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International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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TRIAL CHAMBER

The Hague, 30 May 2013

Judgement Summary for Jovica Stanišić and Franko Simatović

Please find below the summary of the Judgement read out today by Judge Alphons Orie.

This Chamber is sitting today to deliver its Judgement in the case of the Prosecutor versus Jovica Stanišić and Franko Simatović.

For the purposes of this hearing, the Chamber will briefly summarize its findings. I stress that this is a summary only. The authoritative account of the Chamber's findings can be found in the written Judgement, which will be made available at the end of this session.

This case concerns crimes allegedly committed between 1 April 1991 and 31 December 1995 against Croats, Bosnian Muslims, Bosnian Croats, and other non-Serb civilians in large areas of Croatia and Bosnia-Herzegovina. The areas in Croatia were the Serbian Autonomous Area of Krajina, or the SAO Krajina, and the Serbian Autonomous Area of Slavonia, Baranja, and Western Srem, or the SAO SBWS. The crimes charged by the Prosecution include persecution, murder, deportation, and forcible transfer.

Jovica Stanišić and Franko Simatović stood trial as alleged participants in a joint criminal enterprise. The alleged objective of this enterprise was the forcible and permanent removal of the majority of non-Serbs from large areas of Croatia and Bosnia-Herzegovina. According to the Prosecution, the members of the criminal enterprise sought to accomplish this goal through the commission of the crimes of persecution, murder, deportation, and forcible transfer. Alternatively, the common criminal purpose included the crimes of deportation and forcible transfer, and the crimes of persecution and murder were reasonably foreseeable to the two Accused as a possible consequence of the execution of the joint criminal enterprise.

In addition to the Accused, the Prosecution alleged that members of the joint criminal enterprise included Serb political and military leaders, such as Slobodan Milošević, Radovan Stojičić, Milan Martić, Goran Hadžić, Milan Babić, Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, and Željko Ražnatović, also known as Arkan.

The Prosecution alleged that Jovica Stanišić and Franko Simatović contributed to the achievement of the objective of the criminal enterprise by their acts or omissions. According to the Indictment, the Accused shared the intent to further the common criminal purpose.

In addition to the charges of individual criminal responsibility for committing crimes as part of a joint criminal enterprise, the Indictment charged each Accused with having planned, ordered, and/or aided and abetted in the planning, preparation, and/or execution of the alleged crimes.

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The Prosecution alleged that, as of 1991 Jovica Stanišić was the head of the Republic of Serbia's State Security Service, or the DB, and that Franko Simatović functioned under his direct authority as a DB official throughout the Indictment period.

According to the Indictment, Jovica Stanišić and Franko Simatović participated in the joint criminal enterprise through their interaction with, inter alia, a special unit of the Serbian DB known as the Special Purpose Unit or the Red Berets. In this summary I will refer to this formation as "the Unit". Stanišić and Simatović further participated through their interaction with the Skorpions and the Serbian Volunteer Guard, also known as Arkan's men. In this summary, I will refer to the Serbian Volunteer Guard as the SDG. It is alleged that the Accused secretly established these groups as special units of the DB for the purpose of undertaking military actions in Croatia and Bosnia-Herzegovina. According to the Prosecution, the Accused directed the involvement of these units in particular operations in these countries. Furthermore, the Accused are alleged to have trained, supplied, financed, and supported them.

The Prosecution further alleged that the Accused participated in the joint criminal enterprise through their interaction with other Serb Forces, including the SAO Krajina Police, and that they provided channels of communication between core members of the criminal enterprise throughout the Indictment period.

During the trial, 95 fact and expert witnesses appeared before the Chamber and almost 5,000 exhibits were admitted into evidence. A large number of witnesses testified with protective measures, aimed at protecting the witnesses' personal safety and security, or that of their family. This was the case for 54 of the 133 witnesses whose evidence the Chamber received. The Chamber also granted applications from Serbia seeking protective measures to secure its national security interests, mostly in relation to redacting parts of exhibits.

The Chamber will now give a summary of its findings.

In accordance with an agreement between the parties, the Chamber found that there was an armed conflict in the territories of Croatia and Bosnia-Herzegovina that extended throughout the period relevant to the crimes charged in the Indictment.

Considering that crimes were committed throughout the Indictment area over the course of many years, and that the victims of the crimes were, with few exceptions, non-Serb civilians the Chamber found beyond a reasonable doubt that there was a widespread attack directed against the non-Serb civilian population in the SAO Krajina, the SAO SBWS, and the Indictment municipalities in Bosnia-Herzegovina.

The Chamber has considered evidence on a significant number of specific incidents of deportation and forcible transfer. For instance, two witnesses provided evidence on an incident of 9 April 1992, where members of the SDG and other armed men collected at least 90, primarily elderly, Croats and Hungarians from Erdut and put them on buses to Sarvaš. In Sarvaš, the people were told to walk towards Croat-controlled Osijek, which they did. The Chamber found beyond a reasonable doubt that these perpetrators committed the crime of deportation as a crime against humanity.

The Chamber also received evidence relating to the departure of between 80,000 and 100,000 Croats and other non-Serb civilians from the SAO Krajina in 1991 and 1992. The Chamber found that the people fleeing did so as a result of the situation prevailing in the region, which was created by a combination of the following factors: attacks on villages and towns with Croat population; killings; use of human shields; detention; beatings; forced labour; sexual abuse and other forms of harassment of Croat persons; and looting and destruction of property.

Noting that fear of violence, duress, detention, psychological oppression, and other such circumstances may create an environment where there is no choice but to leave, the Chamber found that those who left the SAO Krajina as a result of the circumstances prevailing there, were forcibly displaced. Based on the foregoing, the Chamber found that members of the SAO Krajina Police, the SAO Krajina territorial defence, and the Yugoslav People's Army, or the JNA, among other forces, in carrying out the aforementioned acts of violence and harassment, committed the crime of deportation as a crime against humanity.

The Chamber also found that the SDG, the Unit, the SAO Krajina Police, and other forces, committed the crimes of deportation and forcible transfer at numerous locations in Croatia and Bosnia-Herzegovina throughout the Indictment period.

The Chamber further received and considered adjudicated facts and evidence on numerous incidents of murder. As an example, the Chamber found that on or about 20 October 1991, members of the SAO Krajina Police rounded up local, mainly Croat civilians and brought them to the fire station in Hrvatska Dubica. The following day, at Krečane near Baćin, members of the SAO Krajina Police shot and killed 39 Croat detainees, many of whom were elderly. The Chamber found that members of the SAO Krajina Police committed the crime of murder as a crime against humanity and as a violation of the laws and customs of war.

The Chamber further found that the SDG, the Unit, the Skorpions, the SAO Krajina Police, and other forces committed a large number of murders against Croats, Muslims, and other non-Serbs in Croatia and Bosnia-Herzegovina.

Having examined the evidence and its findings with regard to the incidents of murder, deportation, and forcible transfer, the Chamber found that they had been carried out with discriminatory intent. The Chamber therefore concluded that they constituted persecution as a crime against humanity.

The Indictment charged the Accused with individual criminal responsibility for the crimes of murder, deportation, forcible transfer, and persecution. These charges were based on the Accused's alleged participation in a joint criminal enterprise, the object of which was the forcible and permanent removal of the majority of non-Serbs from large areas of Croatia and Bosnia-Herzegovina. The Chamber will now address whether the aforementioned crimes can be attributed to the Accused.

The Chamber found that as of 31 December 1991, Jovica Stanišić was the head of the Serbian DB and that Franko Simatović was employed in the Second Administration of the DB throughout the Indictment period.

The Chamber has received a substantial amount of evidence regarding the role of the Accused vis-à-vis the Unit, other alleged special units of the Serbian DB, and other Serb Forces, often from former members of the same formations or through official DB documentation.

Turning first to the Unit, also known as the Red Berets and later as the JATD, the Chamber found that in the period from May to August 1991, Jovica Stanišić and Franko Simatović formed a Serbian DB unit consisting of around 25 to 30 persons. From late April or early May to July 1991, Franko Simatović cooperated with others in the establishment and operation of a training camp at Golubić, where training commenced in May 1991. Following meetings in Belgrade between Martić and Stanišić and between Simatović and Captain Dragan, instructors Captain Dragan and Dragan Filipović provided training at Golubić, together with, among others, Živojin Ivanović. Upon completion of their training, a number of trainees from Golubić became training instructors themselves.

The Chamber found that the training at Golubić was of a military character and included weapons and ambush training, as well as the treatment of prisoners of war and the

treatment of civilians in armed conflict. A total of between 350 and 700 members of the SAO Krajina Police and the SAO Krajina territorial defence were trained at Golubić between April and August 1991. Men who had trained at Golubić set up further units and trained other people in the SAO Krajina. They also participated alongside Simatović, Captain Dragan, and Živojin Ivanović in operations in the SAO Krajina between June and August 1991.

The Chamber found that the Golubić camp was the first of a number of similar camps, where the Unit trained new recruits and other Serb forces. The Unit also deployed its members to various operations of a military character with the support and under the control of the Accused. From late 1991, these camps included the Ležimir camp at Mount Fruška Gora from where the Unit was deployed to operations in the SBWS in September 1991. In 1992, the camps included the Pajzoš camp at Ilok from where members of the Unit were deployed to participate in the take-over of Bosanski Šamac in May 1992, as well as the Mount Ozren and Vila camps, from where members of the Unit were deployed to participate in the Doboj operations in April-July 1992. The Chamber found that members of the Unit committed the crimes of murder, deportation, and forcible transfer in Bosanski Šamac municipality and deportation and forcible transfer in Doboj municipality in 1992.

In 1993, the Unit's training activities continued at the Tara camp and at the Skelani and Bratunac camps from which the Unit took part in combat and mop-up operations in the Skelani area in March and April 1993 and in the Bratunac area in first part of 1993. Training of the Unit continued in 1995 at the Bilje camp, the Sova camp, and the Pajzoš camp.

In 1997, the Accused attended a ceremony marking the anniversary of the Unit's formation, during which Simatović praised the Unit's achievements in, as he put it, protecting national security in circumstances where the existence of the Serbian people was directly jeopardised throughout its entire ethnic area. On this occasion, Stanišić presented awards to several members of the Unit.

In conclusion, the Chamber found that the Accused directed and organized the formation of the Unit, organized its involvement in a number of operations in Croatia and Bosnia-Herzegovina, and directed and organized its financing, logistical support, and other substantial assistance or support, throughout the Indictment period. From at least September 1991, the Accused were in command of the Unit and controlled its deployment and training activities through leading Unit members. As of August 1993, the Unit formally became a part of the Serbian DB, when it was formalized as the JATD.

With regard to the other alleged special units of the DB, the Chamber considered that the ties between these formations and the Accused were less substantial. For example, the Chamber was unable to conclude that the Accused directed or organised the formation of the SDG or the Skorpions, or directed them in any particular operations. Moreover, the Chamber made only a limited number of findings that the Accused provided support to these two formations.

The Chamber found that the Accused, among others, directed and organized the formation of the SAO Krajina Police, in cooperation with Milan Martić. Furthermore, they contributed to the financing of the SAO Krajina Police in 1990 and 1991, and organized logistical support, in the form of weapons and communication equipment between December 1990 and May or June 1991. The Chamber also found the SAO Krajina Police committed murders in 1991, and deportation in 1991 and 1992, in the SAO Krajina.

The Chamber finally considered the allegations that the Accused provided "channels of communication" between and among the core members of the joint criminal enterprise in Belgrade, in the specific regions, and locally, throughout the Indictment period. Based on the evidence before it, the Chamber found that the Accused were in direct and frequent contact with many of the alleged members of the joint criminal enterprise. It further found that, on occasion, Stanišić acted in a liaison capacity at least in the contacts between

Milošević and Martić, as well as Milošević and Karadžić. However, the evidence also indicated that there was regular direct contact between Milošević, Martić, Karadžić, and Babić. The majority, Judge Picard dissenting, did not consider that Jovica Stanišić had acted as a channel of communication. Further, the Chamber could not conclude that Franko Simatović had acted as a channel of communication between and among core members of the joint criminal enterprise.

The Chamber finally considered the question of whether the Accused shared the intent of the alleged joint criminal enterprise to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia-Herzegovina, through the commission of murder, deportation, forcible transfer, and persecution. For both Accused, the Chamber first reviewed direct evidence indicating that they shared the intent. This included evidence on actions taken and words uttered, and in this respect the Chamber paid particular attention to evidence the Prosecution had pointed to in its final trial brief. The Chamber then proceeded to examine what, if anything, could be inferred with regard to the intent from the actions by the Accused.

With regard to Jovica Stanišić, the Prosecution pointed to a few instances of words uttered and actions taken by him that, in its view, would indicate that he shared the intent. For example, according to one witness's testimony, in September 1991 Stanišić arrived at the SAO SBWS government building in Dalj, yelling at people, and berating them because Vukovar had not surrendered yet. Stanišić then called a meeting with among others Hadžić, representatives of the JNA, and territorial defence commanders. Following this meeting Stanišić returned to Belgrade. The Chamber noted that it had not received evidence about what was discussed at the meeting called by Stanišić. The majority, Judge Picard dissenting, considered that Stanišić's action in relation to Vukovar could reasonably be interpreted as support for a successful military takeover of Vukovar.

Having reviewed this, and other, direct evidence regarding Stanišić's intent, the majority, Judge Picard dissenting, did not consider it sufficient to establish Stanišić's intent to further the alleged common criminal purpose through the commission of crimes.

Absent direct evidence, the Chamber examined whether intent could be inferred from Stanišić's actions during the Indictment period. In this respect, the Chamber considered in particular the Accused's actions in relation to the Unit, the SAO Krajina Police, the SDG, and the Skorpions.

With regard to the Unit, the Chamber first recalled its findings that this formation had committed the crimes of murder, deportation, and forcible transfer first in Bosanski Šamac and then of deportation and forcible transfer in Doboj in 1992. The Chamber had further found that the Accused organised the involvement of the Unit in the operations in these municipalities. However, the evidence did not establish that the Accused personally directed the Unit during these operations or that they had issued orders or instructions to commit the aforementioned crimes. Nonetheless, given their role vis-à-vis the Unit and the scope of the crimes, the Chamber found that the Accused must have known that Unit members had committed crimes in Bosanski Šamac and that it may have been reasonably foreseeable to them that Unit members would commit crimes in Doboj. The Chamber further considered the Unit's involvement in other operations, for which the Accused had organized its involvement. These included reconnaissance activities and operations undertaken in response to military attacks by opposing forces. With the exception of the Doboj and Bosanski Šamac operations, the Chamber did not find that Unit members committed crimes during the operations in which they were involved.

In conclusion, the majority, Judge Picard dissenting, did not consider that the only reasonable inference from Stanišić's actions with regard to the Unit was that he shared the intent to further the alleged joint criminal enterprise. Similarly, with regard to Stanišić's actions with regard to training of Serb forces, the majority, Judge Picard dissenting, did not

consider that the only reasonable inference from the evidence was that he shared the intent to further the alleged joint criminal enterprise.

With regard to the SAO Krajina police, the Chamber found that the members of this formation committed murders in the SAO Krajina in 1991 and deportation of between 80,000 and 100,000 Croats in the same area in 1991 and 1992. The Chamber further found that the Accused had been closely involved with the formation, logistical, and financial support of the SAO Krajina police. The Accused had also cooperated closely with Milan Martić, who had authority over this formation, and whose intent to deport non-Serbs must have been known to the Accused.

The Chamber found that in continuing to support the SAO Krajina police and cooperate with Milan Martić from April 1991, Stanišić took the risk that the SAO Krajina police would commit crimes when establishing and maintaining Serb control over large areas of Croatia. However, the Chamber found that knowledge and acceptance of such a risk is insufficient for the first form of joint criminal enterprise liability. The majority, Judge Picard dissenting, did not consider that the only reasonable inference from Stanišić's actions with regard to the SAO Krajina Police was that he shared the intent of the alleged joint criminal enterprise.

The majority, Judge Picard dissenting, reached the same conclusion concerning Stanišić's actions with regard to the SDG and the Skorpions.

In making the foregoing findings, the majority, Judge Picard dissenting, allowed for the reasonable possibility that Stanišić's intent in relation to the Unit, including the training of other Serb forces, the SAO Krajina police, the SDG, and the Skorpions, was limited to establishing and maintaining Serb control over large areas of Croatia and Bosnia-Herzegovina.

Based on the foregoing, the majority, Judge Picard dissenting, could not conclude that the only reasonable inference from the evidence on Stanišić's actions was that he shared the intent to further the common criminal purpose of forcibly and permanently removing the majority of non-Serbs from large areas of Croatia and Bosnia-Herzegovina, through the commission of murder, deportation, forcible transfer, and persecution from at least April 1991 through 1995.

With regard to Franko Simatović, the Chamber first considered the evidence with regard to his specific actions or words uttered. In this respect, the Chamber found that Simatović participated in a discussion of the objectives of the attack on Lovinac, which included the objective to have as much of the local population leave as possible in order to establish a purely Serb territory. According to the Chamber, the evidence indicated that Simatović was at least aware of Martić's intent (and may have shared it), to forcibly remove Croat civilians from the village of Lovinac in June 1991, even if the evidence did not establish whether persons actually left Lovinac during or immediately following the attack.

Concerning the Vukovar operations, the Chamber found that Simatović was present at a meeting prior to, and a celebration following, the fall of Vukovar. Considering that the content of the meeting was unknown to the Chamber, and noting that members of the Unit did not participate in the attack, the majority, Judge Picard dissenting, allowed as a reasonable interpretation that Simatović's intent was limited to support for the successful military take-over of Vukovar.

The Chamber further considered evidence on Simatović's acts in relation to other military operations. This evidence indicated that these operations had been military actions directed against opposing forces and it did not indicate that any crimes had been committed during the operations.

Based on the foregoing, the majority, Judge Picard dissenting, was unable to conclude from the evidence on Simatović's actions, that he shared the intent to further the common criminal purpose of forcibly and permanently removing the majority of non-Serbs from large areas of Croatia and Bosnia-Herzegovina, through the commission of murder, deportation, forcible transfer, and persecution from at least April 1991 through 1995.

The Chamber then considered the other modes of criminal liability, charged by the Prosecution.

The Chamber found that the Prosecution had not proven beyond a reasonable doubt that the Accused planned or ordered the crimes charged in the Indictment.

With regard to the allegations of responsibility for aiding and abetting the crimes charged in the Indictment, the Chamber primarily considered whether the Accused's acts vis-à-vis certain formations, in particular the Unit, aided and abetted any crimes.

In this respect, and as stated before, the Chamber found that the Accused directed and organized the formation of the Unit between May and August 1991, and that from at least September 1991, the Accused were in command of the Unit and controlled its deployment and training activities through leading Unit members who acted on behalf of the Accused and were immediately subordinate to them. The Chamber further recalled its findings that the Accused organised the Unit's involvement during the Bosanski Šamac and Doboj operations in 1992, organized the training of its members at the Doboj and Pajzoš camps, and organised their financing. The Chamber found that these contributions of the Accused assisted the commission of the crimes in Bosanski Šamac and Doboj.

The majority, Judge Picard dissenting, considered that the Accused's assistance to the Bosanski Šamac and Doboj operations, and to the Unit generally, was not specifically directed towards the commission of the crimes of murder, deportation, forcible transfer, or persecution. Rather, it allowed for the reasonable conclusion that the assistance was specifically directed towards establishing and maintaining Serb control over these areas. The majority, Judge Picard dissenting, was thus unable to conclude that the assistance rendered to the Unit by the Accused aided and abetted the commission of the crimes in Doboj and Bosanski Šamac.

The Chamber found that there were certain links, albeit looser when compared to the Unit, between the Accused and other groups, for example with the SAO Krajina Police. The Accused's contributions vis-à-vis these other groups were of a similar nature, including financing, supplying, organising involvement, supporting, and training. However, the Chamber recalled that in none of the incidents where members of these other groups committed crimes, did the Accused play any more specific role in providing assistance.

Recalling its finding that the kind of assistance rendered to the Unit was insufficient to incur criminal responsibility as an aider and abettor, the majority, Judge Picard dissenting, was unable to conclude that the Accused aided and abetted crimes perpetrated by the SDG, the SAO Krajina Police, the Skorptions, or other groups.

Mr Stanišić, will you please stand.

For the reasons summarised above, the Chamber by majority, Judge Picard dissenting, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Judgement, finds you not guilty and therefore acquits you of all Counts against you in the Indictment. The Chamber orders that you be immediately released from the United Nations Detention Unit, after the necessary practical arrangements are made.

You may be seated.

Mr Simatović, will you please stand.

For the reasons summarised above, the Chamber by majority, Judge Picard dissenting, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Judgement, finds you not guilty and therefore acquits you of all Counts against you in the Indictment. The Chamber orders that you be immediately released from the United Nations Detention Unit, after the necessary practical arrangements are made.

You may be seated.

A dissenting opinion by Judge Picard and a separate opinion by me, Judge Orie, is appended to the Judgement. This concludes the delivery of the Judgement, which will now be made publicly available. The Chamber stands adjourned.
