

**UNITED  
NATIONS**

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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-03-69-A  
Date: 25 September 2013

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**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Carmel Agius  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Khalida Rachid Khan

**Registrar:** Mr. John Hocking

**THE PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC REDACTED***

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**PROSECUTION APPEAL BRIEF**

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## I. OVERVIEW

1. At the core of this case is the existence of a JCE that spanned parts of Croatia and BiH, with the aim of forcibly and permanently removing a majority of non-Serbs. To achieve this aim, Serb Forces<sup>1</sup> under the control and authority of the JCE members murdered, persecuted, forcibly removed and deported non-Serbs who lived in these regions. Stanišić and Simatović were central to the commission of these crimes. They shared the common criminal plan and participated in its implementation.

2. The Prosecution's case against the Accused is a quintessential 'JCE case'. Yet, the Judgement lacks any analysis of the existence and implementation of the common criminal purpose. Also missing is any assessment of the conduct of Stanišić and Simatović as contributions to the common criminal purpose. In short, the Chamber failed to adjudicate on the allegations at the very core of the Prosecution case.

3. This serious judicial failure manifested itself in a full acquittal of the Accused. The judicial failure was caused by the glaring absence of analysis of, and findings on, the central element of the principal mode of liability alleged in the indictment. The judgement is the only decided JCE leadership case without a consideration of the existence and implementation of the common criminal purpose—the most fundamental element of JCE liability.

4. The Chamber's failure to consider the JCE's common criminal purpose and Stanišić and Simatović's contributions to it had direct implications on its ultimate conclusions regarding their shared intent. Without deciding the common criminal purpose, which was integral to understanding how the JCE members used the SDB to facilitate their common criminal purpose, the Chamber could not fully and accurately assess the Accused's shared intent and thus criminal responsibility.

5. By its inexplicable failure to give consideration to key elements of JCE liability, the Chamber erred in law by failing to give a reasoned opinion.

6. In addition, in its analysis, the Chamber erred in law by assessing individual pieces or parts of the evidence in isolation. It also erred in law by applying the

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<sup>1</sup> See Indictment, para.6.

beyond-reasonable-doubt standard to these individual parts of the evidence, instead of to the totality of the evidence.

7. Having acquitted the Accused under JCE liability, the Chamber also erroneously acquitted them of aiding and abetting the crimes in the SAO Krajina and in the BiH municipalities of Bosanski Šamac and Doboj.

8. The Chamber's aiding and abetting analysis is legally flawed because it followed the *Perišić* Appeal Judgement and required that the acts of the aider and abettor be *specifically directed* to assist the commission of the crime. This requirement has no basis in the law of the Tribunal, and the Appeals Chamber should depart from it.

9. But even if this legal requirement were valid, the facts show that Stanišić and Simatović were so closely connected to the crimes that specific direction should have been inferred. At the very least, the Chamber thus erred in fact in acquitting the Accused of aiding and abetting these crimes.

10. Finally, the Chamber's assessment of the evidence in a piecemeal fashion, and its inconsistent approach to different aspects of the evidence, led to its erroneous factual finding that Stanišić and Simatović were not responsible for the crimes in the SAO SBWS and in the BiH municipalities of Bijeljina, Zvornik and Sanski Most.

11. The Prosecution urges the Appeals Chamber to find that the errors as set out in this brief are established and, either, to apply the correct legal standards to the Chamber's findings and evidence and to enter the proper findings itself convicting the Accused, or to remand the case to a bench of the Tribunal.

## II. GROUND ONE: STANIŠIĆ AND SIMATOVIĆ SHARED THE INTENT FOR JCE LIABILITY

### A. Overview

12. This case is the first case to come to judgement at the Tribunal which examines the culpability of individuals who were at the heart of the common purpose through which crimes were systematically committed against non-Serbs in both BiH and Croatia over a span of five years. It is one of the widest-reaching cases since *Prosecutor v. Slobodan Milošević*. It shows that the violent displacement of hundreds of thousands of people from their homes was neither happenstance nor the work of localized radicals, but instead was organised and deliberate.

13. Yet the JCE analysis is entirely absent from the Judgement rendered by the Chamber. The core issue in the case is undecided. Without addressing that core issue, the judgement of acquittal is not fair, not valid, and not reasonable.

14. In attempting to capture the scale of the error in the Judgement, the sub-grounds of Ground One examine three different but related facets of it. Although the sub-grounds are mutually supporting, reversal is warranted if the Appeals Chamber is satisfied of any one of the three.

15. In sub-ground 1(A), the Prosecution shows the Chamber's manifest legal error in failing to adjudicate or provide a reasoned opinion on the objective existence of the common criminal purpose, and the contributions of the Accused to that criminal purpose. Given the charges and facts in this case, no Judgement can stand without adequate reasoning in these respects.

16. In sub-ground 1(B), the Prosecution shows the Chamber's misapplication of the established law on the assessment of evidence, invalidating its analysis of the *mens rea* of the Accused. It demonstrates the Chamber's piecemeal and decontextualized approach, resulting in its failure to assess the relevant evidence in its totality.

17. Since both sub-grounds 1(A) and 1(B) allege errors of law which, if upheld, would require the Appeals Chamber to conduct a *de novo* review of the Chamber's factual findings and evidence in the record, the Prosecution sets out in Section II.D an

extended remedy section to these sub-grounds. This section shows that the existence of the common criminal purpose, the contributions of the Accused, and their shared intent to further that common criminal purpose, are established beyond reasonable doubt. It demonstrates in practice how the analyses of these legal elements are inter-related.

18. In sub-ground 1(C), the Prosecution shows that, when applying the findings and evidence summarised in Section II.D, no reasonable Chamber could have determined that the Accused did not share the intent to further the common criminal purpose, given the factual findings and evidence in the record.

**B. Sub-Ground 1(A): The Chamber erred by failing to adjudicate and/or to provide a reasoned opinion on essential elements for JCE liability**

19. The Accused were acquitted of responsibility as JCE members for crimes established beyond reasonable doubt because the Chamber did not find that the Accused shared the intent to further the common criminal purpose.<sup>2</sup> However, the Chamber's shared intent finding was made without adjudicating or providing a reasoned opinion on the existence of and the Accused's participation in a common criminal purpose.<sup>3</sup> A trial chamber's reasoning must be sufficient to allow for an understanding and review of its findings, "as well as its evaluation of the evidence".<sup>4</sup> The Chamber's failure to adjudicate on essential and precursor elements of JCE liability before deciding the element of shared intent is a legal error invalidating the Judgement. This error is so clear, fundamental and serious that the Appeals Chamber must intervene.<sup>5</sup>

20. Shared intent requires a determination that the JCE members "had a common state of mind, namely the state of mind that the statutory crime(s) forming part of the *objective* should be carried out".<sup>6</sup> This objective is a predicate determination to inferring shared intent, yet the Chamber made no finding of the scope of the

<sup>2</sup> Judgement, paras.2336, 2354, 2362-2363.

<sup>3</sup> Article 23(2) of the Statute and Rule 98ter(C) of the Rules oblige trial chambers to set out a reasoned opinion in writing. A trial chamber must make "legal and factual findings on the basis of which it reached the decision either to convict or acquit an individual". *Hadžihasanović* AJ, para.13.

<sup>4</sup> *Kunarac* AJ, para.41.

<sup>5</sup> *Perišić* AJ, para.92; *Haradinaj* AJ, para.129; *Limaj* AJ, para.86; *Kvočka* AJ, para.23.

<sup>6</sup> *Krajišnik* AJ, para.200 (emphasis added).

objective.<sup>7</sup> The Chamber is also obliged to determine with whom the Accused had a common state of mind. Without a reasoned opinion on these essential elements of JCE, the Chamber could not correctly decide on the Accused's shared intent.

21. The Chamber's occasional references to the "alleged common criminal purpose"<sup>8</sup> and to JCE members (Milan Martić, Mile Mrkšić and Ratko Mladić) do not make up for the missing analysis and reasoning on the elements of JCE, such as:

- whether there was a common purpose;
- the content of the common purpose;
- when the common purpose came into existence;
- who shared the common purpose;
- which crimes formed part of the common purpose; and
- how the JCE members contributed to the common purpose.

22. A Chamber's reasoning concerning the existence of a common criminal purpose, and an Accused's conduct which contributes to it, is central to a determination of shared intent. For example, intent may often be inferred from knowledge of the common criminal purpose and continued contribution to it.<sup>9</sup> No other JCE leadership case has been decided without findings on whether a common criminal purpose existed.<sup>10</sup> These cases demonstrate the obvious: shared intent cannot

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<sup>7</sup> In the alternative, if the Chamber assessed the common criminal purpose more narrowly, it would have concluded that the Accused shared the intent to forcibly and permanently remove, through deportation and forcible transfer, the majority of non-Serbs from large areas of Croatia and BiH, as a consequence of which the crimes of persecution and murder were reasonably foreseeable to the Accused. All references in this Brief to the Accused's shared intent to further the common criminal purpose mean both the Prosecution's primary JCE I position (intent for deportation/forcible transfer/murder/persecution) and its alternative JCE I (deportation/forcible transfer) + JCE III (murder/persecution) position. The ambiguity as to the Chamber's view of the extent of the common purpose in this case yet further demonstrates the fallacy of its attempt to determine whether the Accused shared that intent.

<sup>8</sup> Judgement, paras.2309, 2312, 2316, 2317, 2324, 2326, 2330, 2332-2335, 2354.

<sup>9</sup> See *Krajišnik* AJ, para.697 (upholding trial chamber finding that "knowledge combined with continuing participation can be conclusive as to a person's intent.").

<sup>10</sup> See *Prlić* TJ, Vol.IV, paras.6-73, 74 *et seq.* (analysis by individual accused); *Stanišić and Župljanin* TJ, Vol.II, paras.131-316; *Tolimir* TJ, paras.1010-1072; *Gotovina* TJ, paras.2303, 2369-2371, 2548, 2579-2584; *Đorđević* TJ, paras.2003 ("The Chamber must first establish if a JCE existed"), 2007, 2126-2128, 2130, 2158; *Popović* TJ, Vol.II, paras.1047-1088, 1089 *et seq.* (analysis by individual accused); *Milutinović* TJ, Vol.III, paras.16-98, 1050-1088, 1089 *et seq.*



be properly assessed or determined without consideration of the common criminal purpose. The predicate findings of the existence of a common criminal purpose, its members, and the conduct which contributed to it are required when determining whether the Accused possessed the shared intent to implement the JCE.

23. The Chamber's failure to address the common criminal purpose properly is illustrated by its assessment of the Accused's actions as contributions to certain crimes but not as contributions to the common criminal purpose.<sup>11</sup>

24. The Chamber's failure is further illustrated by the lack of any discussion or reference in the Judgement to numerous pieces of evidence clearly relevant to aspects of the JCE case, such as:

- the historical and political goals, including ambitions for a "Greater Serbia" based on ethnic discrimination, which underpinned the common criminal purpose of the JCE in BiH and Croatia;
- the development of these political and strategic goals into the common criminal purpose;
- the execution of the common purpose through a pattern of violent crimes;
- the criminal intent of JCE members, including those with whom the Accused closely cooperated; and
- the close interactions between the Accused and core JCE members and the role/contributions of the Accused.<sup>12</sup>

Although the Chamber prefaced the Judgement with the perfunctory statement that it had "considered the charges against the Accused in light of all the evidence it

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(analysis by individual accused); *Boškoski* TJ, paras.580-585; *Haradinaj* TJ, paras.475-478; *Martić* TJ, paras.442-455; *Krajišnik* TJ, paras.1078-1124; *Blagojević* TJ, paras.704-712, 715-723; *Brđanin* TJ, paras.345-356. See also *Tadić* AJ, paras.230-232; *Mrkšić* TJ, paras.569-608; *Limaj* TJ, paras.665-669; *Simić* TJ, paras.983-992; *Kvočka* TJ, paras.319-321, 328 *et seq.*; *Krstić* TJ, paras.612-646; *Kordić* TJ, paras.829-831; *Kupreškić* TJ, paras.782-783, 814, 819-820. For on-the-ground perpetrators, see *Vasiljević* TJ, paras.188-189, 207-209 (but see further paras.167, 241; *Krnjelac* TJ, paras.127, 525).

<sup>11</sup> Judgement, paras.2317-2334, 2353. See below Ground 1(B).

<sup>12</sup> See below Section II.D and Ground 1(C).

admitted during the trial”,<sup>13</sup> the content of the Judgement demonstrates that it failed to do so.

25. While a trial chamber is entitled to rely on the evidence it finds most convincing,<sup>14</sup> it may not completely disregard clearly relevant evidence.<sup>15</sup> The Chamber, for example, disregarded Exhibit P2057, the plea agreement of JCE member Milan Babić,<sup>16</sup> which confirmed both that Babić knew of the common purpose to create a unified Serb state by conflict and force and that Babić shared the intent to forcibly remove non-Serbs from large areas of Croatia. Exhibit P2057 details the close cooperation between Babić and other JCE members and sets out how he met frequently with JCE members Slobodan Milošević, Martić and Radovan Karadžić in furtherance of this goal. Exhibit P2057 also describes others who participated in this common plan including Goran Hadžić, Vojislav Šešelj, Stanišić and Simatović, along with members of the JNA, local TO forces, MUP forces, the SDB, and the SAO Krajina police, also known as Martić’s Police.<sup>17</sup>

26. The Chamber also disregarded other clearly relevant evidence showing the criminal intent of JCE member Karadžić, Stanišić’s awareness of that intent and their close cooperation. For example, Karadžić’s criminal intent is evident from his speech at the RS Assembly session of 14 October 1991, where he stated:

This is the road you want Bosnia and Herzegovina to take, the same highway of hell and suffering that Slovenia and Croatia went

<sup>13</sup> Judgement, para.18.

<sup>14</sup> *Perišić* AJ, para.92; *Kvočka* AJ, para.23.

<sup>15</sup> *Perišić* AJ, para.92; *Haradinaj* AJ, para.129; *Limaj* AJ, para.86; *Kvočka* AJ, para.23. A chamber need not refer to the testimony of every witness or every piece of evidence on the trial record, “as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence.” Such disregard is shown “when evidence which is clearly relevant [...] is not addressed by the Trial Chamber’s reasoning.” *Kvočka* AJ, para.23.

<sup>16</sup> Exh.P2057, *see* in particular Tab 1, paras.17, 30-31 (**uncited**). Hereinafter, the term “uncited” is used to indicate material not referred to in the Judgement.

<sup>17</sup> Although the Chamber noted that, “given his *central position in the SAO Krajina at the time of the events*” Babić was a reliable witness (Judgement, para.402, emphasis added), it generally overlooked the significance of his own contacts with the Accused and failed to address his interactions with the Accused in its assessment of the Accused’s *mens rea*. The evidence shows, for example, that Stanišić and Babić met on multiple occasions, and that these contacts reflected Stanišić ‘handling’ Babić in the interest of the common criminal purpose: *e.g.* Judgement, para.2294 (meeting on at least one occasion in March 1991 to discuss the provision of weapons to the SAO Krajina); Exh.P1878, pp.136-137 (meeting in May 1991 with Karadžić and Martić discussing SDS strategy for takeovers), 192 (meeting in Golubić with Martić and DB operative Orlović in August 1991); Exh.P1877, pp.116-117 (meeting in Belgrade concerning Captain Dragan); Exh.P1878, pp.201-203 (encounter in Belgrade). *See also* Judgement, para.2295, fn.4916, citing [REDACTED], [REDACTED]. *See also* Exh.P686, p.4 (public).

[through]. Don't think you won't take Bosnia and Herzegovina to hell and Muslim people [to] possible extinction. Because, Muslim people will not be able to defend itself if it comes to war here!<sup>18</sup>

On 21 December 1991, Karadžić spoke in the 4<sup>th</sup> Assembly session about the situation in BiH and again predicted the deaths of several hundred thousand people, complete destruction of several hundred towns and massive population displacements.<sup>19</sup> Illustrating their shared intent, [REDACTED].<sup>20</sup> Stanišić's approval of Karadžić's statement was direct evidence of their shared intent.

27. Similarly, the Chamber improperly disregarded adjudicated facts which it had accepted and which were probative and relevant to the existence of the common criminal purpose. For example, adjudicated facts accepted by the Chamber establish not only that the "clearly recognisable pattern" of criminal activity in BiH reflected the strategic plans of the Bosnian Serb leadership to permanently remove non-Serbs but also that the Bosnian Serb leadership knew that the takeover of municipalities would necessarily entail "the use of force and fear".<sup>21</sup> Annex B lists other clearly relevant evidence which the Chamber disregarded.<sup>22</sup> The relevance of this material to the existence of the common criminal purpose is obvious.

28. By completely disregarding such central, relevant evidence—of which these are only a few examples<sup>23</sup>—the Chamber failed in its obligation to adjudicate and provide a reasoned opinion on material elements of JCE. The error is so fundamental that it invalidates the Judgement.

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<sup>18</sup> Exh.P940, pp.1-2 (**uncited**).

<sup>19</sup> Exh.P1483, p.87.

<sup>20</sup> [REDACTED].

<sup>21</sup> *E.g.* AFI-236 ("The clearly recognisable pattern of criminal activity allows for only one reasonable conclusion, namely that these crimes were committed with the aim of implementing the Strategic Plan of the Bosnian Serb leadership to take control of the territory claimed for the Serbian State within BiH and to permanently remove most non-Serbs from this territory.") (**uncited**); AFI-129 ("The Bosnian Serb leadership was fully aware that the establishment of Bosnian Serb authority, especially in areas where Bosnian Serbs were in a minority, would necessarily entail the use of force and fear.") (**uncited**). *But see* Judgement, para.584 fn.1207 (noting AFIV-255, which establishes that "Bijeljina was the first municipality in BiH to be taken over" and that it "established a pattern which was later repeated").

<sup>22</sup> *See* Annex B (listing evidence and adjudicated facts not cited in the Judgement, discussed in this Brief). Further discussion of this relevant evidence is found below in Section II.D and Ground 1(C).

<sup>23</sup> *See further below* Section II.D, Ground 1(C).

**C. Sub-Ground 1(B): The Chamber applied an erroneous legal standard to the evidence**

1. Overview

29. The Chamber misapplied the relevant legal standards for assessing evidence. This error permeates the Judgement,<sup>24</sup> but is most evident in the section on the Accused's *mens rea*.<sup>25</sup> The Chamber considered evidence piecemeal rather than reaching conclusions based on the totality of the evidence before it.<sup>26</sup> It applied the beyond reasonable doubt standard to discrete parts of the evidence rather than to the totality of the evidence.<sup>27</sup> Overall, the Chamber "reviewed the evidence in an isolated fashion" as opposed to "survey[ing] the entire picture".<sup>28</sup> The Chamber's assessment of the evidence of the *mens rea* of the Accused, tainted by its legal error, is invalid—as well as being so unreasonable as to occasion a miscarriage of justice.<sup>29</sup>

2. All chambers are bound to apply core, fundamental legal standards governing the assessment of evidence

30. The case-law of the Appeals Chamber and the consistent practice of this Tribunal reflect certain fundamental legal standards which govern a chamber's assessment of evidence. The Chamber accepted its duty to apply these standards,<sup>30</sup> yet the content of the Judgement demonstrates that it did not adhere to them.<sup>31</sup>

31. The fundamental legal standards governing the assessment of evidence at this Tribunal include the following:

<sup>24</sup> See Judgements, paras.971, 1001, 1762, 1787, 1789-1791, 1800, 1812-1813, 1837-1840, 1855-1860, 1879, 1881, 1909-1910, 1913, 2041, 2212, 2233-2236, 2253-2254, 2257-2260, 2271-2273, 2284-2286, 2302-2304.

<sup>25</sup> Judgement paras.2309, 2311-2312, 2314-2336, 2340-2354, 2362-2363.

<sup>26</sup> See *Halilović* AJ, para.128.

<sup>27</sup> *Halilović* AJ, paras.125 (citing *Ntagerura* AJ, para.174: "[T]he standard of proof beyond a reasonable doubt is applied to establish the facts forming the elements of the crime or the form of responsibility alleged against the accused, as well as with respect to the facts which are indispensable for entering a conviction"), 128; *Delalić* AJ, para.458.

<sup>28</sup> Judgement, Dissenting Opinion of Judge Picard, para.2367.

<sup>29</sup> See below Ground 1(C). See also below Grounds 2 and 3.

<sup>30</sup> See Judgement, paras.7, 18-20, 23-24, 34, 37.

<sup>31</sup> Furthermore, certain remarks indicate that the Chamber may have misdirected itself as to the meaning of these standards: e.g. Judgement, para.32 (treating unlike issues— hearsay evidence and circumstantial analysis—as alike); Judgement, Separate Opinion of Judge Orić, para.2418.

- A chamber must consider all evidence presented to it.<sup>32</sup>
- A chamber must assess and weigh evidence in its totality.<sup>33</sup>
- A chamber must apply the standard of proof beyond reasonable doubt to the totality of the evidence when establishing the facts forming the elements of the crime or the form of responsibility alleged, as well as facts which are indispensable for entering a conviction.<sup>34</sup>

32. The Chamber's error in applying this accepted law necessarily invalidates its analysis of the evidence concerning the *mens rea* of the Accused.

3. The Chamber's assessment of *mens rea* evidence breaches these legal standards and is invalid

33. The Chamber's incorrect and piecemeal approach is patent in its analysis of Stanišić's *mens rea*.

- First, the Chamber assessed three examples of Stanišić's "actions taken or words uttered" in isolation and wrongly found each insufficient to conclude that he shared the intent to further the common criminal purpose.<sup>35</sup>
- Then, it considered discrete portions of the Accused's "actions"<sup>36</sup> and applied the beyond reasonable doubt standard to them.
- Finally, it failed to look at the three "actions taken or words uttered" by Stanišić and the discrete portions of the Accused's actions together and in the context of other relevant evidence.<sup>37</sup>

The Chamber therefore erred in law.

<sup>32</sup> See *Kvočka* AJ, para.23 (although the Appeals Chamber presumes that the Trial Chamber evaluated all evidence presented to it, error is established if there is indication that the Trial Chamber completely disregarded any particular piece of evidence).

<sup>33</sup> See *Martić* AJ, para.233; *Halilović* AJ, para.125. See also *Ntagerura* AJ, para.174.

<sup>34</sup> See *Halilović* AJ, paras.125, 128. See also *Galić* AJ, para.218; *Delalić* AJ, para.458, *Ntagerura* AJ, para.174.

<sup>35</sup> Judgement, para.2316; see also paras.2307-2315.

<sup>36</sup> Judgement, paras.2317-2335.

<sup>37</sup> Judgement, para.2336.

34. The Chamber's analysis for Simatović explicitly draws on the evidence applying to Stanišić,<sup>38</sup> supplemented by additional evidence specific to Simatović.<sup>39</sup> The Chamber's invalid approach to the assessment of Stanišić's *mens rea* thus applies equally to its assessment for Simatović. The following section demonstrates the Chamber's erroneous approach to the evidence in its *mens rea* analysis.

(i) The Chamber analysed the Accused's "actions taken or words uttered" in isolation

35. The Chamber started its fragmented shared intent analysis by considering evidence of three "actions taken or words uttered"<sup>40</sup> by Stanišić in isolation and out of context. It independently considered an intercepted conversation between Stanišić and Karadžić of 22 January 1992,<sup>41</sup> a meeting at Belgrade on 13-14 December 1993,<sup>42</sup> and Stanišić's visit to Dalj in September 1991.<sup>43</sup>

36. When considering Stanišić's discussion with Karadžić, in which Stanišić anticipated the likelihood of killings and forecast that "we'll exterminate them completely",<sup>44</sup> the Chamber construed the content of the intercepted telephone conversation in total isolation. It considered none of its previous findings or any of the evidence in the record. For example, the Chamber gave no consideration to:

- the extensive evidence in the record establishing the systematic crimes that were ongoing in Croatia at the time of the conversation;
  - Karadžić's criminal intent and Stanišić's knowledge of his criminal intent;<sup>45</sup>
  - evidence that Serb Forces were being established in BiH during that period;<sup>46</sup>
- or

<sup>38</sup> Judgement, para.2353.

<sup>39</sup> Judgement, paras.2340-2342, 2354 (Lovinac); 2343-2345 (Vukovar), 2346-2351 (Operation Udar); 2352 (other operations).

<sup>40</sup> Judgement, paras.2036-2307.

<sup>41</sup> Judgement, paras.2307-2309.

<sup>42</sup> Judgement, paras.2310-2312.

<sup>43</sup> Judgement, paras.2313-2315.

<sup>44</sup> Judgement, para.2307.

<sup>45</sup> See below paras.81-82.

<sup>46</sup> See below paras.79-86.

- evidence that attacks were in fact directed at Croats and Muslims by Serb Forces when BiH declared independence.<sup>47</sup>

37. Likewise, when discussing the 1993 Belgrade meeting, the Chamber failed to consider relevant evidence that provided context and meaning to this event.<sup>48</sup> The Chamber concluded that “the link between Stanišić’s offer to send 100 to 120 men for activities around Sarajevo and the forcible and permanent removal [...] of non-Serbs from areas of Croatia and Bosnia-Herzegovina cannot be inferred from the context of the meeting or the content of the discussion.”<sup>49</sup> However, it failed to take into account:

- its finding that, of the nine key participants at the meeting with Stanišić,<sup>50</sup> two (Mrkšić and Mladić), “may” have shared the common criminal purpose<sup>51</sup> and the evidence shows that at least three (Milošević, Karadžić and Momčilo Krajišnik) also shared the common criminal purpose;<sup>52</sup>
- the significance of Karadžić’s reference in the meeting to Sarajevo as a priority for the RS’s “strategic goals”,<sup>53</sup> given the evidence of the synergy between the common criminal purpose and the political objectives of the Bosnian Serb leadership, and Stanišić’s knowledge of this synergy;<sup>54</sup> and
- what Stanišić must have known of the notorious and widely publicised siege of Sarajevo (and the crimes committed there for months on end), and the significance of his decision to deploy forces there regardless.

38. Finally, when the Chamber considered Stanišić’s visit to Dalj in September 1991—where he expressed his frustration that Vukovar had not yet fallen—it failed to consider the context of the visit.<sup>55</sup> For example, the Chamber did not consider that by

<sup>47</sup> See below paras.83-85, 87-88.

<sup>48</sup> Judgement, paras.2310-2315.

<sup>49</sup> Judgement, para.2312.

<sup>50</sup> See Judgement, para.2310.

<sup>51</sup> E.g. Judgement, para.2335. See further below paras.53-54, 57, 67, 93.

<sup>52</sup> See e.g. below paras.55, 63, 79-81, 89.

<sup>53</sup> Judgement, para.2310. See below para.80.

<sup>54</sup> See below paras.80-82.

<sup>55</sup> Judgement, paras.2313-2315.

then, Stanišić knew of the large scale, systematic crimes by Serb Forces in Croatia,<sup>56</sup> and that he visited Dalj shortly after it had been ethnically cleansed by Serb Forces.<sup>57</sup> Because of its narrow approach to the evidence, the Chamber erred in concluding that Stanišić's actions in relation to Vukovar could only be interpreted as limited to supporting the Serb Forces' successful military takeover of Vukovar.<sup>58</sup>

(ii) The Chamber analysed four parts of the Accused's "actions" in isolation

39. When assessing Stanišić's intent, the Chamber considered four discrete parts of his actions in isolation, and erroneously applied the beyond reasonable doubt standard to them.<sup>59</sup> It thus considered in isolation "Stanišić's actions in relation to: the Unit, the SAO Krajina Police, the SDG, and the Scorpions"<sup>60</sup> and made a passing reference to his "interactions and cooperation with other persons".<sup>61</sup>

40. The Chamber failed to consider any of these discrete parts of the Accused's actions in the context of the three examples of "actions taken or words uttered" it had previously considered. It also considered each of the discrete parts of conduct in isolation from each other. So even if the Chamber purported to have assessed the discrete part of the Accused's actions "in itself or in light of the totality of the evidence",<sup>62</sup> it is clear that it did not. This is further evidenced by the fact that the Chamber repeatedly made findings "beyond reasonable doubt" with respect to each of the strands of the evidence listed above.<sup>63</sup>

41. The Chamber's erroneous piecemeal approach to the *mens rea* analysis is further confirmed and exacerbated by its failure to treat the various acts of the Accused as contributions to a single common criminal purpose rather than discrete contributions to separate crimes<sup>64</sup> and its disregard of extensive portions of evidence

<sup>56</sup> Judgement, para.2332, and *e.g.* 2331 (finding the SAO Krajina police committed murders and persecution in the SAO Krajina in 1991 and participated in the deportation of between 80,000 and 100,000 Croat and other non-Serb civilians.).

<sup>57</sup> Judgement, paras.527, 1033-1038.

<sup>58</sup> Judgement, para.2315.

<sup>59</sup> See Judgement, Dissenting Opinion of Judge Michèle Picard, para.2367.

<sup>60</sup> Judgement, paras.2317, with paras.2318-2330 (the Unit), 2331-2332 (the SAO Krajina police), 2333 (the SDG), 2334 (the Scorpions).

<sup>61</sup> Judgement, para.2335.

<sup>62</sup> Judgement, paras.2326, 2330, 2332, 2351; *but see* paras.2333, 2334, 2335 (omitting to make such assertions).

<sup>63</sup> Judgement, paras.2326, 2330, 2332-2335.

<sup>64</sup> See below paras.108-110, 119-122.



relevant to the assessment of shared intent, resulting from the error articulated in Ground 1(A).<sup>65</sup>

(iii) The Chamber should have looked at the evidence in its totality

42. Instead of looking at individual pieces and segments of evidence in isolation, as discussed above, the Chamber should have considered them in the context of all the evidence, such as the explicit aim of several JCE members whom the Accused cooperated with to create a Serb-only state; the coordinated actions of the JCE members who created and controlled the armed forces; the pattern of systematic criminality in Croatia and BiH by these Serb Forces; the Accused's control over and multi-faceted contributions to Serb Forces who committed the crimes; and the extensive period the Accused were involved in these events despite their knowledge of the criminal campaign in Croatia and BiH.

4. Conclusion

43. By failing to consider the evidence in its totality and by applying the beyond reasonable doubt standard to discrete parts of the evidence, the Chamber failed to apply the legal standards for assessment of evidence.

**D. The Appeals Chamber should correct the Chamber's error and find the liability of the Accused pursuant to JCE has been established**

44. In this section, the Prosecution seeks to assist the Appeals Chamber in correcting the error of law by recalling the evidence presented to the Chamber.<sup>66</sup> Where appropriate, reference is also made to the Chamber's findings on that evidence. Even applying its erroneous, incomplete and overly narrow approach to the assessment of evidence, the Chamber still accepted the vast majority of the Prosecution case. This fact is a compelling argument for the Appeals Chamber to agree with those factual findings already made, to enter additional findings as

<sup>65</sup> See above Ground 1(A).

<sup>66</sup> See *Perišić* AJ, para.9 (where the Appeals Chamber finds an error of law arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant findings of the Trial Chamber accordingly, applying the correct legal standard to the evidence on the record). See also *Lukić* AJ, para.12; *Gotovina* AJ, para.12; *Haradinaj* AJ, para.11; *Boškoski* AJ, para.11.

required by the evidence, and to convict the Accused accordingly. This section concludes by relating the evidence described to the elements of JCE liability.

1. Overview

45. From 1991 to 1995, Serb Forces expelled hundreds of thousands of non-Serbs (Croats and Muslims) from Serb-claimed areas in Croatia and BiH. Tens of thousands were murdered, tortured, beaten, and illegally detained. Property belonging to non-Serbs was looted. Croat and Muslim religious sites were systematically destroyed.

46. Over this five-year period, Stanišić and Simatović made extensive contributions to the preparation and implementation of this criminal campaign.

47. As Croatia moved towards independence, local Serb leaders and JCE members (Martić, Babić, and Hadžić—all of whom considered JCE member Milošević their leader) established Serb institutions, including local police and TOs, in Croatia. Local Serbs and Serb Forces carried out crimes and acts of intimidation against non-Serbs. In August 1991, after Croatia had declared independence, Serb Forces launched an offensive in Croatia under the overall command of JCE member Veljko Kadijević and led by the JNA under his control. During this offensive, large-scale crimes were systematically committed by Serb Forces against non-Serb civilians, driving them from their homes.

48. The same pattern was repeated in BiH, as it moved towards independence some months later. From October 1991, as the crimes in Croatia were at their height, Serb leaders in BiH (notably JCE member Karadžić, as well as JCE members Krajišnik and Biljana Plavšić) created parallel Serb structures and prepared for the takeover of key municipalities. In April 1992, when BiH declared independence, Serb Forces (commanded, among others, by JCE members Mladić and Mrkšić) unleashed a new offensive against non-Serb civilians. In the following years, JCE members in BiH sought to consolidate and maintain their ‘ethnically cleansed’ territory through the commission of further crimes as well as military operations.

49. In both Croatia and BiH, before and during the ethnic cleansing campaigns, the Accused organised and facilitated the creation, arming, training, supply, and deployment of key components of the Serb Forces. They worked closely with JCE

members in the Serb leadership and notorious criminals such as Željko Ražnjatović (“Arkan”).

2. As senior SDB members, the Accused used the SDB as a tool to contribute to the common criminal purpose in Croatia and BiH

50. The Accused were senior members of the SDB, the security service of Serbia, and had power and authority over the SDB. Throughout the Indictment period, Stanišić was either Chief of the SDB<sup>67</sup> or exercised *de facto* authority to a similar extent—as Karadžić was informed in June 1991, “Slobo” (Milošević) had “given Jovica [...] *carte blanche*”.<sup>68</sup> Simatović was Stanišić’s right-hand man,<sup>69</sup> whom he repeatedly promoted.<sup>70</sup> Stanišić received reports from all SDB administrations, and he made decisions on the employment of SDB assets and the methods they used.<sup>71</sup>

51. The Accused consistently used the SDB as a tool to effect their contributions to the common criminal purpose in Croatia and BiH. The Accused deployed SDB assets (including members of “the Unit”,<sup>72</sup> an elite force specially created by the

<sup>67</sup> Judgement, para.1279. *See also* Judgement, para.1281 (attempts to side-line Stanišić by his predecessor as SDB Chief did not have a significant effect on his position or powers).

<sup>68</sup> Exh.P630, pp.1, 3 (intercepted telephone conversation of 24 June 1991 in which Kertes told Karadžić that “Jovica’s boss” was “holding up everything” and “driving Jovica crazy”; Kertes reassured Karadžić, however, that “Slobo” (Milošević) had “given Jovica and me *carte blanche*”) (public) (**uncited**).

<sup>69</sup> *See* Judgement, paras.1422 (relying on evidence that Stanišić entrusted Simatović with creation of the Unit to find that Stanišić participated in the creation of the Unit by Simatović), 1489 (Simatović told Unit members they should take orders only from himself or Stanišić), 2353 (considering Simatović’s intent by reference to Stanišić’s intent).

<sup>70</sup> Judgement, para.1286. *See also* Judgement, paras.1284-1285.

<sup>71</sup> Judgement, para.1279. *See further* [REDACTED].

<sup>72</sup> The Chamber made extensive findings concerning the actions and status of various Unit members including **Radojica Božović** (Judgement, paras.718, 722, 1367, 1424, 1444, 1455, 1488-1491, 1533, 1595, 1597, 1600, 1638-1639, 1675, 1746, 1884, 1998, 2002, 2005, 2055, and fn.4985), **Dragan Đorđević** (Judgement, paras.650, 685, 1491, 1533, and fn.4985), **Dragan Filipović** (Judgement, paras.1361, 1365, 1367, 1371, 1394, 1421-1422, 1424, 1444, 1446, 1455, 1488-1491, 1746, 1884, 2002, 2055), **Živojin Ivanović** (Judgement, paras.183, 1367, 1372, 1393-1394, 1398, 1403, 1421, 1424, 1444, 1455, 1488-1491, 1533, 1568, 2002), **Vasilije Mijović** (Judgement, paras.1444, 1455, 1568, 1570, 1699, 1701-1703, 1717-1719, 2002, 2028, 2035, 2037, 2055, 2087, and fn.5006), **Nikola Pilipović** (Judgement, paras.183, 332, 1369, 1393-1394, 1397-1398, 1403, 1424, 1488-1491, 1568-1569, 1675, 1746), **Zoran Raić** (Judgement, paras.1367, 1424, 1444, 1446, 1455, 1488-1491, 1533, 2002), **Davor Subotić** (Judgement, paras.183, 747-748, 1367, 1398, 1424, 1444, 1455, 1488-1491, 1533, 1595, 1597, 1600, 2002), **Dušan Orlović** (Judgement, paras.335, 1366, 1397, 1421, 1424, 1488-1491, 2119, 2150, 2157, 2340), **Milan Radonjić** (Judgement, paras.1365, 1367, 1371, 1444, 1446, 1455, 1457, 1880, 1911, 2002, 2083-2084, 2087, 2092).

Accused<sup>73</sup>) to all the ‘hot-spots’ of JCE activity throughout the Indictment period. This correlation, exemplified in Annex A,<sup>74</sup> demonstrates that:

- SDB assets were deployed in all the key theatres of JCE activity over the Indictment period;
- SDB assets were deployed to support Serb Forces and participated both in *prima facie* legitimate activity and crimes—they continued to be deployed even after their criminal conduct was known to the Accused (as otherwise set out in this Brief);<sup>75</sup>
- SDB assets moved frequently across the borders between Croatia, BiH and Serbia, corroborating the evidence that both Croatia and BiH formed part of a single common criminal purpose.

52. Given the Accused’s authority over the SDB, no reasonable chamber could conclude that the consistent deployment of SDB assets to implement the common criminal purpose occurred without the Accused’s knowledge and volition.

3. JCE members, including the Accused, created and used armed groups in Croatia to further the common criminal purpose

53. From 1990 to 1991, local Serb leaders in Croatia began to articulate and work towards a policy of self-rule based on ethnic division.

- In the Krajina, these leaders were JCE members Martić and Babić, who led the way in repudiating Croatian authority in 1990,<sup>76</sup> proclaiming Serb autonomy by the end of the year.<sup>77</sup> Both Martić and Babić publicly advocated that the

<sup>73</sup> See below para.62.

<sup>74</sup> Annex A sets out the Chamber’s factual findings concerning a selected number of SDB assets (Simatović and members of the Unit/JATD) whose conduct it found to be attributable to the Accused: see below para.63. Annex A does not include other SDB assets whose conduct the Chamber unreasonably and inconsistently failed to attribute to the Accused: Judgement, paras.2233-2234, 2257, 2271, 2285. See further below Ground 3.

<sup>75</sup> See below paras.70-73.

<sup>76</sup> Exh.P2057, paras.9-24 (public) (**uncited**). On Martić’s leadership role, see Judgement, paras.2111, 2151; see also paras.2117, 2137-2138, 2153 (positions held by Martić). On Babić’s position, see Exh.P2057, para.5 (public) (**uncited**).

<sup>77</sup> AFIII-5. See Judgement, para.149. See also Exhs.P1106 (public); P2057, para.18 (public) (**uncited**).

SAO Krajina belonged with Serbia<sup>78</sup>—Babić, for example, described Milošević as “the President of all Serbs, not only those in Serbia.”<sup>79</sup>

- In SBWS, the move for autonomy came a short time later. It was fronted by Hadžić,<sup>80</sup> who headed the SAO SBWS government’s predecessor structure from early 1991<sup>81</sup> and became President of the SAO SBWS government by 25 September 1991.<sup>82</sup> Hadžić too was seen as being very close to the Serbian political leadership.<sup>83</sup>

54. JCE members, including the Accused, were involved in supporting the developing ethnic tensions in Croatia<sup>84</sup> from very early on. [REDACTED].<sup>85</sup> Martić also introduced Stanišić to Babić in Knin in August 1990,<sup>86</sup> giving the impression that Stanišić was “somebody who meant something to him and who he was in contact with”.<sup>87</sup>

55. By March 1991, Milošević had ordered the mobilisation of reserve police forces in Serbia to defend “the interests of our republic, and also the interests of the Serbian people *outside Serbia*”.<sup>88</sup>

(a) JCE members, including the Accused, created parallel political and security structures in Croatia

56. JCE members sought to entrench the ethnic divisions in Croatia, to gain a foundation for claiming territory for Serbs, by creating parallel political and security structures. These structures facilitated the subsequent crimes, formed the basis of the future autonomous regions of the SAO Krajina and SAO SBWS (together, ultimately,

<sup>78</sup> E.g. AFIII-60 (uncited); AFIII-41 (uncited); Exh.P1956 (public) (uncited).

<sup>79</sup> Exh.P1956, p.10 (public) (uncited). See also AFIII-34 (uncited).

<sup>80</sup> B.Bogunović, Exh.P553, paras.6-7 (public).

<sup>81</sup> B.Bogunović, Exh.P553, para.7 (public).

<sup>82</sup> Exh.P16 (public) (uncited).

<sup>83</sup> See Judgement, para.2222. See further below paras.116, 209, 255, 257, 259.

<sup>84</sup> See generally Judgement, paras.369-370 (recalling evidence of “the destruction of businesses, the setting up of barricades, and the arming of local Serbs [...] in Knin in 1990”, “Serb Radio Knin broadcasts to spread war propaganda and fear [...] around January 1991” and “instances of discriminatory policies, destruction of property, and the setting up of barricades” around Knin from April to June 1991).

<sup>85</sup> See [REDACTED]. [REDACTED].

<sup>86</sup> See Judgement, paras.1297, 2142.

<sup>87</sup> Babić, Exh.P1878, p.59 (public).

<sup>88</sup> Exh.P975, p.1 (emphasis added) (public) (uncited). See also AFI-90 (uncited).

the RSK<sup>89</sup>) and provided a means for imposing discriminatory measures against the remaining civilian population. However, they relied significantly on support from JCE members in the (S)FRY.<sup>90</sup>

57. As summarized by the Chamber, JCE member and insider witness Babić—whose testimony the Chamber found to be reliable<sup>91</sup>—described:

[A] parallel structure of power and authority [which] began to be formed by the [SDB] in the SAO Krajina in August 1990 and started its activities in April 1991. The structure operated in conjunction with the SUP and the SAO Krajina MUP [and] consisted of members of the Serbian MUP, [SDB] and SJB, police officers from Serb municipalities in Croatia, and members of the SDS, and was run by Milošević and the [SDB]. [...] Jovica Stanišić was the central figure of the structure, followed by Franko Simatović [...] [and] Milan Martić [...] <sup>92</sup>

58. Consistent with this evidence, the findings and evidence demonstrate the extensive measures taken by the Accused to initiate and support the development of parallel security structures in Croatia, beginning in the Krajina.

59. The Chamber found that the Accused directed and organised the formation of the SAO Krajina police, in close cooperation with Martić (who commanded those police).<sup>93</sup> This took place in the period August 1990 to May 1991.<sup>94</sup> The Accused also directed and organised the funding, arming, and equipping of the SAO Krajina police.<sup>95</sup> For example:

<sup>89</sup> See Judgement, para.149 (citing AFIII-21). See also AFIII-22 (**uncited**). See further AFIII-40 (Martić saw the joinder of the SAO Krajina and SAO SBWS as “the first stage in the establishment of a state of all Serbs”) (**uncited**).

<sup>90</sup> Judgement, paras.2137, 2153, 2159.

<sup>91</sup> Judgement, para.2146. See also para.402.

<sup>92</sup> Judgement, para.2120 (noting also that the parallel structures “introduced discriminatory practices against the Croats and provoked conflicts, trying to establish control over the Krajina”). See also paras.2146, 2150. See Babić, Exh.P1877, pp.22-23, 35 (public); Babić, Exh.P1878, pp.46, 339-342 (public); Babić, Exh.P1879, pp.2-3 (public). See also Exh.P2057, Tab 1, para.17 (public) (**uncited**).

<sup>93</sup> Judgement, paras.2159, 2331. See also paras.2137 (citing AFIII-9), 2147.

<sup>94</sup> Judgement, para.2158. See also para.2152.

<sup>95</sup> Judgement, para.2153-2159, 2201-2202, 2208, 2211, 2213.

- between December 1990 and May or June 1991, Simatović brought bags of cash to Martić in Knin and, with the financial support of Stanišić, Martić set up at least two new Serb police stations in the Krajina;<sup>96</sup>
- between December 1990 and May or June 1991, Simatović personally oversaw the delivery of arms and ammunition to Martić for the SAO Krajina police;<sup>97</sup>
- Simatović supplied communication equipment to the SAO Krajina police in April 1991.<sup>98</sup>

60. The Accused also organised training for the SAO Krajina police, as well as the SAO Krajina TO and other armed groups, at facilities which they established and helped to maintain.<sup>99</sup>

61. In January 1991, the Accused and Martić had agreed on the creation of a training camp at Martić's headquarters in Golubić,<sup>100</sup> with SDB operatives as instructors.<sup>101</sup> The camp, covertly financed and supplied by the Accused, was established from April 1991.<sup>102</sup> The Accused also brokered the deployment of JCE sympathiser<sup>103</sup> Captain Dragan to Golubić as an instructor and fighter.<sup>104</sup> The Golubić

<sup>96</sup> Judgement, paras.2123, 2153-2155. *See also* Judgement, paras.2123 (“Witness JF-039 further testified that in January 1991, after he had returned from Belgrade, Martić was given a green light from Stanišić and police stations were set up all over Krajina, with the first one in Civljane and then also in Otočac. [...] When the witness asked how Martić was going to pay for the additional stations, Martić would respond: ‘Jovica promised it.’”), 2201 (Martić sent JF-039 and other persons to Belgrade to collect bags of cash from Stanišić).

<sup>97</sup> Judgement, para.2154. *See also* Judgement, para.2110 (recalling JF-039's evidence that “the police alone was incapable of organising the distribution and financing of weapons”).

<sup>98</sup> Judgement, para.2156.

<sup>99</sup> Judgement, paras.1369, 2197, 2327.

<sup>100</sup> Judgement, para.1365.

<sup>101</sup> Judgement, paras.1365, 1367.

<sup>102</sup> Judgement, paras.1365-1366, 2197, 2327.

<sup>103</sup> Captain Dragan had demonstrated sympathy to the aims of the common criminal purpose before he was approached by the Accused: *see e.g.* Judgement, para.1368. *See also* paras.377, 387, 406 (Captain Dragan's criminal participation).

<sup>104</sup> Judgement, paras.1366-1367. Once deployed, Captain Dragan not only provided training at Golubić but also commanded forces (including Unit members: *see below* Annex A) which attacked the villages of Struga and Glina, reporting directly to Simatović and DB operative Filipović: Judgement, paras.180, 183-184, 1367, 1398, 1425, 2327. Captain Dragan's relationship with the Unit ceased at the end of August 1991, although he continued to be a person of interest to the DB: Judgement, paras.1370, 1566-1567, 2287. *See also* Exhs.P671, p.2 (intercepted telephone conversation between Stanišić and Karadžić of 29 November 1991: “[Stanišić]: My colleagues send you special regards, Frenki and Captain are here [...] I hope we'll also have a chance to work with you a little”) (public); P633, pp.3-4 (intercepted telephone conversation between Karadžić and Nenad Stevandić of August 1991, in which Stevandić tells

camp provided training to at least 350-700 of the SAO Krajina police, as well as TO and other armed groups.<sup>105</sup> Subsequently, many similar camps were set up in other parts of Croatia and BiH, again with the financial and logistical support of the Accused.<sup>106</sup>

62. In the period from May to August 1991, Simatović—with Stanišić’s approval and participation<sup>107</sup>—also formed a special SDB unit at Golubić (“the Unit”) with an initial core of 25-30 members.<sup>108</sup> The Unit was used to provide support to the parallel security structures and other Serb Forces, first in Croatia and then subsequently in BiH as the common criminal purpose developed.<sup>109</sup> The Unit was deliberately created ‘off the books’, so that it could operate covertly.<sup>110</sup> Although only formalized within the SDB structure as the JATD in 1993,<sup>111</sup> members of the Unit were subordinate to and commanded by the Accused from the start.<sup>112</sup> Unit members trained at Golubić went on to establish and train further units that participated in attacks against non-Serbs in the Krajina.<sup>113</sup>

63. Over the course of 1991, JCE members also transformed the JNA into a Serb fighting force in Croatia. JCE members with control of the JNA (Milošević, Kadijević and Blagoje Adžić<sup>114</sup>) had redefined the JNA’s mandate as “protecting and defending the Serb people outside of Serbia and assembling the JNA within the boundaries of

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Karadžić that he has spoken with the people “across the Drina” about the possibility that “Dragan” would be deployed to BiH) (public).

<sup>105</sup> See Judgement, paras.1369, 2327.

<sup>106</sup> E.g. Judgement, paras.1488-1492 (Ležmir camp); 1533, 1539, 1746-1749 (Pajzoš camp); 1597, 1600, 1602 (Mount Ozren and Vila camps, Doboj); 1639 (Mount Tara); 1672-1674 (Skelani camp); 1702-1705 (Bratunac camp); 1718-1719 (Bilje camp); 1727-1728 (Sova camp). See Annex A. See also Exh.P61, p.11 (public).

<sup>107</sup> Judgement, para.1422.

<sup>108</sup> Judgement, para.1421.

<sup>109</sup> See e.g. Annex A.

<sup>110</sup> Judgement, para.1423. See also Judgement, para.1371 (Stanišić retroactively signed orders purporting to deploy Simatović and DB operatives Radonjić and Filipović to Kosovo during the period they were operating in the Krajina).

<sup>111</sup> See Judgement, paras.1443, 1445, 2002, 2011, 2059, 2067.

<sup>112</sup> Judgement, paras.1455, 1489, 1600, 2318. The personnel of the JATD, when officially established, were essentially the same as those of the Unit (Judgement, para.1445) and both were financed by the SDB: Judgement, paras.1456-1457, 1492, 1538, 1602, 1678-1679, 1704, 1718, 1748-1749, 2080-2090. The Chamber rejected the view that Unit/JATD members’ affiliations gained by their deployment to a particular armed group broke their ties to the SDB: e.g. Judgement, para.1701. See also Judgement, paras.2157, 2234.

<sup>113</sup> Judgement, paras.1369, 1394-1395, 1397-1398, 1403, 1421-1426, 2327.

<sup>114</sup> See AFIII-36 (uncited).



the future Yugoslavia".<sup>115</sup> By July 1991, the evolving policy of the JNA<sup>116</sup> reflected what had already become common knowledge: as Martić said, "we have the same goal, both the [JNA] and us."<sup>117</sup> The JNA had transformed from a multi-ethnic to a Serb-dominated army,<sup>118</sup> and deployed itself to enable "full coordination with Serb insurgents in the Serbian Krajina".<sup>119</sup>

(b) JCE members, including the Accused, used Serb Forces to unleash an escalating and systematic campaign of ethnic cleansing across Croatia

64. From August 1990, while the parallel structures described above were being established, the situation in Croatia progressively destabilized.<sup>120</sup> Sporadic violence against non-Serbs became more serious. From at least April 1991, the Chamber found that the SAO Krajina police, commanded by Martić, had begun committing crimes against non-Serbs in the Krajina.<sup>121</sup>

65. By the beginning of August 1991 (once Croatia had declared independence), the escalating violence against non-Serbs exploded into a series of coordinated and deadly attacks led by the JNA and supported by other Serb Forces in both the Krajina and SBWS. JCE member Babić summarized the offensive in Croatia, recalling that Serb Forces including the JNA:

[E]ngaged in combat operations in such a way that [...] it forced the population and members of the armed forces of the Croatian government and the entire population to withdraw and retreat from those territories. In this way, the JNA [...] engaged in a war so that the territories it captured would be left without any Croatian inhabitants, or very few of them.<sup>122</sup>

<sup>115</sup> Babić, Exh.P1878, p.125 (public).

<sup>116</sup> E.g. Exhs.D48, p.3 (by December 1991, Kadijević openly described "protection of the Serbian population" as the ultimate aim of the war) (public); Babić, Exh.P1878, p.125 (Babić testified that, under Milošević's overall leadership, the JNA's task became "protecting and defending the Serb people outside of Serbia") (public).

<sup>117</sup> Exh.P324, p.1 (public). See also JF-032, T.4641 (public), [REDACTED].

<sup>118</sup> AFI-251 (uncited); AFI-252 (uncited).

<sup>119</sup> See AFIII-35 (uncited).

<sup>120</sup> See above fns.84, 85.

<sup>121</sup> Judgement, para.2331.

<sup>122</sup> Babić, Exh.P1878 (public), p.129 (referring also to "other armed formations" including "the militia or police of Krajina as well as [...] so-called volunteer units, under the control of a parallel structure of state security and the police of Krajina and units commanded by the state security of Serbia"); see also pp.130-131.

66. For example, in the Krajina, Serb Forces including the JNA and SAO Krajina police and TO jointly attacked Kijevo,<sup>123</sup> enforcing Martić's ultimatum to Croatian authorities.<sup>124</sup> Subsequent attacks were launched on villages and hamlets across the Krajina,<sup>125</sup> including at:

- Dubica/Cerovljani/Baćin, where members of the JNA, SAO Krajina police and/or TO killed non-Serb civilians and destroyed property;<sup>126</sup>
- Vukovići/Saborsko, where members of the JNA, the SAO Krajina police, and/or local Serbs, among others, killed non-Serb civilians, beat and imprisoned them, looted houses and destroyed property;<sup>127</sup> and
- Škabrnja, where members of the JNA, the SAO Krajina police, the TO, Serb volunteers from Serbia and BiH, and/or local Serbs killed non-Serb civilians, used non-Serb civilians as human shields, beat and imprisoned them, forcibly removed them, looted houses and destroyed property, and subjected villages to aerial bombings (including with cluster bombs and incendiaries).<sup>128</sup>

67. As a result of the various attacks, from April 1991 to April 1992, approximately 80,000 to 100,000 Croats and other non-Serb civilians were deported from the Krajina.<sup>129</sup> JCE member Martić intentionally participated in this enforced displacement,<sup>130</sup> and the Chamber determined that Martić committed deportation as a crime against humanity.<sup>131</sup>

68. The same pattern<sup>132</sup> played out in SBWS. Starting with the 1 August 1991 attacks on Dalj and Erdut,<sup>133</sup> Serb Forces secured the takeover of villages<sup>134</sup> and

<sup>123</sup> Judgement, para.361.

<sup>124</sup> Judgement, para.360 (Martić told the Croatian SJB in Kijevo that they had made further co-existence in the Serbian territories of the SAO Krajina impossible).

<sup>125</sup> See also e.g. Judgement, paras.339 (Lovinac), 368 (Drniš), 387, 389-390 (Knin).

<sup>126</sup> E.g. Judgement, paras.64, 207-209, 216.

<sup>127</sup> E.g. Judgement, paras.78, 85, 104, 225, 227, 242, 258, 261.

<sup>128</sup> E.g. Judgement, paras.133-134, 272, 308, 312-315, 317.

<sup>129</sup> Judgement, paras.403-404, 2331.

<sup>130</sup> Judgement, paras.1000, 2335. See also Judgement, paras.332, 334-335, 1397, 2340 (Martić participated in the attack on Lovinac, carried out by SAO Krajina police and Unit members, in order "to have as much of the local population leave as possible in order to establish a purely Serb territory").

<sup>131</sup> Judgement, para.1003.

<sup>132</sup> See Judgement, para.578.

<sup>133</sup> E.g. Judgement, paras.508, 510, 526-527.

<sup>134</sup> E.g. Judgement, paras.573 (Tovarnik, Bobota, Lužac), 577.

towns<sup>135</sup> through devastating attacks aimed at compelling non-Serbs to flee.<sup>136</sup> Non-Serbs were expelled,<sup>137</sup> their homes looted,<sup>138</sup> and those captured were beaten and killed.<sup>139</sup> Of those who remained, many were forced to perform manual labour, brutally beaten, threatened and harassed.<sup>140</sup> In Erdut, the seat of Hadžić's government, JCE member Arkan<sup>141</sup> ran a make-shift prison at the TO training centre where non-Serbs were detained, severely beaten and often murdered.<sup>142</sup> The deliberate actions of Serb Forces compelled "many thousands"<sup>143</sup> of non-Serbs to flee SBWS.

69. As with Martić in the Krajina, the evidence shows that JCE member Hadžić (the leader of the SBWS government) was personally implicated in crimes in SBWS, and exercised arbitrary powers of life and death over non-Serbs.<sup>144</sup> Members of the SNB, [REDACTED],<sup>145</sup> committed deportation as a crime against humanity.<sup>146</sup>

(c) The Accused continued to contribute to the implementation of the common criminal purpose in Croatia

70. Given the "close cooperation" between Martić and the Accused, "and in view of the crimes committed by the SAO Krajina police," the Accused "must have known of [Martić's] intent" when they "continu[ed] to support the SAO Krajina police and cooperate with Milan Martić from April 1991".<sup>147</sup>

<sup>135</sup> *E.g.* Judgement, paras.553-554.

<sup>136</sup> Judgement, para.578.

<sup>137</sup> Judgement, paras.509, 511, 554.

<sup>138</sup> Judgement, paras.510, 528, 553, 573.

<sup>139</sup> Judgement, paras.553, 573, 577-578.

<sup>140</sup> Judgement, paras.528, 553, 573, 577-578.

<sup>141</sup> *See below* para.274.

<sup>142</sup> Judgement, paras.451, 453, 466-468, 477-480, 510.

<sup>143</sup> *See* Judgement, para.578.

<sup>144</sup> *See e.g.* Judgment, para.410 (in September 1991, Hadžić brought a number of Croat detainees to Dalj police station; the Croats and other non-Serbs were detained for suspected "war crimes" on Hadžić's authority); paras.409, 411, 416, 418-419 (Hadžić visited Dalj police station, where he was greeted with honours by Arkan, and ordered the release of two detained non-Serbs; the remaining non-Serb detainees were killed soon after by Arkan and SDG members); paras.437-438, 441 (shortly after members of Hadžić's security unit, the SNB, had killed a woman, together with her relatives, for investigating the killing of her husband by Arkan and the SDG, Hadžić alluded to the incident over lunch, and was told that the incident "had been taken care of"; Hadžić instructed everyone present to be careful and not to get into trouble).

<sup>145</sup> *E.g.* [REDACTED].

<sup>146</sup> Judgement, paras.1049, 1052, 1054. *See also* Judgement, paras.576-578 (SNB members were involved in detentions, destruction of cultural property, looting, restriction of freedom, forced labour, beatings, killings, harassment, leading to the enforced displacement of "many thousands" from their homes). The SNB cooperated with Arkan and the SDG: Judgement, para.1836.

<sup>147</sup> Judgement, para.2332.

71. Given the scale of the deportation committed by the SAO Krajina police and other Serb Forces, the Accused “must” also have known about the crimes subsequently “committed by the SAO Krajina police between April 1991 and April 1992.”<sup>148</sup>

72. Moreover, by June 1991, Simatović had yet further confirmation of Martić’s criminal intent. From the planning of the attack on Lovinac, in which both Martić and Simatović participated, Simatović was made “aware of Martić’s intent to [...] forcibly remove Croat civilians from the village of Lovinac”.<sup>149</sup> Despite this knowledge, Simatović participated in the attack. The Chamber nonetheless took the unreasonable view that Simatović “may have” shared Martić’s criminal intent at that time.<sup>150</sup>

73. Notwithstanding their knowledge of crimes committed in the Krajina by the armed groups which they were supporting, the Accused continued their support to Martić and Serb Forces in the Krajina including the SAO Krajina police.

- The Accused continued to provide training at the Golubić camp until at least the beginning of August 1991.<sup>151</sup>
- Simatović and Martić met again in Knin at October 1991, and Stanišić was present in the Krajina on multiple occasions between October and December 1991.<sup>152</sup> Years later, when Simatović was recounting the history of the Unit, he recalled that “[f]rom 12 October 1991” the “[U]nit Command” and an SDB intelligence team were “coordinat[ing]” around 5,000 soldiers in “battles” in the Krajina.<sup>153</sup>

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<sup>148</sup> Judgement, para.2332.

<sup>149</sup> Judgement, para.2354.

<sup>150</sup> Judgement, para.2354.

<sup>151</sup> Judgement, paras.1369, 2327.

<sup>152</sup> Judgement, para.1395. *See also* Exhs.P995 (1994 greeting card from Martić to Stanišić, referring to their continued “effort to attain a common stance in our joint effort—the creation of a unified Serbian state”) (**uncited**); P2667 (1994 letter from Stanišić to public security officials in the Krajina congratulating them on their efforts, and stating that “We are now entering the decisive phase of the fight to achieve the common goals of all the Serbian lands, more determined and prepared than ever before”; the letter also notes—cynically in light of the finding concerning Stanišić’s knowledge of the massive crimes committed by police in 1991 and 1992—that Krajina security forces “contributed to the protection of the personal and property security of the citizens and protection of their rights and freedoms, [...] carried out with maximum respect for the legal procedures”) (**uncited**); AFIII-208 (**uncited**).

<sup>153</sup> Exh.P61, p.10.

- Stanišić directed and organised the supply of arms and supplies to the SAO Krajina TO from late 1991 to April 1992, by use of a proxy known as the Association of Serbs and Emigrants of Serbia.<sup>154</sup>

74. In SBWS, the Accused's efforts to assist the development of parallel structures began in earnest *after* they already knew of the massive violence that resulted from the creation of parallel structures in the Krajina, and their use in ethnic cleansing.

75. JCE members, including Stanišić, provided financial and material support to the creation of SBWS police and TO forces, as further developed in Ground 3.<sup>155</sup> Stanišić and Hadžić met to discuss the SAO SBWS, its government and the police and TO structures,<sup>156</sup> as well as meeting at Dalj in September 1991.<sup>157</sup> As in relation to SAO Krajina, Stanišić was involved with the Association of Serbs and Emigrants of Serbia and Serbian MUP Minister Radmilo Bogdanović, a JCE member, in distributing arms to Serb Forces in SAO SBWS. [REDACTED],<sup>158</sup> who also coordinated with Stanišić's operatives on the ground in SBWS.<sup>159</sup> Through SDB operatives Ilija Kojić and Rade Kostić,<sup>160</sup> the Accused supported the creation of the SAO SBWS police and TO:

- The SDB sought to assist the SBWS TO's activities upon its formation in July 1991.<sup>161</sup> Kojić was in charge of organising the SBWS TO,<sup>162</sup> and became its first commander.<sup>163</sup>
- In June or mid-July 1991 in Borovo Selo, Kojić and Hadžić chaired a meeting at which a local police force was formed and the Chief of Police appointed. The organisation, payment and equipment of the local police force were also

<sup>154</sup> Judgement, para.2210.

<sup>155</sup> E.g. Exhs.P968 (public); P2029 (public); P333, p.4 (public). See further Ground 3 below.

<sup>156</sup> Judgement, paras.2222, 2248, 2298. See also B.Bogunović, Exh.P553, p.3 (public); B.Bogunović, Exh.P554, paras.12-13, 15, 18 (public); B.Bogunović, T.5972, 5975, 5977, 5982-5984, 5997 (public); [REDACTED]; [REDACTED]. See also [REDACTED].

<sup>157</sup> See Judgement, paras.2314-2315.

<sup>158</sup> [REDACTED]; [REDACTED].

<sup>159</sup> See below para.211.

<sup>160</sup> See below Ground 3.

<sup>161</sup> Judgement, para.2232.

<sup>162</sup> Judgement, para.2232.

<sup>163</sup> Judgement, para.2232.

discussed. Kostić also attended and was introduced to those present as from a member of the SDB.<sup>164</sup>

- The SDB provided material and logistical support to the newly-established SAO SBWS police and TO.<sup>165</sup> Directly after the July meeting establishing the Borovo Selo police, Kostić, Kojić and Hadžić met with [REDACTED], for a detailed discussion about equipment, salaries and other necessities for the police. They agreed that weapons, equipment and salaries for the policemen would be provided. As promised, these supplies arrived in the specified time from the Serbian MUP.<sup>166</sup>
- After establishing the SBWS police in Borovo Selo, the SDB continued its active role in developing the nascent police force. [REDACTED].<sup>167</sup> Again, Kostić provided arms and uniforms from the MUP in Belgrade.<sup>168</sup>
- [REDACTED].<sup>169</sup> He appointed SDB officers to serve in the SAO SBWS DB<sup>170</sup> and coordinated their work with the work of SDB officers stationed on the Serbian side of the border.<sup>171</sup>

76. Other (S)FRY personnel were also deployed to supplement the parallel security structures in SBWS. For example, in September 1991, Stanišić attended a meeting in Belgrade where deployment of SJB officers and policemen to SBWS was discussed.<sup>172</sup> Between mid-August and late September 1991, members of the MUP SJB arrived and joined the SAO SBWS TO, providing training to the SAO SBWS TO and police, and establishing additional police stations in SBWS.<sup>173</sup> Stanišić's close associates and JCE members Arkan<sup>174</sup> and Radovan Stojičić ("Badža"),<sup>175</sup> were

<sup>164</sup> See Judgement, para.2224; [REDACTED]; [REDACTED].

<sup>165</sup> See Judgement, paras.2246-2247.

<sup>166</sup> [REDACTED]; [REDACTED]. See also Judgement, para.2247.

<sup>167</sup> See Judgement, para.2247; [REDACTED].

<sup>168</sup> See Judgement, para.2247.

<sup>169</sup> [REDACTED]; [REDACTED].

<sup>170</sup> See Judgement, para.1502.

<sup>171</sup> See Judgement, para.1502; [REDACTED].

<sup>172</sup> Judgement, para.2254. See also Judgement, para.2240.

<sup>173</sup> Judgement, para.2254.

<sup>174</sup> Arkan was a notorious criminal who cultivated a reputation for brutality and danger: *e.g.* Exhs.P2924, pp.1-2 (public); P326 (public) (**uncited**). The Chamber found that Arkan personally participated in the murder of at least 33 non-Serbs (including at least one child) in SBWS in September to October 1991 alone: Judgement, paras.419, 432, 573; *see also* para.451. The Chamber found that he was responsible for "beatings, killings, looting, threats, detentions

further deployed to the region along with armed groups under their control.<sup>176</sup> From August or September 1991 onwards,<sup>177</sup> [REDACTED].<sup>178</sup>

77. Furthermore, as argued in Ground 3, the evidence shows that the Accused used Arkan and the SDG to facilitate the takeover of SBWS, and that Arkan operated under Stanišić's authority.<sup>179</sup>

4. JCE members, including the Accused, created and used armed groups in BiH to further the common criminal purpose

78. The same forces which worked to create ethnic division in Croatia, in the interest of securing Serb territory, were also at work in BiH. In BiH—and with full knowledge of the atrocities committed in Croatia—the JCE members repeated the methodology that had served them so well.

(a) JCE members planned and prepared the takeovers in BiH, with the Accused, knowing of the lethal consequences of the common criminal purpose in Croatia

79. As Serb Forces in Croatia committed crimes against non-Serbs, JCE members Karadžić, Krajišnik<sup>180</sup> and Plavšić were consolidating key (Serb-majority) municipalities in a programme of 'regionalisation', and were planning the political and military strategy for the creation of the RS.<sup>181</sup> Knowing the human cost of their

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[and] forced labour", and determined that he committed deportation as a crime against humanity: Judgement, paras.577, 923, 1052, 1054, 1195, 1198, 1200. Arkan's extensive criminal record was known at least by repute to "[e]very police officer in Serbia": T.15275; Exh.P1646, p.6 (public). Arkan was even arrested in late 1990 in the Krajina where he was helping his "close friend" Martić plan "a fight against that Ustashoid 'dragon'": Exh.P2924, p.1 (public). Arkan's arrest was reported within the DB: Exh.P1646, p.2 (public). *See also* Exhs.P334 (public); P335 (public); P327, p.2 (public); P329 (public); P1188, p.2 (public); P1647, p.2 (public); P1078, p.2 (public); P1077 (public) (**uncited**). *See further below* Ground 3.

<sup>175</sup> Badža was a member of the RJB (the other branch of the Serbian MUP), and commander of the elite SAJ unit: *see* Judgement, para.1437; [REDACTED]. Bogunović testified that "Hadžić told him" that Stanišić was the link between Milošević and Badža. Milovanović moreover testified that Badža introduced Stanišić as his "boss" in early 1993, and Badža could only possibly have been referring either to Stanišić, a MUP employee, or General Miodrag Panić, a VJ officer (*e.g.* T.4384-4385). *But see* Judgement, paras.1837, 1913 (unreasonably rejecting Bogunović and Milovanović's evidence on these points).

<sup>176</sup> Regarding Badža, *see* Judgement, paras.1778, 1818, 2221, 2253. Regarding Arkan, *see* Ground 3 below.

<sup>177</sup> *See* Judgement, para.2253.

<sup>178</sup> *See* [REDACTED]; [REDACTED].

<sup>179</sup> *See below* Ground 3.

<sup>180</sup> *See also* AFIV-84 (**uncited**).

<sup>181</sup> *E.g.* AFIV-74 (**uncited**); AFIV-99 (**uncited**); AFI-151 (**uncited**).

policy, graphically demonstrated in Croatia, they were committed to ethnic separation<sup>182</sup> and the use of force to achieve it. As the Chamber had judicially noted: “[t]he Bosnian Serb leadership was fully aware that the establishment of Bosnian Serb authority, especially in areas where Bosnian Serbs were in a minority, would necessarily entail the use of force and fear.”<sup>183</sup> Hence:

- on 14 October 1991, Karadžić predicted that BiH would follow “the same highway of hell and suffering that Slovenia and Croatia went through” and forecast the “possible extinction” of the “Muslim people”;<sup>184</sup>
- in November 1991, Karadžić urged SDS members to impose complete Bosnian Serb authority in their respective municipalities, regions, and local communities;<sup>185</sup>
- in December 1991, the SDS Main Board under Karadžić issued the notorious “Variant A/B Instructions”, the blueprint for the Serb takeovers in BiH which followed;<sup>186</sup>
- on 21 December 1991, Karadžić spoke at the 4<sup>th</sup> RS Assembly session about the situation in BiH, predicting the deaths of several hundred thousand people, the complete destruction of several hundred towns and massive population displacements;<sup>187</sup>

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<sup>182</sup> See also AFIV-57 (as early as 14 February 1991, Milošević had briefed Karadžić, Plavšić and Krajišnik on the possible future of a federal Yugoslavia; Karadžić subsequently gave an interview suggesting that a “core Yugoslavia” would need to adjust its borders on “the ethnic principle”) (**uncited**); AFI-142 (Bosnian Serb Assembly discussions illustrated the continued determination of the Bosnian Serb leadership to establish a state in which there would be no place for non-Serbs) (**uncited**).

<sup>183</sup> AFI-129 (**uncited**).

<sup>184</sup> Exh.P940 (public) (**uncited**). See also AFI-108 (**uncited**).

<sup>185</sup> AFI-116 (**uncited**).

<sup>186</sup> See AFI-126 (**uncited**), AFI-127 (**uncited**); AFIV-90 (**uncited**); AFIV-92 (**uncited**); Exh.P2512 (public) (**uncited**); Donia, Exh.P939, pp.43-45 (public) (**uncited**); AFII, p.2 (**uncited**). The instructions mapped out the takeover in municipalities where Serbs constituted a majority of the population (“Variant A”) and a minority (“Variant B”).

<sup>187</sup> See Exh.P1483, p.87.



- by March and April 1992, Serb control over police and TO forces was established, a central element of the plan to take over parts of BiH.<sup>188</sup>

80. On 12 May 1992, after the takeovers had begun,<sup>189</sup> Karadžić issued the “Six Strategic Goals”,<sup>190</sup> which set out in more detail the steps necessary to implement the common criminal purpose to expel non-Serbs from Serb-claimed areas in BiH, including *inter alia* “border separation of the state from the other two national communities” and the assertion of territorial control over a number of areas.<sup>191</sup>

81. Karadžić worked tirelessly behind the scenes to plan and coordinate the implementation of the common criminal purpose in BiH.<sup>192</sup> Stanišić was a key contact in the coordination of the planned takeovers with the situation in the (S)FRY.<sup>193</sup> The trial record includes, for example, at least 47 intercepted telephone conversations between Karadžić and other leading JCE members,<sup>194</sup> of which 19 are between

<sup>188</sup> See AFI-104 (uncited); AFI-148 (uncited), AFI-149 (uncited), AFI-170 (uncited), AFI-171 (uncited), AFI-172 (uncited); see also AFI-182 (uncited), AFI-183 (uncited), AFI-184 (uncited).

<sup>189</sup> See Defence AF-52 (uncited).

<sup>190</sup> See AFI-153 (uncited), AFI-154 (uncited), AFI-155 (uncited), AFI-156 (uncited). See also Donia, Exh.P939, p.31 (public) (uncited); Exhs.P1483, p.25 (public); P942 (public). See also AFI-157 (uncited).

<sup>191</sup> Exhs.P942 (public); P2532, p.1 (public) (uncited).

<sup>192</sup> For example, in August 1991, Karadžić told Nenad Stevandić his intention to allow “Vojo and Brdo [Radoslav Brđanin]” to do everything that they plan—but only after blame for the breakdown of talks could be placed on BiH President Alija Izetbegović. Stevandić reassures Karadžić that “Jovica” had given Brđanin “a good telling off” in order to hold him back for the time being. See Exh.P632, pp.1-3 (public). Brđanin advocated three steps to ridding the RS of non-Serbs: terror, deportation, and liquidation: AFI-37 (uncited), AFI-38 (uncited). In the same intercept, and other conversations between Karadžić and Stevandić, frequent reference is made to Stanišić’s participation and agreement in the planning: Exhs.P632, pp.2, 5-8 (public); P664, pp.1, 3-5 (intercept of 2 November 1991) (public).

<sup>193</sup> But see Judgement, para.2302; see also para.2295.

<sup>194</sup> Karadžić’s interlocutors include JCE members Babić, Milošević, Krajišnik, Plavšić, Brđanin, Mićo Stanišić as well as (Jovica) Stanišić: Exhs.P619 (public), P625 (public), P626 (public), P629 (public), [REDACTED], P634 (public), P635 (public), P636 (public), P637 (public), P638 (public), [REDACTED], [REDACTED], P646 (public), P647 (public), P648 (public), P649 (public), [REDACTED], P651 (public), P660 (public), P661 (public), P662 (public), P663 (public), P667 (public), P668 (public), P669 (public), P670 (public), P671 (public), [REDACTED], P675 (public), P676 (public), [REDACTED], [REDACTED], P679 (public), P680 (public), P681 (public), P682 (public), [REDACTED], [REDACTED], [REDACTED], P686 (public), P687 (public), P689 (public), P690 (public), P691 (public), P692 (public), P703 (public), [REDACTED]. The Judgement cites 24 of these intercepts only: e.g. Judgement, fns.4914, 4916-4917, 4919, 4053-4054, 4056. 23 are uncited: Exhs.P619 (public), P634 (public), P635 (public), P636 (public), P647 (public), P648 (public), P649 (public), [REDACTED], P663 (public), P668 (public), [REDACTED], P676 (public), [REDACTED], P679 (public), P680 (public), P681 (public), P682 (public), [REDACTED], P689 (public), P691 (public), P692 (public), P703 (public).

Karadžić and Stanišić.<sup>195</sup> In one of these deliberately coded<sup>196</sup> conversations, on 12 January 1992, Karadžić tells Stanišić “[w]e are preparing certain things, very, very, very, err, attentively, so that nothing can surprise us”. He continues, “we didn’t miss a thing, we’ve foreseen every possible situation”. Stanišić cautions him to “do it in a way so that I am not shown as a part of the initiative. I can’t afford that, you know.”<sup>197</sup>

82. Stanišić monitored Karadžić’s public statements and was a ‘sounding board’ and confidant. [REDACTED].<sup>198</sup> [REDACTED].<sup>199</sup> The extensive background of Stanišić and Karadžić’s dealings formed the context vital to confirming the meaning of their telephone conversation culminating with Stanišić’s chilling remark, “we’ll exterminate them completely”.<sup>200</sup>

(b) JCE members, including the Accused, used Serb Forces to conduct a systematic campaign of ethnic cleansing in BiH

83. Following the BiH declaration of independence in April 1992, Serb Forces struck first at the strategically important municipalities of Bijeljina and Zvornik,<sup>201</sup> carrying out crimes “on a massive scale”<sup>202</sup> against non-Serbs including killings, arbitrary arrests and detention, lootings and destruction of property, forcing non-Serbs to flee for their lives.<sup>203</sup>

<sup>195</sup> E.g. Exhs. [REDACTED], P636 (public) (**uncited**), P670 (public), P671 (public), [REDACTED], P676 (public) (**uncited**), [REDACTED], P681 (public) (**uncited**), [REDACTED], [REDACTED], [REDACTED], P686 (public), P687 (public), P689 (public) (**uncited**), P690 (public), P691 (public) (**uncited**), P692 (public) (**uncited**), [REDACTED].

<sup>196</sup> See Prosecution FTB, fn.276 (cautioning the Chamber that speakers in these intercepts intentionally spoke in a coded fashion, and expressly requesting the Chamber to consider each intercept in the context of the entire body of intercept evidence). See further e.g. Exhs.P633, pp.3-4 (Karadžić expressed concern that the movement of “this battlefield [...] into Bosnia” (by implication, from Croatia) be kept secret) (public); P636, p.2 (Stanišić tells Karadžić that “[t]hose from Krajina called and so on, but it is not for the phone”) (public) (**uncited**); P690, pp.9-10 (Karadžić checks that Stanišić knows what he means if he refers to “code ‘Twenty’”) (public); P692, p.4 (Stanišić tells Karadžić that must continue their conversation on “another phone”) (public) (**uncited**).

<sup>197</sup> Exh.P687, pp.1, 7 (cited Judgement, para.2308) (public).

<sup>198</sup> [REDACTED]. See Judgement, para.2295 (fn.4916).

<sup>199</sup> [REDACTED].

<sup>200</sup> Judgement, para.2307 (citing Exh.P690, p.7 (public)). See further below paras.118-122.

<sup>201</sup> Judgement, paras.584, 587, 917, 1853. See also AFIV-255; Exh.P1575, p.292 (public).

<sup>202</sup> Judgement, para.589.

<sup>203</sup> Judgement, paras.587, 596-598, 1056-1079 (Bijeljina); paras.889-890, 895, 917-924, 927-928, 931, 935, 942, 947, 975, 990, 1183-1236, 1244-1253 (Zvornik).

84. Attacks on other key municipalities, such as Sanski Most<sup>204</sup> and then Bosanski Šamac and Doboj,<sup>205</sup> soon followed. As in Croatia, the JNA was openly involved in operations on behalf of ethnic Serbs. Together with other Serb Forces, it carried out a further campaign of ethnic cleansing, driving non-Serbs out of Serb-claimed territory.<sup>206</sup> As it withdrew from Croatia on 18 May 1992, the JNA provided the RS' new fighting force, the VRS, commanded by JCE member Mladić, with equipment and personnel.<sup>207</sup>

85. The Bosanski Šamac and Doboj attacks were carried out by Serb Forces including the Unit.<sup>208</sup> The sequence of events in Bijeljina, Zvornik and Bosanski Šamac preceding, during, and after the takeover bore close similarity to Karadžić's Variant A/B Instructions.<sup>209</sup> Following each of these takeovers, Serb Forces arrested and detained thousands of non-Serbs in detention facilities where detainees were held in overcrowded conditions, forced to perform forced labour, brutally beaten, tortured and sexually assaulted.<sup>210</sup>

86. The JCE members achieved much of the objective of the common criminal purpose in a relatively short time. By late 1992, many non-Serbs in BiH had been "cleansed" from the territories controlled by the Bosnian Serb leadership.<sup>211</sup> JCE members continued to cooperate in the prosecution of the war against the Bosnian Muslims through initiatives such as Operation Udar in 1993,<sup>212</sup> which resulted in the confinement of non-Serbs to restricted enclaves in BiH.<sup>213</sup> Evidence and adjudicated facts in the record concerning the planning for Operation Udar establish that JCE

<sup>204</sup> Judgement, paras.814, 830, 861-863, 1147, 1153, 1159, 1165, 1171. *See also* [REDACTED]; AFI-527 (*see* Judgement, fn.1821); AFIV-81 (**uncited**), AFIV-358 (**uncited**).

<sup>205</sup> Judgement, paras.608, 610-612, 614-615, 622, 625, 633, 649-650, 654, 658, 670, 678-680, 684-687, 975, 990, 1080-1092 (Bosanski Šamac); paras.697-701, 708, 710-711, 718-723, 725, 730, 733, 744-747, 773-781, 787, 975, 990, 1093-1140 (Doboj).

<sup>206</sup> *See* AFI-219 (**uncited**).

<sup>207</sup> *See* Exh.P1575, pp.301-303 (VRS effectively absorbing the JNA 4<sup>th</sup>, 5<sup>th</sup>, 10<sup>th</sup>, and 17<sup>th</sup> Corps) (public). *See also* AFI-246 (**uncited**); AFI-245 (the FRY subsequently continued to influence the VRS) (**uncited**).

<sup>208</sup> *E.g.* Judgement, paras.650, 703, 718, 776, 2320-2326. *See also* AFI-200 (noting the reliance on Serb paramilitary forces, recruited in Serbia and Montenegro, which were much employed in control of non-Serb communities in BiH) (**uncited**); AFI-235 (crimes required cooperation between Bosnian Serb police, army and paramilitary groups) (**uncited**).

<sup>209</sup> AFI-339 (**uncited**).

<sup>210</sup> Judgement, paras.598, 609, 684-685, 773-775, 827, 856, 858. *See also* Judgement, paras.591-592, 596, 600, 659, 661-663, 668-669, 673, 675-676, 750, 752-754, 764, 766-767, 769, 820, 835-836, 843.

<sup>211</sup> *See further* Exhs.P2532, p.1 (public); P3115, p.2 (public).

<sup>212</sup> Judgement, paras.1676-1677, 1679. *See also* Exh.P392, pp.2-5 (public).

members Mladić and Mrkšić possessed criminal intent.<sup>214</sup> The evidence shows that Simatović attended a meeting with Mladić to discuss the planning of Operation Udar,<sup>215</sup> and that the Unit subsequently participated in the operation.<sup>216</sup>

87. Throughout the remainder of the Indictment period, Serb Forces continued the persecution of those non-Serbs remaining and prevented the return of those who had already fled. Operation Pauk,<sup>217</sup> a joint operation launched in 1994 by JCE members from Croatia, BiH and Serbia, illustrates the continuing unity of JCE members' interests in securing Serb-claimed territory in BiH.

88. In September and October 1995, as part of the continuing campaign of ethnic cleansing and to further consolidate JCE members' control over their territorial gains, Arkan and other SDG members were sent into Sanski Most.<sup>218</sup> In this operation, the SDG murdered 65 non-Serb civilians in Sasina and 11 non-Serb men in the village of Trnova.<sup>219</sup>

(c) The Accused continued to contribute to the implementation of the common criminal purpose in BiH

89. Despite their full knowledge of the disastrous consequences of their criminal and violent policy in Croatia, and supplemented by their knowledge of the clear intent of the Bosnian Serb leadership to achieve the same result, the Accused continued to contribute to the implementation of the common criminal purpose in BiH from 1992 to 1995. For example, JCE members including Stanišić covertly supplied weapons, equipment and financial support to Serb Forces in BiH from at least 1991 through to

<sup>213</sup> Exh.P3118, pp.1-3.

<sup>214</sup> *E.g.* Judgement, paras.1668, 2324, 2346-2349 (citing [REDACTED]; P385, p.4 (Mladić: “force [...] the Muslim population” to leave) (public)). *See also* AFI-162 (Mladić became a senior member of the VRS in the knowledge and acceptance of the fact that the Bosnian Serb leadership’s policy entailed massive forcible and permanent removal of the non-Serb population from Serb-claimed territory); AFI-163 (Mladić transformed the Bosnian Serb leadership’s strategic goals into operational imperatives for the VRS) (**uncited**). *But see* Judgement, para.2335 (unreasonably finding only that “Mrkšić and Mladić may also have shared the alleged common criminal purpose”). *See also* Exh.P2989, p.4 (**uncited**).

<sup>215</sup> Judgement, paras.2347, 2350-2351 (Simatović attended a meeting with Mladić and others to plan the implementation of Operation Udar, which was covered by Mladić’s criminal order (Exh.P385 (public))).

<sup>216</sup> *See* Annex A.

<sup>217</sup> *See* Judgement paras.1998, 2003-2006, 2011, 2060, 2067, 2072, 2084.

<sup>218</sup> *See* Ground 3.

<sup>219</sup> Judgement, paras.795, 804-805, 2333.

1995.<sup>220</sup> By July 1994, Milošević stated in a meeting with fellow JCE members Stanišić, Mladić, Martić and others that Serbia had spent approximately 1 billion USD in support of Serb Forces.<sup>221</sup>

90. One of the Accused's earliest contributions to the common purpose in BiH illustrates the manner in which criminal conduct and ethnic cleansing were intertwined with the takeover of the municipalities.<sup>222</sup> In 1992, the Accused organised the involvement of the Unit to support the takeovers of the municipalities of Bosanski Šamac and Doboj, collaborating with other groups whose stated aims were ethnic cleansing.<sup>223</sup> Simatović personally briefed the Unit members deployed to Bosanski Šamac.<sup>224</sup> The Accused trained, financed and equipped Unit members for these operations,<sup>225</sup> and the training of Unit members deployed to Doboj included training in the use of criminal techniques (human shields).<sup>226</sup> Unit members subsequently participated in the ethnic cleansing of non-Serbs from Bosanski Šamac and Doboj.<sup>227</sup> The Accused used many of the Unit members who committed crimes in Bosanski

<sup>220</sup> [REDACTED]. *See* Judgement, paras.1678, 1704, 1880, 1911-1912 (the Accused supported the Unit comprising locals from Skelani and Bratunac in 1993, and financially and otherwise supported the SDG in 1994 and 1995, including while they were operating in BiH); Exh.P399 (public) (listing of locals from Skelani (Eastern Bosnia) who were incorporated into the Unit for a time). [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. *See also* Exh.D1224, pp.1-3 (public) (listing locals from Bratunac, Eastern Bosnia). [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>221</sup> Exh.P2535, pp.6-7 (**uncited**).

<sup>222</sup> *See also* Judgement, para.2325 (observing that the Bosanski Šamac and Doboj operations resembled other Unit operations in that they involved taking over territory).

<sup>223</sup> Judgement, paras.1084, 1097, 2326.

<sup>224</sup> Judgement, para.1536.

<sup>225</sup> Judgement, paras.1365-1366, 1370, 1421-1422, 1426, 1518, 1534, 1536, 1538, 1600-1602, 2359. The Chamber also found that the Accused organised the training by Unit members of men from the SBWS MUP (including JF-047) at Ležimir camp, and that these men were deployed as part of the Unit to Bosanski Šamac under the command of Srećko Radovanović (a.k.a. Debeli). Although the Judgement refers in certain passages to the training of this group in "May" 1992, this appears in light of JF-047's evidence to be a typographical error for "March": Judgement, paras.1493, 1515-1519, 2255, 2328; *see also* para.1487. On Radovanović's deployment as a Unit member to Bosanski Šamac, *see* Judgement, paras.650, 685, 1534-1536.

<sup>226</sup> Judgement, paras.1579, 1600, 2329-2330. The Chamber further found that at least 11 non-Serbs in Doboj were used as human shields by a group of local and non-local Serbs in camouflage uniforms, some of whom wore red berets (although the Chamber did not find that the evidence clearly established the perpetrators were Unit members). The non-Serbs were shot or otherwise killed as a direct result of their mistreatment. *See* Judgement, paras.697-704.

<sup>227</sup> Judgement, paras.615, 990, 1086, 1099, 1111, 1247, 1252, 2359.

Šamac and/or Doboj in subsequent operations, including in Skelani in 1993 as part of Operation Udar.<sup>228</sup>

91. The “Accused must have known” in 1992 “that Unit members committed crimes in Bosanski Šamac”,<sup>229</sup> such that it “may have been reasonably foreseeable” that “Unit members would commit crimes in Doboj municipality in 1992”,<sup>230</sup> as they did. Nonetheless, the Accused deployed the Unit to Doboj all the same.<sup>231</sup>

92. The evidence further shows that the Accused contributed to the implementation of the common criminal purpose in BiH by using Arkan and the SDG to facilitate the takeovers of Bijeljina and Zvornik in 1992 and by arming, equipping and supporting the Zvornik TO in the takeover of Zvornik in 1992.<sup>232</sup> For example, as in relation to SAO Krajina and SAO SBWS, Stanišić worked with the Association of Serbs and Emigrants of Serbia to send arms to Serb Forces in BiH, and collaborated with JCE member Bogdanović.<sup>233</sup> Stanišić deployed SDB operatives to supply weapons for the Zvornik TO,<sup>234</sup> as he had done in SBWS, and Bogdanović coordinated with SDB operative Kostić in the weapons distribution.<sup>235</sup> One of these operatives, Marko Pavlović, was appointed commander of the Zvornik TO,<sup>236</sup> and led the TO in deporting thousands of non-Serbs.<sup>237</sup> In Bijeljina, the SDG committed numerous crimes, as they had done in SBWS. A few days later, the Accused deployed the SDG to Zvornik, where the same pattern was repeated yet again. As a result of the takeovers, many non-Serbs were killed or fled.<sup>238</sup> This evidence is discussed further in Ground 3 of the Prosecution appeal.

<sup>228</sup> See Judgement, paras.1533-1536, 1597, 1600, 1998, 2002, 2005, 2055, 2326. See also e.g. Judgement, paras.747-748 (Unit member Davor Subotić commanded attacks on villages in Doboj municipality and subsequently was deployed to Operation Pauk). See further Annex A.

<sup>229</sup> Judgement, para.2323.

<sup>230</sup> See Judgement, para.2326; see also paras.2323, 2353 (incorporating *mens rea* findings and discussions concerning Stanišić and the crimes committed by the Unit).

<sup>231</sup> Judgement, para.2323. Simatović was also a regular presence at the Pajzoš and Mount Ozren camps from which the operations in Bosanski Šamac and Doboj were launched. See Judgement, para.1516, 1518, 1583 (noting evidence).

<sup>232</sup> See Ground 3.

<sup>233</sup> See below paras.235-236, 238.

<sup>234</sup> See Judgement, paras.2276, 2284; [REDACTED]; JF-026, T.9684, T.9704-9705, T.9738, T.9873 (public); [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>235</sup> See below paras.235-236, 238.

<sup>236</sup> Judgement, para.2270.

<sup>237</sup> See Judgement, paras.928, 931, 935, 947, 1213-1224, 1231-1236.

<sup>238</sup> See below Ground 3.

93. On 19 November 1992, JCE member Mladić ordered the Drina Corps in the wider Podrinje region to “force [the enemy] to leave the Birač, Žepa and Goražde areas together with the Muslim population.”<sup>239</sup> [REDACTED].<sup>240</sup> By virtue of the Accused’s functions, activities and contacts, the Accused would at least “have been aware” of Mrkšić and Mladić’s criminal intent.<sup>241</sup>

94. Nonetheless, the Accused deployed the Unit to Skelani in Operation Udar despite knowing both of Mrkšić and Mladić’s intent, and the Unit’s history of criminal conduct at Bosanski Šamac and Doboj.<sup>242</sup>

95. The Accused made various other contributions to the implementation of the common criminal purpose in BiH, including:

- organising logistical support and weapons, ammunition and fuel for the Brčko training camp run by the Unit, and organising the Unit’s involvement in operations in the Brčko corridor in June 1992;<sup>243</sup>
- organising training, and financial and logistical support, at the Bratunac training camp run by the Unit, and organising the Unit’s involvement in operations undertaken from the Bratunac camp in 1993, as part of Operation Udar;<sup>244</sup>
- organising in 1994 the involvement of the JATD in Operation Pauk;<sup>245</sup>
- Simatović organising the involvement of the SDG in Operation Pauk;<sup>246</sup>
- financing the involvement of the SDG in Banja Luka/Sanski Most in 1995;<sup>247</sup>
- supplying the Skorpions with ammunition during its participation in the Treskavica/Trnovo operation in 1995;<sup>248</sup>

<sup>239</sup> Exh.P385, p.5 (cited in Judgement, paras.2324, 2347).

<sup>240</sup> [REDACTED].

<sup>241</sup> Judgement, paras.2324, 2335. *But see above* fn.214.

<sup>242</sup> Judgement, para.2324.

<sup>243</sup> Judgement, paras.1569-1571.

<sup>244</sup> Judgement, paras.1699, 1702-1704.

<sup>245</sup> Judgement, para.2011.

<sup>246</sup> Judgement, para.2010.

<sup>247</sup> Judgement, para.1880.

<sup>248</sup> Judgement, para.2068.

- Simatović organising the involvement of the SDG in the Treskavica/Trnovo operation in 1995;<sup>249</sup> and
- supporting the involvement of the SDG in the Treskavica/Trnovo operation by embedding a JATD liaison officer with the SDG.<sup>250</sup>

96. Through these activities, the Accused organised the training of various armed groups in the period 1991-1995, including the VRS, the Skelani TO, and paramilitary groups “Karaga’s men” and the “Miće group”.<sup>251</sup> These groups were used by the JCE members as part of the Serb Forces employed to implement the common criminal purpose on the ground.

97. The Accused must have come to know of the “crimes committed in 1991 and 1992 in the SAO SBWS, Bijeljina and Zvornik”, such that “it was reasonably foreseeable to the Accused” by 1995 “that the SDG would commit murders in Sanski Most municipality”.<sup>252</sup> Nonetheless, as recalled above, the Accused financed Arkan and the SDG in the Banja Luka operation in 1995.<sup>253</sup> Furthermore, as argued in Ground 3, the evidence shows that the Accused facilitated the deployment of Arkan and the SDG in Sanski Most, even with that knowledge.

98. Much of the direct contact with Arkan was made through Simatović: they were in “regular telephone contact” both during Operation Pauk and the Treskavica/Trnovo operation.<sup>254</sup> These were operations for which Simatović had organised the involvement of the SDG.<sup>255</sup> The evidence also shows that Simatović maintained the same level of contact with Arkan during the Banja Luka/Sanski Most operation.<sup>256</sup> Stanišić’s knowledge and approval of Simatović’s dealings with Arkan

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<sup>249</sup> Judgement, para.2039.

<sup>250</sup> Judgement, para.2037.

<sup>251</sup> Judgement, paras.1493, 1539, 1571, 1604, 1680, 1705, 1719, 2328.

<sup>252</sup> Judgement, para.2333.

<sup>253</sup> Judgement, para.2333.

<sup>254</sup> Judgement, paras.2005, 2035. For the Trnovo operation, DB operative Vasilje Mijović was also embedded with the SDG as a liaison: Judgement, paras.2035, 2037.

<sup>255</sup> Judgement, paras.2010, 2039. For the Trnovo operation, in addition to finding that Simatović “organised” the involvement of the SDG, the Chamber also found that both Accused “supported the involvement” of the SDG: Judgement, para.2037.

<sup>256</sup> See Judgement, para.1863.



is demonstrated by his authorization of financial, logistical and material support to the SDG throughout this period.<sup>257</sup>

99. The Accused's conduct in 1995 also shows at least two areas in which the Accused and Karadžić worked hand-in-glove, corroborating their shared intent:

- At the very least, Karadžić invited the assistance of the SDG in Banja Luka/Sanski Most in 1995.<sup>258</sup> This assistance was financed by the Accused.<sup>259</sup>
- Karadžić requested the assistance of Arkan and the SDG in the Treskavica/Trnovo operation in 1995, yet this request was facilitated by Simatović, who organised the involvement of the SDG at Trnovo.<sup>260</sup> The Accused also supported the involvement of the SDG in the operation by embedding a JATD liaison officer with the SDG.<sup>261</sup>

## 5. Conclusion

100. In correcting the Chamber's legal errors and giving due consideration to the elements of JCE and the evidence in its totality, the Appeals Chamber should find that:

- a common criminal purpose<sup>262</sup> existed to forcibly and permanently<sup>263</sup> remove the majority of non-Serbs from large areas of Croatia and BiH, through the commission of murder, deportation, forcible transfer and persecution;
- members<sup>264</sup> of this JCE included (in addition to the Accused) at least Milošević, Martić, Babić, Hadžić, Karadžić, Mladić, Kadijević, Badža, and

<sup>257</sup> See Judgement, paras.1880, 1911-1912, 2068 (finding that the Accused financed SDG involvement in Banja Luka, financed the SDG otherwise in the period 1994-1995, provided other support to the SDG in the period 1994-1995 in the form of medical care, and supplied ammunition and uniforms to the SDG during operations in SBWS in 1995).

<sup>258</sup> Judgement, para.1879.

<sup>259</sup> Judgement, paras.1880, 2333. See also Judgement, para.1874.

<sup>260</sup> Judgement, para.2039.

<sup>261</sup> Judgement, para.2037.

<sup>262</sup> *Krajišnik* AJ, para.188.

<sup>263</sup> The only reasonable inference is that the Accused had the intent to permanently remove a majority of the non-Serb population. However, proof of intent to *permanently* displace is not legally required for the crimes of deportation or other inhumane acts (forcible transfer): see *Stakić* AJ, paras.307, 317.

<sup>264</sup> *Stakić* AJ, paras.64, 69; *Krajišnik* TJ, paras.884, 1086.

Arkan. These members controlled Serb Forces, whom they used to commit crimes to further the common criminal purpose;<sup>265</sup>

- the Accused significantly contributed to the implementation of the common criminal purpose;<sup>266</sup> and
- the Accused shared the intent to further the common criminal purpose.

101. The common criminal purpose is demonstrated by the evidence discussed in Section II.D (paras 44-99) above and the Chamber's numerous findings about crimes in Volume I of the Judgement. These findings, coupled with the evidence prove beyond reasonable doubt that the common purpose was pursued through the commission of crimes enumerated in Articles 3 and 5 of the Statute.<sup>267</sup> The core crimes necessary to the implementation of the common purpose were persecution, murder, deportation, and inhumane acts (forcible transfer). The pattern of attacks and accompanying criminality, from the start of the common purpose in April 1991 and throughout the Indictment period, evidences beyond reasonable doubt that these criminal means formed part of the common purpose. JCE members accepted the commission of these serious crimes in the implementation of the common purpose.

102. The implementation of the common purpose necessarily required the combined and coordinated efforts of the JCE members and the Serb Forces under their command or control. Members of the Serb Forces perpetrating the crimes found proven by the Chamber were under the control of one or more JCE members:

- Members of the Unit were under the command of Stanišić and Simatović;<sup>268</sup>
- Members of the SAO Krajina police and TO were under the control or command of JCE members Martić<sup>269</sup> and Babić;<sup>270</sup>

<sup>265</sup> See below para.102.

<sup>266</sup> See above 54, 57, 59-62, 70, 73-77, 85, 89-92, 94-96, 99.

<sup>267</sup> *Krajišnik* TJ, para.1090.

<sup>268</sup> Judgement, paras.1421-1422, 1426, 1445, 1489-1490, 1536, 1569, 1601, 1677, 1703, 2318. Cf. Judgement, para.2335

<sup>269</sup> See Judgement, paras.2137-2138, 2152, 2158, 2162. See also Exhs.P1575, p.174 (in relation to Martić's relationship with the SAO Krajina TO, "MARTIĆ's de facto influence and authority went beyond his de jure powers."); P1123, pp.1-2 (Report to SAO Krajina TO Main Staff dated 16, 17 September 1991, showing Martić issuing orders to the TO concerning operational matters).

<sup>270</sup> See Judgement, paras.155, 271, 325, 1315, 1389, 2111, 2137-2138, 2162, 2164.

- Members of the JNA were under the command or control of JCE members Kadijević, Adžić and Milošević;<sup>271</sup>
- Members of the SAO SBWS TO and police were under the command of Hadžić<sup>272</sup> and Badža;<sup>273</sup>
- Members of the SNB were under Hadžić's command;<sup>274</sup>
- Members of the SDG were commanded by Arkan;<sup>275</sup>
- Members of the SDS, and SDS-linked groups such as the SOS, were led by Karadžić;<sup>276</sup>
- Members of the TOs in BiH were controlled and influenced by Karadžić;<sup>277</sup>
- The RS MUP in BiH was controlled by JCE member Mićo Stanišić, who was Minister of the Interior;<sup>278</sup>
- Šešelj's Men, or the SRS volunteers, followed the President of the SRS, JCE member Šešelj;<sup>279</sup>

<sup>271</sup> See AFIII-36 (**uncited**); Exh.P1575, pp.146 (describing Kadijević as the "Federal Secretary for People's Defence (SSNO)"), 147 ("During these meetings, MILOŠEVIĆ and JOVIĆ at several occasions gave KADIJEVIĆ instructions on the use of the SFRY Armed forces"), 157 (showing Adžić as "Chief of the General Staff of the JNA")

<sup>272</sup> See Judgement, para.2232 (Hadžić formed the SAO SBWS TO and police). See also Judgement, paras.409-411, 416 (evidence showing Hadžić had the authority to decide who should be detained in the Dalj police station); Judgement, paras.2221, 2224-2225, 2239, 2248 (evidence regarding Hadžić's role in the establishment and support for the police and TO); Exhs.P1575, pp.242-243 (Hadžić became SAO SBWS president in February 1992, with power to appoint the RSK TO commander); P1239, p.2 (**uncited**).

<sup>273</sup> Judgement, para.2253 (beginning in August or September 1991). See also Judgement, paras.2239, 2241-2244.

<sup>274</sup> [REDACTED]. See also Judgement, para.441 (evidence showing Hadžić advising SNB members who were committing crimes).

<sup>275</sup> See Exhs.P1575, p.7; P1078, p.1; [REDACTED]. See also Ground 3 (asserting that the Accused controlled Arkan).

<sup>276</sup> See AFI-108 (Karadžić was President of the SDS) (**uncited**).

<sup>277</sup> Regarding Zvornik TO, commanded by Marko Pavlović (Judgement, para.2270), see Judgement, paras.1231, 2270 (Pavlović was appointed TO commander by local SDS President Branko Grujić); AFI-108 (Karadžić was President of the SDS) (**uncited**). See also Ground 3 (Pavlović was a DB operative used by the Accused); Judgement, paras.2271, 2285. Regarding Bijeljina and Sanski Most TOs, see AFIV-247 (**uncited**), AFIV-248 (**uncited**), AFIV-269 (**uncited**) (Karadžić exercised control and influence over the TOs through local crisis staffs and/or the VRS).

<sup>278</sup> See Donia, Exh.P939, p.72 (**uncited**).

<sup>279</sup> See Exh.P1575, pp.108-109.

- Members of the VRS were under the command of JCE members Mladić and Karadžić;<sup>280</sup> and
- The Skorpions, in the Trnovo operation, were under the operational command of the VRS, commanded by Mladić and Karadžić.<sup>281</sup>

JCE members used these forces to implement the common criminal purpose.

103. The Accused and the other JCE members knew of the commission of crimes during the ethnic cleansing campaign.<sup>282</sup> Nevertheless, the Accused provided manpower, training, weapons, equipment and financial support to the JCE members and their forces that were conducting the campaign of ethnic cleansing in Croatia and BiH, and by sending their Unit to participate in the campaign.<sup>283</sup> They thereby made significant contributions to the implementation of the common criminal purpose.

104. Considered in its totality, the evidence establishes beyond a reasonable doubt that from no later than April 1991, Stanišić and Simatović shared the intent of the common criminal purpose.

105. The Appeals Chamber should therefore correct the Chamber's legal errors; review the relevant findings of the Chamber, apply the correct legal standard to the evidence on the record; and convict the Stanišić and Simatović on all counts in the Indictment for the crimes of murder, deportation, inhumane acts (forcible transfer) and persecution that the Chamber found proven.

**E. Sub-Ground 1(C): The Chamber erred in fact in finding that Stanišić and Simatović did not share the common criminal purpose of the JCE**

106. In addition, or in the alternative, the Chamber erred in fact in finding that Stanišić and Simatović did not share the intent to further the common criminal purpose of forcibly and permanently removing the majority of non-Serbs from large areas of Croatia and BiH, through the commission of murder, deportation, forcible

<sup>280</sup> See Exh.P1575, p.12; AFIV-150 (**uncited**); AFIV-151 (**uncited**); AFIV-152 (**uncited**); AFIV-153 (**uncited**).

<sup>281</sup> Judgement, para.2031. See See Exh.P1575, p.12; AFIV-150 (**uncited**); AFIV-151 (**uncited**); AFIV-152 (**uncited**); AFIV-153 (**uncited**).

<sup>282</sup> See above paras.70, 72, 81, 82, 86, 91, 93, 97, 98.

<sup>283</sup> See above paras.54, 57, 59-62, 70, 73-77, 85, 89-92, 94-96, 99.

transfer, and persecution.<sup>284</sup> There is no other reasonable explanation for Stanišić's and Simatović's continued substantial contribution to the pattern of displacement of non-Serbs from large areas in Croatia and BiH during a period of five years, in full knowledge that the displacement was done as part of a common criminal purpose.

107. Stanišić and Simatović created, deployed, trained, financed, supplied and supported multiple armed groups and continued supporting them, knowing that they participated in one massive systematic campaign of violence against non-Serbs. The Chamber closed its mind to this conclusion, because it failed to assess these actions of the Accused as contributions to a common criminal purpose, and rather looked at them as contributions to individual crimes.<sup>285</sup> This is a result of the Chamber's failure to make findings on the existence of the common criminal purpose.<sup>286</sup>

108. The findings of the Chamber, and the evidence on the record, establish that the Accused knew of the commission of crimes by the groups they assisted—including the Unit, which they created and was answerable directly to them<sup>287</sup>—and by their fellow JCE members.<sup>288</sup> They knew of the crimes as early as 1991,<sup>289</sup> and they accepted them, as demonstrated by their continued work with and assistance to those groups and JCE members in the years that followed. The Accused also knew, as a consequence of their own functions,<sup>290</sup> that all of these crimes were connected parts of a single, criminal plan: to forcibly and permanently remove non-Serbs from large areas of Croatia and BiH.

109. Knowing of crimes previously committed or of the criminal intent of relevant persons or groups to commit crimes:

<sup>284</sup> See Judgement, paras.2309, 2311-2312, 2314-2336, 2340-2354, 2362-2363.

<sup>285</sup> E.g., Judgement, para.2325 (giving no further consideration to Unit operations on behalf of the Accused in which it did not find that crimes were committed).

<sup>286</sup> See above Ground 1(A).

<sup>287</sup> See Judgement, paras. 1421, 1422, 1445, 1489, 1677.

<sup>288</sup> See e.g. above paras.70-72, 81-82, 91, 93, 97-99. See below Ground 3 (aiding and abetting *mens rea*) with respect to their knowledge of the crimes of the SDG, SAO SBWS TO and police.

<sup>289</sup> Judgement, para.2332.

<sup>290</sup> See Judgement, paras.1279, 1281,1286; [REDACTED]. See also Exh.P630, p.3 (Milošević gave Stanišić “*carte blanche*” by 24 June 1991, revealing Stanišić's heightened *de facto* authority even while he was Deputy Chief of the SDB) (**uncited**).

- the Accused continued to assist Martić and the SAO Krajina police well after they knew of his criminal intent;<sup>291</sup>
- Simatović participated in the attack on Lovinac despite knowing of Martić’s intent for the attack itself to be a crime;<sup>292</sup>
- the Accused deployed the Unit to Doboj despite knowing of the crimes committed by Unit members at Bosanski Šamac,<sup>293</sup> and deployed the Unit to Skelani in Operation Udar despite knowing both of Mrkšić and Mladić’s intent, and the Unit’s history of criminal conduct at Bosanski Šamac and Doboj;<sup>294</sup>
- the Accused financed Arkan and the SDG in the Banja Luka operation in 1995 despite knowing of crimes committed by the SDG in SBWS in 1991, and in Bijeljina and Zvornik in 1992.<sup>295</sup>

110. Viewing this consistent pattern of conduct as a whole, rather than in isolation as the Chamber did, no reasonable trial chamber could have concluded that the intent of the Accused was limited to asserting or maintaining the Serbs’ “exclusive control”<sup>296</sup> over “large areas of Croatia and Bosnia-Herzegovina”.<sup>297</sup> The only reasonable conclusion is that they shared the criminal intent with the other JCE members.

111. Their shared intent is further the only explanation for their close cooperation with the key JCE members in all three regions.

112. As set out above, the implementation of the common criminal purpose started in the SAO Krajina, setting the pattern for SBWS and BiH. In the SAO Krajina Milan Martić was central to each stage of the implementation of the common criminal purpose in that region.<sup>298</sup> The Chamber found that Martić had the intent to deport non-

<sup>291</sup> Judgement, paras.2331-2332.

<sup>292</sup> Judgement, paras.2340, 2354.

<sup>293</sup> Judgement, para.2323, 2326.

<sup>294</sup> Judgement, paras.2324, 2326, 2351.

<sup>295</sup> Judgement, para.2333.

<sup>296</sup> Judgement, paras.2325.

<sup>297</sup> *Contra* Judgement, paras.2325-2326, 2330, 2332-2334, 2351, 2353-2354.

<sup>298</sup> *E.g.*, Judgement, paras.2152 (creation of police), 2151 (raising of the barricades in August 1990). *See also* Judgement, para.2111. For Martić’s leadership position, *see* Judgement, para.2153. *See also* Judgement, paras.2117, 2137-2138

Serbs from the SAO Krajina, but failed to find that this intent was shared by the Accused.<sup>299</sup> This conclusion is unreasonable on the basis of the Chamber's findings alone, since continued contribution to SAO Krajina Police in the knowledge that their leader Martić intended to deport non-Serbs, suffices to show that the Accused shared Martić's criminal intent.<sup>300</sup> All of the relevant findings were made by the Chamber. It established that:

- the Accused "cooperated closely" with Martić;<sup>301</sup>
- the Accused collaborated with Martić from April 1991 onwards in full "knowledge and acceptance of the risk" that Martić and "the SAO Krajina police would commit crimes when establishing and maintaining Serb control over large areas of Croatia",<sup>302</sup> and
- the Accused "must have known about the crimes committed by the SAO Krajina police between April 1991 and April 1992".<sup>303</sup>

113. The Chamber's alternative explanation that the Accused only intended to assist local SAO Krajina authorities in establishing and maintaining Serb control over large areas of Croatia,<sup>304</sup> is unreasonable in light of the Accused's continued cooperation with Martić over the months and years in knowledge of his criminal intent and criminal conduct.<sup>305</sup>

114. Simatović's dealings with Martić in Lovinac provided further evidence that he shared the intent to further the common criminal purpose. As noted above, the Chamber found that Simatović was present when Martić and Babić planned the attack on Lovinac, in which Martić's criminal intent was clear.<sup>306</sup> Freely participating in the attack in the knowledge of the criminal intent behind it, evidences that Simatović shared this criminal intent, regardless of whether the attack was actually successful.<sup>307</sup>

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<sup>299</sup> Judgement, paras.2332, 2335.

<sup>300</sup> See *Krajišnik* AJ, para.171.

<sup>301</sup> Judgement, para.2332.

<sup>302</sup> Judgement, para.2332.

<sup>303</sup> Judgement, para.2332.

<sup>304</sup> Judgement, para.2332.

<sup>305</sup> See Judgement, paras.2327, 2331, 2340-2341.

<sup>306</sup> See Judgement, paras.335, 2340-2341, 2354.

<sup>307</sup> See *however* Judgement, para.2354.

115. The Accused's shared intent for crimes in the SAO Krajina is confirmed by their close cooperation with Milan Babić,<sup>308</sup> the other key JCE player in the SAO Krajina, who admitted his criminal intent.<sup>309</sup>

116. That the Accused shared the intent to implement the common plan not only in the SAO Krajina, but also in the SAO SBWS is evident from, in particular, Stanišić's close relationships with Arkan<sup>310</sup> and Hadžić,<sup>311</sup> the focal points for the implementation of the common criminal purpose in SBWS.<sup>312</sup> The findings and evidence demonstrating the continuing relationship between the Accused and Arkan from 1991 to 1995, together with the findings of Arkan's serial commission of crimes in this same period, further support a finding that they shared a common criminal intent. Even accepting the Chamber's analysis that the relationship between the Accused and Arkan was not as close in 1991-1992 as it was in 1994-1995,<sup>313</sup> the knowing decision to embrace a closer relationship is consistent only with their mutual agreement. The criminal intent at the root of their connection is further corroborated by Simatović's role in organising Arkan and the SDG's deployment to Treskavica/Trnovo on behalf of another JCE member, Karadžić, in 1995,<sup>314</sup> as well as Arkan's willing engagement in ethnic cleansing in 1992 at the invitation of JCE member Plavšić.<sup>315</sup> In SBWS in 1991-1992, Arkan also worked closely with

<sup>308</sup> E.g., Judgement, paras.335 (finding that Simatović and Babić discussed the objective of the attack on Lovinac as, *inter alia* "to have as much of the local population leave as possible in order to establish a purely Serb territory"), 2354 (Simatović was aware of and may have shared the intent to remove Croat civilians from Lovinac); Babić, Exh.P1878, pp.58-59, 136-137, 192, 201-203 (discussing meetings between the Accused and Babić, including one among Stanišić, Simatović, Karadžić, Martić and Babić regarding where Serb control needed to be established).

<sup>309</sup> Exh.P2057, paras.3, 18, 31(plea agreement freely and voluntarily acknowledging that Babić "is in fact guilty as a co-perpetrator of the joint criminal enterprise" that included the Accused) (**uncited**).

<sup>310</sup> See below Ground 3.

<sup>311</sup> E.g. Judgement, paras.2222, 2248, 2298, 2314. See also Bogunović, T.5972-5975, 5997 (public), Exhs.P553, para.26 (public), P554, paras.11-15, 18 (public); [REDACTED]. See also Ground 3 (regarding Hadžić's collaboration with Stanišić's trusted subordinate DB operatives, further evidence of Stanišić's connections to Hadžić).

<sup>312</sup> Hadžić headed the Serb parallel government structures from early 1991. E.g., Bogunović, Exh.P553, para.7 (public); Exh.P16 (public) (**uncited**); Exh.P1115, p.4 (public) (**uncited**). See above Ground 1 and below Ground 3 (describing the key role of Arkan and the SAO SBWS TO and police in furthering the common purpose in SAO SBWS).

<sup>313</sup> In dismissing evidence of Stanišić's contributions to the SDG's 1991-1992 crimes, the Majority stated repeatedly, "the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding". See Judgement, paras.1789, 1791, 1800, 1839-1840, 1857-1860.

<sup>314</sup> Judgement, para.2039.

<sup>315</sup> Judgement, para.1858. See also Judgement, para.1840 (noting evidence of a relationships between Arkan and Milošević and Arkan and JCE member Bogdanović, but not considering it "conclusive").



Hadžić,<sup>316</sup> who in turn maintained a close relationship with Stanišić. Like Arkan, Hadžić shared the intent to further the common criminal purpose, as evidenced by the arbitrary fashion in which he exercised powers of life and death over non-Serbs in SBWS, including through his personal security unit, the SNB.<sup>317</sup>

117. The Accused also shared the intent to continue the implementation of the common criminal plan in BiH as shown by their continued contribution to the crimes in BiH and their close cooperation with Karadžić, the leading JCE member for this region.<sup>318</sup> Simatović facilitated Karadžić's request of assistance by Arkan and the SDG in the Treskavica/Trnovo operation in 1995, and organised the involvement of the SDG at Trnovo.<sup>319</sup>

118. Stanišić's shared intent is further evident from an intercepted telephone conversation between Karadžić and Stanišić on 22 January 1992, which the Chamber interpreted in isolation and out of context.

119. In this telephone conversation Stanišić remarked "we'll exterminate them completely".<sup>320</sup> This was a conversation in which Karadžić informed Stanišić that they had had talks with the Croats who were also worried about the plebiscite and a sovereign Bosnia-Herzegovina. Karadžić told Stanišić that with elasticity and goodwill Serbs and Croats could settle their disagreement, otherwise, they would be in for thirty years of torture. Stanišić then said: "With killings." and continued: "No. We'll then have to push them to go to Belgrade, you know! [...] There is nothing else left for us to do. [...] Or we'll exterminate them completely so let's see where we'll end up." Karadžić agreed. Stanišić added: "No, if they want it, they'll have it. Then they'll have an all-out war. [...] Better do it like decent people".<sup>321</sup>

120. The Chamber considered this remark to be "too vague" as an expression of Stanišić's shared intent. Only when looked at out of context can this statement be considered "too vague". When looked at it in the context of the common criminal purpose and the evidence which shows that Karadžić possessed the intent to further

<sup>316</sup> See Judgement, para.1782. See also [REDACTED]; N.Bogunović, T.13295 (public); [REDACTED]; Exh.P1077, p.3 (**uncited**) (public).

<sup>317</sup> See above para.69. See also Judgement, paras.576-578, 1049, 1052, 1054.

<sup>318</sup> See above paras.89-99.

<sup>319</sup> Judgement, para.2039.

<sup>320</sup> Exh.P690, p.7 (public); Judgement, para.2307. See above Ground 1(B).

the common criminal purpose and that Stanišić knew of it, Stanišić's remark is only compatible with the conclusion that he shared the intent to further the common criminal purpose.

121. Stanišić clearly monitored Karadžić's public statements and was thus aware of his intent. [REDACTED].<sup>322</sup> [REDACTED].<sup>323</sup> In this Assembly session, Karadžić had spoken about the situation in BiH, predicting the deaths of several hundred thousand people, complete destruction of several hundred towns and massive population displacements.<sup>324</sup> [REDACTED], Karadžić had distributed the Variant A/B instructions for the Serb takeover of municipalities.<sup>325</sup> This was not the first time Karadžić had expressed such views. On 14 October 1991, for example, he had stated in an RS Assembly session that:

This is the road you want Bosnia and Herzegovina to take, the same highway of hell and suffering that Slovenia and Croatia went [through]. Don't think you won't take Bosnia and Herzegovina to hell and Muslim people [to] possible extinction. Because, Muslim people will not be able to defend itself if it comes to war here!<sup>326</sup>

Similarly, a day later, on 15 October 1991, Karadžić had made an impassioned speech before the Assembly of the SRBH in Sarajevo, indicating the possibility that Bosnian Muslims could disappear as a group if they declared the independence of the SRBH from the SFRY.<sup>327</sup> In November 1991, Karadžić urged SDS members to impose complete Bosnian Serb authority in their respective municipalities, regions, and local communities.<sup>328</sup>

122. In this context, Stanišić's remark can only reasonably be understood as sharing Karadžić's intent.

123. That the Accused shared the intent for the entire common plan, spanning all three regions, is further evident from the frequent movement of SDB operatives

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<sup>321</sup> Exh.P690, pp.5-7.

<sup>322</sup> [REDACTED]. *See* Judgement, para.2295 (fn.4916).

<sup>323</sup> [REDACTED].

<sup>324</sup> Exh.P1483, p.87 (public).

<sup>325</sup> [REDACTED]. *See also* Exh.P2512 (public) (**uncited**).

<sup>326</sup> Exh.P940, pp.1-2 (**uncited**).

<sup>327</sup> AFI-108 (**uncited**).

<sup>328</sup> AFI-116 (**uncited**).

across borders between all three regions and the FRY.<sup>329</sup> Given the Accused's authority over the SDB and the Unit/JATD, such a sophisticated criminal operation would not have been possible without the Accused's volition. Similarly, the Unit, the group under the Accused's direct control, could not have moved between the Croatia, BiH and Serbia<sup>330</sup> had the Accused not shared the intent to implement the common criminal purpose in all three regions.

124. That the Accused shared the intent to further the common criminal purpose from its inception, no later than April 1991, is evident from their involvement already in the preparation for the ethnic cleansing campaign. As described above, Stanišić and Simatović contributed extensively to the creation and support of Serb Forces in Croatia, as part of the setting up of parallel structures, including the establishment of training facilities and the formation of the Unit.<sup>331</sup>

125. In light of the above, no reasonable trial chamber could have found that Stanišić and Simatović did not share the intent to further the common criminal purpose.

## **F. REMEDY**

126. The Prosecution requests that the Appeals Chamber:

- (a) overturn the acquittals of Stanišić and Simatović; and
- (b) apply the correct legal standards to the evidence and find:
  - (i) that a common criminal purpose existed to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina through the commission of persecutions, murder, deportation and inhumane acts (forcible transfer);
  - (ii) that Stanišić and Simatović, together with others, shared the intent to further this common criminal purpose; and

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<sup>329</sup> See Annex A.

<sup>330</sup> See Annex A.

<sup>331</sup> See above paras.54, 56-63, 73-77, 89-99.

- (iii) that through their acts and omissions, as found by the Chamber in its Judgement and, in addition, as set out in Ground 3, Stanišić and Simatović made significant contributions to the common criminal purpose; and
- (c) convict Stanišić and Simatović under Article 7(1) of the Statute based on their participation in and contributions to the JCE alleged in the Indictment for the following crimes:
  - (i) persecutions through murder, deportation, and other inhumane acts (forcible transfer) as a crime against humanity (Count 1);
  - (ii) murder as a crime against humanity (Count 2);
  - (iii) murder as a violation of the laws or customs of war (Count 3);
  - (iv) deportation as a crime against humanity (Count 4); and
  - (v) inhumane acts (forcible transfer) as a crime against humanity (Count 5); and
- (d) sentence Stanišić and Simatović accordingly.

127. Alternatively, the Appeals Chamber should exercise its discretion to remand the case to a bench of the Tribunal to apply the correct legal standards to the trial record, and to determine the liability of Stanišić and Simatović as alleged in the Indictment.

### **III. GROUND TWO: STANIŠIĆ AND SIMATOVIĆ AIDED AND ABETTED THE CRIMES IN BOSANSKI ŠAMAC, DOBOJ AND IN THE SAO KRAJINA**

#### **A. Overview**

128. The Chamber erroneously acquitted Stanišić and Simatović of aiding and abetting the crimes in the municipalities of Bosanski Šamac, Doboj and in the SAO Krajina.

129. The Chamber erred in law in requiring that the acts of the aider and abettor be *specifically directed* to assist the commission of the crime. This requirement introduced by the *Perišić* Appeal Judgement has no basis in the law of the Tribunal and the Appeals Chamber should depart from it. Had the Chamber not so erred, it would have concluded, based on its findings alone, that the *actus reus* of aiding and abetting is met with regard to the crimes in Bosanski Šamac and Doboj. The evidence on the record further establishes that the Accused possessed the *mens rea* for aiding and abetting these crimes.

130. In addition and/or in the alternative, the Chamber erred in fact because no reasonable trial chamber could have found that Stanišić and Simatović did not aid and abet the crimes in Bosanski Šamac, Doboj and the SAO Krajina. Even if specific direction is a requirement of aiding and abetting, no reasonable trial chamber could have found that the acts of the Accused were not specifically directed to these crimes. No reasonable trial chamber could further have concluded that the acts of the Accused did not have a substantial effect on the commission of these crimes. The evidence on the record establishes that the Accused possessed the *mens rea* of aiding and abetting these crimes.

#### **B. Sub-Ground 2(A): The Chamber erred in law with respect to the *actus reus* requirement for aiding and abetting**

131. In acquitting Stanišić and Simatović of aiding and abetting the crimes in Bosanski Šamac and Doboj, the Chamber erred in following the *Perišić* Appeal Judgement and requiring proof that Stanišić and Simatović's acts be *specifically*

*directed* to assist, encourage or lend moral support to the perpetration of the crimes (“specific direction”).<sup>332</sup>

1. There are cogent reasons to depart from the requirement of specific direction

132. Specific direction has no basis under customary international law. It conflicts with the prior case-law of the ICTY and ICTR, creates vague concepts, and undermines principles of international humanitarian law. Individually or together, these are cogent reasons in the interests of justice to depart from the *Perišić* Appeal Judgement on specific direction.<sup>333</sup>

(a) Customary international law does not require specific direction as an element of aiding and abetting

133. In adopting a specific direction requirement, the *Perišić* Appeal Judgement added an element to aiding and abetting not found in customary international law.<sup>334</sup>

134. The *Perišić* Appeal Judgement failed to justify the existence of specific direction under customary international law and overlooked the analysis of custom conducted in earlier cases. The Tribunal’s earlier case-law held that specific direction is not an element of aiding and abetting. The *Furundžija* Trial Judgement conducted the Tribunal’s first comprehensive review of the legal elements of aiding and abetting under customary international law approximately 15 years ago.<sup>335</sup> Following an extensive review of post-WWII trials and international instruments, the *Furundžija* Trial Judgement found that the *actus reus* of aiding and abetting consisted only of “practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime” and that the *mens rea* is knowledge.<sup>336</sup> Specific direction was not mentioned as part of aiding and abetting under customary international law.

<sup>332</sup> Judgement, para.1264.

<sup>333</sup> See *Aleksovski* AJ, para.108.

<sup>334</sup> See *Aleksovski* AJ, para.108. The ICTY was mandated to “apply rules of international humanitarian law which are beyond any doubt part of customary law.” Report of the Secretary-General Pursuant to Paragraph 2 of Security General Resolution 808, S/25704, 3 May 1993, para.34.

<sup>335</sup> *Furundžija* TJ, paras.190-249 (noting at para.191 that “[s]ince no treaty law on the subject exists, the Trial Chamber must examine customary international law in order to establish the content of this head of criminal responsibility.”).

<sup>336</sup> *Furundžija* TJ, paras.235, 249.

135. The *Perišić* Appeal Judgement ignored the *Furundžija* Trial Judgement’s analysis and focussed instead on the use of the phrase “specific direction” in the *Tadić* Appeal Judgement.<sup>337</sup> A plain reading of the *Tadić* Appeal Judgement, however, reveals that the phrase “specific direction” was used to distinguish aiding and abetting from JCE liability by noting that the former requires a contribution to the crime and the latter a contribution to the common plan or purpose.<sup>338</sup> The *Tadić* Appeal Judgement did not analyze the elements of aiding and abetting under customary international law or specify that “specific direction” was an element of aiding and abetting.<sup>339</sup> Had the *Tadić* Appeal Judgement intended to clarify the elements of aiding and abetting under customary international law as set out in the *Furundžija* Trial Judgement only seven months earlier, it could have done so explicitly, particularly given that Judges Cassese and Mumba were judges on both the *Furundžija* Trial Judgement and the *Tadić* Appeal Judgement.

136. Indeed, approximately four months after the *Tadić* Appeal Judgement was delivered, the *Aleksovski* Appeal Judgement explicitly stated that the formulation of aiding and abetting in *Tadić*:

[W]as in the context of contrasting that liability with the liability of a person charged with acting pursuant to a common purpose or design with another person to commit a crime, and for that reason that judgement does not purport to be a complete statement of the liability of the person charged with aiding and abetting.<sup>340</sup>

The *Aleksovski* Appeal Judgement accepted the *Furundžija* Trial Judgement’s definition of the *actus reus* of aiding and abetting, making no reference to specific direction.<sup>341</sup>

137. None of the ICTY judgements, including *Perišić*, that have reproduced the *Tadić* Appeal Judgement’s contrasting language have explicitly endorsed specific direction as a *requirement* under customary international law.<sup>342</sup> In addition, none of these judgements have departed from the *Aleksovski* Appeal Judgement’s

<sup>337</sup> *Tadić* AJ, para.229.

<sup>338</sup> *Tadić* AJ, para.229.

<sup>339</sup> *Tadić* AJ, para.229.

<sup>340</sup> *Aleksovski* AJ, para.163.

<sup>341</sup> *Aleksovski* AJ, paras.162, 164.

<sup>342</sup> *Perišić* AJ, para.29; *Blagojević* AJ, para.127; *Kvočka* AJ, para.89; *Blaškić* AJ, para.45; *Vasiljević* AJ, para.102; *Krnjelac* AJ, para.33; *Kupreškić* AJ, para.254; *Aleksovski* AJ,

endorsement of the aiding and abetting elements articulated in the *Furundžija* Trial Judgement or its contextual understanding of the *Tadić* Appeal Judgement in its use of the phrase “specific direction”. The *Perišić* Appeal Judgement’s interpretation of the *Tadić* Appeal Judgement is contrary to the explanation in the *Aleksovski* Appeal Judgement, yet provides no cogent reasons for such departure. Its adoption of specific direction as an element of aiding and abetting is also contrary to the analysis of customary international law in the *Furundžija* Trial Judgement. Insistence on a specific direction requirement was only achieved by the *Perišić* Appeal Chamber by excluding from their analysis the relevant discussions from these two judgements.<sup>343</sup> The Appeals Chamber should now depart.

(b) The “specific direction” requirement ignores and conflicts with the prior case-law of the Appeals Chamber

138. The *Perišić* Appeal Judgement mischaracterised prior Tribunal case-law when establishing specific direction as an element of aiding and abetting.<sup>344</sup> The mischaracterisation provides cogent reasons in the interests of justice to depart from its holding on specific direction.<sup>345</sup>

139. The *Perišić* Appeal Judgement begins by overstating the significance of the phrase “specific direction” as used in the *Tadić* Appeal Judgement.<sup>346</sup> As discussed above, the *Aleksovski* Appeal Judgement clarified that the phrase “specific direction” in the *Tadić* Appeal Judgement did not import a new element into the test for aiding and abetting. In paragraphs 162 and 164 of the *Aleksovski* Appeal Judgement, the elements of aiding and abetting are set out by first endorsing the *Furundžija* Trial Judgement’s description of the *actus reus* and *mens rea* elements of aiding and abetting and then by noting that aiding and abetting “was extensively considered” in that Trial Judgement.<sup>347</sup> The *Aleksovski* Appeal Judgement recited the language in the *Tadić* Appeal Judgement, noting that *Tadić* sought to contrast aiding and abetting liability with JCE liability and is not “a complete statement of the liability of the

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para.163; *Kalimanžira* AJ, para.74; *Muvunyi* AJ, para.79; *Seromba* AJ, para.139; *Nahimana* AJ, para.482; *Muhimana* AJ, para.189; *Ntagerura* AJ, para.370; *Ntakirutimana* AJ, para.530.

<sup>343</sup> *Perišić* AJ, para.26.

<sup>344</sup> *Perišić* AJ, paras.26-36.

<sup>345</sup> See *Aleksovski* AJ, para.108.

<sup>346</sup> *Perišić* AJ, para.26.



person charged with aiding and abetting.”<sup>348</sup> It found the *Aleksovski* Trial Judgement’s articulation of the law on *actus reus*, which “relied upon the *Furundžija* Judgement”, to be accurate,<sup>349</sup> and endorsed the Chamber’s analysis, which did not use a specific direction test.<sup>350</sup> As mentioned earlier, the *Perišić* Appeal Judgement ignored this part of the *Aleksovski* Appeal Judgement, which expressly contradicted its own interpretation of the *Tadić* Appeal Judgement.<sup>351</sup>

140. The *Perišić* Appeal Judgement also mischaracterised two appeals judgements (*Mrkšić* and *Lukić*) where specific direction was explicitly rejected as an element of aiding and abetting.<sup>352</sup> With respect to the *Mrkšić* Appeal Judgement, the *Perišić* Appeal Judgement erroneously asserted that the *Mrkšić* Appeal Judgement’s rejection of specific direction was a mere “passing reference” and was considered only in the context of the *mens rea* of aiding and abetting.<sup>353</sup> To the contrary, after reviewing the *Blagojević* Appeal Judgement, the *Mrkšić* Appeal Judgement explicitly concluded that specific direction is “not an essential ingredient of the *actus reus* of aiding and abetting.”<sup>354</sup> The *Mrkšić* Appeal Judgement’s rejection of “specific direction” as an *actus reus* requirement was an essential part of its reasoning and not a mere “passing reference” as the issue had to be decided to affirm the appellant’s conviction in that case. The *Mrkšić* Appeal Judgement clearly rejected specific direction in its consideration of the *actus reus* of aiding and abetting, emphasising that, while the issue of specific direction had been raised as a *mens rea* requirement, “Šlivančanin misapprehend[ed] the *mens rea* standard applicable to aiding and abetting.”<sup>355</sup> It then clarified that specific direction is “not an essential ingredient of the *actus reus* of aiding and abetting.”<sup>356</sup>

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<sup>347</sup> *Aleksovski* AJ, para.162.

<sup>348</sup> *Aleksovski* AJ, para.163.

<sup>349</sup> *Aleksovski* AJ, para.164.

<sup>350</sup> *Aleksovski* AJ, paras.168-169.

<sup>351</sup> The *Perišić* Majority only refers to the *Aleksovski* Appeal Judgement when identifying ICTY and ICTR appeal judgements which refer to “specific direction” in enumerating the elements of aiding and abetting. See *Perišić* AJ, para.28 fn.70.

<sup>352</sup> *Perišić* AJ, paras.32-35.

<sup>353</sup> *Perišić* AJ, para.34.

<sup>354</sup> *Mrkšić* AJ, para.159.

<sup>355</sup> *Mrkšić* AJ, para.159.

<sup>356</sup> *Mrkšić* AJ, para.159.

141. The *Perišić* Appeal Judgement also erroneously stated that the *Lukić* Appeal Judgement approved the existence of a specific direction requirement.<sup>357</sup> A plain reading of the *Lukić* Appeal Judgement reveals the opposite. The *Lukić* Appeal Judgement unequivocally affirmed the *Mrkšić* Appeal Judgement’s rejection of specific direction in stating that, “[i]n *Mrkšić and Šljivančanin*, the Appeals Chamber has clarified that ‘specific direction’ is not an essential ingredient of the *actus reus* of aiding and abetting”.<sup>358</sup> The Appeals Chamber also found that “there is no ‘cogent reason’ to depart from this jurisprudence.”<sup>359</sup> Indeed, Judge Liu’s dissent in the *Perišić* Appeal Judgement<sup>360</sup> noted that Judges Güney and Agius both issued separate opinions in *Lukić* expressing their disagreement on this point.<sup>361</sup>

142. Because the *Perišić* Appeal Judgement endorses a specific direction test based on an erroneous understanding of the Tribunal’s case-law, the Appeals Chamber should depart from its holding.

(c) The “specific direction” test introduces vague concepts

143. A third reason to depart from the *Perišić* Appeal Judgement’s specific direction test is that it introduces vague concepts which create uncertainty and practical difficulties.<sup>362</sup>

144. The *Perišić* Appeal Judgement stated that specific direction establishes the concept of a “culpable link” between assistance provided by the aider and abettor and

<sup>357</sup> *Perišić* AJ, para.35.

<sup>358</sup> *Lukić* AJ, para.424.

<sup>359</sup> *Lukić* AJ, para.424.

<sup>360</sup> *Perišić* AJ, Partially Dissenting Opinion of Judge Liu, para.2, fn.6.

<sup>361</sup> *Lukić* AJ, Separate and Partially Dissenting Opinion of Judge Güney, para.11 (“I cannot agree with the reasons offered by the Majority for not departing from the *Mrkšić* Appeal Judgement”); *Lukić* AJ, Separate Opinion of Judge Agius, para.2 (“In my opinion, while the *Mrkšić and Šljivančanin* Appeal Judgement categorically stated that “‘specific direction’ is not an essential ingredient of the *actus reus* of aiding and abetting”, it did not “clarify” the situation at all. Rather, in my view, it appeared to represent a departure from the existing Appeals Chamber jurisprudence regarding specific direction.”(internal reference omitted)).

<sup>362</sup> As noted by the Appeals Chamber in *Aleksovski*, “the fundamental mandate of the Tribunal to prosecute persons responsible for serious violations of international humanitarian law cannot be achieved if the accused and the Prosecution do not have the assurance of certainty and predictability in the application of the applicable law.” *Aleksovski* AJ, para.113(ii).

the crimes of the principal perpetrators but offered no more guidance as to its meaning.<sup>363</sup>

145. Another conceptual ambiguity arising from introduction of the requirement of a “culpable link” is demonstrated by the *Perišić* Appeal Judgement’s application of the specific direction test. Despite stating that “its analysis of specific direction will exclusively address *actus reus*” and that “specific direction is an analytically distinct element of *actus reus*”,<sup>364</sup> in applying the test to remote aiders and abettors, the *Perišić* Appeal Judgement effectively required evidence relevant to the accused’s state of mind.<sup>365</sup> The *Perišić* Appeal Judgement noted the Trial Judgement’s consideration of “extensive evidence suggesting that Perišić knew of crimes being committed by the VRS, especially with respect to Sarajevo.”<sup>366</sup> It reasoned, however, that “[i]ndicia demonstrating that Perišić knew of the VRS Crimes in Sarajevo and Srebrenica may serve as circumstantial evidence of specific direction; however, a finding of specific direction must be the sole reasonable inference after a review of the evidentiary record as a whole.”<sup>367</sup> It then acquitted Perišić of aiding and abetting these crimes because “Perišić’s relevant actions were *intended* to aid the VRS’s overall war effort.”<sup>368</sup>

146. The implication is that, to establish a “culpable link” for a remote aider and abettor, as an *actus reus* element, evidence of the accused’s state of mind is required. The analysis of the *Perišić* Appeal Judgement further suggests that this state of mind needs to be higher than the *mens rea* of knowledge<sup>369</sup> required for aiding and abetting.

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<sup>363</sup> *Perišić* AJ, paras.37-38, 68 fn.201. See also *Perišić* AJ, Joint Separate Opinion of Judges Meron and Agius, para.4 (“The critical issue raised by the requirement of specific direction, regardless of whether it is considered in the context of *actus reus* or *mens rea*, is whether the link between assistance of an accused individual and actions of principal perpetrators is sufficient to justify holding the accused aider and abettor criminally responsible for relevant crimes.”).

<sup>364</sup> *Perišić* AJ, para.48.

<sup>365</sup> See also the separate opinions of three of the four judges comprising the *Perišić* Majority who disagree with specific direction being couched as an *actus reus* requirement: *Perišić* AJ, Joint Separate Opinion of Judges Meron and Agius, para.1 (“While we agree with the analysis and conclusions of the Appeal Judgement, we write separately to address the issue of whether specific direction should be considered as part of the *actus reus* or *mens rea* of aiding and abetting.”); *Perišić* AJ, Opinion séparée du Juge Ramaroson sur la question de la *visée spécifique* dans la complicité par aide et encouragement, para.7 (“Toutefois, comme la frontière avec la *mens rea* me paraît ténue, je ne puis souscrire à l’affirmation selon laquelle la *visée spécifique* est un élément requis de l’*actus reus*, séparé de la *mens rea*”).

<sup>366</sup> *Perišić* AJ, para.68.

<sup>367</sup> *Perišić* AJ, para.68.

<sup>368</sup> *Perišić* AJ, para.60 (emphasis added).

<sup>369</sup> *Perišić* AJ, para.48; *Mrkšić* AJ, para.159.

Indeed, the Appeal Judgement seems to have considered whether Perišić *wanted* the crimes to be carried out.

147. To the extent the *Perišić* Appeal Judgement’s “specific direction” test requires *mens rea* exceeding knowledge, it blurs the distinction between aiding and abetting and JCE liability. If an aider and abettor must specifically direct his or her assistance to a crime (in the sense of wanting it), the difference between an aider and abettor’s state of mind and that of a JCE member who shares the intent for the common criminal purpose becomes difficult to tell.

148. Lastly, the *Perišić* Appeal Judgement created a “proximity” test with new standards for determining criminal responsibility for aiding and abetting to explain prior judgements which did not explicitly apply a specific direction requirement.<sup>370</sup> The proximity test has one standard for “proximate” aiders and abettors for whom explicit consideration of specific direction is not required and another for “remote” aiders and abettors for whom it is.<sup>371</sup> This test is illogical and unfair. For example, if two individuals, one remote and the other proximate, have the same level of knowledge and make the same contributions to the crimes, the “remote” one could be acquitted because of the absence of evidence demonstrating specific direction, while the “proximate” one could be convicted because specific direction can be inferred.

149. These vague concepts make deciding when acts may lead to criminal liability unpredictable and, as reflected in Ground 2(B), has led the Chamber in this case to an unjust result. Accordingly, the Appeals Chamber should depart from the *Perišić* Appeal Judgement’s requirement of specific direction.

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<sup>370</sup> *Perišić* AJ, para.38 fn.100.

<sup>371</sup> *Perišić* AJ, paras.38-40. *See also* *Perišić* AJ, Opinion séparée du Juge Ramaroson sur la question de la *visée spécifique* dans la complicité par aide et encouragement, para.8 (“En conséquence, la Chambre d’appel introduit à mon sens une distinction nouvelle dans le droit de l’aide et l’encouragement en affirmant que dans les cas où l’accusé se trouve loin de la scène de crime, la *visée spécifique* doit être analysée de façon explicite. En vertu du principe *ubi lex non distinguit*, je ne peux souscrire au raisonnement de la Chambre d’appel sur ce point.”).

(d) The “specific direction” requirement undermines respect for international humanitarian law

150. The *Perišić* Appeal Judgement’s specific direction requirement undermines IHL by shielding individuals who knowingly and substantially contribute to the commission of international crimes from criminal liability.

151. The customary international law standard for aiding and abetting provides sufficient safeguards against unreasonable convictions, including in circumstances where the military of one country provides aid to another.<sup>372</sup> Only when an accused’s assistance has a substantial effect on the commission of the crimes and he knows that crimes will *probably* be committed and that his acts will assist, will he be held criminally responsible for aiding and abetting. This standard supports the goals of IHL by encouraging those providing military aid to take reasonable and necessary measures to ensure they are not knowingly contributing to the commission of crimes. Such measures could include requiring the proper and lawful use of equipment and resources, training combatants in the laws of war, channelling money to be used strictly for lawful purposes and implementing proper protocols and procedures for command and control.

152. On the other hand, the *Perišić* Appeal Judgement’s specific direction requirement encourages the provision of broad and general military assistance (including even to armed groups known to commit crimes) and removes the incentive to condition military aid on respect for IHL. The *Perišić* Appeal Judgement effectively excluded “the provision of general assistance which could be used for both lawful and unlawful activities”<sup>373</sup> from culpable conduct, notwithstanding knowledge that the military assistance will probably result in the commission of crimes. The specific direction requirement undermines IHL, providing another cogent reason for departure from the *Perišić* Appeal Judgement.

2. Impact of the legal error

153. Had the Chamber not erred in requiring specific direction, it would have found that Stanišić and Simatović aided and abetted the crimes in Bosanski Šamac and

<sup>372</sup> See *Perišić*, AT.61-63. See also *Perišić* AJ, para.72.

<sup>373</sup> *Perišić* AJ, para.44.

Doboj. The Chamber found that the conduct of the Accused “assisted the commission of the crimes.”<sup>374</sup> The Chamber reasoned, however, that it was unable to conclude that the assistance the Accused rendered to the Unit aided and abetted the crimes, because it was not specifically directed to these crimes.<sup>375</sup> Had it not required specific direction, it would have found, as set out below,<sup>376</sup> that the Accused’s conduct aided and abetted the crimes. This is because the Accused’s conduct substantially contributed to the crimes. Further, the findings made by the Chamber and the evidence on the record show that the Accused possessed the *mens rea* for aiding and abetting the crimes in Bosanski Šamac and Doboj in that they knew of the crimes and knew that their acts would assist their commission.

**C. Sub-Ground 2(B): The Chamber erred in its application of the *actus reus* requirement for aiding and abetting**

154. In addition or in the alternative, the Chamber erred in fact. Even accepting that specific direction constitutes an element of the *actus reus* of aiding and abetting, no reasonable trial chamber could have found that Stanišić and Simatović did not aid and abet the crimes committed in the municipalities of Bosanski Šamac and Doboj and in the SAO Krajina.

155. First, no reasonable trial chamber could have found that the acts of the Accused did not amount to a substantial contribution to these crimes. The Chamber’s erroneous assessment of the Accused’s contribution was compounded in relation to Bosanski Šamac and Doboj by a misapplication of the legal test as set out in the *Perišić* Appeal Judgement. In particular, the Chamber erroneously made the finding of substantial contribution contingent upon establishing specific direction.

156. Second, no reasonable trial chamber could have found that the contributions of the Accused to the crimes in Bosanski Šamac and Doboj were not specifically directed to the commission of the crimes. Similarly, in relation to the crimes in the SAO Krajina, a proper assessment of the evidence also shows that the acts of the Accused were specifically directed to the commission of the crimes in these locations.

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<sup>374</sup> Judgement, para.2359.

<sup>375</sup> Judgement, para.2361.

<sup>376</sup> See below Section III.C.

1. Stanišić and Simatović aided and abetted the crimes committed in the Bosanski Šamac and Doboj municipalities

157. The Chamber found that, in early 1992, members of the Unit committed murder, deportation, forcible transfer and persecution (based on murder and forcible displacement) in Bosanski Šamac and deportation, forcible transfer and persecution (based on forcible displacement) in Doboj.<sup>377</sup> It further found that Stanišić and Simatović contributed to these crimes by forming the Unit and by organising and financing the Unit's involvement in the Doboj and Bosanski Šamac takeovers.<sup>378</sup> No reasonable trial chamber could have found that these contributions did not have a substantial effect on the commission of the crimes.

158. Stanišić's and Simatović's contributions were vital to the Unit's commission of crimes in Bosanski Šamac and Doboj. By organising its formation and training, Stanišić and Simatović, in coordination with Martić, provided the Unit with structure, preparedness, resources and equipment to participate in the takeover of Bosanski Šamac and Doboj and to commit the ensuing crimes.<sup>379</sup> After forming the Unit, Stanišić and Simatović organised the training of Unit members at the Pajžoš camp near Ilok in 1992, from where the takeover of Bosanski Šamac was launched.<sup>380</sup> In April 1992, Stanišić and Simatović also organised and financed the Unit's involvement in Bosanski Šamac.<sup>381</sup> As noted by the Chamber, Simatović held a meeting at the Pajžos camp where he personally informed the Unit of their deployment to Bosanski Šamac.<sup>382</sup> As a result, they facilitated the Unit's participation in the takeover and in the commission of crimes.

159. Stanišić and Simatović made equally substantial contributions to the Unit's commission of crimes in Doboj. In addition to forming, financing and supporting the Unit, as noted above, Stanišić and Simatović organised the Unit's training at the Mount Ozren and Vila camps from where the Doboj takeover was launched.<sup>383</sup>

<sup>377</sup> Bosanski Šamac: Judgement, paras.611, 615, 975, 990, 1081-1086, 1248, 1249, 1253; Doboj: Judgement, paras.709-723, 726-730, 737, 781-782, 1099, 1081-1086, 1094-1099, 1106-1111, 1130-1138, 1244-1253.

<sup>378</sup> Judgement, paras.1421-1422, 1536, 1538, 1601-1602, 2321, 2323, 2359.

<sup>379</sup> See Judgement, para. 1365-1366, 1421-1422, 1534, 1600.

<sup>380</sup> Judgement, para.1534. See also Judgement, paras.1515-1518, 1521-1523, 1525-1526, 1534.

<sup>381</sup> Judgement, para.1536, 1538.

<sup>382</sup> Judgement, para.1536. See also Judgement, para.1518.

<sup>383</sup> Judgement, paras.1597, 1600. See also Judgement, paras.1577-1579, 1586, 1588-1590.

Stanišić and Simatović further facilitated the Unit’s commission of crimes in Doboj by financing and organising the Unit’s specific involvement there.<sup>384</sup> Without these contributions, the Unit members would not have participated in the takeover nor committed the crimes in Doboj.

160. The acts of Stanišić and Simatović, taken together, thus substantially contributed to the Unit’s commission of murder, forcible transfer, deportation and persecution in Bosanski Šamac and Doboj.

161. In addition, to its erroneous factual assessment, or in the alternative, the Chamber’s failure to find a substantial contribution to the crimes committed by the Unit in Bosanski Šamac and Doboj was based on an erroneous application of the legal test for aiding and abetting as set out in the *Perišić* Appeal Judgment. The requirement of a substantial contribution is not—as found by the Chamber—contingent upon a finding of specific direction.<sup>385</sup> To the contrary, in *Perišić* the Appeals Chamber reasoned that a finding that the accused substantially contributed to the crime may be a factor for determining whether the accused specifically directed his acts toward the commission of those crimes.<sup>386</sup> Had the Chamber not committed this error, it would have found that Stanišić and Simatović substantially contributed to the crimes committed in the municipalities of Bosanski Šamac and Doboj in light of the findings made.

162. The Chamber found that the evidence allowed for the reasonable inference that the conduct of the Accused was not specifically directed to crimes in Bosanski Šamac and Doboj.<sup>387</sup> However, as described below,<sup>388</sup> specific direction is implicit given the proximity of the Accused to the crimes, the nature of their substantial

<sup>384</sup> Judgement, paras.1601, 1602.

<sup>385</sup> See Judgement, para.1264 (“When assessing whether the acts carried out by the aider and abettor have a substantial effect on the perpetration of a crime, the Trial Chamber must find that they are specifically directed to assist, encourage, or lend moral support to the perpetration of that crime.”). See also Judgement, para.2360 (“In assessing whether this assistance had a substantial effect on the perpetration of the crimes, the Trial Chamber now turns to whether the Accused’s acts were specifically directed to assist the perpetration of the crimes of murder, deportation, forcible transfer, and persecution in Doboj and Bosanski Šamac municipality.”).

<sup>386</sup> *Perišić* AJ, para.39 (holding that “[w]here an accused aider and abettor is remote from relevant crimes, evidence proving other elements of aiding and abetting *may* not be sufficient to prove specific direction”) (emphasis added).

<sup>387</sup> Judgement, para.2360.

<sup>388</sup> See below Section III.C.3.



contributions, and the extent of their knowledge.<sup>389</sup> No reasonable trial chamber could have concluded that the acts of the Accused were not specifically directed to assisting the crimes in Bosanski Šamac and Doboj.

163. In light of its erroneous conclusion that the *actus reus* of aiding and abetting was not fulfilled, the Chamber failed to consider whether Stanišić and Simatović possessed the *mens rea* required for aiding and abetting the crimes in Bosanski Šamac and Doboj. The Chamber's findings throughout the Judgement and the evidence presented at trial, however, demonstrate that Stanišić and Simatović knew, in the sense of awareness of the probability,<sup>390</sup> that the Unit would commit murder, deportation, forcible transfer and persecution during the Bosanski Šamac and Doboj takeovers in 1992 and that their acts would assist in the commission of those crimes.

164. In relation to Bosanski Šamac, Stanišić was aware of the probability that the Unit would commit these crimes due to the Unit's involvement in prior operations wherein similar crimes were committed. Prior to its involvement in the Bosanski Šamac takeover in early 1992, the Unit was involved in operations in the SAO Krajina and in the SAO SBWS in 1991. In these operations, the Unit cooperated with forces under Martić's control whom Stanišić knew possessed the intent to displace the non-Serb populations through force and violence.<sup>391</sup> For instance, the Chamber found that Stanišić organised the Unit's participation in operations in the Kostajnica region in July 1991 together with the SAO Krajina police and TO, despite knowing of Martić's criminal intent to deport non-Serbs from the SAO Krajina.<sup>392</sup> During these operations, the Chamber found the Unit destroyed 30 homes in Jukinac (a Croat-populated area of Glina), fired and hit churches and schools<sup>393</sup> and that the SAO Krajina police and TO forcibly displaced between 80,000 and 100,000 non-Serb civilians from the Kostajnica region<sup>394</sup> and murdered at least nine non-Serb civilians.<sup>395</sup> Notably, the Chamber found that in light of the widespread nature of these crimes, Stanišić must have known about them.<sup>396</sup>

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<sup>389</sup> See *Perišić* AJ, para.38.

<sup>390</sup> See *Simić* AJ, para.86.

<sup>391</sup> Judgement, paras.2325, 2332, 2335. See above paras.112-114.

<sup>392</sup> Judgement, para.2332.

<sup>393</sup> Judgement, para.185. See also Judgement, paras.171-174, 183-184.

<sup>394</sup> Judgement, paras.217-218, 404 and fns.872, 882.

<sup>395</sup> Judgement, para.146, 990. See also Judgment, paras.64, 104.

<sup>396</sup> Judgement, para.2332.

165. Stanišić was also aware that force and violence would be used to displace the non-Serb population in Bosanski Šamac by the very nature of that takeover. The purpose of the attack on Bosanski Šamac was to take control of areas not under the exclusive control of the Bosnian Serb municipal leadership and the Serb armed forces.<sup>397</sup> In that sense, the operation undertaken in Bosanski Šamac possessed similar characteristics to those in Croatia wherein the crimes of murder and forcible displacement were committed. Further, the Unit and other Serb Forces who were involved in the attack, including local Serb authorities, intended the forcible displacement of non-Serbs from Bosnian Serb territories.<sup>398</sup>

166. The attack was also preceded by overt declarations by Serb representatives concerning the removal of the non-Serb population and, as reflected in Ground 1, the Bosanski Šamac takeover was undertaken as part of the Bosnian Serb leadership's attempts to ethnically separate Bosnia through violence.<sup>399</sup> Stanišić must have known about these intentions. Stanišić was in frequent contact with Karadžić prior to the Bosanski Šamac and Doboj takeovers<sup>400</sup> and would have been aware of Karadžić's repeated and public advocacy for the ethnic separation of Bosnian Muslims from Bosnian Serbs through the use of violence.<sup>401</sup> Indeed, after watching Karadžić's televised prediction on 21 December 1991 that a civil war in BiH would cause the "deaths of several hundred thousand people" and "massive and rapid population movements",<sup>402</sup> [REDACTED].<sup>403</sup> In addition, Stanišić must have known about the intention of the Unit members subordinate to him in light of his command and control over them throughout the relevant period.<sup>404</sup>

167. With respect to the Doboj takeover, Stanišić not only knew of the campaign of violence and the intent of the Bosnian Serb leadership to ethnically cleanse large areas of BiH, but he was aware of a probability that deportation, forcible transfer and persecution would be committed in Doboj. The Chamber found that "the Accused

<sup>397</sup> Judgement, para.2325.

<sup>398</sup> Judgement, paras.1084.

<sup>399</sup> See above paras.83-86.

<sup>400</sup> See e.g., [REDACTED], P636 (public) (**uncited**), P666 (public), P670 (public), P671 (public), [REDACTED], P676 (public) (**uncited**), [REDACTED], P681 (public) (**uncited**), [REDACTED], [REDACTED], [REDACTED], [REDACTED], P686 (public), P687 (public), P689 (public) (**uncited**), P690 (public), P691 (public) (**uncited**), P692 (public) (**uncited**).

<sup>401</sup> See below para.121.

<sup>402</sup> Exh.P1483, p.87 (public).

<sup>403</sup> See [REDACTED].

<sup>404</sup> See Judgement, para.1489.

must have known that Unit members committed crimes in Bosanski Šamac” and in that awareness “the Accused organised the Unit’s involvement in the Doboj operations.”<sup>405</sup>

168. These same findings were equally made with respect to Simatović.<sup>406</sup> In addition, Simatović was in regular contact with the Unit in operations in Croatia<sup>407</sup> during which the destruction of non-Serb homes and cultural properties took place and when massive numbers of non-Serbs were displaced through joint activities with the SAO Krajina police and TO.<sup>408</sup> Simatović was further present at the Pajzoš<sup>409</sup> and Mount Ozren camps<sup>410</sup> from which the attacks in Bosanski Šamac and Doboj were launched.

169. By organising and deploying the Unit in Bosanski Šamac and Doboj in the awareness that they would probably commit crimes, the Accused were also aware that their conduct would assist the commission of crimes.

170. Taken together, the Chamber’s findings along with the evidence presented at trial demonstrate beyond a reasonable doubt that Stanišić and Simatović possessed the *mens rea* for aiding and abetting the crimes committed in Bosanski Šamac and Doboj.

## 2. Stanišić and Simatović aided and abetted the crimes committed in the SAO Krajina

171. The Chamber found that the SAO Krajina police and TO committed murder, deportation and persecution (based on murder and forcible displacement) of non-Serb civilians in the SAO Krajina between April 1991 and the end of 1994.<sup>411</sup>

172. While the Chamber acknowledged that there were certain links between the Accused and groups such as the SAO Krajina police,<sup>412</sup> it found the links insufficient

<sup>405</sup> Judgement, para.2323. *See also* Judgement para.2326.

<sup>406</sup> *See* Judgement, para.2353 (incorporating *mens rea* findings and discussions concerning Stanišić and the crimes committed by the Unit).

<sup>407</sup> *See* Judgement, para.184.

<sup>408</sup> *See below* para.180.

<sup>409</sup> *See* Judgement, para.1536.

<sup>410</sup> *See* Judgement, para.1583.

<sup>411</sup> Judgement, paras.60, 146, 147, 186-211, 212-214, 220-222, 229-242, 243-262, 273-317, 340-349, 363, 364-368, 369-374, 375-392, 393-400, 401-407, 975, 979, 983-984, 990, 1003-1015, 1244-1253.

<sup>412</sup> Judgement, para.2361.

to conclude that Stanišić and Simatović aided and abetted the crimes committed by the SAO Krajina police and TO in the SAO Krajina.

173. However, in light of the findings made by the Chamber, coupled with the evidence presented, no reasonable trial chamber could find that the Accused did not substantially contribute to the crimes committed by the SAO Krajina police and TO.

174. As set out above,<sup>413</sup> the Chamber found that the Accused worked in coordination with Martić in establishing, funding, arming and equipping the SAO Krajina police.<sup>414</sup> The Chamber found that both Accused organised training for the SAO Krajina police and TO,<sup>415</sup> and directed and organised the supply of weapons to the SAO Krajina police.<sup>416</sup> Simatović also supplied them with communication equipment.<sup>417</sup> Stanišić further directed and organised the supply of weapons to the SAO Krajina TO.<sup>418</sup> Stanišić's and Simatović's covert assistance to the SAO Krajina police and TO continued uninterrupted as these forces engaged in a large-scale campaign to drive out non-Serbs from the Krajina.

175. Through these contributions Stanišić and Simatović assisted and enabled the formations to participate in the forcible displacement campaign and thus substantially contributed to their commission of the crimes described above.

176. Because the Chamber found the connection between the acts of the Accused and the crimes insufficient, it did not make findings on whether the acts of the Accused were specifically directed to the crimes in the SAO Krajina. However, in light of their proximity to the crimes and the perpetrators as described below,<sup>419</sup> coupled with their substantial contributions and their knowledge of the crimes, it is implicit that the contributions of the Accused were specifically directed to the crimes by the SAO Krajina police and TO.

177. Given that the Chamber found that the *actus reus* of aiding and abetting was not established, it did not make findings on Stanišić's and Simatović's *mens rea*. The

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<sup>413</sup> See above Section II.D.

<sup>414</sup> Judgement, paras.2153-2159, 2199, 2201-2202, 2208, 2211, 2213.

<sup>415</sup> Judgement, paras.1365-1366, 1369, 2197, 2327.

<sup>416</sup> Judgement, paras.2208, 2213.

<sup>417</sup> Judgement, paras.2156, 2211, 2213.

<sup>418</sup> Judgement, para.2210.

<sup>419</sup> See below Section III.C.3.

findings made by the Chamber, coupled with the evidence, however, establish, that Stanišić and Simatović knew that the SAO Krajina police and TO would commit murder, deportation and persecution in the SAO Krajina in 1991 and 1992 and that their acts would assist those crimes.

178. In particular, in light of their close cooperation with Martić, Stanišić and Simatović were aware of Martić's criminal intent.<sup>420</sup> Coupled with their knowledge of prior crimes committed by the SAO Krajina police and TO, Stanišić and Simatović must have been aware that the SAO Krajina police and TO would probably continue to commit murder, deportation and persecution and that their conduct described above would assist the commission of these crimes.

179. With respect to Stanišić, the Chamber found that throughout 1991 and 1992, before crimes were committed by the SAO Krajina police and TO, Stanišić cooperated closely with Martić.<sup>421</sup> Stanišić and Martić cooperated in establishing the Golubić training camp.<sup>422</sup> Stanišić frequently met with Martić and organised the procurement and transportation of money, weapons and ammunition in support of the SAO Krajina police and TO.<sup>423</sup> In reaction to this support Martić himself provided 60 members of his police force to assist Belgrade's demonstrations in March 1991.<sup>424</sup>

180. During this time, thousands of non-Serbs were forcibly displaced by the SAO Krajina police and TO. For instance, the Chamber found that by mid-November 1991 the SAO Krajina TO and/or police were responsible for displacing non-Serb inhabitants of the villages of Glina, Struga, Hrvatska Dubica, Baćin, Saborsko, Kijevo and Drniš.<sup>425</sup> The SAO Krajina police and TO were also responsible for the widespread destruction and looting of non-Serb homes and properties and the murder of non-Serb civilians during this period.<sup>426</sup> The Chamber concluded that, given the scale of the crimes committed by the SAO Krajina police in 1991 and Stanišić's close relationship with Martić, Stanišić must have known about the crimes and of Martić's

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<sup>420</sup> Judgement, paras.2332, 2354.

<sup>421</sup> Judgement, para.2332. *See also above* paras.57-62, 70-73.

<sup>422</sup> Judgement, para.1365.

<sup>423</sup> Judgement, para.2331. *See also above* paras.59-62, 73.

<sup>424</sup> Judgement, para.2155.

<sup>425</sup> *See e.g.*, Judgement, paras.180, 182-184, 206, 258, 261-262, 308, 312-313, 316-317, 368, 404, fn.872. *See also* Judgement, paras.314, 400.

<sup>426</sup> *See e.g.*, Judgement, paras.207, 214, 242, 260, 362, 368, 373, 387, 390, 400.

intent to deport non-Serbs from the SAO Krajina.<sup>427</sup> It found that “[i]n continuing to support the SAO Krajina police and cooperate with Martić from April 1991, Stanišić took the risk that the SAO Krajina police would commit crimes when establishing and maintaining control over large areas of Croatia.”<sup>428</sup>

181. These findings were equally made with respect to Simatović.<sup>429</sup> In addition, Simatović personally participated in the initial takeover attacks undertaken in Croatia, where Martić acted with the intent to commit crimes, such as in Lovinac and in Glina and Struga, where crimes were committed.<sup>430</sup> Simatović also frequently visited Martić in the Krajina where he personally delivered weapons and funding.<sup>431</sup> Simatović was present in the Krajina on a “more permanent basis” between April and August 1991,<sup>432</sup> when masses of non-Serbs were displaced by Martić’s forces.<sup>433</sup> Simatović also received numerous reports concerning events in the SAO Krajina from the SAO Krajina TO, including at times when mass displacements were ongoing.<sup>434</sup>

182. Stanišić and Simatović must have also known that by contributing to the establishment, funding, arming, equipping and training the SAO Krajina police they would assist their involvement in the removal of non-Serbs from large areas of the Krajina and thus substantially assist the commission of crimes. The same applies to organising the training of the TO and directing and supplying weapons to them. The Accused were aware of Martić’s intent and thus aware to what end he was planning to deploy his forces. Further, Stanišić and Simatović provided much of their assistance while knowing that thousands of non-Serbs were being violently displaced by Martić’s forces. They were thus aware that their assistance would contribute to the commission of crimes by the SAO Krajina police and TO in the Krajina.

183. Accordingly, Stanišić and Simatović possessed the *mens rea* for aiding and abetting the crimes committed in the SAO Krajina by the SAO Krajina police and TO.

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<sup>427</sup> Judgement, para.2332.

<sup>428</sup> Judgement, para.2332.

<sup>429</sup> See Judgement, para.2353 (incorporating by reference discussion made with respect to the *mens rea* findings concerning Stanišić and the crimes committed by the SAO Krajina police and other Serb Forces).

<sup>430</sup> See below para.190.

<sup>431</sup> See above paras.59-73.

<sup>432</sup> Judgement, para.2157.

<sup>433</sup> Judgement, paras.997-1003.

<sup>434</sup> See Exhs.P2670 (public); P2671 (public); P2672 (public); P2674 (public); P2675 (public); P2676 (public); P2677 (public); P2678 (public); P2679 (public).

3. Stanišić and Simatović’s contributions were specifically directed to the commission of the crimes

184. If specific direction is a legal requirement of aiding and abetting, no reasonable trial chamber could have found that the contributions of Stanišić and Simatović were not specifically directed to the commission of the crimes in Bosanski Šamac and Doboj in light of the proximity of Stanišić and Simatović to the commission of the crimes combined with their substantial contribution to and their knowledge of the crimes. For the same reasons, it is implicit that Stanišić and Simatović specifically directed their conduct to assisting the crimes in the SAO Krajina.

185. As set out in the *Perišić* Appeal Judgement, where the relevant acts of the accused are proximate to the crimes of the principal perpetrators, specific direction may be demonstrated implicitly.<sup>435</sup> This analysis is intended to be a holistic evaluation of the accused’s relationship with the principal perpetrators and not a narrow evaluation of the accused’s location at the time of the crime. Relevant factors for this case-by-case assessment depend on the individual circumstances of each case and include temporal and geographical distance between the actions of the accused and the crimes.<sup>436</sup> Evidence indicating that Stanišić and Simatović were actively involved in assisting the formations committing crimes, and/or were in the locations where the formations were operating or where crimes were being committed, is thus relevant towards establishing proximity and specific direction.

186. The Chamber erroneously limited itself to assessing where Stanišić and Simatović were at the time of the crimes<sup>437</sup> and failed to take into account other relevant factors of proximity including evidence of their consistent interactions with the different perpetrator groups throughout the Indictment period. The findings made by the Chamber taken together with the evidence, however, show that Stanišić and Simatović were proximate to the crimes. This is not a case where the accused are responsible for only providing general assistance.<sup>438</sup> Stanišić and Simatović were

<sup>435</sup> *Perišić* AJ, para.38 (“Where such proximity is present, specific direction may be demonstrated implicitly through discussion of other elements of aiding and abetting liability, such as substantial contribution.”).

<sup>436</sup> *Perišić* AJ, para.40.

<sup>437</sup> Judgement, para.2360.

<sup>438</sup> *Contra* Judgement, para.2360.

actively involved with each of the formations responsible for committing crimes and often assisted the operations in which those crimes were committed. Stanišić and Simatović were not sitting in their offices removed from the scene of the crime and detached from what was happening on the ground. Rather, they kept a presence in the area where the crimes were committed, including in the relevant time frame.

187. Stanišić and Simatović not only organised training, financing and other support to the formations responsible for crimes, but were personally involved in these activities by visiting training facilities, personally delivering money, weapons and ammunition, and directing the involvement of formations into the crime sites.<sup>439</sup> Their subordinates in the SDB were members in formations that directly participated in a number of the crimes.<sup>440</sup>

188. Stanišić and Simatović's proximity to the crimes is all the more evident when evaluating their specific role in relation to the formations responsible for the crimes described above.

189. In relation to the Unit, Stanišić and Simatović directed and organised its formation between May and August 1991.<sup>441</sup> From at least September 1991, Stanišić and Simatović were in command of the Unit and controlled its deployment and training activities through leading Unit members, such as Živojin Ivanović, who acted on behalf of Stanišić and Simatović and were immediately subordinate to them.<sup>442</sup> Important Unit members also included Dragan Filipović, Dušan Orlović, and Zoran Raić, all of whom were SDB members and played important roles in the formations involved in crimes.<sup>443</sup> Orlović, for example, was appointed Head of the SAO Krajina DB despite continuing to report to the SDB.<sup>444</sup> Even those not formally within the SDB's chain of command continued to work closely with Stanišić and Simatović. For instance, the Chamber found that Captain Dragan played a prominent role in the Unit from its creation until at least August 1991, cooperating closely with and reporting

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<sup>439</sup> See below paras.190-192.

<sup>440</sup> See above para.62. See also Annex A.

<sup>441</sup> See above para. 62.

<sup>442</sup> Judgement, paras.1433-1445, 1489, 2359.

<sup>443</sup> Judgement, paras.1424, 1444. See also Annex A.

<sup>444</sup> Judgement, paras.1424, 1442. See also Judgement, para.1319.



directly to Simatović, despite operating “with more independence than other Unit members”.<sup>445</sup>

190. Simatović also directed the Unit during the takeover of Lovinac in June, and Plitviće in August 1991.<sup>446</sup> Stanišić and/or Simatović also organised the Unit’s involvement in Glina and Struga<sup>447</sup> and in Bosanski Šamac and Doboj.<sup>448</sup>

191. Stanišić and Simatović were also routinely present at the camps where Unit members were trained and from which the Unit’s participation in various attacks were launched. For example:

- In September and October 1991, Stanišić and Simatović visited the Ležimir camp at Fruška Gora from where Stanišić directed, and both Accused organised, the Unit’s involvement in SWBS.<sup>449</sup>
- In late March or early April 1992, Simatović held a meeting in Pajzoš camp from where the Bosanski Šamac takeover was launched.<sup>450</sup> Simatović announced that the Unit would be deployed to Bosanski Šamac.<sup>451</sup>
- In June 1992, Simatović travelled to Bajina Bašta where he met with local municipal leaders from Skelani as a result of which Stanišić and Simatović organised financing and logistical support for the Unit in Skelani and organised the Unit’s involvement in Skelani in March and April 1993.<sup>452</sup>

192. In relation to the SAO Krajina police and TO, the Chamber found that Stanišić and Simatović worked in close co-ordination with Martić in establishing, training, funding and/or arming the formations. For example, the Chamber recalled evidence from Witness JF-039 that, in January 1991, Martić was given the “green light” when he visited Stanišić in Belgrade and police stations were set up all over Krajina.<sup>453</sup> Between April and August 1991, Stanišić and Simatović organised the training of

<sup>445</sup> Judgement, para.1425. *See also* Judgement, paras.1309-1311, 1315, 1318, 1323, 1327, 1334.

<sup>446</sup> Judgement, paras.335, 1379, 1403, 1426. *See also* Judgement, paras.323-325,1400.

<sup>447</sup> Judgement, paras.1398, 1426, *see also* Judgement, paras.167, 170-171, 173.

<sup>448</sup> Judgement paras.1536, 1601.

<sup>449</sup> Judgement, paras.1489-1490. *See also*, Judgement, paras.1463-1464, 1467, 1469

<sup>450</sup> Judgement, para.1536. *See also* Judgement, paras.1516, 1518.

<sup>451</sup> Judgement, para.1536. *See also* Judgement, paras.1516, 1518.

<sup>452</sup> Judgement, paras. 1672, 1677, 1679. *See also* Judgement, para.1647.

<sup>453</sup> Judgement, para.2123.

between 350 and 700 SAO Krajina police and TO members at the Golubić camp.<sup>454</sup> As noted by Witness JF-039, Simatović personally accompanied trucks loaded with automatic and semi-automatic rifles to the Knin police station, where they were unloaded for Martić's use.<sup>455</sup> The Chamber also found that Stanišić was present in the area of Knin on at least two occasions between August 1990 and April 1991 and Simatović was present in the Krajina on a few occasions between December 1990 and April 1991 and on a more permanent basis between April and August 1991,<sup>456</sup> during which time masses of non-Serbs were displaced by Martić's forces.<sup>457</sup>

193. As a result of these close connections and contacts with the SAO Krajina police and TO and the Unit, Stanišić's and Simatović's acts were proximate to the crimes. Coupled with their substantial contributions and their knowledge of the crimes as described below, no reasonable trial chamber could have found that their acts were not specifically directed to the commission of the crimes in Bosanski Šamac, Doboj and the SAO Krajina.

#### **D. Remedy**

194. The Prosecution requests that the Appeals Chamber apply the correct legal standards to the evidence and correct the Chamber's errors, and:

- (a) overturn the acquittals of Stanišić and Simatović;
- (b) find that, through their acts and omissions, as found by the Chamber in its Judgement, Stanišić and Simatović substantially contributed to the commission of the following crimes:
  - (i) persecutions through murder, deportation, and other inhumane acts (forcible transfer) as a crime against humanity (Count 1);
  - (ii) murder as a crime against humanity (Count 2);
  - (iii) murder as a violation of the laws or customs of war (Count 3);
  - (iv) deportation as a crime against humanity (Count 4); and
  - (v) and inhumane acts (forcible transfer) as a crime against humanity (Count 5);

<sup>454</sup> Judgement, paras.1426, 2197, 2327. *See also* Judgement, paras.1295, 1348, 2110-2111.

<sup>455</sup> Judgement, para.2122.

<sup>456</sup> Judgement, para.2157. *See also* Judgement, paras.1297, 1315, 1317-1318, 1320, 1323-1324, 1352, 1366, 2125-2126.

<sup>457</sup> Judgement, paras.997-1003.

and

- (c) find that Stanišić and Simatović knew that the crimes would be committed and that their conduct would assist the commission of these crimes; and
- (d) find, if required, that Stanišić and Simatović specifically directed their acts and omissions towards the commission of the above-mentioned crimes; and
- (e) convict Stanišić and Simatović under Article 7(1) of the Statute for aiding and abetting these crimes; and
- (f) sentence Stanišić and Simatović accordingly.

195. Alternatively, the Appeals Chamber should exercise its discretion to remand the case to a bench of the Tribunal to apply the correct legal standard to the trial record, and to determine the liability of Stanišić and Simatović as alleged in the Indictment.

#### **IV. GROUND THREE: STANIŠIĆ AND SIMATOVIĆ ARE RESPONSIBLE FOR THE CRIMES IN THE SAO SBWS, BIJELJINA, ZVORNIK AND SANSKI MOST**

##### **A. Overview**

196. As discussed in Ground 1, the crimes in SBWS, Bijeljina, Zvornik and Sanski Most were implemented as part of the common criminal purpose. The Accused are responsible for these crimes, which were committed by Serb Forces imputable to them and/or other JCE members, given the Accused's shared intent and significant contributions to the JCE.

197. In any event, the Accused are responsible for these crimes because they used the perpetrators to implement the common purpose and significantly contributed to its implementation in these localities. The Chamber erred in fact in failing to make this finding. This erroneous conclusion, which occasioned a miscarriage of justice, resulted because the Chamber:

- assessed the evidence in a piecemeal fashion, in isolation and out of context;
- erred in its analysis of the testimony of key witnesses and evidence; and
- applied an inconsistent approach to different aspects of the evidence and disregarded key pieces of evidence.

198. Had the Chamber not so erred, it would have concluded beyond reasonable doubt that Stanišić significantly contributed to the implementation of the common purpose in the SAO SBWS and in the BiH municipalities of Bijeljina, Zvornik and Sanski Most, and that Simatović significantly contributed to the implementation of the common purpose in Sanski Most. In 1991 and 1992, Stanišić was actively involved in forming and supporting parallel police and TO structures in SBWS and in BiH, and in deploying Arkan to SBWS, Bijeljina and Zvornik. Both Accused financed and deployed Arkan and his SDG unit to Sanski Most in 1995. From 1991 onwards, the Accused, together with other JCE members, used the forces the Accused helped establish, support and deployed, to commit crimes against non-Serbs, in furtherance of the common criminal purpose. Through these forces, JCE members implemented their goal to drive non-Serbs from Serb-claimed territories in Croatia and BiH.

199. In the alternative, the Chamber erred in failing to find Stanišić and Simatović aided and abetted the forcible displacement, deportation, murder and persecution of non-Serbs in the SAO SBWS and in the BiH municipalities of Bijeljina, Zvornik and Sanski Most. Through their conduct, Stanišić and Simatović substantially contributed to the commission of the crimes in these regions. They knew that the crimes would be committed and that their conduct would assist those crimes.

200. As explained below, the Appeals Chamber should correct these errors, find that Stanišić and Simatović were responsible as members of the JCE for the crimes in the SAO SBWS, Bijeljina, Zvornik and Sanski Most, and take these findings into account in convicting the Accused under Article 7(1) of the Statute for their participation in the JCE under Ground 1. In the alternative, the Appeals Chamber should find that Stanišić aided and abetted one or more of the crimes in the SAO SBWS, Bijeljina, Zvornik and Sanski Most, and that Simatović aided and abetted the crimes in Sanski Most, and convict the Accused accordingly.

**B. Stanišić significantly contributed to the implementation of the common purpose in the SAO SBWS**

201. Stanišić led the SDB in organising the JCE’s activities in the SAO SBWS through covert action. Having sent Simatović and other SDB assets to assist Martić in SAO Krajina, Stanišić provided SAO SBWS President Hadžić with SDB operatives in strategic positions. The most prominent were Radoslav Kostić and Ilija Kojić. Through these trusted SDB operatives, Stanišić facilitated the formation of the SAO SBWS police and armed, financed and equipped the SBWS police and TO, which were used by JCE members to commit crimes against non-Serbs. Stanišić also used Arkan and his unit, the SDG. In 1991 and 1992, operating under Stanišić’s authority, Arkan’s SDG worked together with the SBWS police and TO, and the JNA, to drive “many thousands”<sup>458</sup> of non-Serbs from SBWS. Through his acts, Stanišić significantly furthered the common criminal purpose to forcibly expel non-Serbs from SAO SBWS.

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<sup>458</sup> Judgement, para.578.

1. Through a network of SDB operatives in SBWS, Stanišić facilitated the establishment of the SBWS police and armed, financed and equipped the SBWS police and TO

202. The Chamber erred in fact when it found that there was insufficient evidence from which to conclude that Stanišić facilitated the establishment of the SBWS police or armed, financed and equipped the SBWS TO and police, which were involved in the crimes in SBWS.<sup>459</sup> Had the Chamber properly considered the evidence, it would have found that Stanišić used his extensive authority and his network of SDB operatives to establish, arm, finance and equip these structures in the SAO SBWS. These parallel structures were later used by JCE members to commit crimes against non-Serbs and drive them from the region.<sup>460</sup> No reasonable trial chamber could have found otherwise.

203. The Chamber made two fundamental errors in assessing the evidence: (a) it analysed the evidence of Stanišić's links to SDB operatives in SBWS in a narrow and piecemeal fashion, ignoring relevant evidence; and (b) it misconstrued the testimony of key insider witnesses who testified about the SDB's involvement in setting up parallel police and TO structures.

(a) The Chamber analysed the evidence of Stanišić's links to SDB operatives in a narrow and piecemeal fashion, ignoring relevant evidence

204. Mirroring what he had done in the SAO Krajina,<sup>461</sup> Stanišić dispatched SDB operatives to SBWS to further the common purpose through the setting up of parallel Serb-controlled police and TO structures.

205. Two SDB operatives, Kojić and Kostić, were instrumental. Kojić worked with Hadžić and Kostić to establish and arm police structures on the ground,<sup>462</sup> and commanded the SAO SBWS TO from July 1991<sup>463</sup> before being appointed as SAO SBWS Minister of Defence in September 1991.<sup>464</sup> Kostić facilitated the establishment

<sup>459</sup> Judgement, paras.2236, 2259-2260.

<sup>460</sup> See above paras.56, 65, 68-69, 74-76.

<sup>461</sup> See above paras.51, 60-62, 73.

<sup>462</sup> See Judgement, paras.2224, 2247.

<sup>463</sup> Judgement, para.2232.

<sup>464</sup> Exh.P16 (public) (**uncited**). See also Judgement, para.2222.

of the SAO SBWS police and DB,<sup>465</sup> held a position of authority over both structures<sup>466</sup> and provided arms and uniforms from the Belgrade MUP.<sup>467</sup> Other SDB operatives also assisted.<sup>468</sup>

206. In examining whether Kostić and Kojić's conduct in SBWS was attributable to Stanišić, the Chamber unreasonably found that the "mere fact" that SDB operatives embedded in SBWS were "employed by the SDB at the relevant time does not mean that [their] acts can be attributed to the Accused".<sup>469</sup>

207. This conclusion is wholly inconsistent and contradictory with the Chamber's approach for other SDB operatives. No explanation for this different approach is offered. When attributing the Unit's conduct to Stanišić, the Chamber determined that Stanišić participated in the Unit's formation because he "held a position within the Serbian MUP DB superior to the other SDB employees active in the SAO Krajina (including Simatović and Filipović) at the relevant time."<sup>470</sup> The Chamber recognized Stanišić's significant *de facto* authority even while Deputy Chief. In stark contrast, when assessing the attribution of the conduct of SDB operatives in SBWS, it reached the opposite conclusion even though Stanišić's position and authority did not change.

208. The Chamber's error resulted from its failure to consider independently corroborating evidence of Stanišić's authority and control over Kostić and Kojić, and of Stanišić's awareness of and personal involvement in their activities in SBWS. Viewed in its totality, this evidence shows that Kostić and Kojić were not rogue agents acting on their own, but trusted subordinates of Stanišić who carried out the tasks that he issued them.

209. The following factors taken in combination demonstrate that Kostić's activities as a SDB employee based in the SBWS were carried out at Stanišić's behest:

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<sup>465</sup> See Judgement, paras.1502, 2247; [REDACTED]; [REDACTED].

<sup>466</sup> See Judgement, paras.1502, 2224; [REDACTED]; [REDACTED].

<sup>467</sup> See Judgement, para.2247.

<sup>468</sup> See Judgement, paras.2246-2247, 2257; [REDACTED]. For example, DB operative Lazar Šarac, who worked as Hadžić's bodyguard, participated with Kostić in the delivery of weapons to the SBWS. (Savić, T.1803 (public). See Judgement, para.2247). [REDACTED]. [REDACTED]; [REDACTED]; [REDACTED]. DB operative Dragan Lazić was embedded in the SBWS police in Borovo Selo, and participated with Kojić in procuring weapons from the Novi Sad DB. [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. See Judgement, para.2246).

- Stanišić was responsible for allocating Kostić's responsibilities. Kostić was officially employed as a SDB operative from December 1990, including while he was based in SBWS.<sup>471</sup> As Deputy Chief of the SDB, Stanišić personally signed an employment decision on 21 June 1991 reassigning Kostić to "different issues and tasks"<sup>472</sup> around the time Kostić began assisting the Borovo Selo police in SBWS.<sup>473</sup> [REDACTED].<sup>474</sup>
- After the SAO SBWS police and TO were set up in the summer of 1991, Kostić was engaged in arming and equipping these forces,<sup>475</sup> as were other SDB operatives in Serbia and SBWS,<sup>476</sup> all of whom were subordinate to Stanišić.
- Stanišić was directly involved in the arming scheme in SBWS, and delegated the authority for the distribution of weapons to Kostić and Kojić. Both were present at the MUP in Belgrade in July 1991, when Stanišić met with JF-032, [REDACTED], and MUP Minister Bogdanović about arms for the SAO SBWS police. Directly after this meeting, Kostić and Kojić met with JF-032 and instructed him to come to them for further weapons and equipment inquiries.<sup>477</sup> In late-August 1991, Stanišić attended a meeting in Novi Sad, Serbia, with Hadžić and the Vojvodina DB chief regarding weapons and equipment for the SAO SBWS police. Those in attendance made the decision to give the SAO SBWS police force whatever they requested.<sup>478</sup> The supplies to SBWS forces from Serbia continued throughout the period of the commission of the crimes in SBWS.<sup>479</sup>

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<sup>469</sup> Judgement, paras.2233-2234, 2257.

<sup>470</sup> Judgement, para.1422.

<sup>471</sup> Judgement, para.2234. *See also* Judgement, para.2229.

<sup>472</sup> Exh.P406, p.5 (public).

<sup>473</sup> *See* Judgement, paras.2224, 2247.

<sup>474</sup> [REDACTED]. *See* Judgement, para.1502.

<sup>475</sup> *See* Judgement, para.2247.

<sup>476</sup> *See* Judgement, paras. 2245-2248, 2257; [REDACTED]. *See also* [REDACTED].

<sup>477</sup> [REDACTED]. *See* Judgement, para.2247.

<sup>478</sup> B.Bogunović, Exh.P554, para.14 (public); B.Bogunović, T.5995-5997 (public). *See* Judgement, para.2248.

<sup>479</sup> *See* Judgement, paras.2182, 2210 (The Chamber accepted B-179's evidence that Stanišić and other JCE and DB members met daily to arrange weapons deliveries to Croatia. This evidence relates to the entire period 1991-1993); [REDACTED]; [REDACTED].



- In an intercept of January 1992 between Stanišić and fellow JCE member Karadžić, Stanišić confirmed that he had the ability to appoint people in SBWS, and would do so after touring the field in SBWS.<sup>480</sup> Shortly after<sup>481</sup> this conversation, Kostić and Kojić were appointed as Assistant Ministers of the Interior in the RSK.<sup>482</sup> This intercept shows Stanišić's influence over Kojić and Kostić and their appointment to senior positions in the SAO SBWS. Yet in its analysis, the Chamber failed to consider this evidence.

210. In discussing Kojić's relationship to Stanišić in SBWS, the Chamber wrongly fixated on its findings that he was not officially employed by the Serbian MUP until November 1991,<sup>483</sup> rather than on his actual activities and relationships in SBWS. The Chamber failed to consider Borivoje Savić's evidence of Kojić's early collaboration with Stanišić from August 1990,<sup>484</sup> which provides context for the evidence of Kojić's subsequent collaboration with Stanišić and subordinates of Stanišić within the SDB.<sup>485</sup> Moreover, the Chamber's fixation on Kojić's official position is contradictory to its finding, in relation to a Unit member, that official affiliation with or re-subordination to organs other than the SDB was not inconsistent with membership in the SDB's Unit,<sup>486</sup> and, therefore, subordination to Stanišić.<sup>487</sup>

211. That Kojić's activities in the region were conducted at Stanišić's behest is clear from the Chamber's own findings and the evidence:

- From at least August 1990, Kojić began distributing arms provided by Stanišić to Serbs in Vukovar.<sup>488</sup>
- From at least the summer of 1991, Kojić collaborated closely with Kostić on establishing, arming, financing and equipping the SBWS Serbs, and carried out their responsibilities in tandem.<sup>489</sup> Kojić and other SDB operatives worked with JCE member Kertes, a close associate of Stanišić, to transport weapons

<sup>480</sup> Exh.P686, p.6 (public).

<sup>481</sup> See AFIII-22 (SBWS joined the RSK on 26 February 1992) (**uncited**).

<sup>482</sup> [REDACTED]; [REDACTED]; Đukić, T.18007 (public).

<sup>483</sup> Judgement, para.2233.

<sup>484</sup> Savić, T.1758-1759 (public).

<sup>485</sup> See Judgement, paras.514, 2224, 2246-2247; [REDACTED].

<sup>486</sup> Judgement, para.1701.

<sup>487</sup> See Judgement, para.1489.

<sup>488</sup> Savić, T.1758-1759 (public).

<sup>489</sup> See above paras.75, 209.

across the Serbian border into SBWS,<sup>490</sup> and during this same period Stanišić met regularly with Kertes and arranged for arms for SBWS from Belgrade through the Association of Serb Emigrants.<sup>491</sup> [REDACTED].<sup>492</sup> Kostić and Kojić accompanied Stanišić to Dalj in late September 1991, when he called a meeting with Hadžić and the SBWS leadership to discuss why Vukovar had not yet fallen.<sup>493</sup>

- After Kojić became SAO SBWS TO commander in July 1991,<sup>494</sup> two SDB operatives from Belgrade arrived to assist, support and instruct him.<sup>495</sup> At the end of July 1991 in Borovo Selo, Kojić and these SDB operatives discussed the preparations for the attack on Dalj municipality.<sup>496</sup> Kojić commanded the TO during the attack.<sup>497</sup> Stanišić, then Deputy Chief of the SDB, had responsibility for deployment of personnel.<sup>498</sup> He must have been involved in sending or must have approved the deployment of these two SDB operatives from Belgrade to aid Kojić in SBWS.
- Stanišić was subsequently involved in Kojić's appointment and activities as SAO SBWS Minister of Defence. In August 1991, Hadžić appointed Kojić as SAO SBWS Minister of Defence,<sup>499</sup> under the influence of the Belgrade leadership, including Stanišić, with whom he met regularly.<sup>500</sup> SAO SBWS Interior Minister Bogunović personally observed that while Kojić was Minister of Defence, Stanišić and Kojić must have had a "connection", "been in touch" and made "their own arrangements", because Hadžić and the SAO SBWS government were circumvented.<sup>501</sup> Moreover, Kojić was the only

<sup>490</sup> See Judgement, paras.2246, 2257.

<sup>491</sup> See Judgement, paras.2180-2182, 2210.

<sup>492</sup> [REDACTED].

<sup>493</sup> See Judgement, para.2314.

<sup>494</sup> Judgement, 2232.

<sup>495</sup> [REDACTED]. See Judgement, para.514.

<sup>496</sup> See Judgement, para.514. See also Judgement, para.525 (finding the evidence in para.514 reliable).

<sup>497</sup> See Judgement, paras.492, 2232. See also Judgement, para.507 (finding the evidence in para.492 reliable).

<sup>498</sup> See Judgement, para.1279; [REDACTED].

<sup>499</sup> Exh.P16 (public) (**uncited**). See Judgement, para.2222.

<sup>500</sup> See Judgement, para.2222; B.Bogunović, T.5982-5986 (public); B.Bogunović, Exh. P553, para.6 (public).

<sup>501</sup> B.Bogunović, T.5985-5986 (public). See Judgement, para.2222.

minister in the SAO SBWS government to have Serbian MUP license plates on his vehicle.<sup>502</sup>

212. Finally, the Chamber misread a 4 October 1994 intercept demonstrating that Martić and Milošević considered Kostić to be in SBWS at Stanišić's behest.<sup>503</sup> The Chamber read this intercept to conclude that Milošević did not know Kostić was under Stanišić. Correctly read, this intercept demonstrates that Martić and Milošević understood that Kostić and Kojić were operating in SBWS under Stanišić's direction.<sup>504</sup>

<sup>502</sup> See Judgement, para.2222.

<sup>503</sup> See Judgement, paras.2230, 2234.

<sup>504</sup> Exh.P1605, pp.2-4 (public). The following excerpt demonstrates that Milošević knew Kostić and Kojić were Stanišić's subordinates:

Martić: [...] I am kindly asking you, this has gone beyond limits, KOSTIĆ, the one who was removed, passed this way an hour ago and organised them to come and wait for me with rifles pointed and to maltreat me, Mr. President, I believe that definitely this is not to be tolerated.

Milošević: Absolutely.

Martić: If you have any respect for me, you will order Jovica STANIŠIĆ, who is pulling the strings, to remove this gang from here within one or two hours time.

[...].

I am kindly asking you to order Jovica STANIŠIĆ to cleanse them from Erdut, Pajzoš and all other places that they have occupied within an hour or two, otherwise I will have to do something, this is not good.

Milošević: I will call him now, and it would be good for you, when you come back to Belgrade, to meet with Jovica and to...

Martić: I have no reason to meet with him, he is tripping me at every step and causes trouble, this is really...

Milošević: I will see what he has done...

Martić: Below any level. KOSTIĆ passed this way an hour ago and organised them to wait for me, the way they did.

Milošević: How do you know it was KOSTIĆ?

Martić: It was...Mr. President, I reckon that if you hold any respect for me that something ought to be done in this regard, Jovica STANIŠIĆ must withdraw those men from Erdut and take that over, I am the Corps Command here.

Milošević: All right, I will call him.

[...]

Martić: But, now, should you want his story, I have no...

Milošević: He has no story, he has nothing to do with it.

Martić: How come? KOSTIĆ left an hour before me and organised all this, and he is his man.

Milošević: That is not Jovica's doing.

Martić: But Mr. President, KOSTIĆ is his man, his employee.

Milošević: But that is your territory, not KOSTIĆ's.

Martić: Then I will do it my way, believe me, I will get tanks out and will drive them all away. If he wants to play that card, and, you wait for me with rifles pointed at my chests, while I am in the capacity of some President, well I will not tolerate that.

Milošević: You are right about that, I only have to see what he knows about it, and I do not believe that someone did it while he knew about it.

Martić: Look, you see with him if he is going to keep that idiot KOSTIĆ to do such things, as well as KOJIĆ, or can I come here freely, is this...

[...]

213. Given the evidence that Stanišić directed SDB operatives operating in SBWS to set up parallel police and TO structures in SBWS, it was wholly erroneous for the Chamber to conclude otherwise. No reasonable chamber would have ignored and misconstrued the evidence of Stanišić's role and involvement in the SBWS.

(b) The Chamber's assessment of the evidence of key insider witnesses was defective

214. The Chamber's erroneous assessment of Stanišić's links to Kostić and Kojić was compounded by its multiple errors in analysing key insider witnesses' evidence, which establishes that Stanišić's SDB was actively involved in forming the SAO SBWS police and in arming, financing and equipping SAO SBWS police and TO forces:

- First, the Chamber wrongly dismissed JF-032's evidence regarding Kostić's key role in establishing the SAO SBWS police.<sup>505</sup> [REDACTED], JF-032's evidence was based on his personal interactions with Kostić. [REDACTED].<sup>506</sup> The Chamber wrongly considered his evidence about Kostić's authority as lacking sufficient foundation.<sup>507</sup> [REDACTED].<sup>508</sup> The Chamber was wrong to discount JF-032's evidence<sup>509</sup> on the basis of his mistaken impression that Kostić was superior to MUP Minister Bogunović.<sup>510</sup> [REDACTED].<sup>511</sup> The Chamber erred in ignoring it.
- Second, the Chamber incorrectly characterised and discarded JF-035's evidence about the weapons transfer from Serbia to SBWS forces. [REDACTED].<sup>512</sup> The Chamber wrongly interpreted his evidence as referring solely to the month of April 1991, before the SAO SBWS TO and police were established.<sup>513</sup> Further, in stating that JF-035 had difficulty distinguishing between the SDB and the SJB, the Chamber mistakenly cited to the testimony

<sup>505</sup> Judgement, para.2234. *See also* Judgement, para.2224.

<sup>506</sup> [REDACTED]; [REDACTED]; [REDACTED]. *See also* Judgement, para.2224.

<sup>507</sup> Judgement, para.2234.

<sup>508</sup> *E.g.*, [REDACTED]; [REDACTED]; [REDACTED].

<sup>509</sup> Judgement, para.2234.

<sup>510</sup> *See* Judgement, para.2224.

<sup>511</sup> [REDACTED].

<sup>512</sup> [REDACTED]; [REDACTED]. [REDACTED]. ([REDACTED]; [REDACTED]) [REDACTED]. [REDACTED].

<sup>513</sup> Judgement, para.2257.

of a different witness [REDACTED].<sup>514</sup> JF-035 did not provide the testimony that the Chamber cited to discredit him.

- Third, the Chamber erroneously rejected as unreliable JF-030's evidence regarding two SDB operatives sent from Belgrade to advise Kojić and supply arms to Borovo Selo.<sup>515</sup> The Chamber offered no basis for its finding, aside from a reference to its assessment of an unrelated piece of JF-030's evidence.<sup>516</sup> [REDACTED].<sup>517</sup> Moreover, the Chamber's rejection of this evidence contradicts its prior finding that JF-030's evidence regarding these Belgrade SDB operatives' interactions with Kojić was reliable.<sup>518</sup>
- Finally, and most crucially, the Chamber did not consider JF-035's evidence together with the testimony of JF-032,<sup>519</sup> Borislav Bogunović,<sup>520</sup> and JF-030,<sup>521</sup> who independently offered mutually corroborative evidence that SDB operatives in SBWS (and in one case Stanišić himself) were involved with their Serbian counterparts from the Novi Sad DB and/or MUP in supplying arms to the SAO SBWS police and/or TO.

215. If the Chamber had considered this mutually-corroborating evidence and its own findings, it would have found beyond reasonable doubt that the SDB under Stanišić set up parallel police and TO structures in SBWS. As discussed in Section II.D, these structures were used by JCE members to further the common purpose. No reasonable chamber could have concluded otherwise.

## 2. Stanišić used Arkan and the SDG to further the common purpose in SBWS

216. The Chamber erred in failing to find that Stanišić controlled Arkan and his SDG at the time that unit was deployed in SBWS.<sup>522</sup> Had it properly considered the

<sup>514</sup> Judgement, para.2257 (incorrectly attributing the evidence at T.1848-1849 to JF-035).

<sup>515</sup> Judgement, para.1837.

<sup>516</sup> Judgement, para.1837 (referencing chapter 6.4.2 of the Judgement). *See* Judgement, para.1760 (This paragraph in section 6.4.2 of the Judgement assesses JF-030's evidence regarding the establishment of the SDG as inconsistent with other evidence of the same. The Chamber correctly concluded that JF-030's evidence related to the establishment of the Serbian Guard, which was a different paramilitary group from the Serbian Volunteer Guard.)

<sup>517</sup> [REDACTED]; [REDACTED].

<sup>518</sup> Judgement, paras.514, 525.

<sup>519</sup> *See* Judgement, para.2247.

<sup>520</sup> *See* Judgement, para.2248.

<sup>521</sup> *See* Judgement, para.2246.

<sup>522</sup> Judgement, para.1789.

evidence, the Chamber would have found that Arkan and the SDG operated under Stanišić's authority at the time the SDG was committing crimes in furtherance of the common criminal purpose in SBWS.

217. In failing to find that Stanišić and the SDB directed the involvement of the SDG in SBWS in 1991,<sup>523</sup> the Chamber erred both in its assessment of individual pieces of evidence and in failing to consider the evidence in its totality.

(a) The Chamber erred in its assessment of individual key pieces of evidence

218. First, the Chamber erred in finding that SBWS Interior Minister Bogunović's testimony regarding the links between Stanišić and Arkan lacked sufficiently clear "foundation".<sup>524</sup> Bogunović testified that Arkan was subordinate to the Serbian MUP and Stanišić, not the JNA or the SAO SBWS government.<sup>525</sup> Bogunović was, until December 1991, in a position to make this observation as a member of the SAO SBWS government, and the highest-ranking police officer in the region. He was in a position to know about the belligerent forces in the SBWS region he helped govern.

219. The Chamber's finding also ignores Bogunović's evidence demonstrating that Arkan was not subordinate to official SBWS organs or the JNA. Bogunović's evidence shows his personal knowledge of Arkan and Arkan's behaviour in SBWS, including that Arkan frequently told those in the region that he "was under no obligation to listen to anyone"<sup>526</sup>, that the SAO SBWS "did not have the power to stop Arkan" and that "[e]ven certain JNA officers dared not stand up to him".<sup>527</sup>

220. Second, the Chamber erred in failing to explain how the testimony of Vukovar municipal SDS board member Borivoje Savić<sup>528</sup> that Arkan told him Stanišić was Arkan's boss was "inherently generic".<sup>529</sup> Arkan's statement was made explicitly to Savić during a conversation between the two regarding the specific topic of Arkan's acts in SBWS during the relevant time. Savić testified that he met with Arkan in

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<sup>523</sup> Judgement, para.1789.

<sup>524</sup> Judgement, para.1789.

<sup>525</sup> Judgement, para.1783.

<sup>526</sup> B.Bogunović, T.6028 (public).

<sup>527</sup> B.Bogunović, T.6028 (public).

<sup>528</sup> Savić, T.1740-1741 (public).

<sup>529</sup> Judgement, para.1789.

Belgrade on 16 May 1991.<sup>530</sup> Arkan challenged Savić about a statement Savić had made the previous day in a meeting with Bogdanović about “the territory of Slavonia” in which Savić asked the Interior Minister “why he kept on sending us thieves and criminals to our neck of the woods”, referring to Arkan.<sup>531</sup> Savić recounted his conversation with Arkan as follows:

After that I asked him this, Okay, if you’re not a thief and a criminal then tell me what you are. I appreciate what you do. I know what you do. I understand what you do. And there will be a price to pay for that. What I’m interested in is my house, my property, and my status.

Q. Did you have occasion to ask him any particular question at that time?

A. Yes. I asked him a very concrete question. I told him this, I know that everybody is working for somebody. Tell me who your boss is. I want to make sure it's not Milosevic. He replied, Why are you asking me, you should know? And I said, No, I don't. And then he said, Jovica Stanisic.<sup>532</sup>

221. No reasonable finder of fact could conclude that Savić’s statement was generic in the least. Rather, it showed a specific hierarchical affiliation between Arkan and Stanišić just a few months before the SDG began committing crimes against non-Serbs in SBWS.<sup>533</sup>

222. Third, the Chamber similarly erred in finding that Exhibit P1075 was generic.<sup>534</sup> This exhibit is quite specific in reporting that “[f]rom the beginning of the war in 1991, a number of paramilitary units”, including the “SDG under Željko RAŽNJATOVIĆ aka Arkan” were “engaged in the territory of the RSK and the RS” and “were (and have remained) in direct contact with the RDB and the MUP of the Republic of Serbia, or were engaged under the guise of special units of the RDB or the MUP”.<sup>535</sup> No reasonable finder of fact could have rejected this evidence as generic.

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<sup>530</sup> Savić, T.1810 (public).

<sup>531</sup> Savić, T.1809 (public).

<sup>532</sup> Savić, T.1810-1811.

<sup>533</sup> See Judgement, paras.419, 432, 451, 454, 468, 479, 510, 511, 528, 538, 553, 573, 576-578, 975, 990, 1025, 1049, 1052, 1052.

<sup>534</sup> *Contra* Judgement, para.1789.

<sup>535</sup> Exh.P1075.

223. Fourth, the Chamber erred in failing to properly consider the evidence of JF-030, who testified that a few days after the 1 August 1991 attack on Dalj,<sup>536</sup> he saw Arkan and two other SDB members in front of the Borovo Selo school flashing MUP ID badges and heard them identify themselves as SDB members.<sup>537</sup> The Chamber never considered whether this particular piece of JF-030's evidence was reliable. Though the Chamber found that JF-030 broadly "often provided general statements without providing any factual basis",<sup>538</sup> this assessment cannot apply to his testimony above, which was a specific statement based on JF-030's own observations. The Chamber also found that JF-030 provided "unconvincing" bases for his "assertions", such as his conclusion that SDB affiliation could be inferred based on the weapons a unit carried or its ease in crossing the border.<sup>539</sup> But this assessment also does not apply to JF-030's evidence of what he saw and heard in front of the Borovo Selo school in August 1991. That evidence was not based on a conjecture or inferential opinion, but rather on what JF-030 directly observed. No reasonable finder of fact could have ignored or rejected this evidence.

(b) The Chamber failed to consider the evidence in its entirety and in the context of other corroborative evidence

224. Finally, the Chamber failed to consider the above-mentioned pieces of evidence<sup>540</sup> in the context of the other corroborative evidence in the record showing the undeniable link between Stanišić and Arkan. Savić's evidence that in May 1991 Arkan considered Stanišić his "boss" corroborates Bogunović's evidence that Arkan was subordinated to Stanišić later in 1991. JF-030's evidence that Arkan identified himself as a SDB member in August 1991 corroborates this evidence, as does the testimony of Witness C-1118 that in November 1991 Arkan said he was awaiting "orders from Belgrade".<sup>541</sup> All of this evidence is mutually corroborative of Exhibit P1075, which shows that the SDB engaged Arkan from the beginning of the war in 1991. The evidence that while the SDG remained based in SBWS the SDB deployed them to commit similar crimes in BiH in March and April 1992,<sup>542</sup> and continued to

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<sup>536</sup> Judgement, para.526.

<sup>537</sup> See Judgement, para.1784.

<sup>538</sup> Judgement, para.1787.

<sup>539</sup> Judgement, para.1787.

<sup>540</sup> See above paras.218-223.

<sup>541</sup> Judgement, para.1785.

<sup>542</sup> See above para.92. See below paras.228-234.



exercise authority over and support the SDG through 1995,<sup>543</sup> further corroborates Stanišić's control over Arkan.

225. The Chamber claims to have considered this evidence "cumulatively",<sup>544</sup> but provides no indication that it did.<sup>545</sup> If it had properly assessed this evidence individually and in its totality, the Chamber would have concluded that Stanišić directed and controlled Arkan and his SDG at the time the SDG was committing murder, deportation and persecution in SBWS in 1991.

### **C. Stanišić significantly contributed to the implementation of the common purpose in Bijeljina and Zvornik municipalities**

226. Stanišić significantly contributed to implementing the common purpose in Bijeljina and Zvornik. Stanišić was personally involved in distributing weapons in BiH,<sup>546</sup> and sent operatives from the SDB to supply weapons for the Zvornik TO,<sup>547</sup> just as he had done in SAO Krajina and SBWS.<sup>548</sup> As in SBWS,<sup>549</sup> Stanišić deployed Arkan and the SDG to take over Bijeljina and Zvornik and to commit the crimes that ensued.<sup>550</sup> One of the SDB operatives sent by Stanišić's SDB, Marko Pavlović,<sup>551</sup> was appointed commander of the Zvornik TO.<sup>552</sup> In this capacity, at Stanišić's behest, he led the Zvornik TO in driving non-Serbs from Zvornik.<sup>553</sup>

227. The Bijeljina and Zvornik takeovers and crimes marked the beginning of the JCE members' operations to cleanse non-Serbs from large portions of Bosnia, furthering the common purpose that was already being implemented in the SAO

<sup>543</sup> See above paras.88, 97. See below paras.245-249.

<sup>544</sup> Judgement, para.1789.

<sup>545</sup> See above Ground 1.

<sup>546</sup> [REDACTED]; Exh.P2522, p.41 (public) (**uncited**). See also Judgement, paras.2180-2182, 2210 (accepting B-179's evidence regarding Stanišić's role in the arming scheme from Belgrade from 1991-1993).

<sup>547</sup> See Judgement, paras.2276, 2284; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>548</sup> See above paras.51, 60-62, 73, 75, 202-215.

<sup>549</sup> See above paras.216-225.

<sup>550</sup> See Judgement, paras.1845, 1849-1850; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Exh.P3017, p.6 (public) (discussing events in Bijeljina, Zvornik and later Brčko and indicating that Arkan's SDG was "directed to these parts by the Serbian MUP").

<sup>551</sup> See Judgement, paras.2266-2267; [REDACTED]; [REDACTED]. See also [REDACTED].

<sup>552</sup> Judgement, para.2270.

<sup>553</sup> See Judgement, paras.928, 931, 935, 947, 1213-1224, 1231-1236.

Krajina and SBWS.<sup>554</sup> Through his acts, Stanišić contributed to implementing the common purpose in Bijeljina and Zvornik.

1. Stanišić deployed the SDG to Bijeljina and Zvornik, where they committed the charged crimes

228. The Chamber erred when it found that there was insufficient evidence from which to conclude that Stanišić organised the SDG's involvement in Bijeljina and Zvornik.<sup>555</sup> The Chamber's deficient analysis of the testimony of key insider witnesses and failure to consider the evidence in its totality led to this erroneous conclusion. Had it not made these errors, it would have found that the SDB, under Stanišić's control, deployed the SDG into Bijeljina and Zvornik, enabling them to victimize non-Serb civilians in furtherance of the common purpose. No reasonable trial chamber could have found otherwise.

229. The Chamber erred in rejecting as general and lacking a clear basis of knowledge JF-057's evidence that the SDB deployed the SDG into Bijeljina and Zvornik.<sup>556</sup> [REDACTED].<sup>557</sup> [REDACTED].<sup>558</sup> [REDACTED]<sup>559</sup> [REDACTED],<sup>560</sup> [REDACTED]. [REDACTED].<sup>561</sup> Given JF-057's clear foundation for her conversation regarding the SDB's orders and the Chamber's finding that she provided "very precise" answers and "exhibited a good memory",<sup>562</sup> it was clearly erroneous for the Chamber to reject JF-057's evidence on this point.

230. The Chamber also wrongly concluded that JF-057 provided contradictory evidence on the SDG's deployment to Bijeljina and Zvornik.<sup>563</sup> To reach this conclusion, the Chamber took one answer that JF-057 provided in court in isolation from its context. [REDACTED].<sup>564</sup> [REDACTED].<sup>565</sup> In finding this evidence to be

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<sup>554</sup> See above Section II.D.

<sup>555</sup> Judgement, paras.1800, 1858, 1860.

<sup>556</sup> Judgement, para.1855.

<sup>557</sup> [REDACTED].

<sup>558</sup> [REDACTED].

<sup>559</sup> [REDACTED].

<sup>560</sup> [REDACTED].

<sup>561</sup> [REDACTED]; [REDACTED]; see also [REDACTED]; [REDACTED].

<sup>562</sup> Judgement, para.1909.

<sup>563</sup> Judgement, paras.1845, 1855.

<sup>564</sup> [REDACTED].

<sup>565</sup> [REDACTED]; [REDACTED].

contradictory, the Chamber simply misread JF-057's response and took it out of context.

231. The Chamber further erred by considering JF-057's testimony that Plavšić invited the SDG to go to Bijeljina to be inconsistent with her evidence regarding the SDB ordering the SDG's deployment.<sup>566</sup> There is no inconsistency in the fact that the SDB ordered the SDG to deploy to Bijeljina and Zvornik, on the one hand, and the fact that a high-level member of the RS leadership and fellow JCE member invited them onto RS territory, on the other. [REDACTED].<sup>567</sup>

232. The Chamber compounded its error by failing to make findings based on the evidence of JF-026, [REDACTED],<sup>568</sup> regarding Kostić's role in bringing Arkan's SDG to Zvornik.<sup>569</sup> The Chamber reached this error by misreading several of JF-026's statements as mutually inconsistent.<sup>570</sup> A plain and common sense reading of the Chamber's analysis in paragraph 1854 of the Judgement establishes that there is no contradiction or inconsistency in JF-026's statements. [REDACTED].<sup>571</sup> The Chamber's erroneous assessment of this portion of JF-026's evidence is also at odds with its general assessment that JF-026's evidence is "on the whole coherent, reliable, mutually reinforcing and consistent with the Adjudicated Facts".<sup>572</sup>

233. Finally, the Chamber erred by failing to consider the evidence of the SDB deploying the SDG to Bijeljina and Zvornik in the context of Stanišić's ongoing relationship of authority over Arkan and the SDG. The evidence discussed in relation to the SDG's activities in SBWS establishes that Stanišić was Arkan's boss, and exercised control over him and the SDG continuously from at least mid-1991, while they were committing crimes in SBWS well into 1992.<sup>573</sup> In this context, the only reasonable inference is that in April 1992, Stanišić continued to exercise control over the SDG, and deployed them to Bijeljina and Zvornik. The Chamber's findings that

<sup>566</sup> Judgement, paras. 1855, 1858.

<sup>567</sup> [REDACTED]; [REDACTED].

<sup>568</sup> [REDACTED].

<sup>569</sup> Judgement, paras.1849, 1854, 1860 (based on JF-026's evidence, the Chamber considered only that Arkan was requested to go to Zvornik by the Crisis Staff).

<sup>570</sup> Judgement, para.1854.

<sup>571</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. *See also* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>572</sup> Judgement, para.916. The Chamber relied on JF-026 at Judgement, paras.1796-1798, 1800, 1849-1851.

<sup>573</sup> *See above* paras.216-225.

by 1994 Stanišić and Simatović continued to be involved in the SDG's deployments, and were an integral source of financial and logistical support for the SDG, further demonstrate this continuing relationship of authority.<sup>574</sup>

234. The evidence in its totality and the Chamber's own findings show beyond a reasonable doubt that Stanišić deployed the SDG to Bijeljina and Zvornik, thereby contributing to the furtherance of the common purpose.

2. Through SDB operatives, Stanišić armed, equipped and led the Zvornik TO in committing crimes

235. The Chamber erred by failing to find that Stanišić formed, armed and equipped the Zvornik TO in Zvornik municipality.<sup>575</sup> The evidence establishes that Stanišić sent SDB operatives to arm<sup>576</sup> and command the Zvornik TO,<sup>577</sup> and these operatives carried out their responsibilities at the behest and under the direction of Stanišić. Had the Chamber properly considered this evidence, it would have found that through his SDB operatives, Stanišić armed the Zvornik TO and used the TO to drive out the non-Serb population from the municipality, in furtherance of the common purpose. No reasonable trial chamber could have found otherwise.

236. As in relation to SDB operatives' activities in SBWS, the Chamber unreasonably failed to attribute to Stanišić the conduct of SDB operatives Kostić and Marko Pavlović in Zvornik. The Chamber acknowledged that, while in Zvornik, Kostić was a SDB employee, that Pavlović might have been a SDB employee, and that Stanišić was Chief of the SDB. Nevertheless, it wrongly concluded that this did not mean Kostić and Pavlović's acts could be attributed to the Accused.<sup>578</sup>

(a) The Chamber took an unduly narrow approach to the evidence of links between Stanišić and his SDB operatives

237. As it did in relation to SBWS, the Chamber erred by taking an unduly narrow approach to the evidence regarding the links between Stanišić and SDB operations

<sup>574</sup> See below paras.244-249.

<sup>575</sup> Judgement, paras.2271-2273, 2284-2285.

<sup>576</sup> See Judgement, paras.2276, 2284; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>577</sup> See Judgement, paras.2266-2267, 2270; [REDACTED]; [REDACTED]. See also [REDACTED].

and SDB operatives in Zvornik, and Stanišić's role in the Zvornik operations. It failed to consider Kostić and Pavlović's activities in Zvornik in the context of the evidence about their relationship to Stanišić and, and their links to the SDB, and in the context of the evidence about the SDB's involvement in the arming scheme.

238. Kostić's activities as a SDB employee in Zvornik under Stanišić were no different from those he carried out in SBWS under Stanišić:

- Kostić was a SDB operative acting with Stanišić in SBWS in 1991 and 1992, before and after his activities in Zvornik.<sup>579</sup>
- Having worked with Stanišić and Bogdanović on distributing arms in SBWS, in late autumn 1991 through 1992, Kostić performed this same function in Zvornik.<sup>580</sup> While Stanišić continued to organise weapons transfers through the Association of Serb Emigrants,<sup>581</sup> Kostić worked with Bogdanović to transfer weapons to Zvornik.<sup>582</sup> [REDACTED],<sup>583</sup> [REDACTED].<sup>584</sup> When Bogdanović and Stanišić met SDS leaders in a municipality adjacent to Zvornik to discuss weapons distribution,<sup>585</sup> Bogdanović referred Zvornik's SDS municipal leadership to Kostić, who organised weapons for them.<sup>586</sup>
- [REDACTED].<sup>587</sup> Both Arkan and Kostić acted under Stanišić's direction.<sup>588</sup>
- Following Kostić's successful operations in SBWS,<sup>589</sup> Bijeljina and Zvornik, Stanišić promoted Kostić to senior advisor at the SDB on 5 June 1992.<sup>590</sup> After

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<sup>578</sup> Judgement, paras.2271, 2285.

<sup>579</sup> See above paras.75, 209.

<sup>580</sup> See Judgement, para.2276.

<sup>581</sup> See Judgement, para.2210.

<sup>582</sup> See Judgement, para.2276.

<sup>583</sup> [REDACTED].

<sup>584</sup> [REDACTED].

<sup>585</sup> Exh.P2522, pp.35-36, 41 (public) (**uncited**).

<sup>586</sup> See Judgement, para.2276.

<sup>587</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>588</sup> See above paras.204-225.

<sup>589</sup> See above para.75.

<sup>590</sup> Judgement, para.2229; Exh.P406, pp.6-7 (public).

Kostić died,<sup>591</sup> the elite centre established for the Unit at Kula was named after him.<sup>592</sup>

239. Similarly, Pavlović's links to Stanišić are also clear and well-corroborated in the evidence:

- [REDACTED].<sup>593</sup> He worked with Kostić to supply arms to Serb Forces in SBWS and in Zvornik.<sup>594</sup>
- Pavlović presented himself as a member of the SDB while in Zvornik,<sup>595</sup> [REDACTED].<sup>596</sup>
- Pavlović also worked closely with other SDB members. For example, Pavlović met with Simatović to discuss establishing training camps in close proximity to Zvornik municipality in June or July 1992,<sup>597</sup> the same months that he oversaw the deportation of thousands of non-Serbs from Zvornik.<sup>598</sup> He also had a close relationship with Milan Tepavčević, Stanišić's deputy, with whom he regularly met at the SDB offices in Belgrade.<sup>599</sup>

240. Given the evidence that in their capacity as SDB operatives, Kostić and Pavlović armed, and Pavlović commanded, the Zvornik TO—while Stanišić was SDB Chief and similarly involved in arms distribution—it was wholly erroneous for the Chamber to conclude that the SDB operatives' actions could not be attributed to their chief.

(b) The Chamber misconstrued the evidence of key insider witnesses JF-026 and B-161

241. In addition to failing to consider the above evidence in combination, the Chamber misconstrued the evidence of key insider witnesses. First, the Chamber

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<sup>591</sup> Exh.P406, p.8 (public).

<sup>592</sup> See Judgement, para.1505; *see also* Judgement, para.1504 (discussing evidence that Kostić was to be awarded posthumously at the Kula ceremony).

<sup>593</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>594</sup> See Judgement, para.2276.

<sup>595</sup> See Judgement, para.2267; [REDACTED]; [REDACTED].

<sup>596</sup> [REDACTED].

<sup>597</sup> See Judgement, para.2283.

<sup>598</sup> Judgement, paras.945, 947, 1231-1236.

<sup>599</sup> See Judgement, para.2276; [REDACTED].

erred in finding ambiguity in the clear and straightforward statement by JF-026 that Kostić brought Pavlović to Zvornik.<sup>600</sup> JF-026's evidence regarding the relationship between Kostić and Pavlović describes a clear line of subordination from Pavlović, up through Kostić to Stanišić as head of the SDB. According to JF-026, [REDACTED]<sup>601</sup> and referred to Kostić as "boss" or "chief".<sup>602</sup> Kostić first introduced Pavlović to him in Sombor, Serbia, where JF-026 thought Pavlović was "Serbian MUP intelligence".<sup>603</sup> This was during a period that Kostić was coordinating the activities of the SAO SBWS DB and the SDB in Sombor, Serbia.<sup>604</sup> JF-026's evidence confirms that Pavlović, like Kostić, was subordinate to and acting at the direction of Stanišić. No reasonable chamber could find otherwise.

242. Second, the Chamber erred in considering B-161's evidence that Pavlović had a "very close" relationship to Stanišić's deputy Tepavčević lacked sufficient foundations.<sup>605</sup> [REDACTED].<sup>606</sup> [REDACTED],<sup>607</sup> [REDACTED],<sup>608</sup> [REDACTED].<sup>609</sup> In the context of the totality of B-161's evidence, no reasonable trial chamber could have found his evidence lacking foundation.

243. Based on the totality of the evidence, which the Chamber did not consider, Kostić's acts in Zvornik, like his acts in SBWS, and Pavlović's acts in Zvornik, like those of his "boss" Kostić, were completed at Stanišić's direction. Through Kostić and Pavlović, Stanišić armed the Zvornik TO. Through Pavlović, Stanišić used the Zvornik TO to forcibly displace thousands of non-Serbs. In view of this evidence, any reasonable finder of fact would have found that by using his operatives to arm and command the Zvornik TO, Stanišić substantially contributed to furthering the common purpose in Zvornik.

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<sup>600</sup> Judgement, para.2271.

<sup>601</sup> [REDACTED].

<sup>602</sup> See Judgement, para.2266; see also JF-026, T.9805; [REDACTED]; [REDACTED]; [REDACTED].

<sup>603</sup> See Judgement, para.2266; [REDACTED].

<sup>604</sup> See Judgement, para.1502; [REDACTED].

<sup>605</sup> Judgement, paras.2276, 2285.

<sup>606</sup> See e.g. [REDACTED].

<sup>607</sup> See [REDACTED].

<sup>608</sup> [REDACTED].

<sup>609</sup> See e.g. [REDACTED].

**D. Stanišić and Simatović significantly contributed to the implementation of the common criminal purpose in Sanski Most in 1995**

244. Based on the evidence and the Chamber's own findings, through their acts, Stanišić and Simatović significantly contributed to implementing the common criminal purpose in Sanski Most. Stanišić and Simatović financed and deployed Arkan and the SDG to Sanski Most in 1995. JCE members used Arkan and the SDG to cleanse Sanski Most of non-Serbs. The Chamber erred in finding otherwise.

245. The Chamber erred by viewing the evidence of the SDB's control over or assistance to Arkan and the SDG during its deployment to Sanski Most in isolation. Between 1991 and 1993, the SDG committed numerous crimes against non-Serb civilians in SBWS, Bijeljina and Zvornik under the direction and/or support of the SDB,<sup>610</sup> which the Chamber found must have been known by both Accused.<sup>611</sup> As reflected in the Chamber's own findings, that pattern of control and assistance continued in actions undertaken by the SDG in late 1994 and mid-1995 and immediately preceding their involvement in Sanski Most:

- From late-1994 and onwards, Stanišić and Simatović directed and organised salaries and medical care for SDG members.<sup>612</sup>
- In November 1994, Stanišić and Simatović facilitated the SDG's involvement in Operation Pauk.<sup>613</sup> As noted by the Chamber, Stanišić took part in preparatory meetings with high-ranking officials, including Mladić, Perišić and Čeleketić, regarding his and Simatović's involvement in Operation Pauk.<sup>614</sup> Stanišić also represented Serbia in the Pauk Command and was one of the leaders of the Operation.<sup>615</sup>
- Around June or July 1995, through a JATD liaison officer, Stanišić and Simatović supported the involvement of the SDG and Simatović, in particular, organised the SDG's participation in the Trnovo operation.<sup>616</sup> The Chamber

<sup>610</sup> See above paras.216-225, 228-234.

<sup>611</sup> Judgement, para.2333.

<sup>612</sup> Judgement, paras.1911-1912.

<sup>613</sup> Judgement, para.2004-2005. See also [REDACTED].

<sup>614</sup> Judgement, para.2004.

<sup>615</sup> Judgement, para.2004. See also Exh.P382, p.1.

<sup>616</sup> Judgement, paras.2037, 2039.



noted that while a request for Arkan's assistance had come from the Bosnian-Serb authorities,<sup>617</sup> "Simatović called Arkan and arranged for the SDG to participate in the Trnovo operation".<sup>618</sup> Like in Operation Pauk, Simatović "remained in regular telephone contact with" Arkan throughout the Trnovo operation.<sup>619</sup>

- Between August and October 1995, during the SDG's involvement in the SBWS operation, Stanišić and Simatović supplied SDG members with ammunition and uniforms.<sup>620</sup>

246. The evidence considered at trial and the Chamber's own findings illustrate how this pattern of interactions between Arkan and the Accused was replicated in Sanski Most in 1995:

- During the SDG's deployment to Sanski Most, Arkan met with Simatović on an average of three times per week.<sup>621</sup>
- Arkan himself acknowledged that while deployed in Sanski Most he received orders by phone from the Serbian MUP, which JF-057 clarified included "Frenki".<sup>622</sup>
- The Chamber found that the Accused provided vital financial support for the involvement of SDG members in Sanski Most.<sup>623</sup>

247. The Chamber, however, viewed the evidence of Stanišić's and Simatović's involvement in Sanski Most in isolation of this pattern of assistance and control exercised over Arkan and the SDG. For instance, the level of control exercised by Simatović over Arkan and the SDG during the Tronovo operation—which the Chamber found amounted to "organising" the SDG's involvement in that operation—was virtually identical to the evidence considered with respect to Simatović's relationship with Arkan and the SDG during their deployment to Sanski Most. With

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<sup>617</sup> Judgement, para.2039.

<sup>618</sup> Judgement, para.2039.

<sup>619</sup> Judgement, para.2035.

<sup>620</sup> Judgement, paras.2068.

<sup>621</sup> See Judgement, para.1863.

<sup>622</sup> See Judgement, para.1863. See also [REDACTED].

<sup>623</sup> Judgement, para.1880. See Judgement, para.1874 (noting that the other source of the SDG's salaries—General Lončar—was irregular ).

respect to Trnovo, the Chamber relied on the evidence provided by JF-057 that Simatović called Arkan and arranged for the SDG to participate in that operation.<sup>624</sup> The same witness gave evidence that Arkan “did nothing without the support or permission of Frenki and the DB and, for example, would not call SDG members back to active duty, would not take them to a training camp or take them on any operation without the approval or support of the DB”.<sup>625</sup> Arkan himself noted that during their deployment in Sanski Most he functioned, in part, under the authority of the Serbian MUP.<sup>626</sup>

248. Considering the evidence in its totality and in light of the Chamber’s own findings, Stanišić and Simatović deployed Arkan and the SDG to Sanski Most, thereby contributing to the common criminal purpose.

249. At a minimum, in light of the crimes committed by the SDG in 1991 and 1992 in SBWS, Bijeljina and Zvornik, it was reasonably foreseeable to the Accused that the SDG would commit murders in Sanski Most municipality.<sup>627</sup> Nevertheless, the Accused financed Arkan and the SDG during their involvement in the Sanski Most operation.<sup>628</sup> Furthermore, the Accused facilitated the deployment of Arkan and the SDG to Sanski Most, even with that knowledge.

## **E. Conclusion**

250. The evidence in its totality and the Chamber’s own findings establish beyond reasonable doubt that as JCE members, Stanišić and Simatović are responsible for the crimes proven in SBWS, Bijeljina, Zvornik and Sanski Most through their significant contributions to the implementation of the common purpose, including in these regions.

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<sup>624</sup> Judgement, para.2039.

<sup>625</sup> Judgement, para.1901.

<sup>626</sup> See Exh.P289, p.3.

<sup>627</sup> Judgement, para.2333.

<sup>628</sup> Judgement, para.2333.

**F. In the alternative, Stanišić and Simatović aided and abetted the crimes in these localities**

1. Overview

251. Stanišić aided and abetted crimes in SBWS, Bijeljina, Zvornik and Sanski Most. He helped establish the SAO SBWS police and armed, financed and equipped the SAO SBWS police and TO. Once these forces began perpetrating the anticipated crimes, he continued to finance, arm and support them. He also deployed Arkan and the SDG to SBWS and later to Bijeljina and Zvornik, knowing of their violent propensities and the intent to commit crimes against non-Serb civilians. With Simatović, Stanišić aided and abetted the persecution, murder and deportation of civilians from Sanski Most by financing the SDG and assisting in their deployment to Sanski Most. No reasonable trial chamber could have concluded otherwise.

252. If specific direction is a requirement of aiding and abetting,<sup>629</sup> the evidence on the record establishes that this element is met. The fact that the Accused's contributions were specifically directed to the crimes is clear given their proximity to the perpetrators, their knowledge of the crimes and the perpetrators' criminal propensity and their direct assistance.

2. Stanišić aided and abetting the commission of crimes in SBWS

253. The Chamber found that the SDG and SAO SBWS TO and police deported and persecuted "many thousands" of non-Serbs civilians in SBWS from August 1991 through 1992.<sup>630</sup> The SDG further murdered and persecuted 35 non-Serb civilians in SBWS.<sup>631</sup>

254. Through his conduct and through the SDB operatives he dispatched to SBWS, Stanišić substantially contributed to the crimes committed by the SAO SBWS police and TO by supporting the establishment of the SAO SBWS police, and then arming, financing and equipping the SAO SBWS police and TO.<sup>632</sup> Stanišić exercised control

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<sup>629</sup> See above Ground 2.

<sup>630</sup> Judgement, paras.508-511, 527-528, 537-538, 553, 573, 575-578, 1019-1030, 1033-1038, 1049-1054, 1249-1253.

<sup>631</sup> Judgement, paras.419, 432, 454, 468, 479, 990, 1244-1248.

<sup>632</sup> See above paras.75, 202-215.

over Arkan and the SDG while they were in SBWS, substantially contributing to their crimes in SBWS by enabling their activities.<sup>633</sup>

255. Stanišić's proximity to the crimes and the perpetrators, the nature of his substantial contributions, and the extent of his knowledge, together establish that his contributions were specifically directed to the crimes in SBWS. Commanded by Stanišić's subordinate, Kojić, the SAO SBWS TO committed crimes against the non-Serb population in August 1991.<sup>634</sup> Stanišić maintained a close relationship with Kojić. In addition, Stanišić cooperated closely with Hadžić and Badža, to whom the SAO SBWS police and TO were later officially subordinated.<sup>635</sup>

256. Stanišić held a position of authority over Arkan. He controlled Arkan and the SDG while they carried out a campaign of brutality against non-Serbs in SBWS.<sup>636</sup>

257. In addition, Stanišić was closely involved in the events on the ground, and, through his trusted SDB operatives, maintained a vigilant physical presence. Stanišić's operatives were based in close proximity to and maintained regular contact with the SAO SBWS police and TO while making use of Stanišić's multi-faceted and substantial contributions to these forces' crimes throughout the period of their criminal activity.<sup>637</sup> During the relevant period, Stanišić also met personally with the SAO SBWS police chief, the SAO SBWS Minister of the Interior and Hadžić.<sup>638</sup>

258. Moreover, Stanišić was aware of the probability that the SDG and the SAO SBWS police and TO would commit murder, persecution, forcible transfer and deportation in SBWS in 1991 and 1992 and that his acts would assist those crimes.

259. Stanišić was aware that force and violence would be used to displace the non-Serb population in SBWS. Beginning well before crimes were committed by the SDG or the SAO SBWS TO and police, Stanišić met regularly with Hadžić to discuss establishing the SAO SBWS government, police and TO structures.<sup>639</sup> During the same period, Stanišić worked closely with Martić to create parallel structures in SAO

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<sup>633</sup> See above paras.216-225.

<sup>634</sup> See Judgement, paras.509, 527-528, 1019-1024, 1033-1038, 2232. See also Judgement, paras.492, 514.

<sup>635</sup> See above paras.75-76.

<sup>636</sup> See above paras.216-225.

<sup>637</sup> See above paras.75, 202-215.

<sup>638</sup> See above para.209.

Krajina.<sup>640</sup> Stanišić knew that the SAO Krajina leadership, in particular Martić,<sup>641</sup> intended to ethnically cleanse the region. He was aware that his assistance in establishing the SAO Krajina police, and supplying weapons and financial support to the SAO Krajina police and TO, had enabled these forces to violently and forcibly displace the non-Serb population in SAO Krajina beginning in July 1991.<sup>642</sup> Given his close collaboration with Hadžić, Stanišić must have known that the SAO SBWS police and TO would be used to pursue the same objective.<sup>643</sup> Despite this knowledge, he helped to establish the SAO SBWS police and arm, finance and equip the SAO SBWS police and TO in SBWS, enabling them to commit murder and other violent acts to displace non-Serbs from SBWS.

260. Once the SAO SBWS police and TO began committing crimes in August 1991, Stanišić must have known that his continued efforts to arm, equip and finance them would further contribute to their crimes. These crimes could not have not escaped Stanišić's attention given his position in the SDB, his relationship to Milošević as Milošević's "Number Two",<sup>644</sup> the nature of the SDB's intelligence-gathering responsibilities,<sup>645</sup> and the numerous SDB operatives gathering and reporting information from SBWS.<sup>646</sup>

261. Stanišić was equally aware of Arkan's notorious criminal character and his propensity to commit violent crimes before he engaged Arkan and his SDG in SBWS. [REDACTED].<sup>647</sup> A Belgrade SDB report in January 1991 detailed Arkan's extensive criminal record, including acts of violence.<sup>648</sup> According to a Serbian MUP police officer, "every police officer in Serbia" knew of Arkan's criminal history.<sup>649</sup> Arkan's criminal goals were also closely aligned with Martić's. In late 1990 Arkan was

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<sup>639</sup> Judgement, paras.2298. *See also* Judgement, paras.2222, 2248.

<sup>640</sup> *See above* paras.54, 59-62, 70, 73.

<sup>641</sup> Judgement, para.2332.

<sup>642</sup> *See above* paras.70-73, 178, 182.

<sup>643</sup> *See above* paras.74-76.

<sup>644</sup> Babić, Exh.P1878, pp.192-193 (public); *see, e.g.*, Exh.P630, p.3 (public) (**uncited**); [REDACTED]; [REDACTED]; B.Bogunović, P554, para.18 (public).

<sup>645</sup> *See e.g.*, Exh.P3226, pp.3-5 (public) (**uncited**); Exh.P3227, pp.10-14 (public) (**uncited**); [REDACTED]; Exh.P3230, pp.5, 11-13 (public) (**uncited**); [REDACTED]; P3232, pp.8-9 (public) (**uncited**).

<sup>646</sup> *See e.g.*, Judgement, paras. 1502, 2231, 2247; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; N.Bogunović:T.13191 (public); [REDACTED].

<sup>647</sup> [REDACTED].

<sup>648</sup> Exh.P1646, p.6 (public).

arrested in SAO Krajina where he was helping his “close friend” Martić plan “a fight against that ‘Ustashoid dragon’”.<sup>650</sup> Arkan’s arrest was reported within the SDB,<sup>651</sup> at a time when Stanišić was Deputy Chief of the SDB and Assistant Secretary of the Interior of Serbia.<sup>652</sup>

262. Given Stanišić’s knowledge of the events in the SAO Krajina and of Hadžić’s and Arkan’s criminal intent, Stanišić would have been aware that the SDG and the SAO SBWS police and TO would probably commit murder, persecution, forcible transfer and deportation. He was further aware that by exercising control over the SDG, by supporting the establishment of the SAO SBWS police, and by arming, financing and equipping the SAO SBWS police and TO on an ongoing basis, he would assist the commission of these crimes.

### 3. Stanišić aided and abetted crimes in Bijeljina and Zvornik

263. The Chamber found the SDG responsible for the forcible transfer, deportation and persecution of scores of non-Serb civilians during the takeover of Bijeljina,<sup>653</sup> and found the SDG and Zvornik TO responsible for the forcible transfer, deportation and persecution of thousands of non-Serbs from Zvornik.<sup>654</sup>

264. Through the acts of Kostić and Pavlović, trusted SDB operatives dispatched to Zvornik, Stanišić substantially contributed to the Zvornik TO’s crimes by arming the Serb Forces in Zvornik both before and after they were officially organised as the Zvornik TO.<sup>655</sup> Stanišić further contributed to the TO’s crimes through Pavlović, who, as Zvornik TO commander, led the Zvornik TO in a campaign of crimes against non-Serb civilians.<sup>656</sup> Stanišić substantially contributed to the SDG’s crimes in Bijeljina and Zvornik by deploying them to these areas to participate in the forcible

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<sup>649</sup> Grekulović, T.15275 (public).

<sup>650</sup> Exh.P2924, p.1 (public).

<sup>651</sup> Exh.P1646, p.2 (public).

<sup>652</sup> Exh.P2397(public) (**uncited**).

<sup>653</sup> Judgement, paras.587, 596, 1056-1067, 1249-1253.

<sup>654</sup> Judgement, paras.917-919, 921, 923, 928, 931, 935, 942, 947, 1183-1188, 1195-1236, 1249-1253. *See also* Judgement, paras.889-890, 990, 1244-1248 (The Chamber also found that the SDG and/or Šešelj’s men murdered and persecuted (through murder) 12 non-Serb civilians during the Zvornik takeover).

<sup>655</sup> *See above* paras.92, 226-243.

<sup>656</sup> *See* Judgement, paras.928, 931, 935, 947, 1213-1224, 1231-1236.

displacement campaign,<sup>657</sup> and enabling them to commit other crimes during these attacks against the civilian non-Serb population of Zvornik.<sup>658</sup>

265. Stanišić's proximity to the crimes and their perpetrators (led by his subordinates), the direct and substantial nature of his contributions, and his knowledge of previous similar crimes by the same perpetrator groups establish that his contributions were specifically directed to the crimes in Zvornik and Bijelina. Stanišić embedded Pavlović in a command position over the Zvornik TO.<sup>659</sup> The Zvornik TO commanded by Pavlović committed crimes against the non-Serb population.<sup>660</sup> As in SBWS, Stanišić controlled Arkan and the SDG while they carried out a campaign of brutality against non-Serbs in Bijeljina and Zvornik.<sup>661</sup> The fact that he knew about the criminal propensity of Arkan and his SDG<sup>662</sup> but repeatedly deployed them into areas where he allowed them to act with impunity, demonstrates that Stanišić's acts in deploying and controlling the SDG were specifically directed to crimes. In addition, Stanišić's operatives were based in close proximity to and maintained regular contact with the Zvornik TO while making use of Stanišić's multifaceted and substantial contributions to these forces' crimes throughout the period of their criminal activity.<sup>663</sup>

266. Stanišić was aware of the probability that during and following the takeovers of Bijeljina and Zvornik in 1992, the SDG and the Zvornik TO would commit murder, persecution, forcible transfer and deportation, and that his acts would assist those crimes.

267. Stanišić knew that force and violence would be used to displace the non-Serb population in Bijeljina and Zvornik. The Bijeljina and Zvornik takeovers were part of the Bosnian Serb leadership's plan to ethnically divide BiH through violence.<sup>664</sup> Prior to the Bijeljina and Zvornik operations, Stanišić was in frequent contact with

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<sup>657</sup> See above para.92.

<sup>658</sup> See Judgement, paras. 587, 596, 917-919, 921, 923, 942,1056-1067, 1183-1188, 1195-1206. See also Judgement, paras.889-890.

<sup>659</sup> See above paras.239-243.

<sup>660</sup> See Judgement, paras.928, 931, 935, 947, 1213-1224, 1231-1236.

<sup>661</sup> See above paras.228-234.

<sup>662</sup> See above para.261.

<sup>663</sup> See above paras.235-243.

<sup>664</sup> See above paras.79-82.

Karadžić<sup>665</sup> who had repeatedly and publicly advocated for the ethnic separation of Bosnian Muslims from Bosnian Serbs through the use of violence.<sup>666</sup> The attacks on Bijeljina and Zvornik were preceded by overt declarations by Serb leaders concerning the removal of the non-Serb population. These attacks were also similar to those in the SAO Krajina and SBWS which had resulted in murder, persecution and forcible displacement of non-Serbs.

268. Knowing of the brutal crimes Arkan and the SDG had committed in SBWS,<sup>667</sup> Stanišić must have known that by deploying them into Bijeljina, he would assist the brutal crimes they would commit there. Stanišić must have known that deploying them into Zvornik directly after they had committed crimes against non-Serbs in Bijeljina would contribute to a similar pattern of violent crimes in Zvornik. Similarly, Stanišić knew that his contributions to the arming of the SAO SBWS TO and police through Kostić would enable them to commit crimes in that region. He knew that deploying Kostić and Pavlović to arm the Zvornik TO would similarly enable the Zvornik TO to commit crimes.

#### 4. Stanišić and Simatović aided and abetted crimes in Sanski Most

269. The Chamber found Arkan and the SDG responsible for the murder and persecution (through murder) of 65 non-Serb civilians in Sasina and of 11 non-Serb men in Trnova, Sanski Most municipality, in September 1995.<sup>668</sup> These crimes were committed during the SDG's deployment to Sanski Most municipality.

270. Both Accused substantially contributed to the SDG's crimes in Sanski Most. The Chamber found that the Accused financed the SDG during their deployment to Sanski Most.<sup>669</sup> This financial support was vital to the SDG's participation in the attacks and crimes in this municipality.<sup>670</sup> The Accused also facilitated the SDG's deployment to Sanski Most.<sup>671</sup> Simatović supported the SDG through operations from

<sup>665</sup> See e.g., [REDACTED], P636 (public) (**uncited**), P666 (public), P670 (public), P671 (public), [REDACTED], P676 (public) (**uncited**), [REDACTED], P681 (**uncited**), [REDACTED], [REDACTED], [REDACTED], P686 (public), P687 (public), P689 (public) (**uncited**), P690 (public), P691 (public) (**uncited**), P692 (public) (**uncited**), [REDACTED].

<sup>666</sup> See above para.79.

<sup>667</sup> See above paras.260-261.

<sup>668</sup> Judgement, paras.795, 805, 990, 1244-1248.

<sup>669</sup> Judgement, para.1880.

<sup>670</sup> See Judgement, para.1874.

<sup>671</sup> See above paras.244-248.



late 1994.<sup>672</sup> While the SDG was engaged in the area of Sanski Most, Simatović was in regular contact with Arkan—through in-person meetings in Belgrade and phone communications.<sup>673</sup> Simatović paid SDG members and supplied them with ammunition and uniforms during the period the murders were committed.<sup>674</sup> Through these contributions, the Accused enabled the SDG to participate in the attacks on Sasina and Trnova villages, substantially contributing to the crimes they committed there.

271. The fact that Stanišić and Simatović provided vital support and facilitated Arkan and the SDG’s deployment to Sanski Most in full knowledge of their criminal propensity and prior crimes<sup>675</sup> demonstrates that their acts were specifically directed to the crimes.

272. Moreover, Stanišić and Simatović were aware of the probability that the SDG would commit crimes of persecution and murder in Sanski Most in 1995 and that their acts would assist those crimes.

273. In light of the crimes committed by the SDG in 1991 and 1992 in SBWS, Bijeljina and Zvornik, Stanišić must have been aware of the probability that the SDG would commit crimes of persecution and murder in Sanski Most. The Chamber found that it was “reasonably foreseeable to the Accused that the SDG would commit murders in Sanski Most municipality, during the period that the Accused financed them.”<sup>676</sup>

274. In organising the financing of the SDG over a period of time, “Stanišić took the risk that the SDG would commit murders during that period”.<sup>677</sup> In light of his prior knowledge, Stanišić was aware of the probability that the SDG would commit persecution and murder. These same findings and conclusion apply to Simatović.<sup>678</sup> In addition, Witness JF-057 noted that around September 1995, after Arkan relocated from Erdut to Banja Luka, Arkan met with Simatović almost every day during the

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<sup>672</sup> Judgement, para.2005.

<sup>673</sup> Judgement, para.1863; [REDACTED].

<sup>674</sup> Judgement, paras.1880, 2068 (accepting the evidence that the SDG retrieved supplies from the Unit’s base in Pajzoš between July and late September or early October 1995).

<sup>675</sup> See above para.261.

<sup>676</sup> Judgement, para.2333.

<sup>677</sup> Judgement, para.2333.

<sup>678</sup> See Judgement, para.2353 (incorporating by reference discussion made with respect to the *mens rea* findings concerning Stanišić and the crimes committed by the SDG).

SDG's deployment in Sanski Most in 1995<sup>679</sup> and at least three times per week on average.<sup>680</sup> Thus, Simatović must have been aware of the probability that Arkan and the SDG would commit the crimes of persecution and murder during the Banja Luka operations.

275. In light of the above, Stanišić and Simatović must have also known that their acts of assistance, namely enabling the SDG's deployment in Sanski Most and financing their participation there, would assist in the commission of crimes. Arkan and the SDG were notorious for their abuse of non-Serbs.<sup>681</sup> The purpose of their deployment into Sanski Most was to preserve the territorial gains and population removal achieved by the JCE in 1992.<sup>682</sup> Within this context, there is no question that Stanišić and Simatović were aware that by facilitating the deployment and financing the SDG's involvement in Sanski Most that they would assist Arkan and the SDG to murder and persecute non-Serbs there.

#### 5. Conclusion

276. The Chamber's findings and evidence demonstrate beyond reasonable doubt that Stanišić aided and abetted the crimes committed by the SDG, SAO SBWS police and TO in SBWS, by the SDG in Bijeljina and by the SDG and the Zvornik TO in Zvornik. In addition, the Chamber's findings and evidence also demonstrate beyond reasonable doubt that both Accused aided and abetted the crimes committed by the SDG in Sanki Most.

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<sup>679</sup> See Judgement, para.1863.

<sup>680</sup> Judgement, para.1863.

<sup>681</sup> See above para.261.

<sup>682</sup> Theunens, Exh.P1575, pp.411-412 (public).

## G. Remedy

277. In relation to Stanišić, the Prosecution requests that the Appeals Chamber apply the correct legal standards to the evidence, and:

- (a) overturn the acquittal of Stanišić;
- (b) find that, through his conduct, Stanišić significantly contributed to the implementation of the common criminal purpose in:
  - (i) SBWS in 1991 and 1992 through the SDG and the SBWS TO and Police;
  - (ii) Bijeljina through the SDG;
  - (iii) Zvornik through the SDG and Zvornik TO; and
  - (iv) Sanski Most through the SDG; and
- (c) take these findings into account in convicting Stanišić under Article 7(1) of the Statute for his participation in the JCE under Ground One and/or
- (d) in the alternative, find that Stanišić substantially contributed to one or more of the crimes in SBWS, Zvornik, Bijeljina and Sanski Most; and
- (e) find that Stanišić knew that the crimes would be committed and that their conduct would assist the commission of these crimes; and
- (f) find, if required, that Stanišić specifically directed their acts and omissions towards the commission of the above-mentioned crimes; and
- (g) convict Stanišić under Article 7(1) of the Statute as an aider and abettor for one or more of the crimes in these regions; and
- (h) sentence Stanišić accordingly.

278. In relation to Simatović, the Prosecution requests that the Appeals Chamber:

- (a) overturn the acquittal of Simatović; and
- (b) find that, through his conduct, Simatović significantly contributed to the implementation of the common criminal purpose in Sanski Most through the


SDG; and

- (c) take these findings into account in convicting Simatović under Article 7(1) of the Statute for his participation in the JCE under Ground One and/or
- (d) in the alternative, find that Simatović substantially contributed to one or more of the crimes in Sanski Most; and
- (e) find that Simatović knew that the crimes would be committed and that their conduct would assist the commission of these crimes; and
- (f) find, if required, that Simatović specifically directed their acts and omissions towards the commission of the above-mentioned crimes; and
- (g) convict Simatović under Article 7(1) of the Statute as an aider and abettor for the crimes in Sanski Most; and
- (h) sentence Simatović accordingly.

Word Count: 37,412 (including Annexes)



**Peter Kremer, QC**  
**Chief of Appeals Division**



**Mathias Marcussen**  
 Senior Legal Officer OTP MICT

Dated this 25<sup>th</sup> day of September 2013  
 At The Hague, The Netherlands

## V. RULE 111 DECLARATION

The Prosecutor will exercise due diligence to comply with his continuing Rule 68 disclosure obligations during the appeal stage of this case. As of the date of this filing, the Prosecutor has disclosed, or is in the process of disclosing, to Stanišić and Simatović all material under Rule 68(i) which has come into the Prosecutor's actual knowledge and, in addition, has made available to him collections of relevant material held by the Prosecutor.



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## GLOSSARY

### *Pleadings, Orders, Decisions etc. from Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69*

<b>Abbreviation used in Prosecution Brief</b>	<b>Full citation</b>
AFI	Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts, 25 November 2009 (public)
AFII	Decision on taking Judicial Notice of Adjudicated Facts, 16 December 2009 (public)
AFIII	Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 January 2010 (public)
AFIV	Decision on Third Prosecution's [sic] Motion for Judicial Notice of Adjudicated Facts, signed 23 July 2010, filed 26 July 2010 (public)
Defence AF	Decision on Stanišić Defence Motion for Judicial Notice of Adjudicated Facts, 16 February 2012
Indictment	Third Amended Indictment, 10 July 2008
Judgement	Judgement, 30 May 2013
Prosecution FTB	Prosecution Final Trial Brief of 14 December 2012

### *Other ICTY authorities*

<b>Abbreviation used in Prosecution Brief</b>	<b>Full citation</b>
<i>Aleksovski</i> AJ	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, App.Ch., Judgement, 24 March 2000
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Blagojević</i> AJ	<i>Prosecutor v. Vidoje Blagojević &amp; Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
<i>Blagojević</i> TJ	<i>Prosecutor v. Vidoje Blagojević &amp; Dragan Jokić</i> , Case No. IT-02-60-T, T.Ch., Judgement, 17 January 2005
<i>Boškoski</i> AJ	<i>Prosecutor v. Ljube Boškoski &amp; Johan Tarčulovski</i> , Case No. IT-04-82-A, App.Ch., Judgement, 19 May 2010
<i>Boškoski</i> TJ	<i>Prosecutor v. Ljube Boškoski &amp; Johan Tarčulovski</i> , Case No. IT-04-82-T, T.Ch., Judgement, 10 July 2008

<b>Abbreviation used in Prosecution Brief</b>	<b>Full citation</b>
<i>Brđanin</i> TJ	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-T, T.Ch., Judgement, 1 September 2004
<i>Delalić</i> AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. “Pavo”, Hazim Delić &amp; Esad Landžo, a.k.a. “Zenga”</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
<i>Đorđević</i> TJ	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-T, T.Ch., Judgement, 23 February 2011
<i>Furundžija</i> TJ	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, T.Ch., Judgement, 10 December 1998
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Gotovina</i> AJ	<i>Prosecutor v. Ante Gotovina &amp; Mladen Markač</i> , Case No. IT-06-90-A, App.Ch., Judgement, 16 November 2012
<i>Gotovina</i> TJ	<i>Prosecutor v. Ante Gotovina, Ivan Čermak, &amp; Mladen Markač</i> , Case No. IT-06-90-T, T.Ch., Judgement, 15 April 2011
<i>Hadžihasanović</i> AJ	<i>Prosecutor v. Enver Hadžihasanović &amp; Amir Kubura</i> , Case No. IT-01-47-A, App.Ch., Judgement, 22 April 2008
<i>Halilović</i> AJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, App.Ch., Judgement, 16 October 2007
<i>Haradinaj</i> AJ	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj &amp; Lahi Brahimaj</i> , Case No. IT-04-84-A, App.Ch., Judgement, 19 July 2010
<i>Haradinaj</i> TJ	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj &amp; Lahi Brahimaj</i> , Case No. IT-04-84-T, T.Ch., Judgement, 3 April 2008
<i>Kordić</i> TJ	<i>Prosecutor v. Dario Kordić &amp; Mario Čerkez</i> , Case No. IT-95-14/2-T, T.Ch., Judgement, 26 February 2001
<i>Krajišnik</i> AJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, App.Ch., Judgement, 17 March 2009
<i>Krajišnik</i> TJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, T.Ch., Judgement, 27 September 2006
<i>Krajišnik</i> TJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, T.Ch., Judgement, 27 September 2006
<i>Krnojelac</i> AJ	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, App.Ch., Judgement, 17 September 2003
<i>Krnojelac</i> TJ	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, T.Ch., Judgement, 15 March 2002
<i>Krstić</i> TJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, T.Ch., Judgement, 2 August 2001

<b>Abbreviation used in Prosecution Brief</b>	<b>Full citation</b>
<i>Kunarac</i> AJ	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač &amp; Zoran Vuković</i> , Case No. IT-96-23 & IT-96-23/1-A, App.Ch., Judgement, 12 June 2002
<i>Kupreškić</i> AJ	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović &amp; Vladimir Šantić</i> , Case No. IT-95-16-A, App.Ch., Judgement, 23 October 2001
<i>Kupreškić</i> TJ	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić &amp; Vladimir Šantić, a.k.a. “Vlado”</i> , Case No. IT-95-16-T, T.Ch., Judgement, 14 January 2000
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić &amp; Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Kvočka</i> TJ	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić &amp; Dragoljub Prcać</i> , Case No. IT-98-30/1-T, T.Ch., Judgement, 2 November 2001
<i>Limaj</i> AJ	<i>Prosecutor v. Fatmir Limaj, Haradin Bala &amp; Isak Musliu</i> , Case No. IT-03-66-A, App.Ch., Judgement, 27 September 2007
<i>Lukić</i> AJ	<i>Prosecutor v. Milan Lukić &amp; Sredoje Lukić</i> , Case No. IT-98-32/1-A, App.Ch., Judgement, 4 December 2012
<i>Lukić</i> TJ	<i>Prosecutor v. Milan Lukić &amp; Sredoje Lukić</i> , Case No. IT-98-32/1-T, T.Ch., Judgement, 20 July 2009
<i>Martić</i> AJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, App.Ch., Judgement, 8 October 2008
<i>Martić</i> TJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, T.Ch., Judgement, 12 June 2007
<i>Milutinović</i> TJ	<i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević &amp; Sreten Lukić</i> , Case No. IT-05-87-T, T.Ch., Judgement, 26 February 2009
<i>Mrkšić</i> AJ	<i>Prosecutor v. Mile Mrkšić &amp; Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009



<b>Abbreviation used in Prosecution Brief</b>	<b>Full citation</b>
<i>Mrkšić</i> TJ	<i>Prosecutor v. Mile Mrkšić, Miroslav Radić &amp; Veselin Šljivančanin</i> , Case No. IT-95-13/1-T, T.Ch., Judgement, 27 September 2007
<i>Perišić</i> AJ	<i>Prosecutor v. Momčilo Perišić</i> , Case No. IT-04-81-A, App.Ch., Judgement, 28 February 2013
<i>Popović</i> TJ	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero &amp; Vinko Pandurević</i> , Case No. IT-05-88-T, T.Ch., Judgement, 10 June 2010 (Public Redacted)
<i>Prlić</i> TJ	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić &amp; Berislav Pušić</i> , Case No. IT-04-74-T, T.Ch., Judgement, 29 May 2013
<i>Simić</i> AJ	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006
<i>Simić</i> TJ	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić &amp; Simo Zarić</i> , Case No. IT-95-9-T, T.Ch., Judgement, 17 October 2003
<i>Stakić</i> AJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch., Judgement, 22 March 2006
<i>Stanišić &amp; Župljanin</i> TJ	<i>Prosecutor v. Mićo Stanišić &amp; Stojan Župljanin</i> , Case No. IT-08-91-T, T.Ch., Judgement, 27 March 2013
<i>Tadić</i> AJ	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, App.Ch., Judgement, 15 July 1999
<i>Tolimir</i> TJ	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-T, T.Ch., Judgement, 12 December 2012
<i>Vasiljević</i> AJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, App.Ch., Judgement, 25 February 2004
<i>Vasiljević</i> TJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, T.Ch., Judgement, 29 November 2002

**ICTR authorities**

<b>Abbreviation used in Prosecution Brief</b>	<b>Full citation</b>
<i>Kalimanzira</i> AJ	<i>Callixte Kalimanzira v. Prosecutor</i> , Case No. ICTR-05-88-A, App.Ch., Judgement, 20 October 2010
<i>Muhimana</i> AJ	<i>Mikaeli Muhimana v. Prosecutor</i> , Case No. ICTR-95-1B-A, App.Ch., Judgement, 21 May 2007
<i>Muvunyi</i> AJ	<i>Prosecutor v. Tharcisse Muvunyi</i> , Case No. ICTR-2000-55A-A, App.Ch., Judgement, 29 August 2008
<i>Nahimana</i> AJ	<i>Ferdinand Nahimana, Jean-Bosco Barayagwiza &amp; Hassan Ngeze v. Prosecutor</i> , Case No. ICTR-99-52-A, App.Ch., Judgement, 28 November 2007
<i>Ntagerura</i> AJ	<i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki &amp; Samuel Imanishimwe</i> , Case No. ICTR-99-46-A, App.Ch., Judgement, 7 July 2006
<i>Ntakirutimana</i> AJ	<i>Prosecutor v. Elizaphan Ntakirutimana &amp; Gérard Ntakirutimana</i> , Case Nos. ICTR-96-10-A and ICTR-96-17-A, App.Ch., Judgement, 13 December 2004
<i>Seromba</i> AJ	<i>Prosecutor v. Athanase Seromba</i> , Case No. ICTR-2001-66-A, App.Ch., Judgement, 12 March 2008

**Other Abbreviations**

<b>Abbreviation used in Prosecution Brief</b>	<b>Full citation</b>
(S)FRY	(Former) Socialist Federal Republic of Yugoslavia ( <i>Socijalistička Federativna Republika Jugoslavija</i> )
Art.	Article
AT.	Appeals Transcript
BiH	Bosnia and Herzegovina ( <i>Bosna i Hercegovina</i> )
Chamber	Trial Chamber in <i>Prosecutor v. Jovica Stanišić and Franko Simatović</i> , Case No. IT-03-69-T
Croatia	Republic of Croatia

<b>Abbreviation used in Prosecution Brief</b>	<b>Full citation</b>
Exh.	Exhibit
Exhs.	Exhibits
fn.	footnote
fns.	footnotes
IHL	International Humanitarian Law
JATD	Unit for Anti-Terrorist Activities (DB) ( <i>Jedinice za antiteroristička dejstva</i> )
JCE	Joint criminal enterprise
JNA	Yugoslav People's Army ( <i>Jugoslovenska narodna armija</i> )
JSO	Unit for Special Operations ( <i>Jedinice za specijalne operacije</i> )
MUP	Ministry of the Interior Police ( <i>Ministarstvo unutrašnjih poslova</i> )
p.	page
para.	paragraph
paras.	paragraphs
pp.	pages
PriorT.	Testimony given in a prior trial
RDB	State Security Department ( <i>Resor državne bezbednosti</i> )
RS	Republika Srpska
RSK	Republic of Serbian Krajina ( <i>Republika Srpska Krajina</i> )
Rules	Rules of Procedure and Evidence

Abbreviation used in Prosecution Brief	Full citation
SAO Krajina	Serbian Autonomous Region of Krajina ( <i>Srpska autonomna oblast Krajina</i> )
SAO Krajina DB	Serbian Autonomous Region of Krajina State Security Department ( <i>Resor (ili Služba) državne bezbednosti Srpska autonomna oblast Krajina</i> )
SAO SBWS	Serbian Autonomous Region of Eastern Slavonia, Baranja and Western Srem ( <i>Srpska autonomna oblast Istočna Slavonija, Baranja i Zapadni Srem</i> )
SAO SBWS DB	Serbian Autonomous Region of Eastern Slavonia, Baranja and Western Srem State Security Department ( <i>Resor (ili Služba) državne bezbednosti Srpska autonomna oblast Istočna Slavonija, Baranja i Zapadni Srem</i> )
SDB	Serbian State Security Service ( <i>Služba državne bezbednosti</i> )
SDG	Serbian Volunteer Guard aka “ARKAN’s Tigers”, a paramilitary group lead by Željko RAŽNATOVIĆ aka ARKAN ( <i>Srpska dobrovoljačka garda</i> )
SDS	Serbian Democratic Party ( <i>Srpska demokratska stranka</i> )
Serb Forces	As defined in paragraph 6 of the Indictment
SJB	Public Security Station ( <i>Stanica javne bezbjednosti</i> )
SNB	National Security Service ( <i>Služba nacionalne bezbednosti</i> )
SRBH	Republic of the Serbian People of Bosnia and Herzegovina (predecessor of RS) ( <i>Republika srpskog naroda Bosne i Hercegovine</i> )
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the Security Council Resolution 827 (1993)
SUP	Secretary of Internal Affairs ( <i>Sekretarijat za unutrašnje poslove</i> )
T.	Trial Transcript
TO	Territorial Defence ( <i>Teritorijalna odbrana</i> )
uncited	Material not referred to in the Judgement
VJ	Army of Yugoslavia Army of the Federal Republic of Yugoslavia (came into existence after May 1992 when the JNA ceased to exist) ( <i>Vojska Jugoslavije</i> )
VRS	Army of Republika Srpska ( <i>Vojska Republike Srpske</i> )

# ANNEX A

This table shows the Chamber's findings establishing the involvement of selected Unit/JATD members from the DB in selected incidents relevant to the implementation of the common criminal purpose in the three regions from 1991 to 1995. Numerical references refer to paragraphs in the Judgement

Selected incidents, as found in the Judgement, relevant to the implementation of common purpose	Selected DB operatives (Unit/JATD members)										
	Franko SIMATOVIĆ	Radojica (Rajo) BOZOVIĆ	Dragan ĐORĐEVIĆ	Dragan FILIPOVIĆ	Živojin IVANOVIĆ (Crnogorac)	Vasilije (Vaso) MIJOVIĆ	Nikola FILIPOVIĆ	Zoran RAIĆ	Davor SUBOTIĆ	Dušan ORLOVIĆ	Milan RADONJIĆ
Monitoring of Captain Dragan (Serbia) December 1990–April 1991	1361	-	-	1361	-	-	-	-	-	-	-
Unspecified covert activities (Krajina) April–August 1991	-	-	-	-	-	-	-	-	-	-	1367, 1371
Golubić training camp (Krajina) April–June 1991	1366, 1421	1367	-	1367	1367	-	1369	1367	1367	1366, 1421 <sup>1</sup>	1365, 1367
Lovinac attack (Krajina) June 1991	335, 1397, 1426	-	-	-	-	-	332, 1397	-	-	335, 1397	-
Knin fortress training camp (Krajina) May–July 1991	-	-	-	-	1393	-	1393	-	-	-	-
Gilina/Struga attack (Krajina) July 1991	- <sup>2</sup>	-	-	-	183, 1398	-	183, 1398	-	183, 1398	-	-

<sup>1</sup> Orlović also served as head of the SAO Krajina DB in 1991: Judgement, paras. 1424, 2150, 2157.

<sup>2</sup> The Chamber found that Simatović organized the Unit's involvement in the Glina/Struga operations: Judgement, para. 1426. See also Judgement, paras. 184, 1398.

	Selected DB operatives (Unit/JATD members)										
	Franko SIMATOVIĆ	Radojica (Raj) BOZOVIĆ	Dragan ĐORĐEVIĆ	Dragan FILIPOVIĆ	Zivojin IVANOVIĆ (Crnogorac)	Vasilje (Vaso) MIJOVIĆ	Nikola PILIPOVIĆ	Zoran RAJIĆ	Davor SUBOTIĆ	Dušan ORLOVIĆ	Milan RADONJIĆ
Korenica training camp and operations (Krajina) <i>From August 1991</i>	1394, 1421	-	-	1394	1394, 1421	-	1394	-	-	-	-
Plitvice attack (Krajina) <i>August 1991</i>	1403, 1426	-	-	-	1403	-	1403	-	-	-	-
Ležimir training camp (Serbia), & operations (SBWS) <i>September 1991–March 1992</i>	1489, 1490	1488, 1490	1490, 1491	1488, 1490	1488, 1490	-	1488, 1490	1488, 1490	1488, 1490 <sup>3</sup>	1488, 1490	-
Ilok/Pajzoš training camp (SBWS) <i>November/December 1991–June 1992</i>	1536 <sup>4</sup>	1533	1533	-	1533	-	1533	1533	1533	-	-
Brčko training camp, & operations (Brčko corridor, BiH) <i>February–June 1992</i>	- <sup>6</sup>	-	-	-	1568	1568, 1570	1568	-	-	-	-

<sup>3</sup> The Chamber also noted evidence that Subotić fought at Tikveš at some point while in Ležimir (Fruška Gora, Serbia): Judgement, para.1507.

<sup>4</sup> The Chamber also found that Simatović organized the Unit's training at Pajzoš in 1992: Judgement, para.1534.

<sup>5</sup> The Chamber also noted evidence that Pilipović arrived at Ilok around December 1991: Judgement, para.1525.

<sup>6</sup> The Chamber found that Simatović organized the Unit's involvement in Brčko, and organized the logistical and other support for the Unit: Judgement, paras.1569, 1570. The Chamber also found that Simatović organized the training of VRS members: Judgement, para.1571.

	Selected DB operatives (Unit/JATD members)										
	Franko SIMATOVIĆ	Radojica (Rafo) BOZOVIĆ	Dragan ĐORĐEVIĆ	Dragan FILIPOVIĆ	Zivojin IVANOVIĆ (Crnogorac)	Vasilje (Vaso) MIJOVIĆ	Nikola PILIPOVIĆ	Zoran RAJIĆ	Davor SUBOTIĆ	Dušan ORLOVIĆ	Milan RADONJIĆ
Bosanski Šamac takeover (BiH) <i>April 1992</i>	- <sup>7</sup>	-	650, fn.4985	-	-	-	-	-	-	-	-
Mt.Ozren and Vila training camps (BiH) <i>April-July 1992</i>	- <sup>8</sup>	1597	-	-	-	-	-	1597	-	-	-
Doboij takeover (BiH) <i>May 1992</i>	- <sup>9</sup>	718, fn.4985	-	-	-	-	-	747, 777	-	-	-
Mt.Tara training camp (Serbia) <i>In early 1993</i>	- <sup>10</sup>	1638	-	-	-	1638	-	-	-	-	-
Skelani training camp, & operations (Op. Udar, BiH) <i>March-July 1993</i>	- <sup>11</sup>	1675	-	-	-	-	-	-	-	1675	-

<sup>7</sup> The Chamber found that Simatović organized the involvement of the Unit in Bosanski Šamac: Judgement, para. 1536.

<sup>8</sup> The Chamber found that Simatović directed and organized the training of and financed Unit members, and directed and organized the training of other Serb Forces at the Mt. Ozren and Vila camps: Judgement, paras.1600, 1602, 1604.

<sup>9</sup> The Chamber found that Simatović organized the involvement of and financed the Unit in the Doboij operations: Judgement, paras.1601-1602.

<sup>10</sup> The Chamber found that Simatović directed and organized the training of the Unit at Mt.Tara: Judgement, para.1639.

<sup>11</sup> The Chamber found that Simatović organized the training of the Unit in Skelani, and organized and financially supported the Unit's involvement in the Skelani operations: Judgement, paras.1672, 1674, 1677-1679. The Chamber also found that Simatović organized the training of VRS members at the Skelani camp: Judgement, para.1680.



Selected DB operatives (Unit/JATD members)											
	Franko SIMATOVIĆ	Radojica (Rajo) BOZOVIĆ	Dragan BORBEVIĆ	Dragan FILIPOVIĆ	Zivojin IVANOVIĆ (Crnogorac)	Vasilje (Vaso) MIJOVIĆ	Nikola FILIPOVIĆ	Zoran RAIĆ	Davor SUBOTIĆ	Dušan ORLOVIĆ	Milan RADONJIĆ
Bratunac training camp, & operations (Op. Udar, BiH) <i>In early 1993</i>	- <sup>12</sup>	-	-	-	-	1699, 1701	-	-	-	-	-
Mt. Tara/Lipovica/Surčin/Banjica training camp (Serbia) <i>From May 1994</i>	- <sup>13</sup>	-	-	1446 <sup>14</sup>	-	-	-	1446	-	-	1446
Petrova Gora (Operation Pauk, BiH) <i>September 1994–July 1995</i>	2003, 2005 <sup>15</sup>	1998, 2002	-	2002	2002	2002	-	2002	2002	-	2002
Baranja training centres (headquarters at Bilje, SBWS) <i>From mid-1995</i>	- <sup>16</sup>	-	-	-	-	1717, 1719	-	-	-	-	-

<sup>12</sup> The Chamber found that Simatović organized the training and the financing, logistical support and other substantial assistance for the Unit at the Bratunac camp: Judgement, paras.1702, 1704. The Chamber also found that Simatović organized the training of VRS members at the Bratunac camp: Judgement, para.1705.

<sup>13</sup> The Chamber found that Simatović organized the training for these JATD camps: Judgement, para.1446.

<sup>14</sup> By at least 27 June 1994, Filipović was serving in Simatović's former post as Deputy Chief of the DB Second Administration (Intelligence): *see* Judgement, para.2301; Exh.P2420 (public).

<sup>15</sup> The Chamber also found that Simatović organized the involvement of and financed the JATD and SDG in Operation Pauk, and provided some supplies to the JATD: Judgement, paras.1456, 2010-2011, 2067, 2084.

<sup>16</sup> The Chamber found that Simatović organized the financing, and provided other substantial assistance to the JATD in Bilje, and organized and directed the training of other Serb Forces: Judgement, paras.1718-1719.

	Selected DB operatives (Unit/JATD members)														
	FRANKO SIMATOVIĆ	RADOJICA (RAJO) BOZOVIĆ	DRAGAN ĐORĐEVIĆ	DRAGAN FILIPOVIĆ	ZIVOJIN IVANOVIĆ (CRNOGORAC)	VASIJE (VASO) MIJOVIĆ	NIKOLA PILIPOVIĆ	ZORAN RAIĆ	DAVOR SUBOTIĆ	DUŠAN ORLOVIĆ	MILAN RADONJIĆ				
Ilok/Pajzoš training camp (SBWS) <i>From May 1995</i>	1746 <sup>17</sup>	1746	-	1746	-	-	1746	-	-	-	-	-	-	-	-
Trnovo/Treskavica operation (BiH) <i>June–July 1995</i>	- <sup>18</sup>	-	-	-	-	2037	-	-	-	-	-	-	-	-	-
Čakovci, Nijemci, Lipovac, etc. operations (SBWS) <i>August–October 1995</i>	2056 <sup>19</sup>	2055	-	2055	-	2055	-	2055	-	-	-	-	-	-	-
Banja Luka operation (BiH) <i>September–October 1995</i>	- <sup>20</sup>	1884	-	1884	-	-	-	1884	-	-	-	-	-	-	-

<sup>17</sup> The Chamber also found that Simatović directed and organized the training, financing, logistical support and other substantial assistance for the JATD at Pajzoš in 1995: Judgement, paras.1456, 1748-1749.

<sup>18</sup> The Chamber found that Simatović was in regular telephone contact with Arkan during the Trnovo/Treskavica operation and that Simatović organized and financed the SDG's involvement in this operation: Judgement, paras.2035, 2087.

<sup>19</sup> The Chamber also found that Simatović organized the involvement of the JATD in these SBWS operations: Judgement, para.2059. The Chamber also found that Simatović supplied the Skorpions and SDG with ammunition (at least once and twice, respectively) for these operations, and financed the JATD and SDG: Judgement, paras.1456, 2068, 2092.

<sup>20</sup> The Chamber found that Simatović supported the PJP's involvement and financed the SDG's involvement in Banja Luka: Judgement, paras.1880, 1884.

## **ANNEX B**

## Annex B

### Exhibits and Adjudicated Facts Not Cited in the Judgement

Exhibit or Adjudicated Fact	Reference in Prosecution Appeal Brief
Exh.P16	Fns.82, 312, 464, 499
Exh.P326	Fn.174
Exh.P619	Fn.194
Exh.P630	Fns.68, 290, 644
Exh.P634	Fn.194
Exh.P635	Fn.195
Exh.P636	Fns.194, 195, 196, 400, 665
Exh.P647	Fn.194
Exh.P648	Fn.194
Exh.P649	Fn.194
[REDACTED]	[REDACTED]
Exh.P663	Fn.194
Exh.P668	Fn.194
[REDACTED]	[REDACTED]
Exh.P676	Fns.194, 195, 400, 665
[REDACTED]	[REDACTED]
Exh.P679	Fn.194
Exh.P680	Fn.194
Exh.P681	Fns.194, 195, 400, 665
Exh.P682	Fn.194
[REDACTED]	[REDACTED]
Exh.P689	Fns.194, 195, 400, 665
Exh.P691	Fns.194, 195, 400, 665
Exh.P692	Fns.194, 195, 196, 400, 665
Exh.P703	Fn.194
Exh.P939	Fns.186, 190, 278
Exh.P940	Fns.18, 184, 326
Exh.P975	Fn.88
Exh.P995	Fn.152
Exh.P1077	Fns.174, 316
Exh.P1115	Fn.312
Exh.P1239	Fn.272
Exh.P1956	Fns.78, 79
Exh.P2057	Para.25; Fns.16, 76, 77, 92, 309
Exh.P2512	Fns.186, 325
Exh.P2522	Fns.546, 585
Exh.P2535	Fn.221
Exh.P2667	Fn.152
Exh.P2989	Fn.214
Exh.P3226	Fn.645

<b>Exhibit or Adjudicated Fact</b>	<b>Reference in Prosecution Appeal Brief</b>
Exh.P3227	Fn.645
Exh.P3230	Fn.645
[REDACTED]	[REDACTED]
Exh.P3232	Fn.645
Exh.P2397	Fn.652
AFI-37	Fn.192
AFI-38	Fn.192
AFI-90	Fn.88
AFI-104	Fn.188
AFI-108	Fns.184, 276, 277, 327
AFI-116	Fns.185, 328
AFI-126	Fn.186
AFI-127	Fn.186
AFI-129	Fns.21, 183
AFI-142	Fn.182
AFI-148	Fn.188
AFI-149	Fn.188
AFI-151	Fn.181
AFI-153	Fn.190
AFI-154	Fn.190
AFI-155	Fn.190
AFI-156	Fn.190
AFI-157	Fn.190
AFI-162	Fn.214
AFI-163	Fn.214
AFI-170	Fn.188
AFI-171	Fn.188
AFI-172	Fn.188
AFI-182	Fn.188
AFI-183	Fn.188
AFI-184	Fn.188
AFI-200	Fn.208
AFI-219	Fn.206
AFI-235	Fn.208
AFI-236	Fn.21
AFI-245	Fn.207
AFI-246	Fn.207
AFI-251	Fn.118
AFI-252	Fn.118
AFI-339	Fn.209
AFII	Fn.186
AFIII-22	Fns.89, 481
AFIII-34	Fn.79
AFIII-35	Fn.119

<b>Exhibit or Adjudicated Fact</b>	<b>Reference in Prosecution Appeal Brief</b>
AFIII-36	Fns.114, 271
AFIII-40	Fn.89
AFIII-41	Fn.78
AFIII-60	Fn.78
AFIII-208	Fn.152
AFIV-57	Fn.182
AFIV-74	Fn.181
AFIV-81	Fn.204
AFIV-84	Fn.180
AFIV-90	Fn.186
AFIV-92	Fn.186
AFIV-99	Fn.181
AFIV-150	Fns.280, 281
AFIV-151	Fns.280, 281
AFIV-152	Fns.280, 281
AFIV-153	Fns.280, 281
AFIV-247	Fn.277
AFIV-248	Fn.277
AFIV-269	Fn.277
AFIV-358	Fn.204
Defence AF-52	Fn.189