Crime Against Humanity**

In its Pre-Trial Brief the Prosecution alleges:

“174. 'Deportation' under Article 5(d) and 'forcible transfer' charged as an inhumane act under Article 5 have the following requirements:

“175. Deportation is the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, across a *de jure* state border or, in certain circumstances, a *de facto* border, without grounds permitted under international law. The question whether a *de facto* border is enough for the purposes of the crime of deportation should be examined on a case by case basis in light of customary international law.

“176. The term 'force,' when used in reference to the crime of deportation, is not limited to physical force, but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or another person, or by taking advantage of a coercive

environment. The *mens rea* for the crime of deportation does not require intent to displace across the border on a permanent basis.

“177. Consent of the removed persons may justify the removal and render it legal. However, such consent must be real in the sense that it is given voluntarily and as a result of the individual’s free will, assessed in light of the surrounding circumstances.

“178. An occupying power may carry out the lawful movement of a population if the security of the population or imperative military reasons so demand. A population may be evacuated from an area in danger as a result of military operations, or where intense bombing may occur, and the presence of protected persons would hamper military operations, but real necessity must exist; the measures taken must not be merely an arbitrary infliction or intended simply to serve in some way the interests of the Occupying Power. Moreover, evacuees must be transferred back to their homes as soon as hostilities in the area have ceased. Even under these circumstances, transfer should only be within national boundaries unless it is impossible, and people must be transferred humanely, with “satisfactory conditions of hygiene, health, safety and nutrition.”

“179. Forcible transfer is forcible displacement of persons within national boundaries. The *mens rea* does not require the intent to transfer permanently. The absence of genuine choice makes the displacement unlawful. Acts of forcible transfer may be sufficiently serious to amount to ‘other inhumane acts’.”

In the indictment the Prosecution alleges:

“31. From on or about 1 August 1991 until May 1992 in the Serbian Autonomous Districts in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in Bosnia and Herzegovina, and between May and August 1992 in parts of Vojvodina, Serbia, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the deportation or forcible transfer of the Croat, Muslim and other non-Serb civilian populations from their legal domiciles, in Vukovar (SAO SBWS) in November 1991, in the municipality of Zvornik in Bosnia and Herzegovina between March 1992 and September 1993, in Greater Sarajevo in Bosnia and Herzegovina between April 1992 and September 1993, in the municipality of Nevesinje in Bosnia and Herzegovina between June 1992

and September 1993 and in parts of Vojvodina, Serbia, including the village of Hrtkovci, between May and August 1992.”

Professor Vojislav Šešelj’s Comment

Deportation and forcible transfer are shown here as an independent crime against humanity under Article 5 of the Statute, with regard to all types of individual criminal responsibility for the locations: Vukovar, Zvornik, Greater Sarajevo, Nevesinje and Hrtkovci. Therefore it is not a question of deportation and forcible transfer as an act within the crime of persecution. As far as Vukovar is concerned, in the final judgement against Mrkšić, Šljivančanin and Radić, there was not a single crime against humanity, and accordingly neither deportation nor forcible transfer. As for the locations: Zvornik, Greater Sarajevo and Nevesinje, the responsibility of Krajišnik as a participant in the JCE was only established for the Zvornik location, while the charges for Greater Sarajevo and Nevesinje were dropped. So we only need to examine the Zvornik location in terms of the charges against Professor Vojislav Šešelj, with regard to all types of responsibility which were simply thrown into the indictment.

“32. In order to achieve this objective, Serbian forces, including the White Eagles and *Dušan Silni*, and volunteers recruited and/or incited by Vojislav Šešelj, surrounded Croatian and Bosnian towns and villages and demanded that the inhabitants surrender their weapons, including legally owned hunting rifles. Then, the towns and villages were attacked or otherwise taken-over, even those where the inhabitants surrendered their weapons. These attacks were intended to compel the population to flee. After taking control of the towns and villages, the Serb forces sometimes rounded up the remaining Croat, Muslim and other non-Serb civilian populations and forcibly transported them to locations within Croatia or Bosnia and Herzegovina not controlled by Serbs, or deported them to locations outside Croatia or Bosnia and Herzegovina, in particular Serbia and Montenegro. On other occasions, Serb forces, in co-operation with the local Serb authorities, imposed restrictive and discriminatory measures on the non-Serb population and engaged in a campaign of terror designed to drive them out of the territory. The majority of the non-Serbs that remained were later deported or forcibly transferred from their homes.”

Professor Vojislav Šešelj’s Comment

The Prosecution alleges that Serbian Radical Party volunteers would “surround Croatian and Bosnian towns and villages and demand that the inhabitants surrender their weapons, including legally owned hunting rifles”. The Prosecution adduced evidence in connection with this, but there is not a single piece of evidence on the basis of which we could establish the fact: surrounding (when, where, who and what does this have to do with Professor Vojislav Šešelj?), demands for the inhabitants to surrender their weapons (when, where, who and what does this have to do with Professor Vojislav Šešelj?).

The Prosecution’s allegation that “towns and villages were attacked or otherwise taken over, even those where the inhabitants surrendered their weapons” most probably refers to Vukovar, Zvornik, Greater Sarajevo, Nevesinje and Hrtkovci. With the exception of Hrtkovci, hatred and armed conflict are represented by the attack of Serbian forces on towns and villages with regard to all the other locations cited here. As for Hrtkovci, there is no mention of surrounding, confiscation of weapons from people, takeover or taking control. The Prosecution argues that the intention was to force the population to flee. It is alleged that the subsequent phase was to round up populations and forcibly transport them to a border or outside the control of Serbian forces.

This means that deportation and forcible transfer are described in detail and that everything is clear. Regardless of invoking some of the types of responsibility, there is not a single piece of evidence to link Professor Vojislav Šešelj with these acts, whether directly, through Serbian Radical Party volunteers, or some speech of his as a means of instigating or aiding and abetting.

The Prosecution alleges in its indictment:

“33. In May 1992, Vojislav Šešelj came to Vojvodina and met with his associates in the SRS. Vojislav Šešelj instructed his associates to contact non-Serbs and threaten them with death if they did not leave the area. On 6 May 1992 Vojislav Šešelj gave an inflammatory speech in the village of Hrtkovci, Vojvodina, calling for the expulsion of Croats from the area and reading a list of individual Croat residents who should leave for Croatia. As a result of this speech, a number of Croat residents decided to leave Hrtkovci. After this speech, supporters and associates of the accused, including members of the SRS and the SČP, began a campaign of ethnic cleansing directed at non-Serbs, particularly Croats, in Hrtkovci. During the next three months,

many non-Serbs were harassed, threatened with death and intimidated, forcing them to leave the area. Homes of Croats were looted and occupied by Serbs. Serb families who had been displaced from other parts of the former Yugoslavia often occupied the homes of those non-Serbs who had been compelled to leave. The victims of crimes under counts 1, 10 and 11 in connection with Hrtkovci were non-Serbs from Hrtkovci. Annex XI lists the names of known victims.”

**Professor Vojislav Šešelj’s Comment**

As for the Vukovar charges, after the final judgement against Mrkšić, Šljivančanin and Radić, any comment about the charges of deportation and forcible transfer is moot as not a single crime against humanity has been established. As for the charges of persecution and deportation for any location in the territory of Bosnia and Herzegovina, the fact has been established that there was not even a mention of Professor Vojislav Šešelj’s name.

And finally, we need to comment on speech as physical commitment in Hrtkovci on 6 May 1992, as a result of which, according to the Prosecution, deportation and forcible transfer were carried out in the period between May and August 1992. The Prosecution did not mention with a single word that an exchange of property took place in Hrtkovci, something which all witnesses for the Prosecution confirmed in court. There will be more about the events in Hrtkovci in parts analysing the Prosecution’s presentation of evidence by locations.

**VIII. Analysis of Relevant Evidence – Testimonies**

Before we start to analyse the testimonies of witnesses by locations, we must analyse, if at all necessary, the witness testimony regarding hate speech, specifically regarding propaganda techniques by Anthony Oberschall, since everything that a person of rational judgement can conclude about the facts on the basis of Oberschall’s testimony can further the understanding of the analysis of the testimonies of other witnesses.

**Anthony Oberschall (expert witness for hate speech),**

**11, 12 and 13 December 2007**

In the Prosecution’s Final Pre-Trial Brief this witness was scheduled to testify on II. Šešelj’s Participation in the JCE, as follows:

- In paragraph 4, footnote 8) as the second basic segment of participation: “Šešelj oversaw the recruitment, indoctrination, financing, training, formation,

coordination, supply and assignment of units of 'volunteers' who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories."

We need to note here that it is not clear how an expert witness for "hate speech" or propaganda techniques could establish all this, and it is especially not clear on the basis of what? In footnote 8 witnesses are named, but the expert witness did not contact them. The expert witness boasted that he only analysed Professor Vojislav Šešelj's texts and speeches by conducting a word search. The statements of the accused are also cited, but the statements of the accused are analysed and from their content the Trial Chamber judges establish what is relevant for the judgement. What more could an expert witness establish than that which the judges do not see and cannot establish, although they too must read the statements of the accused? Furthermore, this sentence, packed with the Prosecution's findings, is also proof that the expert witness, could not establish it even he wanted to, since by his own admission he is allegedly an expert on propaganda techniques and not for hate speech, military issues, organisation, etc. If an expert witness on military issues failed to establish the existence of volunteer units of the Serbian Radical Party and the SČP, then it is not clear who an expert witness on propaganda techniques could establish that volunteer units existed? It is absurd even to think that an expert witness on propaganda techniques could testify on frequent participation in crimes, and that is what the Prosecution asked him to do, saying that he would testify about it.

In paragraph 12 with footnote 39 this expert witness was scheduled to testify that: "Through his public hate speech, in the period relevant to this indictment, the accused conditioned and provoked Serbs – soldiers, policemen, volunteers and civilians – to tolerate and/or commit the crimes necessary to achieve the goal of 'Greater Serbia'."

Therefore Professor Vojislav Šešelj, through his public hate speech, conditioned and encouraged them to tolerate and/or commit the crimes. The expert witness said in court that he was not an expert on hate speech but only on propaganda techniques, and the question therefore arises of how he could establish the existence of "public hate speech"?

In paragraph 13 with footnote 40 it was announced that this witness would testify that Professor Vojislav Šešelj led the propaganda effort about the dangers

posed by non-Serbs, therefore he instigated, participated in and contributed to the massive amounts of crimes. The sentence which resulted from the plea bargain between the Prosecution and Milan Babić is cited in support of the facts which may be established through the expert witness. Neither is it clear what it means to lead the propaganda effort. If someone is a leader of a propaganda effort, then he/she is either an editor in charge of this kind of propaganda or has the largest media presence with this kind of propaganda. With regard to this allegation, the expert witness did not present a shred of information on gauging leadership. He even looked ridiculous when he found out in court that Professor Vojislav Šešelj was the only people's deputy of the Serbian Radical Party and when he was told that the Serbian Radical Party during the 1992 elections was not among the first four parties represented in the media. If what is expected of this expert witness were true, that the propaganda effort was about the dangers posed by non-Serbs, then it is not clear how it could incite the massive amounts of crimes committed by Serbs, and it is not clear how Professor Vojislav Šešelj could participate in and contribute to these crimes. The expert witness could not provide a shred of evidence or set out the fact which he needs to establish with regard to this guesswork on which the Prosecution is counting. Therefore this is a question of mere guesswork which is allegedly concealed by the fact that it presented by an alleged expert, therefore his expert testimony is supposed to cover for the lack of evidence and for fabricated and commissioned facts. Therefore, the conclusion follows that the very occupation of the expert witness is the only relevant fact, which is so significant that the occupation covers up all the false findings of the expert witness.

In paragraph 14 with footnote 42 it was declared that this witness's testimony would establish that Professor Vojislav Šešelj, by disseminating his racist propaganda, physically committed persecution and deportation and inhumane acts (forcible transfer) as charged in the indictment. This witness is supposed to deal with the effects of the accused's speech on the Croatian population. Therefore the speech and words, owing to their interpretation by the alleged expert witness ought to carry weight and represent direct physical commitment of the crime. The Prosecution's position, formulated in this way, means nothing and therefore it must be concluded that the Prosecution simply has no case. This situation is punished by way of the judges rejecting all counts of the indictment which are based on a fabricated or non-existent case. The Prosecution admits this, because it multiplies Professor Vojislav

Šešelj's words and speech as each of the possible types of individual criminal responsibility, as an act or an omission applicable to all possible and impossible acts of execution, and at the same time interprets them as the accused's mental outlook on the entire situation. The Prosecution believes that the appearance of an expert in court is sufficient to prove it.

Under VI. Legal Analysis, in paragraph 141 with footnote 483, it is stated that this expert witness is supposed to prove in his report and testimony that Professor Vojislav Šešelj physically committed the crime of persecution in Vukovar, Zvornik and Hrtkovci through his use of "hate speech" targeted at the non-Serb populations of those localities.

With regard to the Report and Addenda of Expert Witness Anthony Oberschall, we must bear in mind that in addition to responding to these reports, Professor Vojislav Šešelj filed three briefs as a separate aspect of defence with the analysis of speeches made by politicians and statesmen, and news articles in the period relevant for Croatia, Bosnia and Herzegovina and for representatives of the international community. Comparison of the words used, the way in which thoughts were conveyed, the context, the circumstances of location, time and events, offer the most convincing proof that since after specifically looking for it and not being able to find it in the statements and words of Professor Vojislav Šešelj, the "hate speech" was allegedly made up.

The Trial Chamber resolved all possible ambiguities in respect of the status accorded to Anthony Oberschall by the judges. That is to say, his status as an expert is not accepted. However, during the testimony, especially during the cross-examination, Anthony Oberschall came close to admitting that an attempt at manipulation was the role assigned to him.

An extensive analysis is necessary because, regardless of the Prosecution classifying this witness as a witness for propaganda manipulation, he is in fact a key expert witness on hate speech.

During his testimony Anthony Oberschall showed himself to be an alleged expert who made assessments easily. His method is totally unreliable since it is based on conducting a computer-based word search of texts of speeches and the imaginary importance of the words used, but without leaving space for other important factors of a speech, such as location, time, motive, event, etc. In his testimony he made arbitrary comments on facts, events and commonly known historical facts. During his

testimony, the Prosecution tried, it will be proved later, to present the speech of August 1990 in Mali Zvornik, although by this logic it could have been any other rally, as having taken place in March 1992. He will be remembered as the expert witness who based his expert testimony on the allegation that a student told him something that this student had been told by some writer a few years ago, without even knowing who the student was, which writer said it to the student and when this conversation took place.

The most important part of his testimony are the clear answers to questions which are directly linked to the counts of the indictment:

**A. Cross-examination on 12 January 2008:**

Professor Vojislav Šešelj: I'm asking you: Did you anywhere in my speeches, in my articles, anywhere, in any public appearance, find a passage where I advocate killing prisoners of war?

Witness Anthony Oberschall: No, killing prisoners of war, you don't advocate that.

Professor Vojislav Šešelj: Mr. Oberschall, did you find any excerpt from any text where I would be advocating the killing of women and children or inciting anyone to do that?

Witness Anthony Oberschall: No, you didn't say it in so many words. I don't recall any passage.

Professor Vojislav Šešelj: Mr. Oberschall, you, as an intellectual, should know that there is a great number of judgements of the Supreme Court of the United States clearly defining what kind of instigation or incitement has to exist to make an act punishable criminally. The incitement has to be direct and immediate. Do you know that?

Witness Anthony Oberschall: I've already said to you and the Court that I'm not a legal expert. If -- if you want to have testimony about the -- the -- you know, the constitutional history of how these legal terms are defined in the case law, you should get a -- a lawyer here to testify whose expertise it is. It's not mine.

Professor Vojislav Šešelj: All right, Mr. Oberschall. When you were doing your expertise, you did not put into your computer programme, into your search engine, attitude toward civilians, attitude to prisoners of war, attitude to the women and children of the opposing side; right?

Witness Anthony Oberschall: No. All we did put into the search engine was "Serb", "Croat", "Muslim", "Albanian", in the -- in the right languages. That's what we searched for. Passages that deal with Serb/non-Serb political relations. We didn't search for anything else, the weather, women, old people, tariffs, agriculture, nothing like that. Just -- just those top -- just those key words.

Professor Vojislav Šešelj: Very well, Mr. Oberschall. I asked you this to let everyone know that you did not get hold of a single statement of mine where I advocate honouring international law of war, humane treatment of civilians, women, children, and elderly of the other side, et cetera. Mr. Oberschall, in your searches of my texts, did you find anywhere a passage where I would advocate, incite, or instigate to unlawful detention? So I'm talking necessarily about civilians. Only they can be unlawfully detained.

Witness Anthony Oberschall: You mean taking hostages?

Professor Vojislav Šešelj: Taking hostages as well, unlawful arrests, or any other way. Any other way that can be used to unlawfully detain civilians, that is, without a court decision.

Witness Anthony Oberschall: I -- I don't recall -- I don't recall any such passages.

Professor Vojislav Šešelj: You don't recall because it doesn't exist. Did you find anywhere in my texts a passage where I advocated, incited, or instigated torture, any form of torture?

Witness Anthony Oberschall: Torture? No.

Professor Vojislav Šešelj: Thank you, Mr. Oberschall. Did you find anywhere in my texts a passage where I advocated, incited others, or instigated cruel treatment?

Witness Anthony Oberschall: Well, it depends on what you mean by "cruel treatment." We had a long session last -- yesterday, actually, on expulsion and exchange and ethnic cleansing of -- of populations, and, you know, your advocacy, your views on that point. And I would say that's cruel treatment of people not in the sense of a narrow definition...

Professor Vojislav Šešelj: Mr. Oberschall, we had agreed at the beginning of this session to distinguish everything that happened in Vojvodina from what happened in the Serbian Krajina, Croatia, Republika Srpska, and Bosnia and Herzegovina. Do you remember? So this exchange of population that relates to Vojvodina, let's leave it aside completely for now. We'll come to that later. Let me tell you, for instance, what

cruel treatment is. Rape is cruel treatment. For example, because there is no precise definition of rape in the international law of warfare, it comes under the category of "cruel treatment." So did you encounter anywhere any advocacy on my part, incitement, or instigation to cruel treatment?

Witness Anthony Oberschall: Like rape?

Professor Vojislav Šešelj: Like rape, let's say, or any other form.

Witness Anthony Oberschall: No, you did -- no. You did not advocate rape, no.

Professor Vojislav Šešelj: Mr. Oberschall, did you anywhere in my texts related to the same areas, Serbian Krajina, Croatia, and Republika Srpska and Bosnia, any examples where I would advocate, incite, or instigate to wanton destruction of villages in populated areas and devastation that is not justified by military need? Did you find anything of the kind anywhere, from what you remember?

Witness Anthony Oberschall: I -- I don't really know quite what you mean by "not justified by military -- by military need." I mean, that's a very loose term. But I would say in general, no, you didn't -- you know, you didn't do a sort of a Genghis Khan act and say we have to destroy everybody and kill everybody and rape everybody and so on. You didn't do that, no. In the text that I looked at, you didn't do that.

Professor Vojislav Šešelj: Thank you, Mr. Oberschall.

Witness Anthony Oberschall: In the texts that I looked at, you didn't do that.

Professor Vojislav Šešelj: Thank you, Mr. Oberschall and thank you for having been concise. Mr. Oberschall, in my texts, in my public speeches, in my written texts, anywhere, did you find me instigating, inciting destroying religious buildings or educational institutions; that is to say, churches, mosques, schools, and so on and so forth?

Witness Anthony Oberschall: There wasn't any in my content analysis.

Professor Vojislav Šešelj: Mr. Oberschall, in excerpts from my speeches, did you find me anywhere advocating the plunder of public or private property or me instigating others to carry out that robbery?

Witness Anthony Oberschall: Well, in your -- in your -- some of your statements, you certainly describe and refer to a lot of plundering and robbery of private and public property that was going on during ethnic cleansing in Bosnia. You, of course, always say, when you describe these events, that Milošević and the army

and the Defence Ministry forces and the special forces were doing it but your volunteers were not doing it and that you were telling them not to do it. Frankly, should we believe that? I mean, that's what you're saying. Was it true? But it's -- but that's what you were saying. And then that is in the statements that I content analysed.

Vojislav Šešelj: Mr. Oberschall, you're not expected to believe or disbelieve something here. You're just supposed to confirm or challenge some factual allegations. Now you've moved a step ahead. You establish that I criticised others for having plundered private or public property, and you do not have a shred of evidence of me advocating that plunder. Am I right? Am I interpreting your words right now?

Witness Anthony Oberschall: Yes, you were accusing others, a lot of others, doing that.

Professor Vojislav Šešelj: If somebody is an inhabitant of Republika Srpska or Republika Srpska Krajina and if they belong to a different ethnic group, if that person differs ethnically from Serbs, did I advocate discrimination against such persons? Have you come across any such thing?

Witness Anthony Oberschall: You mean things like employment discrimination? I didn't -- well, we weren't looking for that, but I wasn't -- I didn't see in your texts anything about employment discrimination.

Presiding Judge Jean-Claude Antonetti: Witness, if I understand you properly, at this juncture, when Mr. Šešelj talks about the 6<sup>th</sup> of May 1992 speech in Hrtkovci, this doesn't cause any immediate reaction. Is that right? Because you mix it up or it is mixed in the 400 other documents. Is that right?

Witness Anthony Oberschall: Yes, it's -- it's in them.

Presiding Judge Jean-Claude Antonetti: Very well.

Professor Vojislav Šešelj: Thank you, Judge. At that point in time, I could not think of such a clever question. With that question of yours, you replaced the ten questions I want to deal with after that. Yes, this does show the competence of the expert. The Prosecution has my entire speech, Mr. Oberschall, and it proposed that the speech be admitted as evidence. And this speech was publicised several times; the last time in my book. So if you had looked for it, you would have found it. You could not have written your expert report without having the text of all the speeches of the rally in Hrtkovci. Right? Because that was the key rally for the indictment.

When asked how many deputies the Serbian Radical Party had in the People's Assembly of the Republic of Serbia on 6 May 1992, the witness could not give the correct answer, and when told that there was only one deputy, Professor Vojislav Šešelj, he replied:

Witness Anthony Oberschall: The conclusion I draw is contingent. If -- if -- if he's elected just from one constituency, I don't know, in Belgrade or someplace with 20,000 votes going to the Radical Party and he's a deputy, that's one thing. And -- you know, in 250 seats for the whole of -- for the whole of Serbia, then that would not make him an important political actor. But as far as I can tell, the Serbian Radical Party, his party, got several hundred thousand votes in -- in all of these elections. I know that somewhat later he got -- he and his party got about a million votes out of something like 3 or 4 million. So whether or not you are alone as to represent your party if you've got 20 -- 20 per cent of the total country's vote, it makes you an important political actor, yes.

Therefore the witness was inclined to claim that on 6 May 1992, Professor Vojislav Šešelj was an important political player, but could not come up with a single fact on the basis of which he had reached this conclusion. When he found out in court that Professor Vojislav Šešelj had been the only deputy of the Serbian Radical Party, he immediately changed his mind and in so doing challenged his entire work, since it now turns out that Professor Vojislav Šešelj "was not an important political player". However he was still significant, since he analysed all speeches, i.e. 400 speeches made by Professor Vojislav Šešelj and in these speeches he did not find any physical commitment, instigation or aiding and abetting per the counts of the indictment. When to the fact that the expert witness failed to find any references to violence, rape, looting, destruction, murder, expulsion and deportation we add the circumstances of time and place, and the fact that Professor Vojislav Šešelj was the only deputy of the Serbian Radical Party in the People's Assembly of the Republic of Serbia, it is really not clear on what the Prosecution is basing its charges.

**B.** During the cross-examination on 13 January 2008, the expert witness demonstrated total ignorance.

In respect of the factual background of the testimony, it is characteristic that this expert witness either does not have the facts or they are superficial and

stereotypical, and largely wrong. Hence no valid context can be found in which he analysed speeches, messages, propaganda techniques, etc.

The Prosecution presented this witness as the key witness for the use of “hate speech” directed against the non-Serbian population in Vukovar, Zvornik and Hrtkovci.

Through this expert witness, the Prosecution intended to prove persecution through hate speech:

(1) his abusive, violent and ethnically coloured speeches (it was not proven that they were outside the framework which is tolerated in the USA, Great Britain, etc.);

(2) the environment in which Šešelj gave his speeches characterised by a fierce ethnic conflict (the speech in Mali Zvornik in August 1990 was presented as if it took place in March 1992. There was no armed conflict in August 1990. There was no speech in Vukovar in November 1991 and no witness heard the sentence that not a single Ustasha must leave Vukovar alive; the speech transmitted from a loudspeaker mounted on an armoured vehicle simply never happened. There was no armed conflict in Hrtkovci in May 1992, and the speech was part of the election campaign for federal elections);

(3) the fact that these crimes (as described above) were committed shortly after Šešelj had given his speeches (he could not commit any war crime in April 1992 in Zvornik because of a speech in Mali Zvornik in August 1990; there was no speech in Vukovar in November 1991; property in Hrtkovci was being exchanged even before 6 May 1992 and after this date, even in 1995 after Operations Flash and Storm). There is no causal link between the crimes in the said locations and Professor Vojislav Šešelj’s speech.

Finally, we ought to bear in mind that Anthony Oberschall was not accepted as an expert witness, but as an ordinary witness for the Prosecution testifying to facts. Although his credibility and methods were shattered, he is significant because he specifically challenged all counts of the indictment. When answering specific questions on the charges, he was clear in terms of both commission, i.e. physical commitment of persecution through hate speech, and all forms of complicity (instigation, aiding and abetting, supporting, encouraging, etc.) concerning persecution. Of course, when we say persecution, this includes all charges for acts and

omissions which are classified by counts of the indictment as violations of the laws or customs of war and crimes against humanity.

Here, considering the importance which the Prosecution intended to attach to the testimony of this expert witness, we must bear in mind that this expert witness annulled a large number of paragraphs in the Prosecution's Final Pre-Trial Brief, which formed the basis of all the Prosecution's plans and schemes. The Prosecution's Final Pre-Trial Brief contains some allegations which would have to be proven during the presentation of evidence, at least when the Prosecution presents its evidence.

Witness Anthony Oberschall is nonetheless a precious witness in terms of proving both the intention and the method and means which the Prosecution intended to use. Proof of this is in Section A. Šešelj's Role as Chief Propagandist of "Greater Serbia", and paragraphs 5 to 17 of the Prosecution's Final Pre-Trial Brief, with footnotes 5) to 49).

Paragraph 5 deals with the substantial contribution as the chief propagandist for the establishment by force of Greater Serbia. The criterion is what he did in mid-1990 (footnote 9), but there is not a single word about establishment by force, and texts from 9 February to 25 May 1984, 1985, the summer of 1988 and 18 April 1989 are used. Therefore there is not a single text from 1990. All the dates are before 1 January 1991, when the ICTY allegedly had no jurisdiction according to the Statute and there was no armed conflict.

In the next subparagraph of the same paragraph, there is reference to footnote 10 with texts from 1 July 1990, 25 June 1990 and 8 August 1990. It is noticed that these are indeed texts of his speeches in 1990, but none of the texts mention the establishment by force of Greater Serbia. All the dates are before 1 January 1991, and the ICTY allegedly has no jurisdiction for these dates according to the Statute and there was no armed conflict.

The next subparagraph refers to footnote 11 and texts of the statements of 19 September 1990, November 1990 (it is not clear how this can be mid-1990), December 1990 (it is not clear how this can be mid-1990) and 6 August 1991 (it is not clear how this can be mid-1990). There is not a single word about the establishment by force of Greater Serbia.

Paragraph 6 states that by late 1990 the Accused's public rhetoric had become more inflammatory.

The first subparagraph gives in footnote 12 one of the inaccurate definitions of the term Ustasha. It is not a derogatory term at all. If it had been, members of the Nazi movement in the Independent State of Croatia would not have used it before, during and after World War Two. And as for what kind of a movement it is, it probably suffices to say that even Hitler's Nazis were horrified by the Ustashas. The next footnote (13) cites a warning issued to the new Ustasha authorities in Croatia which were best represented by Franjo Tuđman. The Prosecution alleges that had Franjo Tuđman not died he would have been in the dock in The Hague. What is the difference in opposing Hitler, Pavelić or Tuđman as a protagonist of the Ustashas? Is Professor Vojislav Šešelj on trial because he was the first to oppose the Ustashas and how is this unlawful? Is there a ban on verbally opposing the Ustashas and issuing a timely warning about what could happen if the Ustashas were to start implementing their ideology when they had already come to power in Croatia?

The second subparagraph makes reference to footnote 14 and two sources for the same statement, both from 1992. It is a mistake, since it is impossible to make a statement in December 1992 on an issue that was current in 1991. The statement does not mention force, but emphasises living in brotherhood.

The third subparagraph makes reference to footnote 15 and a statement of 21 April 1991. Therefore it is not the end of 1990 and it contains nothing inflammatory, with the exception of a warning based on experience, a warning against the repetition of what happened between 1941 and 1945, and this concerns genocide against the Serbian people in the very same territory from which Serbs were being expelled.

The fourth subparagraph makes reference to footnote 16 and the statement of 18 July 1991. Hence it is not the end of 1990 and the statement refers to Slovenia and its decision to secede. It is a statement by Professor Vojislav Šešelj, who, seven months before this date, was in prison in Belgrade as an opposition politician.

In paragraph 7, six subparagraphs make reference to footnotes 17, 18, 19, 21 and 22, in which the Prosecution invokes the accused's statements of 6 December 1990, 6 May 1991, 24 May 1991 and 4 June 1991. All cite how the accused kept permeating the topic of Serbian enemies and Serbs being threatened with genocide.

Paragraph 8 alleges that the accused kept repeating these messages throughout the period relevant to the indictment. Let us recall that the indictment refers to the period between August 1991 and September 1993. In order to allegedly prove this, the

Prosecution cites the statements in footnote 23, dated **15 August 1990** (this date is not relevant to the indictment), **23 February 1991** (Basic principles of the Serbian Radical Party Programme, this date is not relevant to the indictment), **3 March 1991** (Programme Declaration of the Serbian Radical Party, this date is not relevant to the indictment), **15 May 1991** (this date is not relevant to the indictment), **June 1991**, (this date is not relevant to the indictment), **4 June 1991** (this date is not relevant to the indictment), **14 June 1991** (this date is not relevant to the indictment), **21 June 1991** (this date is not relevant to the indictment), September 1991 (it is not known whether this date is relevant to the indictment), 14 May 1993 (this date is relevant to the indictment), 14 May 1993 (this date is relevant to the indictment), 15 May 1993 (this date is relevant to the indictment), **13 November 1993** (this date is not relevant to the indictment), **12 December 1993** (this date is not relevant to the indictment), **14 April 1995** (this date is not relevant to the indictment), **2 March 1997** (this date is not relevant to the indictment) and **23 February 2003** (this date is not relevant to the indictment). There is also footnote 24, citing a statement given after the period relevant to the indictment. These are therefore the unwavering political positions Professor Vojislav Šešelj presents in the ICTY courtroom even today.

The first subparagraph of the same paragraph makes reference to footnote 25 citing a statement dated **21 April 1991** (this date is not relevant to the indictment).

The second subparagraph contains a reference to footnote 26, citing a statement dated **24 May 1991** (this date is not relevant to the indictment).

The third subparagraph makes reference to footnote 27, citing a statement dated **24 May 1991** (this date is not relevant to the indictment).

The fourth subparagraph makes reference to footnote 28, citing a statement given after the period relevant to the indictment).

The fifth subparagraph makes reference to footnote 29, citing a statement given in September 1991, containing the political stance of an opposition politician saying that the JNA, which is under attack, should withdraw.

It is not clear what the Prosecution has achieved with Anthony Oberschall's testimony. We know what it wanted to achieve, but Anthony Oberschall negated everything and became a witness for the defence.

Considering that it is impossible to determine if Professor Vojislav Šešelj was a participant in the JCE, and none of the expert witnesses mentioned Professor

Vojislav Šešelj at all while giving expert testimony, attaching any significance to these testimonies is moot.

Military expert witness Theunens, an analyst working in the Office of the Prosecutor, however biased he was during the cross-examination, suffered a fiasco in terms of expertise. His credibility was shattered and the fact remained that Theunens refuted the indictment that he had helped draft. Theunens could not even prove the existence of a volunteer unit of the Serbian Radical Party, because there were none.

Witness Yves Tomić, who was tasked with proving that the idea of creating a Greater Serbia was in essence criminal, had his credibility shattered and the public had a chance to see what ignorant people the Prosecution was using.

Expert witness Ewa Tabeau suffered the same fate, and the findings of all the other expert witnesses were irrelevant to Professor Vojislav Šešelj's individual criminal responsibility with regard to all types of responsibility listed.

### **IX. Locations and Events in the Indictment with Regard to Professor Vojislav Šešelj's Responsibility**

#### **THE BIJELJINA LOCATION**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as annexes to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

#### **Remarks Concerning Bijeljina in the Indictment:**

In its Decision of 8 November 2006, the Trial Chamber reduced the scope of the Modified Amended Indictment, as follows:

- Counts 2, 3, 5, 6 and 7 were removed from the indictment;
- charges concerning crimes allegedly committed in Western Slavonia were deleted in paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32 and 34 of the indictment;
- it was decided that the Prosecution would not present evidence in respect of crimes relating to Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and at Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present evidence that does not pertain to the crime base for Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica.

As a result of this Decision, the following paragraphs or parts of paragraphs concerning the Bijeljina location no longer exist in the indictment:

- paragraph: part of paragraph 17 (a), part of paragraph 18, paragraph 19, part of paragraph 22, paragraph 23, part of paragraph 24, paragraph 25, part of paragraph 26; three parts of paragraph 27, paragraph 29 (c) paragraph 29 (d ), paragraph 29 (f), paragraph 29 (h), and paragraph 29 (i).

**Bijeljina is referred to in the indictment as a place where crimes were committed under:**

- individual criminal responsibility (paragraphs 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia (Croatia), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina in the Republic of Serbia (Serbia), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the SAO Krajina, the SAO Western Slavonia, and the SAO Slavonia, Baranja and Western Srem (after 19 December 1991, the SAO Krajina became known as the RSK; on 26 February 1992, the SAO Western Slavonia and the SAO Slavonia, Baranja and Western Srem joined the RSK), as well as the Dubrovnik Republic. With respect to Bosnia and Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), **Bijeljina**, Mostar, Nevesinje and Brčko.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Regions in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, **Bijeljina**, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Bijeljina as a crime location, which was changed to a location with witnesses to a consistent pattern of conduct, appears in paragraphs BIJELJINA, 42, 62, 1. BIJELJINA 78, 80 and 81.

#### BIJELJINA

##### Paragraph 42

42. Adhering to the pattern in Croatia, by spring 1991, municipalities of Serbian communities were formed in three regions. Although the Bosnian Serbs claimed that these municipalities were established solely out of economic reasons, this justification was belied by the Croatian SDS's establishment of municipalities that were transformed into Serbian autonomous districts. In BH this pretext was fully exposed in September 1991 when these municipalities were proclaimed as Serbian Autonomous Districts.

##### Paragraph 62

Each sub-section focuses upon one geographic region where the alleged crimes took place: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

##### Paragraphs 78-81:

#### B. Crimes in Bosnia and Herzegovina

##### 1. Bijeljina

78. Bijeljina is located in Northeastern Bosnia and Herzegovina and was a key to the Bosnian Serb leadership's strategic goal of establishing a corridor between Serbia and the Krajina, linking the FRY /Federal Republic of Yugoslavia//Serbia and the targeted regions in Croatia and Bosnia and Herzegovina. In 1991 the population in Bijeljina was 59% Serbs and 31% Muslims. The remainder were Croats and other ethnicities. By 1997 Serbs accounted for more than 90% of the total population.

79. During the six months leading up to the attack on Bijeljina, Serbian forces, including SRS/SČP volunteers, established positions surrounding Bijeljina and erected roadblocks. At the end of March 1992, Serbian forces, including SRS/SČP troops, surrounded and attacked Bijeljina. Approximately fifty men under the command of Mirko Blagojević, thirty of Željko Ražnatović's men (i.e. Arkan's Tigers), and other troops participated in the attack and the subsequent takeover. During the takeover of Bijeljina, non-Serb civilians - in particular Muslims - were arrested and assaulted in various ways.

Local butcher Redžep Šabanović and his wife were killed by Arkan's Tigers and SRS/SČP volunteers.

80. During the period relevant to the Modified Amended Indictment, Šešelj frequently visited Bijeljina. In particular, he visited the *Srbija* café owned by Mirko Blagojević, who was the local commander of the SRS. During these meetings, Šešelj and Blagojević planned the Serbian takeover of Bijeljina municipality, including the destruction of any resistance. These plans included coordinated efforts of SRS/SČP volunteer troops, JNA forces, Arkan's Tigers, and Captain Dragan Vasiljković's troops associated with the MUP of Serbia. The SRS/SČP volunteers received logistical and material support from JNA units in the area throughout the conflict. In May 1993, Šešelj made Blagojević a *vojvoda* /military leader/ for his service to the Serbian people.

81. Brčko is located in the Northeastern Bosnia and Herzegovina, west of Bijeljina, on the south bank of the Sava river. According to the 1991 census, approximately 44% of the inhabitants were Muslims, 25% were Croats, and 21% were Serbs. Like Bijeljina, it was of strategic military importance for the control of the Posavina corridor during the conflict.

### **Summary Regarding Witnesses for Bijeljina**

#### **B. Implementation of the JCE in Bosnia and Herzegovina**

##### **1. Bijeljina:**

Witnesses: VS-1029 (Alija Gušalić), VS-1028 ( [REDACTED] ) and VS-1035 ( [REDACTED] ).

### **Prosecution's Final Revised List of Witnesses and Summaries of Witness Evidence:**

Crime base witnesses for Bijeljina:

VS-1029 (Alija Gušalić), VS-1028 ( [REDACTED] ) and VS-1035 ( [REDACTED] ).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Bijeljina, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his

actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

It is important in light of the reduction of the indictment and the Order of the Trial Chamber that crime based evidence should not be presented in respect of Bijeljina, but only evidence relating to a consistent pattern of conduct by Professor Vojislav Šešelj. This must be viewed in terms of paragraphs 6 and 10e of the indictment to the effect that Vojislav Šešelj participated in a JCE whose purpose was the removal of population through the commission of crimes in the area of Bijeljina, and his concrete involvement is reflected in that he took part in the planning and preparation of the take-over of power on the territory of Brčko.

During the presentation of Prosecution evidence, the following witnesses were heard:

1. [REDACTED], VS-1028, testified *viva voce* on 9 December 2008 under protective measures.
2. [REDACTED], VS-1035, testified *viva voce* on 28 and 29 January 2009 under protective measures.
3. Alija Gušalić, VS-1029, testified *viva voce* on 4 March 2009 without protective measures.

Considering that according to the Prosecution's Pre-Trial Brief and the Prosecution's summaries of witness testimonies, the Prosecution witnesses were obliged to testify on the crime base in Bijeljina, and by the decision of the Trial Chamber of 8 November 2006, after the scope of the indictment was reduced, on the consistent pattern of conduct, it follows that it is important for the Trial Chamber what the witnesses said in the courtroom in relation to Professor Vojislav Šešelj's participation in the JCE. With regard to the Bijeljina location, these are paragraphs 6 and 10e of the indictment.

It follows that paragraph 10e constitutes the case:

“Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two SAOs in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, **Bijeljina**, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.”

To put it simply, this should refer to:

- Planning to take over power
- Preparation for taking over power
- Forced removal of Muslims from Bijeljina.

Professor Vojislav Šešelj's general political views on the reorganisation of Yugoslavia are not proof that he planned to take over power in Bijeljina. Especially if we bear in mind that at the time he was an opposition deputy in the People's Assembly of the Republic of Serbia, the only deputy of the Serbian Radical Party, and he was not in power either in Serbia or in Bosnia and Herzegovina. During the events in Bijeljina, Professor Vojislav Šešelj could not order, recruit, organise, finance or take any action which could be linked in any way to the armed conflict. The Serbian Radical Party in Bijeljina was in its infancy, and the SDS and the SDA were in power. Had the Serbian Radical Party come to power in Bijeljina on the basis of or by way of armed conflict on 4 April 1992, perhaps there would have been some grounds for considering the allegations in the indictment. However, since the Serbian Radical Party was not in power and neither did it come to power after the armed conflict, the allegations in the indictment referring to the planning and preparation of the take-over of power in Bijeljina make no sense at all. If we were to presume that the purpose of the planning and preparation of the take-over of power in Bijeljina was to bring the SDS to power, the error is all the greater, since the SDS was already in power.

Everything that situates Professor Vojislav Šešelj in the context of Bijeljina has been erroneously and tendentiously conceived in order to establish unity and coordination with Arkan's men. The Serbian Radical Party and Professor Vojislav Šešelj did not send volunteers to Bijeljina, nor did anyone ask that they be sent, there was no need for it. By the force of circumstances, Bijeljina features in the indictment against Professor Vojislav Šešelj because of one event which took place at the *Srbija* café owned by Mirko Blagojević, who is a member of the Serbian Radical Party. Before Professor Vojislav Šešelj was indicted by the ICTY, Bijeljina had been resolved as a location where crimes were committed. The ICTY simply knew everything about it and Mirko Blagojević, who had been the concern of the ICTY, was no longer a suspect. In the trial judgement against Momčilo Krajišnik, this is worded: excerpt from the interview with Mirko Blagojević, 1995.

We need to know that the event of 31 March 1992 in Bijeljina preceded what was being prepared by the European Community, now the European Union. It was preparing to recognise Bosnia and Herzegovina, which took place on 6 April 1992,

hence any armed conflict or provocation by armed Muslims could have a negative impact and lead to a conflict. By erecting roadblocks and arming themselves the Muslims clearly intended to arrange the best possible position for action, and their action would have been accepted as of the first day of the recognition of Bosnia and Herzegovina's independence.

Any conflict requires the existence of two sides. The other, Muslim side was prepared (troops, weapons, organisation) and it provoked and challenged. They were clearly looking for a pretext to start an armed conflict. The incident which Alija Gušalić provoked only sparked what had been smouldering in inter-ethnic relations concerning independence as a topic imposed on the Muslims and encouraged by the European Community (now the European Union) against Serbian aspirations to preserve Yugoslavia. The participation of some members of the Bijeljina branch of the Serbian Radical Party in the armed conflict of 31 March 1992 is indisputable, but their participation can only be linked to the fact that they are residents of Bijeljina, and that they had not come from anywhere else or from Serbia, as some have tried to present their involvement. It is important to bear in mind that Mirko Blagojević and the Serbian Radical Party members had the status of opposition politicians in Bijeljina before, after, and during the armed conflict, and they publicly criticised both the authorities in Bijeljina and individuals who acted without authority. Furthermore, at the time and even today in Bijeljina there are Muslims who are members of the Serbian Radical Party, hence the way the Prosecution constructed its charge that Professor Vojislav Šešelj participated in a JCE the purpose which allegedly being the permanent forcible removal of Muslims from Bijeljina and from other towns in Bosnia and Herzegovina is untenable. Not only is it not so, but it is untenable that Muslim members of the Serbian Radical Party advocated and supported the political idea of the removal of Muslims from the territory of Bosnia and Herzegovina. This is how it appears according to the Prosecution's case which is meaningless.

Furthermore, we must bear in mind that Professor Vojislav Šešelj has never been on good terms with the persons who feature in the charges concerning Bijeljina as those with whom he participated in the joint criminal enterprise. This not only refers to Biljana Plavšić and Arkan, but also to all the other allegedly direct perpetrators of the crime. Surely an accomplice in a joint enterprise or activity is protected and not attacked. For instance, in the case of Mauzer, in order to make the story from the indictment stand, Professor Vojislav Šešelj would have to be in a joint

criminal enterprise with Zoran Đinđić through Mauzer. Mauzer was a high-ranking official of Zoran Đinđić's Democratic Party for Republika Srpska. If Zoran Đinđić accepted him, and both he and the public knew very well who Mauzer was and what his wartime past was, then the same indictment, if not a more extensive one, should have been brought against Zoran Đinđić.

This parallel is important because of the fact that in some other locations good soldiers who subsequently joined the Serbian Radical Party were given the title of *vojvoda*. In the same way Mauzer's wartime past was the prerequisite for membership and a high-ranking political position in the Democratic Party. If Zoran Đinđić and the Democratic Party are not charged over this, there is no way Professor Vojislav Šešelj and the Serbian Radical Party can be.

The testimonies of witnesses for the Bijeljina location on the alleged consistent pattern of conduct are based on the hatred of Professor Vojislav Šešelj and Mirko Blagojević. Proof of this is in the fact that in the trial judgement against Momčilo Krajišnik, case IT-00-39-T of 27 December 2006, paragraphs 297 to 309, which relate to the Bijeljina location and footnotes 665 to 701, where the evidence is presented, there is no mention of the name of Professor Vojislav Šešelj's name or his party.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1028,  
[REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1028, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

**Crimes in BH – Bijeljina**

“At the end of March 1992, Serb forces, including SRS/SČP troops, surrounded and attacked Bijeljina.” (footnote 238)

“Approximately fifty men under the command of Mirko Blagojević, thirty of Željko Ražnatović's men (i.e. Arkan's Tigers), and other troops participated in the attack and the subsequent occupation.” (footnote 239)

“Redžep Šabanović and his wife were killed by Arkan's Tigers and SRS/SČP volunteers.” (footnote 243)

“During the period relevant to the indictment, Šešelj frequently visited Bijeljina. In particular, he visited the *Srbija* café owned by Mirko Blagojević, who was the local commander of the SRS.” (footnote 244)

“Other members of the SRS in Bijeljina included Pero Simić and Branislav Filipović aka Šumar.” (footnote 245)

**2. Summary of testimony for VS-1028, [REDACTED]**

Biography: Muslim male from Bijeljina.

The events: The witness will testify to the relationship between Šešelj and Mirko Blagojević in Bijeljina and the murder of several Muslims by Šešelj’s men. He witnessed the murder of the local butcher, Redžep Šabanović, and his wife by Šešelj’s and Arkan’s men.

In the early twenties the witness frequented the *Srbija* café, partly in order to keep up to date with SRS plans. In 1991, non-Serbs were starting to be dismissed from work. Local radio broadcast purported Chetnik songs. In March 1992, he saw Šešelj and Blagojević in the café. He accidentally overheard them talking about instigating a conflict in Bijeljina and murdering anyone who opposed their plans and the creation of Greater Serbia. They also mentioned that such plans would be implemented with help from the JNA, Arkan’s men and Captain Dragan. The witness saw Šešelj in this café twice. In mid-March 1992, the SRS members started appearing in public armed.

On 31 March 1992, a hand grenade exploded in the *Istambul* café, after which there was shooting in Bijeljina. On 1 April 1992 the witness took part in erecting a barricade and in a clash with Arkan’s and Šešelj’s men. After leaving this spot, he saw Šešelj’s and Arkan’s men kill several Muslims. He also saw soldiers killing people and removing the green flag of the Islamic community from the minaret of the mosque. Some of Šešelj’s men wore *šubara* /fur/ hats with cockades, as well as the standard-issue JNA uniforms, while others wore plain clothes with various Chetnik insignia.

Paragraphs: 5-9, 10a, c, e-g, 11, 15, 16, 17a, j, 18, 25, 28 and 34.

Counts: 1-4, 12 and 13.

**3. Content of testimony:**

The witness testified on 9 December 2008 under protective measures.

The witness demonstrated a maximum hatred and nervousness, as he expected to be provided with means to live abroad on the basis of his testimony against Professor Vojislav Šešelj. His credibility was shattered and even what he could have testified about as an eye witness came to nothing. He protected Mauzer and Đurković and attacked the author of the book, commander Vahid Karavelić.

Showing unconcealed and almost pathological hatred of Mirko Blagojević and Professor Vojislav Šešelj, the witness even turned a hearsay story into something he knows about. The witness was a very good opportunity to present to the judges the broad context of what had preceded the armed conflict, all Professor Vojislav Šešelj's visits to Bijeljina and to confirm that there were no volunteers from Serbia.

Everything the Prosecution cited in its Final Pre-Trial Brief and in the summary of this witness's testimony is a predictable story of the Prosecution which came to nothing during the cross-examination of this witness.

#### 4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 9, 10a, 10c, 10e, 10f, 10g, 11, 15, 16, 17a, 17j, 18, 25, 28 and 34, but charges concerning Bijeljina are contained in paragraphs 6 and 10e.

The witness was planned for counts 1, 2, 3, 4, 12 and 13 of the indictment, but Bijeljina is not mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bijeljina, and the perpetrators of crimes in Bijeljina.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1035, [REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1035, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

#### Crimes in BH – Bijeljina

“At the end of March 1992, Serb forces, including SRS/SČP troops, surrounded and attacked Bijeljina.” (footnote 238)

“During the takeover of Bijeljina, non-Serb civilians - in particular Muslims - were arrested and assaulted in various ways.” (footnote 240)

“The Prosecution will lead evidence as to the involvement of Mirko Blagojević in assaulting non-Serb civilians. The Prosecution will also lead evidence that following the attack on Bijeljina town, the bodies of 48 civilians, including women and children, were collected, mostly from around the house of local butcher Redžep Šabanović.” (footnote 242)

“During the period relevant to the indictment, Šešelj frequently visited Bijeljina. In particular, he visited the *Srbija* café owned by Mirko Blagojević, who was the local commander of the SRS.” (footnote 244)

2. Summary of testimony for VS-1035, [REDACTED]

Biography: Muslim male [REDACTED].

The events: The witness will talk about division within the Bijeljina police and the behaviour of Serbian soldiers and civilians towards Muslim policemen.

On 31 March 1992, the witness travelled from Bosanski Šamac to Bijeljina. He passed through about 18 checkpoints between Brčko and Bijeljina and noticed that the town was surrounded by JNA soldiers and reserve forces who were well armed with JNA weapons. Policemen in Bijeljina had to sign a document of loyalty to the Serbian authorities, stating that they would work for the Ministry of the Interior of the Republika Srpska (RS). The policemen were given berets brought from Serbia, identical to those worn by members of the MUP of Serbia, and given instructions to wear them for personal safety.

The witness will testify to the collection of bodies in Bijeljina. He saw that 48 bodies were collected from the streets, including those of women and children. All these people were killed with firearms. Most of them were Muslims, one was a Croat and another one was of a Serbian child. Most of the bodies had wounds to the chest, mouth, temporal bones or back of the head. None of the collected bodies were in uniforms. He saw members of paramilitary units, including Arkan's men, stopping vehicles with the bodies. The witness saw Arkan in Bijeljina twice, once in a JNA Jeep, with Ferid Zečević, whom Arkan had arrested, and also when Arkan welcomed Biljana Plavšić and Fikret Abdić outside the municipal building. After the take-over of power, Arkan and his men occupied the premises in the SDS building.

The witness found out about an official list kept by Serbs at the police station, containing the names of Muslims wanted for certain crimes allegedly committed in the first few days of the takeover. The Serbian colleagues were asked to show the list, but they refused.

Muslims from certain villages near Bijeljina declared themselves as loyal to Republika Srpska. In spite of this, they were later evicted. The mosques in Bijeljina and Atmačići were destroyed.

Paragraphs: 15, 16, 17 (a, e-j), 18, 25, 31, 32 and 34.

Counts: 1-4, 10-14.

### 3. Content of testimony:

The witness testified on 28 and 29 January 2009 under protective measures. He testified in the Milošević case and his testimony was taken into account in the Krajišnik case.

As a former policeman, the witness helped examine the broader context of the events in and around Bijeljina. In his first statements, the witness did not mention either the Serbian Radical Party, or Professor Vojislav Šešelj, or even Mirko Blagojević. In his last statement before testifying, he said that Mirko Blagojević was well-known as someone involved in crime, but he made a mistake about his party affiliation. During cross-examination this was corrected, as was an attempt to plant a forged Blagoje Adžić document, and a document sent to Stanišić associating it with Jovica, although it was in connection with Mićo Stanišić. An interesting part of the examination was information from the witness that Professor Vojislav Šešelj had always followed by the police when he came to Bijeljina.

### 4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17 (a, e, g, h, i and j), 18, 25, 31, 32, 34, but charges concerning Bijeljina are contained in paragraphs 6 and 10e.

The witness was planned for counts 1, 2, 3, 4, 10, 11, 12, 13 and 14 of the indictment, but Bijeljina is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bijeljina, and the perpetrators of crimes in Bijeljina.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1029,  
ALIJA GUŠALIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1029, Alija Gušalić, was planned as a prosecution witness through whom the following would be proven:

Crimes in BH – Bijeljina

“At the end of March 1992, Serb forces, including SRS/SČP troops, surrounded and attacked Bijeljina.” (footnote 238)

“Approximately 50 men under the command of Mirko Blagojević, 30 of Željko Ražnatović's men (i.e. “Arkan's Tigers”), and other troops participated in the attack and subsequent occupation of the town.” (footnote 239)

“During the takeover of Bijeljina, non-Serb civilians - in particular Muslims - were arrested and assaulted in various ways.” (footnote 240)

“The Prosecution will lead evidence as to the involvement of Mirko Blagojević in assaulting non-Serb civilians.” (footnote 241)

“During the period relevant to the indictment, Šešelj frequently visited Bijeljina. In particular, he visited the Café *Srbija* owned by Mirko Blagojević, who was the local commander of the SRS.” (footnote 244)

**2. Summary of testimony for VS-1029, Alija Gušalić**

Biography: Muslim male from Zvornik, between 20 and 30 years old at the time of the above events.

The events: Arkan's and Šešelj's men arrived in Bijeljina around February 1992. They walked around in uniforms and frequented the *Srbija* café owned by Mirko Blagojević. A day or two before the clash broke out in Bijeljina, on 31 March 1992, a hand grenade was thrown at the *Istanbul* café, injuring seven people. A day later, the witness went to the *Srbija* café where he saw several Arkan's and Šešelj's men. The witness believes that they were amassing forces in order to attack Bijeljina. They spoke with a Serbian accent. The witness was on his way back from the *Srbija* café when he was shot and wounded. While recovering in hospital, Blagojević and three other soldiers beat him. These soldiers wore cockades and had long beards.

Arkan came to his room late in the evening after he was beaten and ordered the hospital staff to give him the medical care he needs. Fikret Abdić and Biljana Plavšić visited the hospital two days later.

The witness will testify to the destruction of the Bijeljina mosque during the war.

In June 1992, the witness was arrested several times. He will give details about the arrests and dwell on his imprisonment in the SUP building and the abuse he suffered there. The witness was then transferred to the Batković camp.

Batković Camp: The witness noticed soldiers in the camp; some wore camouflage uniforms, some SMB /olive drab/ ones. There were about 2,000 prisoners in the camp, mainly civilians. The soldiers beat the witness and the others. Apart from beating them, it was extremely hot in the camp, there was not enough ventilation and there were too many people in a small space, sanitary conditions were poor, there was not enough food. Ferid Zečević and Zlatko, last name unknown, died of the beatings. Many died because of the inhumane conditions in the camp. When the witness arrived in the camp he weighed 109 kg. When he left, he had 59 kg and serious injuries. When the ICRC visited the camp the witness was taken to a house outside the fenced complex and kept hidden inside. The witness spent 11 months imprisoned in the Batković camp without medical care. They took him to Doboj/Usora, where he was beaten again. He was given some medical care there. During the 11 and a half months he spent in Doboj/Usora, the witness was used for forced labour, including digging trenches and collecting bodies of Serbian soldiers from the front line. He was also regularly beaten by a man called Đuro Martić. In mid-July 1993, the witness was sent back to Batković. While in the camp, the witness had contact with a Serb who was called *Vojvoda* Pusula, who prepared him for a TV interview. The witness was exchanged on 8 November 1993 and went to Tuzla.

Paragraphs: 5-10a, f, g, 15, 16, 17 (a-e, g-j), 18, 25, 28, 29 (x), 30-32 and 34.

Counts: All.

### 3. Content of testimony:

The witness testified on 4 March 2009 *viva voce*. The witness was so interesting and inspiring that his testimony came to nothing. It was a retarded person who caused more damage to the Prosecution since the practice of the Prosecution was demonstrated through this witness.

### 4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 9, 10a, 10f, 10g, 15, 16, 17 (a, b, c, d, e, g, h, i and j), 18, 25, 28, 29 (x), 30, 31, 32 and 34, but charges concerning Bijeljina are contained in paragraphs 6 and 10e.

The witness was planned for counts 1-14 of the indictment, but Bijeljina is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bijeljina, and the perpetrators of crimes in Bijeljina.

### **THE BOSANSKI ŠAMAC LOCATION**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as annexes to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

#### **Remarks Concerning Bosanski Šamac in the Indictment:**

In its Decision of 8 November 2006, the Trial Chamber reduced the scope of the Modified Amended Indictment, as follows:

- counts 2, 3, 5, 6 and 7 were removed from the indictment;
- charges concerning crimes allegedly committed in Western Slavonia were deleted in paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32 and 34 of the indictment;
- it was decided that the Prosecution would not present evidence in respect of crimes relating to Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and at Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present non-crime-base evidence in respect of the crime sites of Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica.

As a result of this Decision, the following paragraphs or parts of paragraphs concerning the Bijeljina location no longer exist in the indictment:

- paragraph: part of paragraph 17 (a), part of paragraph 18, paragraph 19, part of paragraph 22, paragraph 23, part of paragraph 24, paragraph 25, part of paragraph

26; three parts of paragraph 27, paragraph 29 (c) paragraph 29 (d ), paragraph 29 (f), paragraph 29 (h), and paragraph 29 (i).

**Bosanski Šamac is referred to in the indictment as a place where crimes were committed under:**

- individual criminal responsibility (paragraphs 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia (Croatia), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia (Serbia), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the SAO Krajina, the SAO Western Slavonia, and the SAO Slavonia, Baranja and Western Srem (after 19 December 1991, the SAO Krajina became known as the RSK; on 26 February 1992, the SAO Western Slavonia and the SAO Slavonia, Baranja and Western Srem joined the RSK), as well as the Dubrovnik Republic. With respect to Bosnia and Herzegovina, the areas included **Bosanski Šamac**, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and Brčko.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Region in Croatia and in the municipalities of **Bosanski Šamac**, Zvornik, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

**According to the Final Pre-Trial Brief for Bosanski Šamac:**

In the Prosecution's Final Pre-Trial Brief, Bosanski Šamac as a crime location, which was changed to a location with witnesses to a consistent pattern of conduct, appears in the paragraphs BOSANSKI ŠAMAC, 3f, 4, 62, 3. BOSANSKI ŠAMAC 85, 88 and 90.

#### BOSANSKI ŠAMAC

Paragraphs 3f and 4

3. Although the process varied from place to place, the take-overs achieved the common goal of establishing Serb control in the targeted territories. Šešelj participated in this process by:

a) publicly and systematically promoting the establishment by force of a unified Serb-dominated state known as Greater Serbia with its western borders along the Karlobag-Karlovac-Ogulin-Virovitica line, thereby including wide parts of Croatia and BH;

b) publicly and systematically inspiring fear and hatred in Serbs that non-Serbs, in particular Croats and Muslims, were their enemies and intended to cause them harm, thereby creating and/or exacerbating an atmosphere conducive to violent acts against targeted non-Serb populations and inciting, participating in and contributing to the crimes alleged in the indictment;

c) recruiting, organising, financing, supporting, directing, encouraging and instigating Serb volunteers affiliated with the SRS/SČP, who committed crimes alleged in the indictment;

d) encouraging and instigating other Serbian forces, such as members of the JNA/VJ /Yugoslav Army/, local units of the Serbian TO and the TO from Serbia, the VRS, SVK and police, to commit the crimes alleged in the indictment;

e) coordinating the activities of the SRS/SČP volunteers and members of other Serbian institutions who committed the crimes alleged in the indictment;

f) participating and assisting in the planning and preparation for taking power in villages in Western Slavonia and Eastern Slavonia, Baranja and Western Srem (SBWS), Croatia, and in the municipalities of Bosanski Šamac and Zvornik, BH, and in the subsequent persecution campaigns;

g) publicly calling for the expulsion of inhabitants of Croatian ethnicity from parts of the Vojvodina, Serbia, thereby instigating his followers and local authorities to engage in a persecution campaign against the local Croatian population;

h) personally and directly causing the expulsion of Croatian residents from villages in Vojvodina, in particular the village of Hrtkovci, by intimidating and insulting Croats in public speeches; and

i) denigrating the non-Serb populations in Vukovar, Zvornik and Hrtkovci through public "hate speech."

4. The accused's participation in the JCE can be divided into three essential segments. First, the accused used his power and popularity as a politician to

constantly promote the goal of the creation of a Serb dominated Greater Serbia by force in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged.

Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of volunteers who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories.

Third, in some areas, which will be discussed further in the text, such as Vukovar, Zvornik, Bosanski Šamac and Hrtkovci, the accused personally planned, instigated, ordered and/or carried out these crimes, thereby additionally participating in and contributing to the JCE.

#### Paragraph 62

62. Each sub-section focuses upon one geographic region where the alleged crimes were committed: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

#### Paragraphs 85-90

##### 3. Bosanski Šamac, April 1992 – September 1993

85. The municipality of Bosanski Šamac, lying along the Sava River which divides BH and Croatia, falls within the so-called Posavina Corridor, a territory that linked Serbia with parts of the targeted areas in BH and Croatia. On 12 May 1992, during an Assembly Session, Radovan Karadžić stressed the crucial importance of taking control of this corridor for the members of the JCE when he declared that the establishment of a corridor between the Bosanska Krajina and ultimately the RSK and Serbia, was the second most important strategic goal of the Bosnian Serbs. The Serb leaderships in (S)FRY and RSK were equally aware of the importance of the Posavina Corridor as the lifeline to the Serbian motherland. The RSK leadership was involved in the planning of military operations in the corridor and participated, on the request of the Belgrade leadership, in the take-overs of territories with its troops. In 1991 the census recorded the ethnic makeup of the Bosanski Šamac municipality as 44.7% Croat, 41.5% Serb, 6.8% Muslim and 7% others, the Muslims living mainly in the town of Bosanski Šamac and representing a majority there.

86. Around March 1992, in preparation for the military and political take-over of Bosanski Šamac, Stevan Todorović requested that the SRS send volunteers to that municipality. Tomislav Nikolić, who was the Vice-President of the SRS in

Kragujevac, recommended Srećko Radovanović (aka Debeli), the leader of a group of volunteers from Kragujevac. The SRS War Staff decided to dispatch a group of 30 - 40 men led by Debeli. Šešelj personally approved and helped to arrange for their training by the Serbian DB /State Security/. The War Staff informed Debeli that instead of sending his group of volunteers directly to the war front, they would first be sent for training in Serbia by a special unit of the Serbian MUP. Debeli initially refused to participate in this training, but agreed after speaking with Šešelj.

87. The SDS in Bosanski Šamac established a Crisis Staff on 28 March 1992, with Blagoje Simić as President and Stevan Todorović as chief of police. On 11 April 1992, Debeli's group of DB-trained and armed SRS/SČP volunteers arrived by JNA helicopter in Batkuša, near Bosanski Šamac, to spearhead the take-over of the municipality. Their commanders were Dragan Đordjević (aka Crni), Debeli, and Slobodan Miljković (aka Lugar) of the Serbian DB. The volunteers wore camouflage uniforms, red berets, and a Grey Wolf patch on their arms. Soon after their arrival they were integrated into the JNA's 17<sup>th</sup> Tactical Group – with the agreement of the local JNA command, the Crisis Staff and Stevan Todorović.

88. On 17 April 1992, Serb forces including SRS/SČP volunteers, Bosnian Serb police under the command of Stevan Todorović, and JNA soldiers attacked the town of Bosanski Šamac, quickly taking over the town and neighbouring areas. These Serb forces effected the forcible removal of the non-Serb civilians from the municipality through violence, mass imprisonment, and deportation. While in detention, the detainees were subject to inhuman and cruel treatment by the police and SRS/SČP volunteers, including physical, psychological and sexual torture.

89. In addition to beating and torturing non-Serb civilians, SRS/SČP volunteers, including Debeli and Lugar, also murdered detainees in the camps in Bosanski Šamac. For example, on 26 April 1992, Lugar killed Anto Brandić (aka Dikan), a Croat, by beating him with a wooden club and then shooting him. During this incident, Lugar referred to Šešelj as “my commander.” On 7 May 1992, approximately 50 Croat and Muslim prisoners were taken by police to a warehouse in the village of Crkvina, near the town of Bosanski Šamac. Late that evening, SRS/SČP volunteers, including Debeli, Lugar, and Crni arrived in Crkvina. Several of these people introduced themselves as “members of Šešelj's group.” They beat the non-Serb detainees and shot and killed 16 of them. The people who were beaten were forced to sing Chetnik songs. The prisoners who survived the massacre were ordered to clean

the blood and brain tissue off the floor and bury the bodies of the dead in a mass grave. The SRS/SČP volunteers were notorious for their cruelty. Following their arrest and abuse the Muslims and Croats in detention camps in the municipality and elsewhere were deported to Croatia or transferred to other parts of BH as part of a series of so-called exchanges.

90. Three or more non-Serbs were forbidden from gathering in public places, and all political activity beyond that of the SDS was banned. Private homes and businesses of non-Serbs were systematically looted. Šešelj was informed about the events in Bosanski Šamac following the takeover.

### **Summary Regarding Witnesses for Bosanski Šamac**

#### **B. Implementation of the JCE in Bosnia and Herzegovina**

##### **3. Bosanski Šamac, April 1992 – September 1993**

Witnesses: VS-043 (Milan Babić, deceased), VS-1010 (██████████), VS-011 (Ljubiša Petković, did not testify, defence witness), VS-1002 (██████████), VS-1004 (██████████, did not testify), VS-1000 (██████████), VS-1008 (Stevan Todorović, deceased), VS-1058 (██████████, testified as a defence witness), VS-010 (Zoran Dražilović, did not testify, defence witness), VS-017 (Zoran Rankić, testified as a defence witness).

### **Prosecution's Revised Final Witness List and Summaries of Witness' Evidence**

Crime base witnesses for Bosanski Šamac turned into witnesses to a consistent pattern of conduct for Bosanski Šamac:

VS-1000 (██████████), VS-1002 (██████████), VS-1004 (██████████, did not testify), VS-1007 (Sulejman Tihic, witness not listed in the Prosecution's Final Pre-Trial Brief, testified in the courtroom), VS-1008 (Stevan Todorović, deceased), VS-1010 (██████████), VS-1058 (██████████, testified as defence witness and the Prosecution planned him to testify to counts which are no longer in the indictment).

### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Bosanski Šamac, to prove that the general requirements under Articles

3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

It is important in light of the reduction of the indictment and the Order of the Trial Chamber what evidence is to be presented in respect of Bosanski Šamac that crime base evidence should not be presented, but only evidence relating to a consistent pattern of conduct by Professor Vojislav Šešelj. This must be viewed in terms of paragraphs 6 and 10e of the indictment to the effect that Vojislav Šešelj participated in a JCE whose purpose was the removal of population through the commission of crimes in the area of Bosanski Šamac, and his concrete involvement is reflected in that he took part in the planning and preparation of the take-over of power in the territory of Bosanski Šamac.

During the presentation of Prosecution evidence, the following witnesses were heard:

1. Sulejman Tihić, VS-1007, testified *viva voce* on 3 and 4 December 2008, without protective measures.
2. [REDACTED], VS-1000, testified *viva voce* on 11 December 2008, under protective measures, under Rule 92ter.
3. [REDACTED], VS-1010, testified on 11 February 2009 in closed session.
4. [REDACTED], VS-1058, testified on 9 and 10 March 2010 under protective measures.

The Prosecution was required to present evidence of a consistent pattern of conduct, but in fact the witness testified to the crime base, even to certain counts that were removed from the indictment. A considerable difference is observed in view of the proposed witnesses and those whom the Prosecution did not call. It did not call

[REDACTED]  
[REDACTED]  
[REDACTED]. It also did not call the witnesses who were scheduled as insider witnesses or witnesses for participation in the JCE. Furthermore, the Bosanski Šamac location was the subject of a number of proceedings before the ICTY and that neither Professor Vojislav Šešelj nor the existence of a JCE in this location were mentioned anywhere. It is not clear how the Prosecution conceived, through the Bosanski Šamac location, to present evidence on the consistent pattern of Professor Vojislav Šešelj's

conduct when in all these proceedings before the ICTY there were no charges or conviction for participation in a JCE?

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1007,  
SULEJMAN TIHIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1007, Sulejman Tihić was not planned as a Prosecution witness.

2. Summary of testimony for VS-1007, Sulejman Tihić

Biography: Bosnian Muslim, the President of the SDA in Bosanski Šamac at the beginning of the war.

Detention and beating in the SUP and TO buildings: The witness was detained at the SUP in Bosanski Šamac. Whilst there he was interrogated and beaten.

The witness will testify about his detention at the TO building in Bosanski Šamac and the treatment of the detainees there.

The detainees were beaten and the witness identifies Lugar as one of the worst perpetrators. One of the detainees was beaten unconscious and shot by Lugar when Lugar realised that he was still alive. The witness was interrogated by Crni.

Detention in the JNA barracks in Brčko: on 26 or 27 April 1992, the witness was transported to the JNA barracks in Brčko. He will give evidence about his detention there and the presence of Arkan's men and the Red Berets in Brčko at that time. The paramilitary forces cooperated with the JNA, and even the JNA soldiers were afraid of the paramilitary forces. He will testify about the outbreak of war in Brčko, and his transfer, on 1 and 2 May 1992, to the JNA barracks in Bijeljina. The witness will describe interrogations and beatings by JNA soldiers.

Detention in Batajnica/Serbia: the witness was subsequently transported by helicopter to Batajnica in Serbia, where he was detained. He was guarded by young JNA recruits. He will testify about their treatment of him there. He was subsequently taken to the prison in Sremska Mitrovica, Serbia. He will talk about the camp commander, a member of the JNA, and about how he was beaten by the soldiers there.

Paragraphs: 5 - 8, 12, 15, 16, 17 a-d, g-j, 18, 23-28, 31 and 32.

Counts: all counts

**3. Content of testimony:**

The witness testified *viva voce* on 3 and 4 December 2008. Previously he had testified in the Tadić, Šamac Group and Milošević cases. Considering that he did not mention Professor Vojislav Šešelj in a negative context even in passing, the testimony was used for general historical and political issues related to armed conflict.

**4. Summary of testimony:**

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 12, 15, 16, 17(a-d), 17(g-j), 18, 23, 24, 25, 26, 27, 28, 31 and 32, but charges concerning Bosanski Šamac are laid out in paragraphs 6 and 10e.

The witness was planned to testify to counts 1-14 of the indictment, and Bosanski Šamac is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14. He is a witness to the consistent pattern of conduct, and this is probably pertinent to the JCE. Given that he did not even mention Professor Vojislav Šešelj, it is unclear why he was called. Nevertheless, he was used to good effect to describe the situation which allowed for the determination of the political context which enabled the outbreak of the armed conflict.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bosanski Šamac, and the perpetrators of the alleged crimes in Bosanski Šamac.

**ANALYSIS OF THE RULE 92ter TESTIMONY OF WITNESS VS-1000,  
[REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1000, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in BH - Bosanski Šamac, April 1992 - September 1993

"On 17 April 1992, Serb forces including SRS/SČP volunteers, Bosnian Serb police under the command of Stevan Todorović, and JNA soldiers attacked the town of Bosanski Šamac, quickly taking over the town and neighbouring areas. While in detention, the detainees were subject to inhuman and cruel treatment by the police and

SRS/SČP volunteers, including physical, psychological and sexual torture.” (footnote 267)

2. Summary of testimony for VS-1000, [REDACTED]

Biography: Muslim male, [REDACTED]. He was detained at the SUP in Bosanski Šamac from 5 May 1992 until he was exchanged on 5 November 1992.

Takeover: before the takeover, the Serbian residents of Bosanski Šamac had armed themselves. By February 1992, they had evacuated the women and children from the town. In the early hours of 17 April 1992, the witness heard shooting. The witness saw tanks and soldiers, accompanied by Simo Zarić and Miroslav Tadić, patrolling the town, stopping at houses owned by non-Serbs, they demanded the surrender of weapons. The witness heard radio announcements that Muslims and Croats were prohibited from gathering in groups and were required to wear white arm bands to identify themselves as non-Serbs. Furthermore, non-Serbs were ordered to report to the TO building. When the witness reported to the TO building, he heard screams coming from the SUP building across the street.

Forced Labour: the witness and other non-Serb men and women of all ages were assigned forced labour such as digging trenches, preparing and carrying sandbags, cleaning streets and harvesting wheat, without any food or payment. At times they had to work in dangerous conditions.

Looting: all valuables were stolen from the witness, his family and friends. The witness's jeep was seized and he later saw Lugar driving it. The witness was forced to help during the lootings.

Imprisonment: on 5 May 1992 the witness was taken to the SUP where he was detained in inhumane conditions. He was beaten by many Serbs, including Stevan Todorović. Laki cut off the witness' ear and pierced his right hand [REDACTED]. The witness saw other detainees, [REDACTED], being regularly beaten and abused. The witness and other prisoners were forced to sing Chetnik songs.

Paramilitary forces: in the vicinity of Bosanski Šamac, the witness saw many members of paramilitary forces, including Arkan's Tigers, Grey Wolves */Sivi vukovi/*, and Šešelj's men who wore *šubara* hats with the Chetnik insignia. The witness heard from many Serbs that Šešelj and Arkan were criminals in Serbia who had come because Milošević told them they would be pardoned if they went to Bosnia to fight. Many spoke with a Serbian accent. One of them said: "They brought us here to save

the Serbs who are being killed by Muslims and Croats.” The witness saw Lugar, Crni, Debeli, Laki and others take part in the ill-treatment of prisoners. Lugar used pliers to extract the witness’ teeth. The witness saw him kill a Croat at the stadium. The witness saw Šešelj and Arkan coming to the SUP separately.

Rape: the witness saw Serbian soldiers raping a 17-year-old girl.

Paragraphs: 12, 15-18, 23-28 and 30-32.

Counts: all counts.

### 3. Content of testimony:

The witness testified on 11 December 2008 under protective measures and under Rule 92*ter*. He earlier testified in the Šamac group case. He was planned to testify to the consistent pattern of conduct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 4. Summary of testimony:

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17, 18, 23, 24, 25, 26, 27, 28, 30, 31 and 32, but charges concerning Bosanski Šamac are contained in paragraphs 6 and 10e.

The witness was planned for counts 1-14 of the indictment, but Bosanski Šamac is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14. The witness was planned to give evidence about a consistent pattern of conduct, but at the end of his testimony it is not clear why he was called to testify.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bosanski Šamac, and the perpetrators of crimes in Bosanski Šamac.

## **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1010, [REDACTED], UNDER PROTECTIVE MEASURES AND IN CLOSED SESSION**



[REDACTED]

[REDACTED]

[REDACTED]

Paragraphs: 12, 15-18, 23-28 and 30-32.

Counts: all counts.

**3. Content of testimony:**

The witness testified on 11 February 2009 under protective measures and in closed session. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17, 18, 23, 24, 25, 26, 27, 28, 30, 31 and 32, but charges concerning Bosanski Šamac are laid out in paragraphs 6 and 10e.

The witness was planned to testify to counts 1-14, and Bosanski Šamac is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the Indictment. He is a witness to a consistent pattern of conduct, to the participation of the Professor Vojislav Šešelj in the JCE.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Bosanski Šamac.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1058, [REDACTED],  
UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1058, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

**Šešelj's Role in the Recruitment and Coordination of SRS/SČP Volunteers:**

"SRS/SČP volunteers agreed with the goal of creating 'Greater Serbia' by using all necessary means, including violence, because they fervently believed in Šešelj." (footnote 84)

**Šešelj's Intent to Participate in the JCE:**

"On other occasions, commanders of SRS/SČP volunteer units and TO Commanders reported to the War Staff, who in turn informed Šešelj, in great detail, about events and the activities of the volunteers." (footnote 94)

**Crimes in BH - Bosanski Šamac, April 1992 - September 1992**

"While in detention, the detainees were subject to inhuman and cruel treatment by the police and SRS/SČP volunteers, including physical, psychological and sexual torture." (footnote 267)

“Prisoners who survived the massacre were ordered to clean the blood and brain tissue off the floor and bury the bodies of the dead in a mass grave.” (footnote 271)

2. Summary of testimony for VS-1058, [REDACTED]

Recruitment: The witness heard Šešelj speak on television about the formation of a Greater Serbia. According to Šešelj, this goal was to be achieved by “force and the power of weapons.” When the SRS began to form volunteer groups, the witness joined the party and enrolled as a volunteer. The witness will describe how and where he was instructed to report for duty. Šešelj, Ljubiša Petković and Zoran Rankić came to see the volunteer groups several times. The witness viewed Šešelj as his future leader. During his visits, Šešelj stated that the units were being formed to create a Greater Serbia and the objective would be achieved by violent actions. He told the volunteers that they would be assisting the JNA.

[REDACTED]

[REDACTED]

[REDACTED]

Many SRS volunteers believed in Šešelj’s political rhetoric and agenda.

The witness is not aware that Šešelj or any other member of the party leadership disciplined SRS volunteers for misconduct.

Attacks in Croatia, Training by the Red Berets: The witness will testify about the military actions in Croatia from July/August 1991 to October 1991. The witness will speak about a group of SRS volunteers led by Srećko Radovanović aka Debeli. This group of SRS volunteers received two weeks of training at a camp located at Pajzoš, near Ilok. He will speak about the training and the instructors. .

Events in Bosanski Šamac: The witness will testify to the participation of volunteers in Bosanski Šamac and describe the roles of Debeli, Stevan Todorović and Crni. The witness will testify to the takeover of Bosanski Šamac in mid-April 1992 in collaboration with members of the JNA. Milan Simić was present at the briefing prior to the takeover. Following the takeover, the witness observed mistreatment of detainees held at the SUP building.

Crkvina massacre: The witness will testify to the killing of 5-7 civilians in Crkvina by Lugar and Tralja, another Chetnik volunteer. Debeli was present but the witness is not sure if he participated in the killing.

Paragraphs: 5-12, 15, 16, 17a and b, 18, 23-26 and 31.

Counts: 1, 2-4 and 5-9.

### 3. Content of testimony:

The witness testified as a Chamber witness on 9 and 10 March 2010 under protective measures. The witness appeared as a Chamber witness, but there are also statements to the effect that he wanted to be a witness for the Defence. Through this witness the Prosecution did not prove any allegation made against Professor Vojislav Šešelj in the Indictment.

### 4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 12, 15, 16, 17a, 17b, 18, 23, 24, 25, 26 and 31, but charges concerning Bosanski Šamac are laid out in paragraphs 6 and 10e.

The witness was planned to testify to counts 1, 2, 3, 4, 5, 6, 7, 8 and 9, and Bosanski Šamac is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the Indictment. He is a witness to the consistent pattern of conduct, and this is probably pertinent to the JCE, and since he did not even mention Professor Vojislav Šešelj it is not clear why he was called to testify. He was, nonetheless, used to good effect to describe the situation which allowed for the determination of the political context which enabled the outbreak of the armed conflict.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bosanski Šamac, and the perpetrators of the alleged crimes in Bosanski Šamac.

## **THE BRČKO LOCATION**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as an annex to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

### **Remarks Concerning Brčko in the Indictment:**

In its Decision of 8 November 2006, the Trial Chamber reduced the scope of the Modified Amended Indictment, as follows:

- counts 2, 3, 5, 6 and 7 were removed from the indictment;
- charges concerning crimes allegedly committed in Western Slavonia were deleted in paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32 and 34 of the indictment;
- it was decided that the Prosecution would not present evidence in respect of crimes relating to Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present non-crime-base evidence in respect of the crime sites of Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica.

As a result of this Decision, the following paragraphs or parts of paragraphs concerning the Brčko location no longer exist in the indictment:

- paragraph: part of paragraph 17 (a), part of paragraph 18, paragraph 19, part of paragraph 22, paragraph 23, part of paragraph 24, paragraph 25, part of paragraph 26; three parts of paragraph 27, paragraph 29 (c) paragraph 29 (d ), paragraph 29 (f), paragraph 29 (h), and paragraph 29 (i).

**Brčko is referred to in the indictment as a place where crimes were committed under:**

- individual criminal responsibility (paragraph 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE /joint criminal enterprise/. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia ("Croatia"), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia ("Serbia"), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the "SAO Krajina", the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" (after 19 December 1991, the "SAO Krajina" became known as the RSK; on 26 February 1992, the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" joined the RSK), as well as the "Dubrovnik Republic" /*Dubrovačka republika*/. With respect to Bosnia and Herzegovina, the areas included Bosanski

Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and **Brčko**.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Region in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and **Brčko** in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Brčko as a crime location, which was changed to a location with witnesses to a consistent pattern of conduct, appears in paragraphs BRČKO, 62, 2. BRČKO 81, 82, 83 and 84.

**BRČKO**

**Paragraph 62**

62. Each sub-section focuses upon one geographic region: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

**Paragraphs 81-84**

**2. Brčko**

81. Brčko is located in the Northeast of Bosnia and Herzegovina, west of Bijeljina, on the south bank of the Sava river. According to the 1991 census, approximately 44% of the inhabitants were Muslims, 25% were Croats, and 21% were Serbs. Like Bijeljina, it was of strategic military importance for the control of the Posavina corridor during the conflict.

82. In early May, Serbian forces comprised of the JNA, local Serb TO, police and paramilitary troops attacked Brčko. These troops included SRS/SČP volunteers and Arkan's Tigers.

Non-Serbs, mostly Muslim civilians, were forced to leave their homes. Many of these civilians were arrested, detained and beaten by the Serb forces, and some were killed. More were executed in Stari Grad square in Brčko by the Serbian forces during the attack in early May.

83. Approximately 200 Muslims from Brčko were arrested and detained for extended periods of time in the Luka camp. The detainees were repeatedly and severely beaten and were kept in a hangar without adequate food, water, or sanitation.

They were forced to do manual labour, including carrying dead bodies and dumping them in the Sava River, and were often forced to watch the killings of other detainees. Many Serbs, including SRS/SČP volunteers, on several occasions brutally raped female detainees. One Serbian soldier, who introduced himself as a member of the SRS from Bijeljina, carved a cross into a Muslim victim's forehead with a knife.

84. The SRS/SČP volunteers were involved in the attack on Brčko and in the operation of the Luka camp. They had a reputation for killing and looting, and participated in rapes of women in the Luka camp. They received ammunition and other logistical support from the JNA.

#### **Summary regarding witnesses for Brčko**

##### **B. Implementation of the JCE in Bosnia and Herzegovina**

##### **2. Brčko**

Witnesses: VS-1034 (dropped by the Prosecution), VS-029 (Vojislav DABIĆ), VS-1033 ( ), VS-015 (Goran STAPARIĆ).

Prosecution's Revised List of Witnesses and Summary of Witness Evidence:

Crime base witnesses for Brčko turned into witnesses to a consistent pattern of conduct: VS-1033 ( ).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Brčko, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

It is important in light of the reduction of the indictment and the Order of the Trial Chamber that crime based evidence should not be presented in respect of Brčko, but only evidence relating to a consistent pattern of conduct by Professor Vojislav Šešelj. This must be viewed in terms of paragraphs 6 and 10e of the indictment to the effect that Vojislav Šešelj participated in a JCE whose purpose was the removal of

population through the commission of crimes in the area of Brčko, and his concrete involvement is reflected in that he took part in the planning and preparation of the take-over of power on the territory of Brčko.

During the Prosecution case, the following witness was examined:

1. VS-1033, [REDACTED], 10 March 2010, with protective measures.

He was the only witness for the Brčko location, which is listed as a location for which witnesses will testify to a consistent pattern of conduct. In addition to [REDACTED], a number of other witnesses testified about this location, such as [REDACTED], Goran Stoparić and witnesses for the Bijeljina location.

In the trial judgment of Momčilo Krajišnik, paragraphs 321 to 337 make references to the crimes in Brčko. Mirko Blagojević is only mentioned in a negative context, but there is not even an allusion that he was engaged through Serbia and Belgrade, but within the framework of the forces from Bijeljina. The Brčko location was also discussed in the judgments and settlements in cases against Ranko Češić and Goran Jelisić.

As with the Bosanski Šamac and Bijeljina locations, it is important with respect to the Brčko location that the fact that some members of the Serbian Radical Party happened to be in some of the units colloquially referred to as the Serbian forces cannot under any circumstances demonstrate causality in relation to Professor Vojislav Šešelj. The important fact is that it has not been proven that the Serbian Radical Party sent its volunteers from Belgrade or from Serbia. This does away with the Prosecution's claims concerning recruitment, dispatch, organising, supplying, ordering, commanding, or any other activity that would constitute a causal link with the presence of a member of the Serbian Radical Party in the specified location. Members of the Serbian Radical Party in the territory of Bosnia and Herzegovina fulfilled their military obligations towards JNA organs and subsequently towards the organs of their entity.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1033,  
[REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1033, [REDACTED], as its witness to prove the following:

Crime in BH – Brčko

"Mile Bolero was President of the SRS party in Brčko." (footnote 248)

"The Prosecution will lead evidence of the following crimes: Non-Serbs, mostly Muslim civilians, were forced to leave their homes. Many of these civilians were arrested, detained and beaten by the Serb forces, and some were killed." (footnote 249)

"More were executed in Stari Grad square in Brčko by the Serb forces during the attack in early May." (footnote 250)

"The detainees were repeatedly and severely beaten and were kept in a hangar without adequate food, water, or sanitation." (footnote 251)

"They were forced to do manual labour, including carrying dead bodies and dumping them in the Sava River, and were often forced to watch the killings of other detainees." (footnote 252)

"The Prosecution will lead evidence that SRS/SČP volunteers were amongst the Serb forces at the camp: One Serb soldier, who introduced himself as a member of the SRS party from Bijeljina, carved a cross into a Muslim victim's forehead with a knife." (footnote 253)

"The SRS/SČP volunteers were involved in the attack on Brčko, and in the operation of the Luka camp. They had a reputation for killing and looting, and participated in rapes of women in the Luka camp." (footnote 254)

"They received ammunition and other logistical support from the JNA." (footnote 255)

2. Summary of testimony for VS-1033, [REDACTED]

Biography: [REDACTED]  
[REDACTED].

Events: The witness will testify about the killing of many civilians in Brčko and Luka camp, forced labour imposed on him and torture by Serb forces.

[REDACTED]. From the end of 1991 through the spring of 1992, the witness saw JNA helicopter landings at the JNA barracks in Brčko. They became more frequent at the beginning of 1992. On one

occasion, a group of soldiers wearing red berets emerged from a helicopter. The witness later heard that the "Red Berets" were special units of the JNA. Prior to the referendum in 1992, Karadžić, Krajišnik, Plavšić and Koljević spoke at a rally in Brčko.

On 30 April 1992, two bridges over the Sava river in Brčko were blown up by a JNA unit. On 1 May 1992, members of the SDS in Brčko issued an ultimatum that the municipality be split into three by 4 May 1992. Also, on 1 May 1992, a JNA officer transmitted a message that his military police unit had been mandated to take over control of the town within 48 hours.

On 3 May 1992, the war broke out in Brčko. On 7 May 1992, the witness observed several men, dressed in camouflage and police uniforms, gun down 10-12 civilians in the Stari Grad complex in Brčko. He also saw three civilians being lined up against a wall and shot at close range by a group of police and soldiers. Another group of three or four victims were lined up against the wall of the *Oslobodenje* cinema and shot to death by a police officer. These events took place within 100 meters of the SUP station. During this time, the witness heard of other killings and rape of a woman by Dragan Živković at Laser.

On 12 May, while the witness was forced to perform work duties in the centre of town, he saw several dead bodies. He also observed two soldiers in camouflage uniforms unloading more than 20 bodies from the back of a TAM truck. A bulldozer then covered the bodies with earth.

Detention in the Luka Camp: On 27 May 1992, the witness was taken to the SUP and then to Luka camp where he was kept until 7 June 1992. He was kept in a hangar with between 120 and 200 other detainees. During this-time, he was severely beaten, cut with a knife, and forced to carry dead bodies d in civilian clothing to the Sava River. [REDACTED]

[REDACTED]. He also witnessed one of the guards, a member of the SRS Bijeljina, carving a cross in the forehead of one of the detainees. One day Mirko Blagojević and his escort from Bijeljina came into the camp and introduced themselves as Serbian "Chetniks" or Radicals. [REDACTED]

[REDACTED]  
[REDACTED].

While being kept prisoner in Luka, the witness heard Goran Jelisić boast that he had killed 97 Muslims. [REDACTED]  
[REDACTED].

The witness also observed Vojkan Đurković wearing a JNA uniform. He would arrive in the Luka camp periodically and give speeches.

On 7 June 1992 the witness was released by Captain Dragan.

Paragraphs 15, 16, 17 (a-e, g-i), 18, 29 (i), 32

Counts: 1-9.

### 3. Content of testimony

Although the Prosecution planned to call the witness to testify under Rule 92 *ter*, the Trial Chamber decided that he should testify *viva voce*. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

His entire testimony hardly ever went beyond the statement he had given to the investigators of the Office of the Prosecutor. He could not be precise; instead, he based the parts relating to Professor Vojislav Šešelj on his assumptions.  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

### THE VOĆIN LOCATION IN WESTERN SLAVONIA

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as an annex to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

#### Remarks Concerning Voćin, Slavonia, in the Indictment:

In its Decision of 8 November 2006, the Trial Chamber reduced the scope of the Modified Amended Indictment, as follows:

- counts 2, 3, 5, 6 and 7 were removed from the indictment;
- counts concerning crimes allegedly committed in Western Slavonia were deleted by the Prosecution in paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32 and 34 of the indictment;
- it was decided that the Prosecution would not present evidence in respect of the crimes concerning Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present non-crime-base evidence in respect of crime sites of Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica.

As a result of this Decision, the following paragraphs or parts of paragraphs concerning the Western Slavonia location no longer exist in the indictment:

- paragraph: part of the paragraph 17 (a), part of paragraph 18, paragraph 19, part of paragraph 22, paragraph 23, part of paragraph 24, paragraph 25, part of paragraph 26, three parts of paragraph 27, paragraph 29 (c), paragraph 29 (d), paragraph 29 (f), paragraph 29 (h), and paragraph 29 (i).

**Western Slavonia is referred to in the indictment as a place where crimes were committed under:**

- individual criminal responsibility (paragraph 6, 10 e)

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia ("Croatia"), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia ("Serbia"), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the "SAO Krajina", the "SAO Western Slavonia", and the "SAO Slavonia, Baranja and Western Srem" (after 19 December 1991, the "SAO Krajina" became known as the RSK; on 26 February 1992, the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" joined the RSK), as well as the "Dubrovnik Republic". With respect to Bosnia and

Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and Brčko.

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Voćin appears in paragraphs 21, 62, 72, 73, 74, 75, 76 and 77 as a crime location which was changed to a location with witnesses to a consistent pattern of conduct.

**VOĆIN**

**Paragraph 21**

21. The Accused also used his special position of political and "moral" authority and hate speech to indoctrinate those who responded to his call to fight for "Greater Serbia". More than once Šešelj told his volunteers that their task was to kill "Ustashas" or "Turks". SRS/SČP volunteers operating in Vukovar, a town in Eastern Slavonia in Croatia, during 1991 understood that their primary goal was to "cleanse the area of Ustashas". The prevailing atmosphere, not surprisingly, was that every Croat was an "Ustasha" and any "Ustasha" who tried to surrender was immediately shot. Volunteers in Voćin, a village in Western Slavonia in Croatia, told a nurse treating a wounded Croat soldier that they "heard that one Ustasha is here. We would like to chop him into pieces." When he dispatched his volunteers to the battlefields, Šešelj used his rhetorical skills to cast these efforts in heroic terms:

"God's help, heroes! Serbian brothers, heroic Serbian Chetniks, today you are going to war. Today you are going to free Serbian Vukovar and to defend Serbian Slavonia. You are going to join hundreds, thousands of our Volunteers. You are going from all parts of today's shrunken Serbia to return glory to the Serbian weapons. You will act with units of the JNA, because that is our army. It is foremost a Serbian army, because of its senior staff and its struggle for the salvation of Serbian lands, of Serbian territories."

**Paragraph 62**

62. Each sub-section focuses upon one geographic region: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

**2. Voćin, August - December 1991**

72. Voćin is a village in the Western Slavonia region of Croatia, located south-west of Podravska Slatina. According to the 1991 census, nearly one-third of the approximately 1,500 inhabitants of Voćin were Croats.

73. On the morning of 19 August 1991, Serb forces including JNA, local Serb TO, and paramilitaries, attacked and took over Voćin.

74. Groups of SRS/SČP volunteers arrived by bus in Voćin during September, October, and November 1991 (many of them travelled through Banja Luka in BiH where the JNA Corps active in Western Slavonia was stationed), to reinforce the local Serb TO, and remained there. The commander of the SRS/SČP volunteers was Radovan Novačić, who was subordinated to the TO commander for Western Slavonia, Lt. Col. Jovan Trbojević. There was extensive co-operation between the local Serb Territorial Defence in Western Slavonia and the SRS.

75. The Prosecution will lead the following evidence of crimes in Voćin: During the occupation of Voćin, Serb forces, including SRS/SČP volunteers, created a climate of fear by looting, threatening, abusing, and killing civilians. For example, in late November or early December 1991, a group of SRS/SČP volunteers forced four Croat boys to carry ammunition to the battlefield and subsequently killed them. One SRS/SČP volunteer marched around Voćin holding the head of a Croatian victim.

76. In November 1991, Ljubiša Petković, chief of the SRS War Staff, contacted Radovan Novačić, informing him that Šešelj was coming to visit his unit in the field. Šešelj came to Voćin and the Sekulinci camp and inspected his volunteer units. He was accompanied by Veljko Vukelić and Ilija Šašić, local Serb TO commanders in Voćin, and Rajko Bojčić, who was associated with the local Serb TO in Voćin. During his visit, Šešelj gave a speech focusing on "Greater Serbia" and its western borders. SRS/SČP volunteers in Voćin repeated Šešelj's ideology of "Greater Serbia" and the creation of a Serbian border along the Virovitica-Karlovac-Karlobag Line. After Šešelj's visit, SRS/SČP volunteers became more aggressive in their behaviour and there was a sharp increase in crimes against Croat civilians. SRS/SČP volunteers often stated their intent to target non-Serbs. On one occasion, a group of SRS/SČP volunteers went to an infirmary and said, "Hey, sister, we heard that one Ustasha is here. We would like to chop him in pieces."

77. The Prosecution will lead further evidence of crimes as follows: On 13 December, with the units of the Croatian Army (HV) approaching, Serb forces withdrew from Voćin and the surrounding villages. As they withdrew, Serb forces,

including SRS/SČP volunteers, assaulted the civilian non-Serb population, killing civilians in Hum and Voćin, burning homes, and blowing up buildings. For example, SRS/SČP volunteers massacred a group of civilians in Hum, executed a Croatian prisoner of war, planted explosives in the police station in Voćin, and blew up the Catholic church. Following the withdrawal, bodies of civilians were found strewn across Voćin. Victims were primarily elderly. During December, a joint funeral was held for 45 people killed in Hum and Voćin.

#### **Summary Regarding Witnesses for Voćin**

##### **V. Factual summaries of the alleged crimes**

Witnesses: VS-1119 (Julka Maretić, testified), VS-026 (██████████, did not testify, witness for the defence), VS-031 (██████████, did not testify, witness for the defence), VS-1120 (Đuro Matovina), VS-050 (██████████, did not testify, witness for the defence), VS-013 (Mladen Kulić, testified), VS-018 (Jelena Radošević, testified), VS-004 (██████████, testified), VS-007 (██████████, testified), VS-010 (Zoran Dražilović, did not testify, witness for the defence).

#### **Final Revised List of Witnesses for the Prosecution and Summaries of Witness' Evidence**

Witnesses to a consistent pattern of conduct for Voćin:

VS-018 (Jelena Radošević testified; she was proposed as a witness for count 2 which does not exist in the indictment, and she will testify about the killing of civilians), VS-031 (██████████ did not testify, ██████████), VS-033 (██████████, testified, false witness), VS-050 (██████████ did not testify, ██████████), VS-1119 (Julka Maretić, will testify to counts 2, 3, 5 and 7, which no longer exist in the indictment, and will testify on expulsion and murders), VS-1120 (Đuro Matovina).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Voćin, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions

under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

During the Prosecution case the following witnesses were examined:

1. VS-033, [REDACTED], testified *viva voce* under a pseudonym and with image and voice distortion on 1 and 2 April 2008.

2. VS-1120, Đuro Matovina, testified *viva voce* on 13 and 14 May 2008.

3. VS-018, Jelena Radošević, testified *viva voce* on 23 October 2008 under Rule 92 *ter*.

4. VS-1119, Julka Maretić, testified *viva voce* on 6 November 2008 under Rule 92 *ter*.

Although referred to as insider witnesses, their testimonies related to the Voćin location, and the following witnesses were examined:

1. VS-004, [REDACTED], testified *viva voce* on 7, 12 and 13 February 2008 with protective measures.

2. VS-013, Mladen Kulić, testified *viva voce* on 4, 5 and 6 March 2008.

The following witnesses were not examined:

1. VS-031, [REDACTED];

2. VS-050, [REDACTED].

It must be noted with respect to the Voćin location that in relation to other locations for which the Prosecution should lead evidence of the consistent pattern which is referred to repeatedly in the indictment, the Voćin location is generally not mentioned in the indictment, except in the annex to the indictment. If the consistent pattern of conduct is supposed to serve as proof of participation in the JCE, it must be noted that the Prosecution does not refer to the Voćin location as a location where there was a JCE. Given the Prosecution's efforts to stuff anything and everything into the charges against Professor Vojislav Šešelj, it seems that the Prosecution is trying to make as few references as possible to the Voćin location, but give the impression that it is present. Why is the Prosecution doing this? The answer is simple, it is ludicrous to bring charges simultaneously for both Hrtkovci and Voćin, because it was mostly Serbs expelled from Western Slavonia who exchanged property with the Croats from Hrtkovci.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-033 [REDACTED]  
[REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-033, [REDACTED], as its witness to prove the following:

Šešelj's intent to take part in the JCE:

"On other occasions, commanders of SRS/SČP volunteer units and TO Commanders reported to the War Staff, who in turn informed Šešelj, in great detail, about events and the activities of the volunteers." (footnote 94)

2. Summary of witness's evidence for VS-033, [REDACTED]

The witness will testify to the SRS structure from early 1991 onwards including the role of Šešelj. He will speak about the recruitment of volunteers. The SRS would take care of the volunteer's health insurance and arrange for them to take leave from their jobs.

Voćin: the witness will describe the situation in the Sekulinci Lager in September 1991, in particular the actions of Radovan Novačić, the then commander of the volunteers. Novačić did tolerate drunken volunteers and opposed violent behaviour and killing of non-Serbs. Later, however, undisciplined volunteers were sent to Vošin, Novačić was unable to control. The witness will testify that Šešelj recruited convicted persons as SRS volunteers. When convicts enrolled into the SRS their sentence was reduced. The witness will testify that Šešelj knew what was going on in Western Slavonia.

The witness will testify that the local TO was in charge of supplying the volunteers with food, fuel, cigarettes and other. The salaries during the time in Voćin were paid by the JNA.

Šešelj's visit in Voćin: the witness will testify to Šešelj's visit in Voćin. He came to Lager Sekulinci where Novačić had lined up about 50 volunteers. Šešelj gave a short speech saying something to the effect "God bless you brothers, kill them all but do not loot."

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED].

The witness will testify that on 14 December 1991 a huge number of people was leaving the area.

SRS volunteers told him that Topola's men and volunteers from other groups had gone wild killing people. Zoran Mišević's men blew up the Catholic church, the bridge, the petrol station in Voćin and the hotel in Zvečevo.

Paragraphs: 10 a, b, d, e and g, 12, 15, 16, 17 a, b and j, 18, 19 and 31.

Counts 1 - 4, 12 and 13.

### 3. Content of testimony

Witness VS-033, [REDACTED], testified under a pseudonym and with image and voice distortion on 1 and 2 April 2008. Notarised statements of Radovan Novačić and Aleksandar Gajić were used during cross-examination. The witness had obviously been prepared by both the Prosecution and by Nataša Kandić.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

This witness, confirmed next to nothing from the summary of evidence on which the Prosecution counted, and the Prosecution cannot expect to make any use of him with respect of the assertions from the Prosecution Final Pre-Trial Brief. The witness was caught lying several times in the courtroom, with respect to both SMS messages he sent to Aleksandar Gajić and his criminal responsibility for what he did in Serbia.

[REDACTED]. He was persuaded by Ljubiša Petković to become a witness for the Prosecution at the time when Petković was seen as a suspect by the Hague Tribunal. It was established through other witnesses that the Serbian Radical Party volunteers did not have any connection whatsoever to the crimes in Western Slavonia. He lied so much that he even went on to allege that, in addition to Veljko Džakula, Goran Hadžić had also welcomed the volunteers.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 10a, 10b, 10d, 10e, 10g, 12, 15, 16, 17a, 17b, 17j, 18, 19 and 31, but these paragraphs do not contain charges for Voćin.

The witness was planned for counts 1, 2, 3, 4, 12 and 13, but Voćin is not mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Voćin.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1120,  
ĐURO MATOVINA**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1120, Đuro MATOVINA, to prove the following:

Crimes in Croatia

Voćin, August - December 1991.

"Groups of SRS/SČP volunteers arrived by bus in Voćin during September, October, and November 1991 (many of them travelled through Banja Luka in BiH where the JNA Corps active in Western Slavonia was stationed), to reinforce the local Serb TO, and remained there." (footnote 217)

"The Prosecution will lead the following evidence of crimes in Voćin: During the occupation of Voćin, Serb forces, including SRS/SČP volunteers, created a climate of fear by looting, threatening, abusing, and killing civilians." (footnote 222)

"For example, SRS/SČP volunteers massacred a group of civilians in Hum, executed a Croatian prisoner of war, planted explosives in the police station in Voćin, and blew up the Catholic church. Following the withdrawal, bodies of civilians were found strewn across Voćin. Victims were primarily elderly. During December, a joint funeral was held for 45 people killed in Hum and Voćin." (footnote 235)

2. Summary of witness's evidence VS-1120, Đuro Matovina

Biography: The witness is a Croat male, 42-years-old at the time of the take-over. The witness is a police officer, was a resident of Slatina.

**Background:** The witness will testify about the deterioration of relations between Croats and Serbs in Western Slavonia during -1990. At that time the Serb nationalist politician Dr Jovan Rašković founded the SDS. Rašković had a strong impact on the rural Serb population. He advocated that Slatina should become the "Slavonian Knin", meaning a centre of Serb rebellion. According to the witness it was easy for Rašković to find -support for the idea of Greater Serbia among the rural, often poorly educated Serbs, living in Western Slavonia.

The witness will testify that around 1 June 1990 the first nationalist graffiti appeared on the buildings in Slatina and the surrounding villages. It said: "This is Great Serbia, this will be Serbia, we shall kill Tudman." At the same time the first Četnik signs appeared.

**Resignation of Serb policemen:** in April 1991 there were mass resignations of Serbian policemen. Serbian JNA reservists were called for military training at the JNA barracks in Western Slavonia. These reservists then formed the Serb Territorial Defence. At the end of their training weapons were given to them.

**Arming of the Serb population:** the witness will describe that a JNA convoy transported weapons and equipment that allegedly was used for military training, however the weapons were distributed to the local Serbs in Voćin. When a Serb inhabitant refused to take the weapons, others shot at his house. When the man attempted to communicate with the police station he was kidnapped and killed. By June 1991, all Serb civilians who lived in the area of Voćin and its surroundings were armed and ready to attack. The Croatian police and local authorities did not have any control over this area.

On 14 August 1991, a Croatian waiter in a hotel in Voćin was kidnapped by Serb irregular soldiers and killed. In 1998 his body was found and identified by a DNA test. On 18 August 1991, the Croatian flag from the police station in Voćin was replaced by the Serbian flag.

**Take-over:** on 19 August 1991, Serb forces took over Voćin. The witness later learned that Croats were gathered in one place, told they must recognise SAO Krajina, and forced to stay in Voćin.

The witness learned that during the end of October 1991, 300-600 members of the SRS came to Voćin and were referred to as White Eagles.

Through his work as a police officer, the witness interviewed numerous Croat civilians detained at Lager Sekulinci and thus gathered information on mistreatment, torture, rape, and murder of detainees.

The witness co-ordinated the investigations of the murder of civilians in Voćin that took place between the 12 and 13 December 1991. He listed around 45 victims. The police learned that a local Serb pointed out the houses of Croats to Serb soldiers who entered and killed the civilians. The perpetrators included 60-80 SRS/SCP volunteers.

After the Serb withdrawal, the witness observed hundreds of homes, public facilities, and a church in Voćin all left in ruins, destroyed by fire, explosives, and shelling.

Paragraphs: 5 - 12, 15, 16, 17a - d, g - j, 18, 19, 24 - 28 and 31 - 32.

Counts: all counts.

### 3. Content of testimony

The witness testified *viva voce* on 13 and 14 May 2008. Voćin and Western Slavonia are listed in the Amended Indictment as places where the crimes occurred, and the witnesses should testify to the consistent pattern of conduct. The witness said that all his information pertaining to the events that may be presented as crimes was hearsay, but he was a witness qualified to testify to the general historical and political circumstances. He tendentiously defended everything the Croats did, and was a valuable witness in terms of filling the gaps and tendentiousness of Mladen Kulić [REDACTED].

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm the paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17l, 17j, 18, 19, 24, 25, 26, 27, 28, 31 and 32, and the se paragraphs do not contain charges for Voćin.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, but Voćin is not mentioned in counts in 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Voćin.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-018,  
JELENA RADOŠEVIĆ, UNDER RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-018, Jelena RADOŠEVIĆ, to prove the following:

Šešelj's role in the recruitment and coordination of SRS/SČP volunteers

"Volunteers in Voćin, a village in Western Slavonia in Croatia, told a nurse treating a wounded Croat soldier that they 'heard that one Ustasha is here. We would like to chop him into pieces.'" (footnote 82)

Šešelj's intent to participate in the JCE

"Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, (footnote 97) as well as parts of Vojvodina, Serbia (which borders Croatia) where non-Serbs were being persecuted."

Crimes in Croatia - Voćin, August - December 1991

"For example, in late November or early December 1991, a group of SRS/SČP volunteers forced four Croat boys to carry ammunition to the battlefield and subsequently killed them." (footnote 223)

"After Šešelj's visit, SRS/SČP volunteers became more aggressive in their behaviour and there was a sharp increase in crimes against Croat civilians." (footnote 230)

"On one occasion, a group of SRS/SČP volunteers went to an infirmary and said, 'Hey, sister, we heard that one Ustasha is here. We would like to chop him into pieces.'" (footnote 231)

2. Summary of testimony for VS-0118, Jelena Radošević

Biography: Female, age 40 at the time of the events.

Situation August/September 1991; the witness will testify to the tension between the Serbs and the Croats in Slatina in 1991. News was spread of crimes that ZNG /National Guard Corps/ members committed against Serbs and therefore many Serbs left town fearing for their safety. In order to get to Voćin the witness went through five checkpoints, three manned by Croats and two by Serbs.

Arrival of Volunteer Units in Voćin: in the beginning of October 1991, the witness saw seven buses full of Serb volunteers arrive in Voćin. The buses were from the *Lasta* Belgrade Transport Company. On the front side of at least one of the buses, the witness noted that there were flags bearing the two-headed eagles and the symbol of the skull and the crossed bones. Some of these soldiers had fur hats on their head (with cockades) and some had cartridge belts. They were all dressed in olive-grey uniforms. The soldiers had patches of the *Srpska Dobrovoljačka Garda* /Serbian Volunteer Guard/ (Arkan's Tigers) and the White Eagles on their sleeves. These units were based in the primary school and in the motel in Voćin, as well as in Lager Sekulinci.

The witness spoke to one of the commanders of the volunteers, Radovan Novačić, who came to the kindergarten of the elementary school which served as an infirmary. The witness heard that the soldiers called him *vojvoda* and she concluded that he was the commander of Šešelj's volunteers. Novačić's soldiers were based in the Sekulinci camp.

Volunteers in the Infirmary: in one instance, the witness spoke to a young volunteer, Ivan LNU (born in 1972). He had a patch that said Serbian Volunteer Guard on his sleeve and was from Pančevo (Serbia). He told the witness that he contracted hepatitis in Banja Luka where he was waiting for deployment. When the witness asked him why he was fighting at such a young age, he replied that "for one month I spend on the front, I have four months less to see my sentence in prison."

The witness will testify that she talked to other Serb volunteers that had a white eagle on their sleeve patches. One day, 14 of those came to the witness' work place. They were all very young (up to 25-years-old). They came to pick up a Croat soldier who was wounded in his shoulder. The soldier said: "Hey, sister, we heard that one Ustasha is here. We would like to chop him in pieces." She answered that the Croat prisoner had been taken to Bučje. The soldiers were angry and one of them fired a shot into the ground.

Arrival of Šešelj: Šešelj came to Voćin around the end of November 1991. The witness saw a crowd and several vehicles parked in front of the Voćin command building. The witness was told that Šešelj was inside.

The witness heard from members of the Serb Territorial Defence that Šešelj visited soldiers in the Sekulinci camp, Lisičince and Čeralije. She also heard from members of the TO that volunteers from Serbia were mixed with the TO and were

present at all checkpoints. The volunteers had their own commanders separate from the TO commanders.

Killings in Voćin: the witness was told that the Šešelj's volunteers would not obey the orders of the local TO commander, Rajko BOJIČIĆ. Following Šešelj's visit, the volunteers became more arrogant and the killing of Croat civilians began. According to the witness, the majority of Croat civilians were killed during the two weeks following Šešelj's visit. Four Croat civilians were killed on 3 December 1991. Members of the TO Command were helpless and afraid of the volunteers. The witness opined that the volunteers were responsible for all the crimes that occurred in Voćin.

Forced Labour: the witness observed the so "working group" of Croats. Members of the group had to report every morning to the Civilian Command in the former *Šumarija* building to be given tasks for the day.

Destruction of the Catholic church: the witness will testify that JNA uniforms, weapons and ammunition were stored in the Catholic church in Voćin. The witness later found out that the church was destroyed to prevent the material and weapons inside from falling into the hands of the Croatian forces. Other nearby buildings, including the *Šumarija*, were destroyed by the blast. The witness does not know who was responsible for the explosion.

Paragraphs: 15, 16, 17 a, e, g j 18, 19, 27, 28 and 31.

Counts: 1, 2 - 4, 12 - 14.

### 3. Content of testimony

The witness testified on 23 October 2008 under Rule 92 *ter*. This is a problematic witness who is the common-law wife of Mladen Kulić who simply had to testify because she still lives in the territory of Western Slavonia and is still politically active. In the summary she made incredible and false claims.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm the paragraphs 15, 16, 17a, 17e, 17j, 18, 19, 27, 28 and 31, but these paragraphs do not contain charges for Voćin.

The witness was planned for counts 1, 2, 3, 4, 12, 13 and 14, but Voćin is not mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Voćin.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1119,  
JULKA MARETIĆ, UNDER RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1119, Julka MARTIĆ, to prove the following:

Crimes in Croatia - Voćin, August - December 1991

"On the morning of 19 August 1991, Serb forces including JNA, local Serb TO, and paramilitaries, attacked and took over Voćin." (footnote 216)

"The Prosecution will lead the following evidence of crimes in Voćin: During the occupation of Voćin, Serb forces, including SRS/SČP volunteers, created a climate of fear by looting, threatening, abusing, and killing civilians." (footnote 222)

"For example, in late November or early December 1991, a group of SRS/SČP volunteers forced four Croat boys to carry ammunition to the battlefield and subsequently killed them." (footnote 223)

"For example, SRS/SČP volunteers massacred a group of civilians in Hum, executed a Croatian prisoner of war, planted explosives in the police station in Voćin, and blew up the Catholic church. Following the withdrawal, bodies of civilians were found strewn across Voćin. Victims were primarily elderly. During December, a joint funeral was held for 45 people killed in Hum and Voćin." (footnote 235)

**2. Summary of testimony for VS-1119, Julka Maretić**

Biography: Croat female from Voćin, 49 years old at the time of the events.

SAO Krajina: the witness will testify that on 14 January 1991, the head of a SDS party, visited Voćin. He stated that the Serbs had to stick together and that the surrounding area, including Voćin, would become part of the SAO Krajina.

Shooting in Voćin: on the morning of 19 August 1991, the witness was on her way to work at the police station when she was stopped by an armed man who wore a mask. He told the witness to return home. From her home, the witness could hear shooting from machine guns and automatic weapons. The witness believed that this took place in the area of Prevenda street, where most of the Croats lived. After the shooting, a local Croat came to the witness' house and told them that all Croats must surrender their weapons.

The witness will testify that from 19 August 1991, Voćin was blockaded and the witness was unable to return to work. Approximately 8 or 10 days following the start of the blockade, armed local Serbs in JNA uniforms came to the witness' house and stole her television, radio, cassette player and her husband's leather trousers.

Following the escape of many of the young people from Voćin, the Serb authorities ordered that a list be compiled of all Croats living in the village. The Croat inhabitants were threatened that if one Croat ran away, all of them would be killed.

Detention of Croats in the Voćin bank building: the witness will testify that on 22 October 1991, many Croatian men were detained in the basement of the Voćin bank. That morning, armed local Serbs in civilian clothes arrested the witness' husband. Later that day, the witness went to the police station and discovered that her husband had been taken to the bank building. A police officer told the witness that she should bring food and clothes to him as he would spend the night there. The police officer told the witness that "Serbs were arrested and they are held in Slatina and that is why your people must be held here." The witness' husband was released that evening. Her husband told her that during their detention, one man had an epileptic attack. A doctor was summoned and ordered that everyone should be released due to the bad conditions in the basement. The witness will state that to her knowledge, no one during the detention in the bank building was beaten or mistreated.

Arrival of volunteers in Voćin: the witness will testify that Voćin was relatively calm after the Serb take-over until the beginning of November 1991 when more Serb volunteers came from Serbia. The witness saw them arrive in three civilian buses; they were based in the elementary school and bowling hall. Additional buses with more Serb volunteers would arrive in Voćin at a later date.

The witness will testify that these volunteers were dressed in all kinds of clothes, including a mismatch of old JNA uniforms and civilian clothing. The witness remembered seeing that they wore all types of hats, including JNA caps with the five-pointed star, *šajkača*, black knitted caps and fur hats. Some wore badges with eagles, some with skulls and crossbones. They all carried weapons with bayonets and carried one or more knives.

Some volunteers told the witness that they had come to Voćin to kill "Ustashas". One of the volunteers told the witness that he came from the prison in Niš and that if he served one month on the front line, his sentence would be reduced for

one year. The volunteers told the witness that they came from all over Serbia, including Belgrade, Niš, Novi Sad and Svetozarevo.

**Killings in Voćin:** the witness will testify how on 3 or 4 December 1991, four young Croat men were ordered to work at the Čeralije, a hamlet close to Voćin. They did not come back to Voćin. Several days later, the witness learned that the men were killed. Approximately 4 days after the men went missing, 3 additional people were killed in a house close to the witness' home.

**Return to Voćin:** the witness and her husband left Voćin on 11 December 1991. They returned 2 days later to discover that many of the buildings in the village, including the bus station, fire brigade, police station and bowling hall were on fire. Later the Catholic church was also destroyed by an explosion.

The witness saw a number of dead bodies in the streets of the village. All of them were civilians, mostly older people.

Paragraphs: 5-12, 15, 16, 17 a-c, 19, 24- 28, and 31-32.

Counts: 1, 2-4, 5, 7 and 10-14.

### 3. Content of testimony

The witness testified on 6 November 2008 under Rule 92 *ter*. The witness is not a Croat at all but a Bulgarian, and the judges determined this during the examination. The most serious problem was the inclusion of irregular statements of this witness, and these statements had been handcrafted.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm the paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17a, 17b, 17c, 17e, 17g, 17i, 17j, 18, 19, 24, 25, 26, 27, 28, 31 and 32, but these paragraphs do not contain charges for Voćin.

The witness was planned for counts 1, 2, 3, 4, 5, 7, 10, 11, 12, 13 and 14, but Voćin is not mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Voćin.

## THE MOSTAR AND NEVESINJE LOCATION

This location is analysed through the positions which the Prosecution advocates, starting from additional historical and political facts for Bosnia and Herzegovina, as an annex to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, tasks before the Prosecution and what the judges were able to establish in the courtroom.

**Remarks Concerning Mostar and Nevesinje in the Indictment:**

Mostar and Nevesinje are referred to in the indictment as places where crimes were committed under:

- individual criminal responsibility (paragraph 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia ("Croatia"), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia ("Serbia"), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the "SAO Krajina" (i.e. the Serbian Autonomous Region of Krajina), the "SAO Western Slavonia", and the "SAO Slavonia, Baranja and Western Srem" (after 19 December 1991, the "SAO Krajina" became known as the RSK; on 26 February 1992, the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" joined the RSK), as well as the "Dubrovnik Republic". With respect to Bosnia and Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, **Mostar**, **Nevesinje** and Brčko.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Region in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, **Mostar**, **Nevesinje** and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

- **Count 1: Persecutions (paragraphs 15, 17a, 17b and 17e - only Mostar, 17g and 17j)**

15. From on or about 1 August 1991 until at least September 1993, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of, or physically committed, persecutions of Croat, Muslim and other non-Serb civilian populations in the territories of the SAO SBWS (Slavonia, Baranja and Western Srem), and in the municipalities of Zvornik, Greater Sarajevo, **Mostar, and Nevesinje** in Bosnia and Herzegovina and parts of Vojvodina in Serbia.

17. These persecutions were committed on political, racial and religious grounds and included:

a. The [REMOVED][1] murder of many Croat, Muslim and other non-Serb civilians, including women, children and elderly persons, in the municipality of Vukovar, in the municipalities of Zvornik, Greater Sarajevo, **Mostar and Nevesinje** in Bosnia and Herzegovina, as described in paragraphs 18 to 27.

b. The prolonged and routine imprisonment and confinement of Croat, Muslim and other non-Serb civilians in detention facilities within Croatia and Bosnia and Herzegovina, including prison camps in Vukovar, and in Zvornik, Greater Sarajevo, **Mostar, and Nevesinje** as described in paragraphs 28 to 30.

e. Prolonged and frequent forced labour of Croat, Muslim and other non-Serb civilians detained in the said detention facilities or under house arrest in their respective homes in Vukovar, Zvornik, Greater Sarajevo and **Mostar**. The forced labour included digging graves, loading ammunition for the Serb forces, digging trenches and other forms of manual labour at the front lines.

g. The imposition of restrictive and discriminatory measures against the Croat, Muslim and other non-Serb civilian populations, including persons in Zvornik, Greater Sarajevo, **Mostar and Nevesinje** in Bosnia and Herzegovina, and in parts of Vojvodina, Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia), such as restriction of movement; removal from positions of authority in local government institutions and the police; dismissal from jobs; denial of medical care; and arbitrary searches of homes.

j. Deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat, Muslim and other non-Serb civilian populations in the municipality of Vukovar in Croatia, and in the

municipalities of Zvornik, Greater Sarajevo, **Mostar and Nevesinje** in Bosnia and Herzegovina as described in paragraph 34.

**- Count 4: Murder (paragraphs 18 and 26 - only Mostar, 27 - only Nevesinje)**

18. From on or about 1 August 1991 until June 1992 in the territory of the SAO SBWS in Vukovar, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation, or execution of the [Removed] murder of Croat, Muslim and other non-Serb civilians as specified in paragraphs 20-22, 24, 26, and 27.

#### MOSTAR

26. Between April 1992 and June 1992, Serb forces, including volunteers known as “Šešelj’s men”, attacked and took control of the town of **Mostar** and surrounding villages. Following the attack, non-Serbs were routinely detained, beaten, tortured, and killed. On or about 13 June 1992 Serb forces, including volunteers known as “Šešelj’s men”, arrested and transported eighty-eight non-Serb civilians from the neighbourhood of Zalik and from the villages of Potoci, Kuti Livač, Vrapčići and other nearby villages to Vrapčići football stadium, detained them in the locker room, and subsequently killed them. The bodies of these non-Serbs were found in the dump in Uborak. On or about 13 June 1992, Serb forces arrested eighteen non-Serb civilians from Zalik and transported them to the city mortuary in Sutina. They were subsequently killed in Sutina in the vicinity of the city mortuary and dumped near the Neretva River in a pit. “Šešelj’s men” participated in the detention and killings. The names of identified victims of murder [REMOVED] at Uborak and Sutina are set out in Annex IX to this indictment.

#### NEVESINJE

27. In June 1992, Serb forces, including volunteers known as “Šešelj’s men”, took control of the town of **Nevesinje** and attacked Muslim villages in the municipality. During this time, non-Serbs were routinely detained, beaten, tortured, and killed. On or about 22 June 1992, Serb forces, including volunteers known as “Šešelj’s men”, arrested seventy-six Muslim civilians in the woods in the area of

Velež and took them to the primary school in the village of Dnopolje in Zijemlje Valley. They separated the men from the women and children. The men were killed. Their bodies were found in a place known as Teleća Lastva. The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Forty-four of them were killed at the dump pit at Lipovača. “Šešelj’s men” participated in the detention and killing. Five of the women from the heating factory were further detained at the resort at Boračko Lake, part of the Konjic municipality, which was used by Serb forces, including “Šešelj’s men”, as a military post. Two of the five women detained at that location, Fadila Mahinić and Mirsada Mahinić, were subsequently killed. On or about 26 June 1992, eleven Muslim civilians from the areas of Hrušta and Kljuna were arrested in Teleća Lastva. They were detained and tortured in the primary school in Zijemlje. Seven were taken away and subsequently killed. Their bodies were found in a pit in Zijemlje. “Šešelj’s men” participated in these killings. The names of identified victims of murder [REMOVED] at the Lipovača pit and [REMOVED], as well as the names of identified victims of murder [REMOVED] whose bodies were found at Teleća Lastva and the pit at Zijemlje are set out in Annex X to this indictment.

**- Counts 8 and 9: Torture and Cruel Treatment (paragraphs 29j – only Mostar – and 29k – only Nevesinje)**

29. Serb forces, including those volunteer units recruited and/or incited by Vojislav Šešelj, captured and detained hundreds of Croat, Muslim and other non-Serb civilians. They were detained in the following short- and long-term detention facilities:

j) The city mortuary in Sutina, **Mostar** and the stadium in Vrapčići, Mostar during June 1992, more than one hundred detainees.

k) The basement of the heating factory in Kilavci, **Nevesinje**, the resort at Boračko Lake, Nevesinje, the primary school in Zijemlje, Nevesinje and the SUP building in Nevesinje during June 1992, more than one hundred detainees.

**- Counts 10 and 11: Deportation and Forcible Transfer (paragraph 31 - only Nevesinje)**

31. From on or about 1 August 1991 until May 1992 in the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in Bosnia and Herzegovina, and between May and August 1992 in parts of Vojvodina, Serbia,

Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the deportation or forcible transfer of the Croat, Muslim and other non-Serb civilian populations from their legal domiciles, in Vukovar (SAO SBWS) in November 1991, in the municipality of Zvornik in Bosnia and Herzegovina between March 1992 and September 1993, in Greater Sarajevo in Bosnia and Herzegovina between April 1992 and September 1993, in the municipality of Nevesinje in Bosnia and Herzegovina between June 1992 and September 1993 and in parts of Vojvodina, Serbia, including the village of Hrtkovci, between May and August 1992.

**- Counts 12 to 14: Wanton Destruction and Plunder of Public or Private Property (paragraph 34 and 34b)**

34. From on or about 1 August 1991 until May 1992 in the territories of the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, **Mostar and Nevesinje** in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the wanton destruction and plunder of public and private property of the Croat, Muslim and other non-Serb populations, acts which were not justified by military necessity. This intentional and wanton destruction and plunder included the plunder and destruction of homes and religious and cultural buildings, and took place in the following towns and villages:

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Mostar and Nevesinje are mentioned as places where crimes were committed in the paragraphs MOSTAR - 62 and 5. MOSTAR 109, 110, 111, 112, 115 and 117, and 7. NEVESINJE, 118, 119 and 120.

**MOSTAR**

**Paragraph 62**

62. Each sub-section focuses upon one geographic region: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

## Paragraphs 109-117

## 5. Mostar

109. Mostar is located in southern Bosnia and Herzegovina. According to the 1991 census, approximately 35% of the inhabitants were Muslims, 34% were Croats, 19% were Serbs and 10% were Yugoslavs. While ethnic Croats were mostly living on the western side of the Neretva river, ethnic Serbs inhabited the eastern parts of the city. Muslims lived on both sides of the Neretva River. Mostar was of special strategic importance in the region and had two large military barracks, an airport and other military facilities. One of the barracks, the so-called Northern Camp, was based in the suburb of Zalik. After the election in 1991, won by the HDZ, Serbs started to leave Mostar and settle in the neighbouring municipality of Nevesinje, which was predominantly Serb. Given the various military facilities in Mostar, there was always a strong JNA presence in the region. However, beginning in autumn 1991 and particularly in 1992, JNA units from elsewhere and reserve troops and volunteers started to arrive. At the same time, the JNA mobilised the local population. Mostly Serbs responded to this mobilisation, while Croats and Muslims left the JNA. By spring 1992, Mostar had become a stronghold for Serb forces, including JNA, Serb TO, MUP Serbia units and volunteer units, including SRS/SČP volunteers.

110. Prior to the war, neither the SRS party, nor the SČP, had a noticeable presence in Mostar. However, in neighbouring Nevesinje, Arsen Grahovac promoted the SČP ideology. From 1991 onwards, his pub "Ravna Gora" became a gathering point for SČP and SRS members and sympathisers. In February 1992, SRS/SČP volunteers began to establish a strong presence in Mostar with the assistance of the JNA troops already in the area. The SRS/SČP volunteers were housed, equipped and armed by the JNA. These volunteers came from Serbia and Montenegro and from the battlefields in Croatia. They were joined by local Serbs who were attracted by their ideology and behaviour. With the arrival of the reservists and volunteers, tensions between the ethnic groups increased and the first incidents of ethnic violence occurred. SRS/SČP volunteers were often involved in such incidents and were particularly prominent in acts of looting. Among the Serb forces and the local population, the SRS/SČP volunteers had a bad reputation. It was known that there were criminals among them who engaged primarily in looting and killing of civilians. They were observed getting drunk and using drugs. The JNA troops originally tasked to prevent ethnic clashes sided with the Serbs, openly considered Muslims and Croats

as enemies and did not prevent the mistreatment of non-Serb civilians. In the spring of 1992, most of the Serb civilians had moved to Nevesinje or elsewhere and many non-Serbs also had left Mostar. After the explosion of a cistern in the vicinity of the JNA North Camp in April 1992, in which both the camp and the Zalik neighbourhood experienced considerable damage, civilians took refuge in a shelter in Zalik.

111. In spring 1992, SRS/SČP volunteers were housed in the Buna holiday resort outside of Mostar. At that time, this facility was frequented by local TO, Red Berets from the Serbian MUP and volunteers. Other SRS/SČP contingents were housed in abandoned homes in Bjelušine and Šehovina and tasked to secure the communications between the JNA facilities in Mostar and the road to Buna and Nevesinje. Among the leaders of Šešelj's volunteers were Mića Pančevac and Vančo Petkovski aka Vranjanac. The latter had a reputation for killing Croats with knife, of the type known as a *kama* knife

112. In mid-May, in an offensive commanded by General Momčilo Perišić that utilised all Serb forces including the SRS/SČP troops, Mostar was indiscriminately shelled for 30 hours. During the military action, "Oliver", one of the leading SRS/SČP commanders with close connections to the SRS leadership, arrived from Belgrade and was present in the military headquarters of the JNA. While there he kept in communication with the SRS/SČP volunteers who participated in the offensive. No distinction was made in this shelling between civilian and military targets. One of the SRS volunteers, Srdan Đurić, specifically targeted the mosques during this offensive. During the offensive, SRS/SČP volunteers were seen torturing and killing a civilian. The offensive was successful for the Serbs. From then onwards, Serb forces were in control of the eastern side of the Neretva River.

113. Throughout the attack and in the time period that followed, all Serb forces acted in full co-ordination. The SRS/SČP volunteers were fully integrated in the local Serb TO, which in turn was subordinated to the JNA command. The JNA gave full logistical and material support to all of these troops including the Red Berets. After the Serb forces took full control of the villages on the eastern banks of the Neretva river, non-Serbs in this area were subjected to a persecution campaign which included restriction of movement, detention under inhumane conditions, looting, burning of houses, rapes, beatings and killings. SRS/SČP volunteers figured prominently among those abusing the non-Serb population.

114. Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month. The detainees were kept under inhumane conditions, without adequate food or water, and were subject to frequent beatings and torture. Those detained in the Zalik shelter were subjected to forced labour under dangerous conditions. About fifty detainees were forced to clean garbage from the streets while exposed to gunfire. The detainees were often subjected to physical and psychological abuse by the Serb soldiers, in particular by SRS/SČP volunteers.

115. SRS/SČP volunteers were also directly involved in the killing of many of Mostar's non-Serb civilians. On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings. Over the next several days, the prisoners were kept in horrible conditions and tortured. They were then removed from the locker rooms in groups, taken by trucks to the city dump named Uborak and killed systematically. The bodies of the victims were covered with earth by a bulldozer. Later the bodies were found in a mass grave in Uborak. Another group of victims was killed in a nearby forest.

116. On that same day, Serb soldiers, including SRS/SČP volunteers, among them a volunteer with the nickname *Šešeljevac* removed a group of men from the Zalik shelter and transported them first to the JNA North Camp and then to the city mortuary in Sutina. There the victims were beaten. Eighteen of them were subsequently murdered. Their bodies were dumped into a pit at the banks of the Neretva River. The bodies of the victims were later exhumed.

Paragraphs 117 - 120

## 7. Nevesinje

117. The Nevesinje municipality is located in southern Bosnia and Herzegovina. It borders Mostar to the west, Konjić and Kalinovik municipalities to the north, Gacko municipality to the east and Bileća and Stolac municipalities to the south. According to the 1991 census, approximately 74,5% of the inhabitants were Serbs, 23% were Muslims and only 1,3% were Croats. During the late 1980's and early 1990's, there were increasing numbers of Serb nationalist rallies in the region,

including at least one that was attended by Šešelj. In the summer of 1991, the JNA, with the help of the SDS, began to arm the Serb inhabitants of Nevesinje. Šešelj again came to Nevesinje in the summer of 1991. Arsen GRAHOVAC established a unit called *Karadorde*, which set up roadblocks, harassed the local non-Serb population, and set off explosives in several Muslim-owned properties in the Nevesinje region. This unit was comprised of members and sympathisers of the SČP and the SRS. During the period leading up to the attack, Muslims were removed from their jobs, expelled from their homes, disarmed, and at times physically abused by Grahovac's men. Grahovac had between 80 and 100 people in his unit, which operated in the area of Mostar, Bijelo Polje, Buna, and Boračko Lake. This unit was later involved in a persecution campaign conducted against the non-Serb population of Gacko, Buna, Mostar, Bijelo Polje and Pijesci. Their main base was in Nevesinje, where they stayed in the JNA barracks with the Užice Corps.

118. SRS/SČP volunteers started to arrive in Nevesinje as early as May 1991 and continued to arrive throughout 1991 and spring 1992. SRS/SČP volunteers arrived in Buna as well. Šešelj participated in a rally in Nevesinje in 1991. In September 1991, parts of the Užice Corps arrived in the region with JNA reserve soldiers, tanks, APCs, and artillery. In March/April 1992 SRS/SČP volunteers started to arrive in large and small groups in Nevesinje. By April 1992, SRS/SČP volunteers and other volunteer and police troops, including the White Eagles and Red Berets, had established a powerful and oppressive presence in the entire Nevesinje municipality. The SRS/SČP volunteers were fully integrated in the local Serb TO, which in turn was subordinated to the JNA command. The JNA gave full logistical and material support to all of these troops in the region, including the Red Berets. Šešelj again visited Nevesinje in April 1992, where he gave a speech at a rally, exhorting the Serbs to continue to defend Serbia.

119. In June 1992, Serb forces, including SRS/SČP volunteers, attacked Nevesinje and the surrounding Muslim villages. After the attack, these forces conducted a ruthless persecution campaign against the non-Serb – primarily Muslim – population. In June 1992, Serb forces required all non-Serbs in the villages of Donja, Bijenja, Gornja Bijenja, and Postoljani to hand over their weapons. On 21 June, the villages were attacked; those too old or infirm to flee were killed by the Serb forces. The forces responsible for these and other attacks included SRS/SČP volunteers, Red Berets, and White Eagles. Many of these forces were commanded by Arsen

GRAHOVAC. Zdravko KANDIĆ commanded some of the SRS/SČP volunteers during the attack on Bijelo Polje. During and after the attack, non-Serbs were routinely detained, tortured, beaten and killed. Women were subjected to violent and repeated rapes by SRS/SČP volunteers and other Serb forces and the Muslim villages were plundered and destroyed. Seven mosques and all the mesdžids were destroyed in Nevesinje municipality between June and July 1992. Also the big Catholic church in Nevesinje was destroyed, the rubble removed and a parking lot created in its place.

120. On 22 June 1992, 76 Muslim civilians were arrested in the woods in the area of Velež by Serb forces, including SRS/SČP volunteers, and taken to the primary school in the village of Dnopolje in the Zijemlje Valley where they were detained. The troops responsible for the capture were commanded by Zdravko KANDIĆ and his second in command, Dragan ĐURĐIĆ, and were a mixture of Red Berets and SRS/SČP volunteers. The men were separated from the women and children, and the men were killed. Their bodies were later discovered in a place called Teleća Lastva. The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Subsequently, forty-four women and children were killed and thrown into a mass grave at Lipovača called Breza. The Serb troops threw bombs into the pit with the bodies. Of this group, twenty were children, including a one-month old baby and at least one other child under the age of one. SRS/SČP troops and Red Berets were responsible for this massacre. Five of the women detained in the heating factory at Kilavci were transported to the resort at Boračko Lake, which was used as a military post by Serb forces, including SRS/SČP volunteers. Local SRS leader Arsen GRAHOVAC, SRS/SČP volunteer Petar DIVAKOVIĆ, and other Serb forces, including other SRS/SČP members, violently raped these women and kept some of them imprisoned for years. Of the five women imprisoned and sexually tortured at the Boračko Lake camp, two were eventually killed. After the killing, several Red Beret soldiers, who previously had been part of Captain Dragan VASILJKOVIĆ's unit, bragged about the murders in a café in Nevesinje.

### **Summary Regarding Witnesses for Mostar and Nevesinje**

#### **B. Implementation of the JCE in Bosnia and Herzegovina**

Witnesses: VS-043 (Milan Babić, died), VS-037 (██████████, testified as though a witness for the defence), VS-1061 (Miroslav Deronjić, died), VS-026 (██████████, did not testify, witness for the defence).

6. Mostar:

Witnesses: VS-1020 (██████████), VS-1068 (██████████), VS-029 (Vojislav Dabić, testified almost completely as though a witness for the defence having previously given completely false evidence in his statement to the Prosecution), VS-1069 (Fahrudin Bilić, false), VS-1067 (██████████, false), VS-1026 (Redžep Karišik), VS-1009 (Zoran Tot, died), VS-1022 (██████████, false), VS-015 (Goran Stoparić, false witness).

7. Nevesinje:

Witnesses: VS-015 (Goran Stoparić, false witness), VS-1025 (██████████, did not testify), VS-1022 (██████████, false witness), VS-1024 (Ibrahim Kujan, false witness), VS-1052 (██████████), VS-029 (Vojislav Dabić, was a defence witness, false witness), VS-1051 (██████████), VS-1067 (██████████, false witness), VS-1020 (██████████).

**Prosecution's Revised List of Witnesses and Summaries of Witness' Evidence:**

Crime base witnesses for Nevesinje and Mostar:

VS-029 (Vojislav Dabić, testified almost completely as though a witness for the defence, false witness), VS-1009 (Zoran Tot, died), VS-1020 (██████████, ██████████), VS-1022 (██████████, false witness), VS-1024 (Ibrahim Kujan, false witness), VS-1025 (██████████, did not testify), VS-1026 (Redžep Karišik), VS-1051 (██████████), VS-1052 (██████████), VS-1067 (██████████, false witness), VS-1068 (██████████), VS-1069 (Fahrudin Bilić, false witness).

**Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Brčko, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

During the Prosecution case, the following witness was examined:

1. Redžep Karišik, VS-1026, testified *viva voce* on 1 July 2008.

2. ██████████, VS-1051, testified with protective measures in closed session on 2 July 2008.
3. ██████████, VS-1052, testified *viva voce* on 2 July 2008 with protective measures under Rule 92 *ter*.
4. Fahrudin Bilić, VS-1069, testified *viva voce* on 2 and 3 July 2008.
5. ██████████, VS-1022, testified on 17 July 2008 in closed session.
6. Ibrahim Kujan, VS-1024, testified *viva voce* on 22 July 2008 under Rule 92 *ter*.
7. ██████████, VS-1068, July 26 November 2008 with protective measures, under Rule 92 *ter*.
8. Vojislav Dabić, VS-029, testified *viva voce* on 26 and 27 January 2010.
9. ██████████, VS-1067, testified *viva voce* on 2 February 2010 with protective measures.

The charges for offences in the Mostar and Nevesinje locations are based on all forms of responsibility under Article 7 (1) of the Statute and concern three crimes against humanity and six crimes of violations of the laws and customs of war. According to the structure of evidence led by the Prosecution, evidence was given by seven witnesses, who were also victims, and two witnesses, who were alleged to have taken part in the armed conflict and who knew that crimes had been committed. These two witnesses were not eyewitnesses to the actual crimes, but had second-hand or umpteenth-hand knowledge of them, because they said that they had heard about all the things to which they were planned to testify as eyewitnesses from other people.

It must be clear from the beginning that all the documents relating to these two locations, which were compiled by the Croatian and Muslim authorities in Mostar in 1992 and 1993, do not contain even an indication that Professor Vojislav Šešelj or volunteers of the Serbian Radical Party took part or were in any way involved in the relevant events. Criminal reports, indictments and investigation documents list full names of local Serbs in relation to all the events relevant to the charges against Professor Vojislav Šešelj.

The witnesses/victims and the two alleged participants in an event did not even mention Vojislav Šešelj and volunteers of the Serbian Radical Party in their statements to the investigators in the Office of the Prosecutor. As the trial of Vojislav Šešelj drew closer, however, their original statements were augmented and altered by

inserting the names of Vojislav Šešelj and volunteers of the Serbian Radical Party, who were referred to as Šešelj's men. The initial muddle as to the identity of Arsen Grahovac was untangled during the witness examination. He was an assemblyman of the Serbian Renewal Movement in Nevesinje and never had anything to do with the Serbian Radical Party. A certificate from Nevesinje municipality and witness statements in the court confirmed that Arsen Grahovac had nothing to do with Professor Vojislav Šešelj.

The volunteers of the Serbian Radical Party who were in Mostar were there until the day the JNA withdrew from the Neretva Valley, which was on 15 May 1992, or 19 May 1992 at the latest. Everything which is treated in the indictment as a crime in Mostar took place on 13 and 14 June 1992, a month after the volunteers left Mostar. Thus, the presence of the Serbian Radical Party volunteers at the location of crimes committed by other individuals who may be referred to as members of the Serbian forces cannot be used to infer the responsibility of Professor Vojislav Šešelj, because the volunteers of the Serbian Radical Party were not in Mostar in June 1992. This means that no link can under any circumstances be established between Professor Vojislav Šešelj and the known perpetrators of crimes in Mostar, who are facing criminal prosecution. It would be hard to establish the responsibility of Professor Vojislav Šešelj for the period before June 1992 in respect of looting, destruction, devastation and everything else that took place during the armed conflict as a legitimate military operation because no conclusion has yet been reached on the individual criminal responsibility of any person, whether as a commander or as an individually identified perpetrator. Without this, there can be no liability on the basis of a JCE.

It must be borne in mind that the Momčilo Krajišnik case is all-embracing in terms of locations in Bosnia and Herzegovina, and Mostar is not even mentioned as a location in the trial judgement. It is notable that even in the fall of 1991 Mostar was the capital of Herceg-Bosna and that the indictment against *Prlić et al.* makes no mention of Mostar and as a location where Serbs allegedly committed crimes, persecution, etc. Virtually the only Serb charged with alleged Serbian crimes in Mostar on the basis of participation in a JCE is Professor Vojislav Šešelj. Thus none of the documents of the Prosecution and judgments issued by the Trial Chambers in The Hague contains either allegations or evidence that Mostar was the location of alleged Serbian participation in a JCE. The fact that some Serbs have been suspected,

investigated, indicted and convicted of specific offences before a court in Bosnia and Herzegovina has not until now been considered sufficient grounds to bring charges for participation in a JCE. Additionally, no causal link can be established with Professor Vojislav Šešelj.

As for the Nevesinje location, the situation was resolved the very instant the Trial Chamber was told that there was simply no truth in the allegations from the indictment concerning any connection with Arsen Grahovac. The witnesses/victims did not say anything during the trial that was relevant to Professor Vojislav Šešelj or volunteers of the Serbian Radical Party, apart from reference to participation in a purely military operation which lasted several days on the Podveležje plateau, which does not include any one of the crime locations in the Indictment concerning Nevesinje and which took place before the alleged crimes were committed at the locations in Nevesinje. It was also established that no volunteers of the Serbian Radical Party had ever been at the Boračko Lake location, but at the time of the crimes in Nevesinje not a single member of the Serbian Radical Party was in the territory of that municipality. Nor is there any question of friendly relations between the Serbian Radical Party and Professor Vojislav Šešelj and persons who were on Boračko Lake because the volunteers of the Serbian Radical Party were not there. In that sense, the evidence of Goran Stoparić (for Podveležje) and that of Aleksa Ejić (for Boračko Lake), given as witnesses for the Prosecution who had found themselves at these locations, is important as they confirmed that there were no volunteers of the Serbian Radical Party at Boračko Lake or in the municipality of Nevesinje. Those who were at Boračko Lake could have been on friendly terms with those from the police and civilian authorities in Nevesinje, but not under any circumstances with the military authorities.

Nevesinje featured as a location in the indictment, as well as in paragraphs 668 to 673, with footnotes 1530 to 1540, of the trial judgment in the *Momčilo Krajišnik* case, IT-00-39-T, dated 27 September 2006. Not a single word in the section of this judgment which pertains to Nevesinje refers to Professor Vojislav Šešelj or volunteers of the Serbian Radical Party, or to the Chetniks or Šešelj's men.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

## ANALYSIS OF THE TESTIMONY OF WITNESS VS-1026, REDŽEP KARIŠIK

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1026, Redžep Karišik, as its witness to prove the following:

Crimes in BH - Mostar:

"Among the leaders of Šešelj's volunteers were Mića Pančevac and Vančo Petkovski aka Vranjanac. The latter had a reputation for killing Croats with knife, of the type known as a *kama* knife." (footnote 354)

"SRS/SČP volunteers figured prominently among those abusing the non-Serb population." (footnote 362)

"Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month." (footnote 363)

"The detainees were kept under inhumane conditions, without adequate food or water, and were subject to frequent beatings and torture." (footnote 364)

"On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings." (footnote 367)

"Over the next several days, the prisoners were kept in horrible conditions and tortured. They were then removed from the locker rooms in groups, taken by trucks to the city dump named Uborak and killed systematically." (footnote 368)

2. Summary of witness's evidence VS-1026, Redžep Karišik

Biography: Muslim male, from Mostar.

Events: The witness will testify that, in April 1992, Šešelj's men -wearing white hats, long beards, and Kokarda - entered Mostar. Some of Šešelj's men were from Serbia while others were locals who joined the Serbian volunteers. The witness saw JNA troops practicing on the shooting range; these troops also had long hair, beards and had Kokarda on their heads.

The witness and many other local Muslims were forced to work without pay under Milan Koro (former member of the MUP) while exposed to rifle fire from the conflict. While working, the witness saw Red Berets and Šešelj's men.

On 9 April 1992, the witness and 10-12 others were taken to the North Camp and questioned by Captain Milorad Gunjević. They were detained for 28 hours without food or water and were beaten. The witness saw several "Chetniks" wearing JNA reservist uniforms during this detention.

On 3 June, the witness and several others attempted to flee but they were detained by policemen. On 6 June, the witness and other detainees were put into a vehicle and taken first to the town cemetery, and then to the Vrapčići Club locker room. The witness saw 37 other people already detained in the room, some of whom claimed to have been there for 20 days. During the next six days, several more detainees were brought into the locker room by Momo Čančar.

On 13 June, two soldiers with big beards, helmets, and olive grey uniforms took the witness and fourteen others in a white van to an unknown destination approximately ten minutes from the locker room. One of the "Chetniks" opened the door and demanded that the detainees get out of the van. All but the witness got out of the van, and one of the "Chetniks" shot each of them as they exited the van. When the witness was called; he refused to leave the van. The "Chetnik" closed the door.

The witness was then taken to the Sutina cemetery, where he was handcuffed to a heater, beaten severely, and abandoned. He broke the handcuffs after two hours with a pocket-knife and escaped.

He had not had food or water for four days.

He will testify to the mass grave in Sutina and the identification of some 75 bodies.

Paragraphs: 15, 16, 17(a-e and g-i), 18, 26, 28, 29(j) and 30.

Counts: 1 - 11

### 3. Content of testimony

The witness testified without protective measures on 1 July 2008.

The witness confirmed the presence of the JNA reserve forces in April 1992. The soldiers who worked at the shooting range in the neighbourhood of Zalika told the witness that these reservists with beards were the Territorials and that there would be an exercise for seven days.

The witness is a victim and no matter how much confusion he exhibited, he was a valuable witness. The Trial Chamber could learn from him that the JNA withdrew from Mostar on 19 May 1992 and that the witness recognised and identified as criminals local Serbs from Vrapčici. The story about Šešelj's men was foggy and it followed the pattern of attributing all and everything to the Chetniks and so on. Also helpful was the first statement that the witness gave to police investigators in Mostar, which did not mention Šešelj's men.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs, 4, 5, 6, 7, 8, 9, 10a, 10b, 10c, 10d, 10f, 10g, 11, 14, 15, 16, 17g, 17i, 27, 28, 29 and 30, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1051,**

#### **██████████, IN CLOSED SESSION**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1051, ██████████, to prove the following:

##### Crimes in BH - Nevesinje

"On 22 June 1992, 76 Muslim civilians were arrested in the woods in the area of Velež by Serb forces, including SRS/SČP volunteers, and taken to the primary school in the village of Dnopolje in the Zijemlje Valley where they were detained. The troops responsible for the capture were commanded by Zdravko KANDIĆ and his second in command, Dragan ĐURĐIĆ, and were a mixture of Red Berets and SRS/SČP volunteers. The men were separated from the women and children, and the men were killed. Their bodies were later discovered in a place called Teleća Lastva.

The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Subsequently, forty-four women and children were killed and thrown into a mass grave at Lipovača called Breza. The Serb troops threw bombs into the pit with the bodies. Of this group, twenty were children, including a one-month old baby and at least one other child under the age of one.” (footnote 399)

“Five of the women detained in the heating factory at Kilavci were transported to the resort at Boračko Lake, which was used as a military post by Serb forces, including SRS/SČP volunteers.” (footnote 401)

“Local SRS leader Arsen Grahovac, SRS/SČP volunteer Petar Divaković, and other Serb forces, including other SRS/SČP members, violently raped these women and kept some of them imprisoned for years.” (footnote 402)

“Of the five women imprisoned and sexually tortured at the Boračko Lake camp, two were eventually killed.” (footnote 403)

“In mid-June 1992, eleven Muslim civilians from Hrušta and Kljuna were arrested while hiding from Serb forces in the woods in Teleća Lastva. They were detained in a primary school in Zijemlje, where they were tortured. The torture included severe lacerations, beatings, and one man had his teeth pulled out with pliers.” (footnote 405)

“Seven of the prisoners were killed. Their bodies were found in a pit in Zijemlje. SRS/SČP volunteers were present at the detention cell in Zijemlje and participated in the killings.” (footnote 406)

2. Summary of witness’s evidence for VS-1051, XXXXXXXXXX

Biography: [REDACTED].

[REDACTED]



The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i, 18, 27, 28, 29k, 30, 31 and 32, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1052, [REDACTED],  
UNDER RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1052, [REDACTED], to prove the following:

Crimes in BH - Nevesinje

"On 22 June 1992, 76 Muslim civilians were arrested in the woods in the area of Velež by Serb forces, including SRS/SČP volunteers, and taken to the primary school in the village of Dnopolje in the Zijemlje valley where they were detained." (footnote 394)

"SRS/SČP volunteers were present at the detention cell in Zijemlje and participated in the killings." (footnote 406) "The troops responsible for the capture were commanded by Zdravko Kandić and his second in command, Dragan Đurđić, and were a mixture of Red Berets and SRS/SČP volunteers. The men were separated from the women and children, and the men were killed." (footnote 396)

"In mid-June 1992, eleven Muslim civilians from Hrušta and Kljuna were arrested while hiding from Serb forces in the woods in Teleća Lastva. They were detained in a primary school in Zijemlje, where they were tortured. The torture included severe lacerations, beatings, and one man had his teeth pulled out with pliers." (footnote 405)

"SRS/SČP volunteers were present at the detention cell in Zijemlje and participated in the killings." (footnote 406)

"Some of the prisoners were taken to the SUP building in Nevesinje, where they were tortured and kept in a tiny cell for more than a week. During that time, the

prisoners, including women and infants, were abused and given insufficient food.”  
(footnote 407)

2. Summary of testimony for VS-1052, [REDACTED]

Biography: [REDACTED].

Events: the witness will testify that, around 18 June 1992, he and his family went into hiding in the woods near Hrušta, in the municipality of Nevesinje. On their way to Mostar by foot, they were ambushed and arrested by Serb soldiers wearing Kokardas, Šajkača caps, and “4C” arm patches. They were walked down a hill for half an hour, and then boarded onto a vehicle by 50 soldiers dressed in the same uniforms. Some wore JNA uniforms.

Primary school in Zijemlje: the witness and his group were taken to a primary school in Zijemlje and kept there overnight. During this time, [REDACTED], [REDACTED], and a family friend were taken from the room and severely beaten by Serb soldiers. [REDACTED] was cut across the neck, and a family friend had several teeth pulled with pliers in the presence of the witness.

The next day, several Serb soldiers dressed in former JNA uniforms took everyone away except the witness, [REDACTED]. He never saw [REDACTED].

SUP building, Nevesinje: the witness, [REDACTED] and [REDACTED] were then taken to Nevesinje, where they were detained by Serb police at the SUP building. At one point a guard slapped the witness across the face.

The witness was kept in a 3x2 meters cell for eight or nine days with little food and water. Other detainees were kept in the same cell; [REDACTED]  
[REDACTED]  
[REDACTED].

The witness was later released [REDACTED].

Paragraphs: 15, 16, 17(a-d, g-j), 18, 27-28.

Counts: 1-11.

3. Content of testimony

The witness testified on 2 July 2008 with protective measure pursuant to Rule 92 *ter*. He neither accused Professor Vojislav Šešelj nor was there any need for him to testify.

4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 18, 27 and 28, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1069,  
FAHRUDIN BILIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1069, Fahrudin Bilić, to prove the following:

Crimes in BH - Mostar

"After the explosion of a cistern in the vicinity of the JNA North Camp in April 1992, in which both the camp and the Zalik neighbourhood experienced considerable damage, civilians took refuge in a shelter in Zalik. (footnote 353)

"SRS/SČP volunteers figured prominently among those abusing the non-Serb population." (footnote 362)

"Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month." (footnote 363)

"Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month. The detainees were kept under inhumane conditions, without adequate food or water, and were subject to frequent beatings and torture. Those detained in the Zalik shelter were subjected to forced labour under dangerous conditions. About fifty detainees were forced to clean garbage from the streets while exposed to gunfire." (footnote 365)

“On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings.” (footnote 367)

“On that same day, Serb soldiers, including SRS/SČP volunteers, among them a volunteer with the nickname *Šešeljevac* removed a group of men from the Zalik shelter and transported them first to the JNA North Camp and then to the city mortuary in Sutina. There the victims were beaten. Eighteen of them were subsequently murdered. Their bodies were dumped into a pit at the banks of the Neretva river. The bodies of the victims were later exhumed.” (footnote 370)

## 2. Summary of witness's evidence for VS-1069, Fahrudin BILIĆ

Biography: Muslim male, living in Mostar at the time of the events in question.

Events: The witness will testify about the detention and killing of many non-Serbs in Sutina.

In the spring of 2002 (as in original, but it should read “1992”) a cistern exploded in Zalik. Soon afterwards, many of Šešelj's men arrived, wearing long beards and Kokardas; some with White Eagle insignia. The soldiers threatened to kill women and children in the community. Šešelj's men forced the witness, along with approximately 200-300 others into a shelter in Zalik where they were detained for two and a half months. During this time, the detainees were guarded by one of Šešelj's men in a JNA uniform. The witness and several other detainees were forced to clear the streets of Zalik of rubbish while exposed to sniper fire.

On 13 June 1992, a group of soldiers, including one of Šešelj's s men and Miloš RADONJIĆ took between 30 and 45 male detainees to the Sjeverni Logor barracks where their identification cards were checked. The detainees were then ordered into trucks, taken to the Sutina cemetery, and locked in a building.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Paragraphs: 15, 16, 17(a-e and g-i), 18, 26, 28, 29(j) and 30

Counts: 1-11.

### 3. Content of testimony

The witness testified *viva voce* on 2 and 3 July 2008.

The witness was extremely difficult to examine, often pretending not to understand the questions and spoke about random subjects in order to use up the time, although he took care not to step outside the given framework. Nevertheless, he was a valuable witness for the defence purposes. The witness tried to cover up the truth with respect to tensions and divisions in Mostar, and he tried to do that before Judge Antonetti, who is sitting the Prlić case and who is perfectly familiar with the chronology of events in Mostar, both up to 13 June 1992 and after that date, when there were no more Serbs in the Neretva valley. It was shown beyond doubt that the volunteers of the Serbian Radical Party operated within units of the JNA up to 19 May 1992, when they withdrew with the JNA from Mostar. It is illusory to claim that the Serbs had devised some kind of a plan for the occupation and encirclement of Mostar, the takeover of the civilian government, the expulsion of Muslims and Croats from their homes and other similar objectives that could all be classified as persecution. Simply put, all that can be said about the Neretva valley is that it was ethnically cleansed of Serbs.

With respect to the Mostar location, it must be noted that the armed conflict against the Serbs and the JNA also involved Croatia with its units, in addition to the Croatian-Muslim paramilitary organisations.

In the end, only the crimes in Sutina and Uborak still remain in the indictment against Professor Vojislav Šešelj. This is an important witness because he had never mentioned Šešelj's men in his previous statements to the local authorities and because he confirmed when questioned that the persons whom the local authorities suspected of crimes were from Mostar and the surrounding area and that not a single one of

them was from Serbia or could for any reason be thought of as being a volunteer of the Serbian Radical Party.

Although the witness was planned to testify to the crime of the killing of civilians, he was also used to describe the situation in Mostar before the withdrawal of the Serbs. At moments the witness appeared to be saying that the Serbs shelled shelters on the Serbian territory of Mostar with Serbs in them, while the only volunteer of the Serbian Radical Party whom the witness saw spent months sharpening a knife in the shelter, thereby demonstrating his love for the daughter of Vojo Pejanović, who kept the keys to the shelters.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17e, 17g, 17h, 17i, 18, 26, 28, 29j and 30, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1022,**

#### **██████████, IN CLOSED SESSION**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1022, ██████████, to prove the following:

##### Crimes in BH - Mostar

"On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings. Over the next several days, the prisoners were kept in horrible conditions and tortured.

They were then removed from the locker rooms in groups, taken by trucks to the city dump named Uborak and killed systematically.” (footnote 368)

Nevesinje:

“Women were subjected to violent and repeated rapes by SRS/SČP volunteers and other Serb forces and the Muslim villages were plundered and destroyed.” (footnote 392)

“On 22 June 1992, 76 Muslim civilians were arrested in the woods in the area of Velež by Serb forces, including SRS/SČP volunteers, and taken to the primary school in the village of Dnopolje in the Zijemlje Valley where they were detained. The troops responsible for the capture were commanded by Zdravko Kandić and his second in command, Dragan Đurđić, and were a mixture of Red Berets and SRS/SČP volunteers. The men were separated from the women and children, and the men were killed. Their bodies were later discovered in a place called Teleća Lastva. The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Subsequently, forty-four women and children were killed and thrown into a mass grave at Lipovača called Breza. The Serb troops threw bombs into the pit with the bodies. Of this group, twenty were children, including a one-month old baby and at least one other child under the age of one.” (footnote 399)

“Five of the women detained in the heating factory at Kilavci were transported to the resort at Boračko Lake, which was used as a military post by Serb forces, including SRS/SČP volunteers.” (footnote 401)

“Local SRS leader Arsen Grahovac, SRS/SČP volunteer Petar Divjaković, and other Serb forces, including other SRS/SČP members, violently raped these women and kept some of them imprisoned for years.” (footnote 402)

“Of the five women imprisoned and sexually tortured at the Boračko Lake camp, two were eventually killed.” (footnote 403)

2. Summary of witness's evidence for VS-1022, [REDACTED]

Biography: [REDACTED].

[REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]





Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17f, 17g, 17h, 17i, 18, 26, 28, 29k, 30, 31 and 32, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 11, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1024,**

##### **IBRAHIM KUJAN, UNDER RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1024, Ibrahim Kujan, to prove the following:

Crimes in BH - Nevesinje

"During the late 1980's and early 1990's, there were increasing numbers of Serb nationalist rallies in the region, including at least one attended by Šešelj." (footnote 373)

"In the summer of 1991 the JNA began, with the help of the SDS, to arm the Serb inhabitants of Nevesinje." (footnote 374)

"Arsen Grahovac established a unit called *Karadorde*, which set up roadblocks, harassed the local non-Serb population, and set off explosives in several Muslim-owned properties in the Nevesinje region." (footnote 375)

"During the period leading up to the attack, Muslims were removed from their jobs, expelled from their homes, disarmed, and at times physically abused by Grahovac's men." (footnote 376)

"In September 1991, parts of the Užice Corps arrived in the region with JNA reserve soldiers, tanks, APCs and artillery." (footnote 381)

"In June 1992, Serb forces, including SRS/SČP volunteers, attacked Nevesinje and the surrounding Muslim villages." (footnote 387)

“The forces responsible for these and other attacks included SRS/SČP volunteers, Red Berets, and White Eagles. Many of these forces were commanded by Arsen Grahovac.” (footnote 390)

“Women were subjected to violent and repeated rapes by SRS/SČP volunteers and other Serb forces and the Muslim villages were plundered and destroyed.” (footnote 392)

2. Summary of witness's evidence for VS-1024, Ibrahim Kujan

Biography: Muslim male from Nevesinje municipality.

Events: The witness will testify about the Serb attacks upon his village and specifically about the killing of hundreds of Bosnian Muslims in Nevesinje in 1992.

Establishment of the *Karadorde* unit: in June 1991, a military unit called *Karadorde* was set up in Nevesinje, commanded by Arsen Grahovac. This unit was associated with the SČP movement. Its members set up road blocks on all roads leading into Nevesinje and physically abused the non-Serb people stopped at the barricades. Those manning checkpoints did not have to pay for their consumptions in certain bars and restaurants. They obtained ammunition, food, refreshment and money from the Police Station commanded by Krsto Savić aka Kićo. The *Karadorde* unit cooperated with the local police. They blew up religious buildings and property belonging to Muslims in Nevesinje with impunity.

When the war in Croatia started there was a general mobilisation call, but non-Serbs in Nevesinje would generally not respond. Those who did not respond were sacked from their jobs, their apartments were entered by force and they were evicted. Non-Serb members of the reserve police were not mobilised. Their posts were taken by Serbs.

Serb take-over of Nevesinje: on 19 September 1991, JNA corps including the Užice Corps from Serbia arrived in Nevesinje with many JNA reserve soldiers and a large quantity of military equipment, including tanks, APCs and artillery weapons. They took complete control of the area from Mostar and Trebinje. The commander was General Milan TORBICA. Their infantry never stopped shooting with all types of weapons, including anti-aircraft guns. For non-Serbs, life in Nevesinje became like life in a prison camp.

The witness will testify to a meeting organised by Torbica on 22 September 1991 at which Torbica said that the moment had arrived to fulfil the Serbs' historic

wishes and that access to the sea and the border along the Osijek - Karlovac - Karlobag line would be achieved within two weeks.

After Torbica's speech, Serbs would carry around automatic rifles. They threatened non-Serbs in the street with their weapons. They told the non-Serbs that it was Serbian territory and that they should leave. They plundered public property and took it to Serbia. Non-Serbs were not permitted to take their savings from the banks. Some of them left Nevesinje.

In the beginning of 1992, a Serb Crisis Staff was established, which took over control of the municipality and replaced the municipal Assembly. The Crisis Staff included Vukan Bratić, Veso Grahovac, Savić, FNU Filmonović, Milan Kapor, and Momo Golijanin who was the direct connection with Karadžić.

In April 1992, big convoys of Serb people from Mostar arrived in Nevesinje. They wanted to enter apartments and houses owned by non-Serbs, threatening their owners with firearms.

The arrests of the non-Serb inhabitants began. In April 1992, the witness and 540 other non-Serbs from Nevesinje fled to the nearby woods.

Military attacks: on 14 and 16 June, the villages in the southern part of the municipality came under military attack. On 18 June, the witness heard heavy explosions coming from the Gacko municipality. On 21 June 1992, the villages, of Postoljani, Donja Bijenja, and Gornja Bijenja were directly attacked by local Serb police, members of the Karadorde unit (consisting of local Šešelj's men), "Chetniks" from Serbia and Montenegro, Arkan's and Šešelj's men and regular army units.

Killings: during the attack on Donja Bijenja, the Serb troops killed eight elderly people. The witness saw these troops wearing red berets and white eagle insignia.

Following the attack on Postoljani, the witness and a group of non-Serb inhabitants walked in the direction of Bjelimići, leaving behind several elderly people who were later killed while trying to get food. The witness interviewed Serbian prisoners of war who told him that all remaining non-Serbs in Nevesinje had been killed. Approximately 350 Muslims and Croats, including 32 children under the age of 14, were killed.

The witness learned that on 26 June 1992, 72 persons were caught trying to escape. They were captured on Velež mountain, near a radio and TV installation. All but three were imprisoned and then killed.

Paragraphs: 5- 8 15, 16, 17 (a, d, i and j), 18, 27, 28, 31, 32 and 34

Counts: 1-4, 7 and 9-13.

### 3. Content of testimony

The witness testified on 22 July 2008 under Rule 92 *ter* and without protective measures. No matter how hard the witness tried to portray himself as being well informed about developments in the municipality of Nevesinje, he succeeded in proving that his testimony was hearsay. His pathological blaming of Serbs went beyond all measure; he would even have us believe that by using a pair of binoculars from the woods he could make out Serbian forces among whom he found Arkan's men and Šešelj' men with red berets and a white double-headed eagles on their sleeves. Arkan's men were never in the territory of Nevesinje and they never used the white double-headed eagle as their insignia. Arkan's men and Šešelj's men acting together is mission impossible. The witness does not know a single Šešelj's man, nor has he ever seen one, other than through binoculars, and everything he said was based on hearsay, i.e. what he had heard from someone else.

The witness nevertheless admitted that Spremo had taken part alongside Grahovac in the formation of the *Karadorde* unit. Notably, this is the only witness who claimed that the attacks on the Muslim villages were led by members of the JNA in June 1992, although it is common knowledge that the JNA had left the territory of Bosnia and Herzegovina as early as 19 May 1992. He accused Svetozar Parežanin and Blagoje Adžić of these attacks, claiming that, as military personnel, they were behind these attacks and that some members of the JNA were Communists in disguise.

In addition to his numerous incredible claims, which Professor Vojislav Šešelj formally challenged in terms of the inclusion of the 1998 and 2004 statements of this witness in the case file, there probably remains another improbable claim which the judges did not verify, and that is that Professor Vojislav Šešelj visited Nevesinje in February or March 1992 and that, on this occasion, he wore a uniform and was accompanied by Božidar Vučurović, Spremo and Grahovac. Allegedly, he arrived there from Gacko, and the witness was told this by two men. He claims that he saw Šešelj for the first time in Sarajevo in the eighties and then a second time at the beginning of 1992 in Nevesinje.

The witness testified that the mosques and the Catholic church in Nevesinje had been destroyed after being captured by some sort of specialist team. The meaning

of the words “after the takeover of Nevesinje” is problematic given that Serbs had been the majority population for a very long time and that the authorities were established after the elections and before the conflict began.

#### 4. Summary of testimony

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 15, 16, 17a, 17b, 17d, 17i, 17j, 18, 27, 28, 31, 32 and 34, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 7, 9, 10, 11, 12 and 13, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1068,**

#### **██████████, UNDER RULE 92 *ter* WITH PROTECTIVE MEASURES**

1. According to the Prosecution’s Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1068, ██████████, to prove the following:

##### Crimes in BH - Mostar

“After the explosion of a cistern in the vicinity of the JNA North Camp in April 1992, in which both the camp and the Zalik neighbourhood experienced considerable damage, civilians took refuge in a shelter in Zalik.” (footnote 353)

“SRS/SČP volunteers figured prominently among those abusing the non-Serb population.” (footnote 362)

“Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month. The detainees were kept under inhumane conditions, without adequate food or water, and were subject to frequent beatings and torture.” (footnote 364)

“About fifty detainees were forced to clean garbage from the streets while exposed to gunfire.” (footnote 365)

“The detainees were often subjected to physical and psychological abuse by the Serb soldiers, in particular by SRS/SČP volunteers.” (footnote 366)

“On that same day, Serb soldiers, including SRS/SČP volunteers, among them a volunteer with the nickname *Šešeljevac* removed a group of men from the Zalik shelter and transported them first to the JNA North Camp and then to the city mortuary in Sutina. There the victims were beaten. Eighteen of them were subsequently murdered. Their bodies were dumped into a pit at the banks of the Neretva river. The bodies of the victims were later exhumed.” (footnote 370)

2. Summary of witness's evidence for VS-1068, [REDACTED]

Biography: Muslim [REDACTED], [REDACTED].

Events: The witness will testify that, on 3 April 1992, following the explosion [REDACTED] near the Northern Camp in Mostar, [REDACTED]

[REDACTED]  
[REDACTED] 500-600 others, moved to a shelter in Zalik. [REDACTED]  
[REDACTED].

In May 1992, the Serbs took over the area and restricted the movement of all non-Serbs. On 7 May, several reservist troops entered the shelter [REDACTED]  
[REDACTED]. Ten men were selected and taken away [REDACTED]  
[REDACTED] they were forced to kneel with their heads down throughout the night.

[REDACTED]  
[REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

From 23 May the witness and several other detainees were forced to clean garbage from the city streets while exposed to gunfire. [REDACTED], a [REDACTED] police commander from Zalik, supervised this forced labour.

On 13 June 1992, having heard that the Northern Camp would be mined, the witness and several hundred other detainees gathered at the shelter. [REDACTED]



latest. [REDACTED]  
[REDACTED]  
[REDACTED].

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 18, 26, 28, 29j and 30, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-029, VOJISLAV DABIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-029, Vojislav Dabić, as its witness to prove the following:

Crime in BH - Brčko

"The SRS/SČP volunteers were involved in the attack on Brčko, and in the operation of the Luka camp. They had a reputation for killing and looting, and participated in rapes of women in the Luka camp." (footnote 254) **(This is an error by the Prosecution.)**

"They received ammunition and other logistical support from the JNA." (footnote 255) **(This is an error by the Prosecution.)**

Mostar:

"The SRS/SČP volunteers were housed, equipped and armed by the JNA. These volunteers came from Serbia and Montenegro and from the battlefields in Croatia. They were joined by local Serbs who were attracted by their ideology and behaviour." (footnote 349)

“With the arrival of the reservists and volunteers, tensions between the ethnic groups increased and the first incidents of ethnic violence occurred. SRS/SČP volunteers were often involved in such incidents and were particularly prominent in acts of looting.” (footnote 350)

“Among the leaders of Šešelj’s volunteers were Mića “Pančevac” and Vančo Petkovski aka Vranjanac. The latter had a reputation for killing Croats with a knife of the type known as a *kama* knife.” (footnote 354)

“SRS/SČP volunteers figured prominently among those abusing the non-Serb population.” (footnote 362)

“On that same day, Serb soldiers, including SRS/SČP volunteers, among them a volunteer with the nickname *Šešeljevac* removed a group of men from the Zalik shelter and transported them first to the JNA North Camp and then to the city mortuary in Sutina. There the victims were beaten. Eighteen of them were subsequently murdered. Their bodies were dumped into a pit at the banks of the Neretva river. The bodies of the victims were later exhumed.” (footnote 370)

Nevesinje:

“Arsen Grahovac established a unit called *Karadorde*, which set up roadblocks, harassed the local non-Serb population, and set off explosives in several Muslim-owned properties in the Nevesinje region.” (footnote 375)

“Grahovac had between 80 and 100 people in his unit, which operated in the area of Mostar, Bijelo Polje, Buna, and Boračko Lake. This unit was later involved in a persecution campaign conducted against the non-Serb population of Gacko, Buna, Mostar, Bijelo Polje and Pijesci.” (footnote 377)

“Their main base was in Nevesinje, where they stayed in the JNA barracks with the Užice Corps.” (footnote 378)

“SRS/SČP volunteers started to arrive in Nevesinje as early as May 1991 and continued to arrive throughout 1991 and the spring of 1992.” (footnote 379)

“SRS/SČP volunteers arrived in Buna as well.” (footnote 380)

“The SRS/SČP volunteers were fully integrated in the local Serb TO, which in turn was subordinated to the JNA command.” (footnote 384)

“The JNA gave full logistical and material support to all of these troops in the region, including the Red Berets.” (footnote 385)

“Zdravko Kandić commanded some of the SRS/SČP volunteers during the attack on Bijelo Polje.” (footnote 391)

“The troops responsible for the capture were commanded by Zdravko Kandić and his second in command, Dragan Đurđić, and were a mixture of Red Berets and SRS/SČP volunteers.” (footnote 395)

“The men were separated from the women and children, and the men were killed.” (footnote 396)

“The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Subsequently, forty-four women and children were killed and thrown into a mass grave at Lipovača called Breza.” (footnote 397)

“The Serb troops threw bombs into the pit with the bodies.” (footnote 398)

“SRS/SČP troops and Red Berets were responsible for this massacre.” (footnote 400)

“Of the five women imprisoned and sexually tortured at the Boračko Lake camp, two were eventually killed. After the killing, several Red Beret soldiers, who previously had been part of Captain Dragan Vasiljković’s unit, bragged about the murders in a café in Nevesinje.” (footnote 404)

## 2. Summary of testimony for VS-029, Vojislav Dabić

Nevesinje: the witness will provide evidence of actions of the Serb forces against Muslim civilians in Nevesinje. He will detail the forces involved, including volunteers from outside BiH. He will describe the rounding up and killing of civilians and the soldiers involved. He will address the raping-of women and describe -sp killing incidents charged in the indictment. After the end of the war in BiH the witness participated in locating several mass graves. The sites were exhumed and corroborate the account given by the witness.

Paragraphs: 15, 16, 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i, 18, 26, 27, 28, 29j, 29k and 32.

Counts: 1- 11.

## 3. Content of testimony

The witness testified *viva voce* on 26 and 27 January 2010. The witness gave two statements to investigators of the Office of the Prosecutors and eight statements to the defence team. In his first statement to the Office of the Prosecutor in 2000, which is 37 pages long, the witness described in detail the chronology of events in Mostar and Nevesinje. It was clarified that the group of Arsen Grahovac on the barricades in 1991 was self-organised and that the names of Šešelj and Martić were mentioned as

persons of trust because of their popularity and with reference to the events in Croatia since there was no armed conflict in Bosnia and Herzegovina at that time, only tension.

[REDACTED]  
[REDACTED]  
[REDACTED]. It was clarified that the volunteers of the Serbian Radical Party were under the command of Momčilo Perišić and that they were the intervention unit, and the witness confirmed that Šešelj's men did not walk around the city.

The witness made a correction by saying that the third mention of Šešelj's men in Nevesinje concerned their withdrawal, and this was between 19 and 25 May 1992, because Baret was wounded in Podgorica on 25 May 1992 when a Muslim man threw a bomb at a rally.

The witness confirmed that no volunteer of the Serbian Radical Party took part in the commission of any of the crimes in the territory of Mostar and Nevesinje. Novica Gušić and Branislav Vakić confirmed that 19 volunteers participated in the battles in Podveležje, but this is about 35 kilometres away from where the crimes against the civilian population took place. As for the murder in Mostar, when a grenade was thrown into a manhole, he confirmed that this was by done by an Albanian JNA officer.

In addition to the clarification of the statements given by the witness in 2004, it was demonstrated in the courtroom that the statement had been expanded by inserting Šešelj's name. The witness admitted that the Office of the Prosecutor had promised to resettle him in another country.

The composition of the 2<sup>nd</sup> Light Brigade at Boračko Lake under the command of Bore Antelj was also discussed, as was the conduct of Baža Milošević, who traded contraband goods with the Croats. It was also clarified that not a single volunteer of the Serbian Radical Party was at Boračko Lake.

The witness was valuable because he facilitated going through all the counts of the indictment concerning Mostar and Nevesinje and because he could be examined about the circumstances cited by some other witnesses. [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i, 18, 26, 27, 28, 29j, 29k, and 32, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1067, [REDACTED] [REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1067, [REDACTED], as its witness to prove the following:

##### Crimes in BH – Mostar

"Mostar had become a stronghold for Serb forces, including JNA, Serb TO, MUP Serbia units and volunteer units, including SRS/SČP volunteers." (footnote 348)

"The SRS/SČP volunteers were housed, equipped and armed by the JNA. These volunteers came from Serbia and Montenegro and from the battlefields in Croatia. They were joined by local Serbs who were attracted by their ideology and behaviour." (footnote 349)

"With the arrival of the reservists and volunteers, tensions between the ethnic groups increased and the first incidents of ethnic violence occurred. SRS/SČP volunteers were often involved in such incidents and were particularly prominent in acts of looting." (footnote 350)

“Among the Serb forces and the local population, the SRS/SČP volunteers had a bad reputation. It was known that there were criminals among them who engaged primarily in looting and killing of civilians. They were observed getting drunk and using drugs.” (footnote 351)

“In mid-May, in an offensive commanded by General Momčilo Perišić that utilised all Serb forces including the SRS/SČP troops, Mostar was indiscriminately shelled for 30 hours.” (footnote 355)

“During the offensive, SRS/SČP volunteers were seen torturing and killing a civilian.” (footnote 359)

“Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month.” (footnote 363)

“On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings. Over the next several days, the prisoners were kept in horrible conditions and tortured. They were then removed from the locker rooms in groups, taken by trucks to the city dump named Uborak and killed systematically.” (footnote 368)

“The bodies of the victims were covered with earth by a bulldozer. Later the bodies were found in a mass grave in Uborak. Another group of victims was killed in a nearby forest.” (footnote 369)

Nevesinje:

“During the period leading up to the attack, Muslims were removed from their jobs, expelled from their homes, disarmed, and at times physically abused by Grahovac’s men.” (footnote 376)

2. Summary of witness’s evidence VS-1067 [REDACTED]

Biography: [REDACTED].

The witness will testify to the military structure during the events and the actions of Šešelj’s men he observed.

Prior to the war, Šešelj and his party were almost unknown in the Mostar area. SRS branch offices did not exist. At the beginning of the war, an SRS office was set up in Bileća. An SRS office was also set up in Nevesinje. The SRS’s first leader was

Ljubo Kapor and then Rade Radević. In 1990, the SČP was established in Nevesinje. The SČP's commander was Arsen Grahovac. Members of Radević's unit told the witness that Radević regularly went to the SRS headquarters in Belgrade for financial and logistical support.

On 6 April 1992, the witness was expelled from his home in Mostar by the Croatian Army. He and his family then went to Bjelušine in east Mostar. On 7 April, he saw approximately 50-60 Šešelj's men, all wearing JNA camouflage and black berets with cockades, arrive in Bjelušine. They spoke the *ekavica* accent, typical for people from Serbia, and were equipped by the JNA with automatic weapons, mortars, and tanks. They stated that they were SRS members and their main commander was Šešelj. Most local Serbs in the area were afraid of Šešelj's men. They drank a lot of alcohol and used drugs. They harassed and humiliated whoever they wanted. Many of them were criminals who came to kill and steal. The witness observed Šešelj's men loot and burn houses in Topla.

During June-August 1992 the witness also observed other paramilitary groups, including the "White Eagles" commanded by Borislav/Branislav Jović and the "Red Berets" commanded by Rašo Soldo. The different paramilitary groups worked together all the time.

The JNA commander was Momčilo PERIŠIĆ. While in Mostar, the witness observed some of Šešelj's men beating a man inside the National Theatre building. Fifteen minutes later, he heard a detonation from the theatre. One of Šešelj's men told the witness that they had put the man down a drain and thrown a grenade in. Five days later, the witness saw a group of people pulling a man's body out of the drain. During the same period, the witness observed four bodies being thrown into the Neretva river and many bodies of civilians who had been shot lying behind buildings and in the streets of east Mostar.

On 13 June 1992, Rade Matković (the TO unit commander) ordered to round up Muslims and Croats in Mostar for interrogation. The witness will testify to the events following this order. A group of Šešelj's men loaded approximately 20 Muslim and Croat detainees on a truck. These detainees were then taken to a nearby junkyard. He then observed the flashes of weapons and heard gunfire. As he was leaving the area, he saw the dead bodies of the detainees, and a man named Rajko Janjić bulldozing earth over the corpses. The witness also saw a group of Šešelj's men in the junkyard.

The witness later got information that 88 people were killed at the junkyard and 30 near a military institute in Vrapčići 79 people, 30 women and children and 49 men of military age, were gathered in the woods between Zijemija and Mostar. The women and children were kept at a school building in Zijemlja and die men were killed on the road towards Nevesinje. According to the witness' information, these killings were done under the orders of Kandić and that Šešelj's men had assisted in the killings.

July 1992, while the witness was in Bileća, he observed 60 to 70 Muslim male civilians being held in two rooms in the police station. He will testify to the events in the police station.

Paragraphs: 15, 16, 17(a-d and g-j), 18 and 26-28

Counts: 1-11.

The witness testified *viva voce* on 2 February 2010 with protective measures.

This witness confirmed most of the allegations from the evidence given by Vojislav Dabić and contributed to the clarification of numerous details. The most interesting part of his testimony is that proceedings against him were conducted in Mostar in 1996, that he was sentenced to several months' imprisonment and that, based on his testimony, a murder case was resolved in Mostar, where there were no volunteers of the Serbian Radical Party. This witness did not say a single word to accuse Professor Vojislav Šešelj or volunteers of the Serbian Radical Party. The fact was also clarified that some men falsely claimed to be Šešelj's men and that all the evidence of this witness given in the statements to the Office of the Prosecutor was hearsay, including names, events, the barricades and the alleged looting of goods.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 18, 26, 27 and 28, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17c, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

### **THE GREATER SARAJEVO LOCATION**

#### **(ILJIA, VOGOŠĆA, NOVO SARAJEVO, ILIDŽA AND RAJLOVAC)**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as an annex to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

#### **Remarks Concerning the Sarajevo area in the indictment:**

The greater Sarajevo area is referred to in the indictment within the framework of:

- individual criminal responsibility (paragraph 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE /joint criminal enterprise/.

The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia ("Croatia"), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia ("Serbia"), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the "SAO Krajina", the "SAO Western Slavonia", and the "SAO Slavonia, Baranja and Western Srem" (after 19 December 1991, the "SAO Krajina" became known as the RSK; on 26 February 1992, the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" joined the RSK), as well as the "Dubrovnik Republic". With respect to Bosnia and Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and Brčko.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Region in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar,