UNITED NATIONS

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

Case No.: IT-03-67-T

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IN TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, Presiding**
Judge Mandiaye Niang
Judge Flavia Lattanzi

Registrar: **Mr John Hocking**

Judgement delivered on: **31 March 2016**

THE PROSECUTOR

v.

Vojislav Šešelj

PUBLIC

JUDGEMENT

Volume 1

Office of the Prosecutor:

Mathias Marcussen

Accused:

Vojislav Šešelj

I. INTRODUCTION[1]

1. In accordance with United Nations Security Council resolution 827 of 25 May 1993, the backdrop of the case before Trial Chamber III is the armed inter-ethnic conflict that unfolded on the territory of the former Yugoslavia from 1991.

2. The Prosecution charges Vojislav Šešelj ("Accused"), a politician, President of the Serbian Radical Party ("SRS") and a deputy in the Assembly of the Republic of Serbia, of having directly committed, incited and aided and abetted the crimes attributed to the Serbian protagonists in the conflict during the period from August 1991 to September 1993, and of having participated in these crimes by way of a joint criminal enterprise ("JCE").

3. The main basis of the Prosecution's charges is the ideology of a Greater Serbia. The Prosecution claims that the crimes committed were an integral part of the means deployed to enable all of the Serbs dispersed across the territories of the former Yugoslavia to live in a new and territorially unified Serbia. According to the Prosecution, this goal was to be achieved through violence, including the forcible removal of the non-Serb population living in certain areas deemed to be Serbian land.

4. The Prosecution's argument regarding a Greater Serbia appears to rest on two pillars, corresponding to the means of commission as the perpetrator of the crimes, which are superimposed on or substituted by the responsibility stemming from instigating or aiding and abetting the commission of the same crimes.

5. The first pillar is the allegation that the Accused was associated with the crimes by virtue of his participation in a JCE, which also included local and national authorities, such as the President of the Republic of Serbia, Slobodan Milošević, military leaders and their deputies, as well as paramilitaries and volunteer units called "Chetniks" and "*Šešeljevci*". In addition to war propaganda and incitement to hatred against non-Serbs, Vojislav Šešelj's main role was distinguished by his involvement in the recruitment and organisation of volunteers, who were sent into the field and integrated into units of the "Serbian Forces", who are claimed to have carried out attacks and sieges during the conflict in several municipalities in Croatia and Bosnia and Herzegovina. It is alleged that these "Serbian Forces" committed murders, acts of torture and cruel

[1] Judge Lattanzi only partially shares the views expressed in this introduction.

treatment against numerous non-Serb civilians, notably Croats and Muslims.[2] It is also alleged that they forcibly displaced non-Serb civilians and deported them, waging a campaign of ethnic cleansing against them. Additionally, they are said to have committed wanton destruction of villages and devastation not justified by military necessity, deliberately destroyed or damaged institutions dedicated to religion or education, and plundered public and private property. These same "Serbian Forces" were said to have imposed restrictive and discriminatory measures, in collaboration with the local Serbian authorities, as part of a system of persecution aimed at expelling the non-Serb civilian population.

6. The Prosecution does not allege that the Accused was a military leader, nor does it base his criminal responsibility on Article 7 (3) of the Statute of the Tribunal, applicable to a military or civilian superior. Nevertheless, the Prosecution does attribute extensive authority to the Accused, which he also wielded in the conflict zones that he visited in order to boost the morale of his troops. The Prosecution submits that the Accused established a War Staff within his party that notably took care of logistical needs and the deployment of volunteers; that he was kept regularly informed of the activities of his troops; that he had the power to intervene with volunteers and to promote them, and that he had even decorated some of them by conferring upon them the rank of *Vojvoda*, which he himself held.

7. According to the Prosecution's second pillar, the Accused directly committed[3] a certain number of crimes, notably by public and direct denigration, in speeches inciting hatred, of the non-Serb populations of Vukovar (Croatia) and Hrtkovci (Vojvodina in Serbia), particularly the Croats, and by calling for their deportation from these parts.

8. The final version of the Indictment – amended several times – wherein all of these charges are included contains nine counts, three of which are counts of crimes against humanity: persecutions (Count 1), deportation (Count 10), inhumane acts (Count 11), and six war crimes (Count 4 murder, Count 8 torture, Count 9 cruel treatment, Count 12 wanton destruction of villages, Count 13 wilful destruction done to institutions dedicated to religion or education, and Count 14 plunder of public or private property).

9. The Accused pleaded not guilty to all the counts. He chose to represent himself and was not assisted by counsel. At the close of the Prosecution case, the Accused opted not to call any

[2] In its brief, the Prosecution mentions crimes committed against persons placed *hors de combat* and prisoners of war, without clarifying whether the Accused is also charged with these crimes. In light of the rights of the Defence, the Chamber took into account and examined only those allegations explicitly set out in the Indictment.

witnesses or to present additional defence evidence before the Chamber. Nevertheless, from the start of this case he presented a multi-pronged defence strategy, which varied from challenging the legality of the Tribunal and claiming that there was no evidence implicating him in the alleged crimes, to stating that the charges against him were political and biased. Some of these grounds of defence were the subject of pre-trial motions that have already been adjudicated. Consequently, they will not necessarily be included in the body of the judgement.

10. Although at first the Accused refused to concede anything to the Prosecution, as the trial progressed his defence strategy nevertheless appeared more nuanced. The Accused assumes and upholds his nationalist ideology of Greater Serbia, however, he does not assign the same ends to this ideology as the Prosecution. Ultimately, he did not challenge the existence of the majority of the acts of violence, destruction and plunder committed in the conflict zones. The Accused did at times contest their scale or motives, but mainly distanced himself from them by insisting that neither he nor his men – recruited as volunteers – were involved in committing these acts. Furthermore, he argues that, once recruited, his volunteers were in any case not under his control because they were directly incorporated into the Yugoslav Armed Forces (the "JNA" or the "VRS", depending on the period in question), which had their own command and hierarchy, or into local command structures. He pointed out that the "War Staff" of his party, the SRS, which was in fact headed by his deputy and in which he had no direct role, had no military structure despite sounding warlike; that the distinction of *Vojvoda* that he bestowed upon some of his men was not a military distinction, nor did it imply an association with the SRS. According to the Accused, some of the volunteers were also local people who were already present at those locations and who, therefore, had not been sent to the conflict zones by him or his party. The Accused submits for that matter that there were several groups of volunteers, some of whom were notorious criminals and had nothing to do with "Šešelj's men". He notes some confusion in distinguishing between them; what added to this confusion, according to him, was the fact that the label "Chetnik", far from being exclusively applied to the SRS volunteers was, instead, rather bandied about.

11. Overall, the Accused presents the Serbs as being the victims of Croatian and Muslim aggression. He also points out that the Croats and Muslims, respectively, initiated an unconstitutional secession that set off a conflict in which the Serbs were the defenders of the law. He defines the recruitment and organisation of volunteers as part of a legitimate operation to

[3] Aiding and abetting and instigation are proposed as alternative modes of participation in the crimes relevant to the Indictment.

defend the Serbs, including in Croatia where the challenge to their status as a constituent people guaranteed by the Constitution, coupled with their harassment and persecution, constituted a serious threat to their existence. The Accused submits that these attacks needed to be taken seriously in order to avoid a repeat of tragic historical events. It is in this same vein that the Accused provided a different context to his speeches, which, in his opinion, galvanised his troops and articulated his own political vision and his plan for society, and which the Prosecution wrongly qualified as acts of persecution, incitement to hatred and deportation.

12. The Accused also invites the Chamber to undertake a critical analysis of the previous judgements rendered before this Tribunal, some of which share the same factual basis as his case, notably judgements in *The Prosecutor v. Mile Mrkšić et al.* and *The Prosecutor v. Momčilo Krajišnik*. He submits that the total or partial acquittals and the findings that rejected, *inter alia*, the existence of a JCE and crimes against humanity in certain places such as Vukovar, must apply to his case as *res judicata*. However, he invites the Chamber to bear in mind the limited scope of the convictions in the same cases because they were erroneous or were based on grounds irrelevant to his own case.

13. Finally, it must be pointed out that Vojislav Šešelj cross-examined witnesses for the Prosecution and those called by the Chamber pursuant to Rule 98 of the Rules of Procedure and Evidence. In his Final Brief, he provided an exhaustive summary of the value that he assigned to each individual testimony. On the other hand, he decided not to question the Rule 92 *ter*[4] witnesses and, for the same reasons, he objected to the admission of the written statements of Rule 92 *bis*, *ter* and *quater* witnesses.

14. Prior to conducting a more detailed analysis of the specific crimes with which the Accused is charged, the Chamber, by a majority, Judge Lattanzi dissenting, made a number of observations, the first being a certain lack of precision in the Prosecution's approach. The Prosecution initially presents a very clear outline of the charges, starting from paragraph 5 of the Indictment, which states:

> By using the word "committed" in this indictment, the Prosecutor does not intend to suggest that the Accused physically committed all of the crimes charged personally. Physical commitment is pleaded only in relation to the charges of persecutions (Count 1) by direct and public ethnic denigration (paragraphs 15 and 17 (k)) with respect to the Accused's speeches in Vukovar, Mali Zvornik and

[4] The Accused objected to the retroactive application of Rules 92 *ter* and 92 *quater* of the Rules which he deems are prejudicial to him and violate, amongst other provisions, Rule 6 (D) of the Rules. The Chamber did not allow these objections.

> Hrtkovci, and by deportation and forcible transfer (paragraphs 15 and 17 (i)) with respect to the Accused's speech in Hrtkovci, and in relation to the charges of deportation and inhumane acts (forcible transfer) (Counts 10 – 11, paragraphs 31 - 33), with respect to the Accused's speech in Hrtkovci. "Committed" in this indictment includes the participation of Vojislav ŠEŠELJ in a joint criminal enterprise as a co-perpetrator. By using the word "instigated", the Prosecution charges that the accused Vojislav ŠEŠELJ's speeches, communications, acts and/or omissions contributed to the perpetrators' decision to commit the crimes alleged.

15. This initial framework, which drew a clear distinction between the three crimes alleged to have been committed individually by the Accused and other crimes to which he was chiefly associated by way of the JCE, was soon obscured by the subsequent allegations in the Indictment, the Pre-Trial Brief and the Closing Brief. It appears from these submissions that the Accused was ultimately a member of a JCE for all the crimes with which he is charged. The Prosecution merely argues that all of the acts qualified as criminal fall primarily under the first category and, alternatively, under the third category, whereas its own theory of an enterprise should have drawn a clear distinction between the crimes inherent to the purpose of the enterprise and the other incidental crimes which were nevertheless foreseeable consequences. The alleged criminal purpose of the enterprise also seems to vary depending on the written submission. To characterise the means of creating a Greater Serbia, the Prosecution seems to oscillate between ethnic cleansing and a mere quest for territorial continuity by the Serbs in the former Yugoslavia. The Prosecution uses the terms "violence" and "crimes" indiscriminately to describe the criminal purpose. Yet, these two notions cannot be considered to be equivalent, especially because the backdrop to this judgement is a war. A war is inherently violent, without this violence necessarily being synonymous with a crime.

16. Some of the Prosecution's written submissions give the impression that the very ideology of a Greater Serbia is criminogenic, while others focus more on denouncing the means of its realisation. The Prosecution's Closing Brief also postulates, *a priori*, that the Serbian military campaign was illegal, thereby rendering futile any distinction between what may have been a legitimate military campaign and its possible criminal derivatives, which are the only acts punishable.

17. Added to this ambiguity are wide-ranging charges by the Prosecution, consisting of specifying all the possible modes of criminal conduct provided for under Article 7 (1) of the Statute of the Tribunal, without them necessarily corresponding to the crimes described. Thus, the same crimes have been qualified as acts of direct commission, acts attributable to the Accused by way of participation in a criminal enterprise, acts of incitement or complicity by aiding and

abetting. The same crimes that are qualified as murder, torture and cruel treatment, crimes of deportation, inhumane acts (forcible transfer), wanton destruction and plunder of public or private property, are also described as acts of persecution. Overall, the Prosecution adopts a circular approach according to which practically each crime has multiple qualifications and each mode of participation in the crimes seems to absorb, or be superimposed on all the others.

18. While cumulative charging is generally permitted, on condition that the facts allow for this, the majority is of the opinion that it is much more difficult to allow the indiscriminate use of all the possible modes of liability with almost no regard for the specificity of the facts. Several judgements have already reprimanded the Prosecution for this catch-all practice.

19. The majority considers this maximalist approach unfortunate, but this is not to say that it impaired the proceedings to the point of compromising the effective defence of the Accused. It must be emphasised that the Accused was able to present all of his defence arguments. The majority merely points out that, regrettably, the Prosecution's ambiguities complicated an approach that could have been simpler for the Prosecution, but also for the Defence and for the Chamber. Both the Defence and the Chamber were obligated to a certain degree to follow the path forged by the Prosecution. The Prosecution's pre-trial and final briefs should have helped to dispel certain initial ambiguities. On the contrary, instead of presenting, respectively, the work plan of the Prosecution with regard to the crimes to be proved and of reviewing, at the end of the trial, the manner in which the Prosecution fulfilled its task, the majority of the Chamber considered the briefs to serve more as new charging instruments, each of which is aimed at presenting the entire Prosecution theory.

20. After brief general observations regarding the evidence (II), the Chamber endeavoured to untangle the – at times – disparate submissions of the Prosecution. It examined the general context of the events covered by the Indictment (III) before turning its attention to the crimes ascribed to the Accused (IV) and the possible ensuing criminal responsibility (V).

II. MATTERS RELATING TO THE EVIDENCE

A. Excerpts from the Accused's publications

21. The Chamber admitted into evidence numerous excerpts from the Accused's publications. The source of these documents was important indicia for the Chamber when considering whether the statements contained therein were attributable to the Accused. The Chamber did, however, keep in mind that certain statements might have been exaggerated.[5]

B. Unreliable testimony

22. The Prosecution informed the Chamber of its intention not to rely on certain witnesses as they were suspected of having provided false information.[6] The Accused did not consider any of those witnesses to be reliable.

23. In light of all of the evidence, the Chamber undertook its own evaluation of the testimonies. Exercising considerable prudence when assessing credibility, the Chamber relied on those parts of their testimony that were corroborated by other evidence.

C. Previous statements of "recanting" witnesses[7]

24. The Prosecution states that the Chamber should accord weight to the previous written statements of certain witnesses, namely Zoran Rankić, Nebojša Stojanović, Nenad Jović, Jovan Glamočanin, Vojislav Dabić, Aleksander Stefanović and VS-037, because they contain key evidence against the Accused and are substantially corroborated by other evidence. On the other hand, the Prosecution requests that their *viva voce* recantation of the statements they gave incriminating the Accused should be rejected. It points out the similarity in the attitudes of all these witnesses, which suggests orchestration.

25. The Accused, on his part, recalls his position of principle that only the testimony given in court is valid.

[5] *See* for example P31 wherein the Accused was questioned about the content of several of his speeches previously admitted. *See* also Anthony Oberschall, T(E) 1982-1984.
[6] *See*: "Prosecution Disclosure Regarding VS-008 and Notice of Non-Reliance on Evidence of VS-008", confidential annex, 17 May 2010; "Prosecution Disclosure Regarding VS-1093 and Notice of Non-Reliance on Evidence of VS-1093", confidential annex, 17 May 2010.
[7] Judge Lattanzi gives her own evaluation of the evidence from the so-called "recanting" witnesses in her partially dissenting opinion.

26. The Appeals Chamber has often recalled the discretionary powers of the judges of a Trial Chamber when evaluating evidence on the record – power that is moreover clearly set out in Rule 89 (C) of the Rules of Procedure and Evidence. This power also applies to the assessment of a previous written statement of a witness who appeared before the Chamber, whether it relates to evaluating the credibility of a testimony or establishing the facts. Notwithstanding, the Appeals Chamber has emphasised the importance for the Trial Chamber judges, when basing themselves on a witness's previous statement rather than on his oral evidence, to explain why they have inverted the preference generally given to *viva voce* testimony.[8]

27. The Chamber has followed these guidelines set out by the Appeals Chamber when evaluating the evidence of the so-called "recanting" witnesses.

D. Evidence relating to a consistent pattern of conduct

28. In a Decision dated 20 September 2007, the Pre-Trial Judge of the present Chamber limited the admissibility of evidence concerning the municipalities removed from the Indictment to evidence that goes towards establishing a consistent pattern of conduct, pursuant to Rule 93 (A) of the Rules.[9]

29. The Chamber notes that the discretionary power of the Judges whether or not to accept the evidence relating to a consistent pattern of conduct must be exercised with caution. The Accused's criminal responsibility must only be sought for those acts that can be directly or indirectly attributed to him. An examination of similar acts that do not fall within the Indictment can certainly help better understand the acts with which the Accused is charged under particular circumstances, but it also runs the risk of leading to a guilty conviction based on facts that were not relevant. Additionally, the Chamber advises that an examination of similar facts must be limited to only those situations where they are essential for an in-depth understanding of the relevant facts, without imputing to the Accused responsibility that falls outside the Indictment. In this case, the Chamber notes by a majority, Judge Lattanzi dissenting, that the evidence admitted in respect of a consistent pattern of conduct only duplicates very similar accusations. Consequently, it decided, Judge Lattanzi dissenting, to exclude them from the proceedings.[10]

[8] *Lukić and Lukić*, para. 614; the Chamber notes that Judges Pocar and Liu are dissenting on the general preference given to *viva voce* evidence rather than to a written statement.
[9] The following municipalities were withdrawn from the Indictment: Bijeljina, Bosanski Šamac, Brčko, and the Boračko Jezero/Mount Borašnica vacation resort.
[10] Judge Lattanzi deems that the Chamber should have taken this evidence into consideration pursuant to the instructions set out in the Decision of 20 September 2007, recalling that the evidence in respect of a consistent pattern of conduct could be used to: (i) prove the purpose and methods of the joint criminal enterprise charged in the Indictment, prove the

E. Evidence stemming from other cases

30. The Chamber received numerous documents and testimony from other cases, pursuant to Rule 89 (C) and Rule 94 (B) of the Rules. There is no distinction to be made between the documents admitted pursuant to Rule 89 (C), whether they stem from other cases or not. The Chamber assessed their probative value according to their content and reliability. With respect to facts resulting from judicial notice pursuant to Rule 94 (B) of the Rules, the Chamber recalls that their probative value rests on a rebuttable presumption. The latter, even without being challenged by rebuttal evidence from the Defence, is not considered to be definitive. The Chamber may, correctly, prefer to exclude these adjudicated facts in favour of evidence to the contrary, such as for example the testimony of witnesses under cross-examination, those directly examined by the Chamber and who appear more reliable.

degree of co-ordination and cooperation of individuals and institutions that are allegedly part of the joint criminal enterprise, the communication, training and transfer of volunteers and the involvement of the Accused; (ii) knowledge of the Accused of the conduct of the volunteers; (iii) the general elements of the persecution campaign in Croatia as charged in Count 1 of the Indictment (*see The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Submission Number 311 Requesting that Chamber III Clarify the Prosecution's Pre-Trial Brief", 20 September 2007).

III. THE GENERAL CONTEXT OF THE EVENTS COVERED BY THE INDICTMENT

A. The process of disintegration of the former Yugoslavia

1. The SFRY and Serbia[11]

31. According to the 1946 Constitution of Yugoslavia, the Socialist Federative Republic of Yugoslavia ("SFRY") consisted of six Republics - Serbia, Croatia, Slovenia, Bosnia and Herzegovina ("BiH"), Macedonia and Montenegro - and two autonomous regions, Vojvodina and Kosovo. According to this Constitution, the peoples of these Republics – with the exception of the BiH – were all considered to be different nations in a federal Yugoslavia.[12]

32. In the late 1980s, the SFRY experienced an extended economic crisis that evolved into a major political crisis. The political and constitutional reform in 1988 abolished the structure of socialist self-management and the leading role of the League of Communists was brought to an end. The disintegration of this party in the early months of 1990 created a political vacuum that enabled the emergence of nationalist parties throughout the country.[13]

33. The secession of Slovenia, Croatia, Bosnia and Herzegovina, Macedonia and the disintegration of the Yugoslav People's Army ("JNA") gave birth to the Federal Republic of Yugoslavia ("FRY") on 27 April 1992, which united Serbia and Montenegro.[14]

2. Croatia and Slovenia

34. Slovenia gained independence following a referendum in December 1990 and a proclamation on 25 June 1991, upheld by a vote of the Federal Presidency on 18 July 1991.[15]

35. The process of independence by Croatia – already initiated in the course of 1990 – heightened tensions between the local Serbian population and the Croatian authorities.[16]

36. On 25 July 1990, an assembly of elected representatives of the Serbian people was created. The Serbian Assembly became the representative organ of the Serbian people in Croatia.[17]

[11] Judge Lattanzi partially dissents from this account of the events.
[12] Decision of 10 December 2007, Annex, facts nos 17-18.
[13] Decision of 10 December 2007, Annex, facts nos 39-45.
[14] Decision of 10 December 2007, Annex, facst nos 73; P31, T. p. 43207.

37. In December 1990 the new Constitution now defined Croatia as "belong[ing] to Croat people and [other nations and minorities] who live in Croatia" without mentioning the autonomous Serbian regions. As a result of these amendments, a new State coat-of-arms was introduced and Croatian became the official language. The Serbs in Croatia were no longer considered as a constituent people of this Republic. Tensions between the Serbs and the Croats heightened.[18]

38. During 1990 and 1991, the Serbian population in Croatia initiated a process of gaining autonomy from Croatian territory, with the creation of Serbian autonomous regions called "SAO". Consequently, three SAO were established in Croatia: SAO Krajina on 21 December 1990, SAO Western Slavonia on 12 August 1991, and SAO Slavonia, Baranja and Western Srem in September 1991 ("SAO SBWS").[19]

39. On 19 December 1991, SAO Krajina was renamed the Republic of Serbian Krajina ("RSK"). On 26 February 1992, SAO Western Slavonia and SAO SBWS joined the RSK.[20]

40. The acts covered by the Indictment only concern Vukovar, the capital of the SAO SBWS, whose strategic importance was due to its proximity to the Republic of Serbia, the border essentially being formed by the Danube.[21]

3. BiH

41. The population of BiH consisted in large part of Muslims, Serbs and Croats. In the 1990s, the three largest political parties in BiH were the Muslim Party of Democratic Action (*Stranka demokratske akcije*, "SDA"), the Serbian Democratic Party (*Srpska demokratska stranka*, "SDS") and the Croatian Democratic Union (*Hrvatska Demokratska Zajednica*, "HDZ").[22]

42. The SDS and the Serbian Radical Party ("SRS") were the two most influential Serbian parties in BiH. The SDS advocated protecting the Serbian nation, which it claimed was disadvantaged by a lower birth rate of Serbs and by the division of Bosnia and Herzegovina into

[15] Decision of 10 December 2007, Annex, fact no. 56.
[16] Yves Tomić, T(E) 2974 and 2975; VS-004, T(E) 3481-3486.
[17] P1137, pp. 12903, 12906-12907; P896, Articles 3-4; P897, notably para. 3.
[18] Mladen Kulić, T(E) 4414, 4418-4419; VS-004, T(E) 3481-3483; P412, p. 9; Decision of 8 February 2010, Annex A, fact no. 18; P55, p. 2; P1137, pp. 12904 and 12997-12998.
[19] Decision of 8 February 2010, Annex, fact no. 43; VS-004, T(E) 3364 and T(E) 3606 (private session); P167; P168; P412, p. 12; P898, Article 4.
[20] VS-004, T(E) 3606; P261, part II, p. 213; P412, p. 12; P950, p. 1.
[21] Decision of 8 February 2010, Annex, fact no. 1; Reynaud Theunens, T(E) 3985.

municipalities, effectively making Serbs an ethnic minority in areas where they might otherwise have dominated.[23]

43. While the SDA advocated changing the Yugoslav federation into a confederation of what remained of the partition, the SDS advocated chiefly that BiH should be kept within the Yugoslav federation. With this purpose in mind, on 24 October 1991, deputies of the BiH SDS created an Assembly of the Serbian People in BiH ("BiH Serbian Assembly"), separate from the BiH Assembly. That same day, this new Assembly decided, notably, that in accordance with its right to self-determination, the Serbian people of BiH would remain in the Yugoslav State consisting of Serbia, Montenegro, SAO Krajina, SAO SBWS and other territories that wished to join. In November 1991, a referendum organised by the SDS received a vote of 100% in favour of unification with the Yugoslav State. On 21 November 1991, the BiH Serbian Assembly ratified the proclamation of the BiH SAOs, declaring its support for the JNA in defending the Yugoslav State, calling for the mobilisation of the Serbs and proclaiming all municipalities with a Serbian majority as being part of the Yugoslav federation.[24]

44. Should it not be possible to keep BiH within Yugoslavia, the SDS proposed the secession of Serbian territories so that the Serbs could remain within Yugoslavia. The SDS thus implemented a policy of creating "regions" (regionalisation), wherein the Serbs were the majority. Between September and November 1991, at least six communities of municipalities became Serbian Autonomous Regions or Districts (SAOs).[25]

45. Between December 1991 and April 1992, the SDS intensified measures to take political control at municipal level, including in some municipalities where the Serbs were a minority. The armed forces – which included the JNA, paramilitaries, local Territorial Defence ("TO") units and special police units – supported taking control in this way, at the request of the BiH Serbian Assembly.[26]

46. On 9 January 1992, the BiH Serbian Assembly proclaimed the Serbian Republic of BiH, renamed *Republika Srpska* ("RS") on 12 August 1992. The SDS formed an independent Serbian

[22] Decision of 10 December 2007, Annex, fact no. 78; Decision of 23 July 2010, Annex, fact no. 1; Sulejman Tihić, T(E) 12530. The SDS of the BiH, presided over by Radovan Karadžić, was created in July 1990 (*see* P931, p. 31; P1137, p. 12896).
[23] Decision of 23 July 2010, Annex, fact no. 3; P1248, pp. 6, 12.
[24] Decision of 10 December 2007, Annex, facts nos 93 and 96; Decision of 23 July 2010, Annex, facts nos 20-22, 32-35; P931, pp. 8, 13-14, 36-37, 41, 42 and 47; P940; P944, pp. 4-5; P945, p. 3.
[25] Decision of 10 December 2007, Annex, facts nos 88-89; Decision of 23 July 2010, Annex, facts nos 15-19 and 23; P877, para. 43; P878, T. 29623-29624; P919.

government and Biljana Plavšić and Nikola Koljević, two former members of the collective Presidency of BiH, became Acting Presidents of the Serbian Republic of BiH. Gradually, the three ethnic groups armed themselves and the situation continued to deteriorate with the creation of paramilitary formations and Serbian volunteers in several sectors of BiH.[27]

47. While maintaining its position that BiH should remain a part of a federal Yugoslavia, in February 1992, the SDS was in favour of creating a confederation in BiH as the only alternative to war. For its part, the SRS wanted a confederation composed of three entities, providing that the Serbian federal unit would be entirely free to enter other inter-state alliances.[28]

48. Following a declaration of independence by BiH on 6 March 1992, an open conflict erupted in BiH between units of the JNA, already present in the territories, and the local Muslim forces under the control of Alija Izetbegović, President of the BiH Presidency. On 16 April 1992, an imminent state of war was declared in the Serbian Republic of BiH and general mobilisation was ordered.[29]

49. On 12 May 1992, Radovan Karadžić, President of the RS, and Momčilo Krajišnik, the President of the Assembly of the Serbian Republic of BiH at the time, presented the "six strategic objectives of the Serbian people in BiH". This "Strategic Plan" aimed to: (i) remove the borders separating Serbian territories; (ii) establish borders separating the Serbian people from the other two communities; (iii) divide Sarajevo into two parts – one Serbian and the other Muslim. According to Prosecution Expert Witness Reynaud Theunens, the operations to take control of the municipalities of BiH in April and May 1992 were in line with the implementation of this Strategic Plan.[30]

[26] Decision of 23 July 2010, Annex, facts nos 48, 49, 51; Decision of 10 December 2007, Annex, facts nos 97-99, 103-104, 108; P878, T(E) 29623; VS-037, T(E) 14865-14867.
[27] Decision of 10 December 2007, Annex, facts nos 65, 113,117; P944, p. 8 *etc.* The implementation of the declaration was nevertheless subject to the recognition by the international community of the independence of BiH (*see* Decision of 10 December 2007, Annex, fact no. 65); Decision of 23 July 2010, Annex, fact nos 42 and 64; P257, p. 5; P644, p. 13; P878, T. 29624 and 29625; P956, p. 2. In the summer of 1992, there were approximately 60 paramilitary groups present on the territory of RS (*see* P974, pp. 1 and 5). The Serbian Republic of BiH consisted of autonomous Serbian regions and districts – including the RAK – and was intended to form a part of the Yugoslav federation (*see* Decision of 10 December 2007, Annex, fact no. 113 and Decision of 23 July 2010, Annex, fact no. 62).
[28] P257, p. 4; P949, pp. 4 to 6; P1198, p. 2.
[29] Decision of 10 December 2007, Annex, facts nos 81, 167, 171; Decision of 23 July 2010, Annex, facts nos 108 and 129; P31, T. 43325, 43326, 43695; P953, p. 1; P956; P992, pp. 46-49.
[30] Decision of 10 December 2007, fact no. 193; P870, p. 1; Reynaud Theunens, T(E) 4033; P261, part II pp. 155-156. During this same session the Assembly elected Radovan Karadžić, Biljana Plavšić and Nikola Koljević as members of the Presidency of the Serbian Republic of BiH, and appointed General Ratko Mladić as the commander of the VRS (*see* P966, pp. 2-3).

50. The SDS Crisis Staffs of the Serbian Republic of BiH were established and became fully operational between April and May 1992. Since the Crisis Staffs were municipal organs, they intervened when the Municipal Assembly could not fulfil its functions due to the state of emergency, and therefore replaced both the Municipal Assembly and the Executive Committee. These staffs consisted of the President of the Municipal Assembly or the President of the Municipal Executive Committee in municipalities with a Serbian majority, of the President of the SDS municipal section in municipalities where the Serbs were a minority, and of local JNA commanders, the chief of the Serbian police and the commander of the Serbian TO. As governing municipal bodies, the Crisis Staffs exercised control over civilian, military and paramilitary affairs.[31]

51. In August 1992, there were barely any non-Serbs left in many of the BiH municipalities, such as Zvornik, where Slobodan Milošević's security services operated. The Muslims and Croats in the RS gradually lost their jobs and by the end of 1992, almost all the members of these communities had been dismissed. On 23 and 24 November 1992, the RS Assembly adopted a flag – identical to that of Serbia – and an RS coat-of-arms and a national anthem. In the spring of 1993, Slobodan Milošević approved the Vance-Owen Peace Plan for BiH, which divided the country into ten regions in an attempt to balance the composition of the ethnic groups and avoid an intervention by Western states and NATO. According to the Accused, the SRS and the authorities of the RS were more in favour of the Owen-Stoltenberg Plan, which was based on a federation of three cantons, each representing the three communities of BiH, but it was rejected by the BiH Muslim authorities who wanted to maintain the unity of BiH.[32]

B. Political parties founded by the Accused

52. The Accused founded the SPO in March 1990 with Vuk Drašković, who became its leader. The SPO advocated a return to a monarchy, the defence of the Serbian nation, of the Serbian tradition and of the Serbian people who the SPO claimed were burdened by the threat of genocide. According to the Accused, the SPO defended the ideology of a Greater Serbia until 1991, before abandoning that direction. Following disagreements between Vuk Drašković and the

[31] Decision of 10 December 2007, Annex, facts nos 100-101, 107; Decision of 23 July 2010, Annex, facts nos 111-113, 117, 121; P957.
[32] Yves Tomić, T(E) 3115-3116; Decision of 10 December 2007, Annex, fact no. 146; P31, T. 43326- 43328, 43330 and 43331; P47, pp. 1, 2, 12; P161; P387; P644, pp. 23-24, 26; P987, p. 64; P998, p. 9; P1214, pp. 1, 3; P1211, p. 1; P1137, T. 13081-13082; P1308, pp. 6-7. According to expert Theunens, one of the aspects of the Vance-Owen Plan was the demilitarisation of the region carried out by the United Nations' Peace-keeping Forces, including the withdrawal of the JNA (*see*, Reynaud Theunens, T(E) 4024, 4239-4241).

Accused, on 18 June 1990 the latter founded the Serbian Chetnik Movement ("SČP") and became its leader.[33]

53. According to Prosecution Expert Witness Yves Tomić, the programme of the SČP was aimed at creating a Greater Serbia. This Greater Serbia would expand the borders of the federal state of Serbia to include Serbian Macedonia, Serbian Montenegro, Serbian Bosnia, Serbian Herzegovina, Serbian Dubrovnik, Serbian Dalmatia, Serbian Lika, Serbian Kordun, Serbian Banija, Serbian Slavonia and Serbian Baranja. From its creation, the SČP asserted the need to implement a policy of protection of the Serbian population against what they referred to as Croatia's "new genocidal policy".[34]

54. In August 1990, the Serbian authorities refused to register the SČP as a political party. The reason given was that the name chosen – the "Serbian Chetnik Movement" – recalled the crimes perpetrated against the population during the Second World War. In December 1990, the Accused ran as an independent candidate in the presidential elections and received approximately 100,000 votes.[35]

55. On 25 February 1991, the Accused, Ljubiša Petković and Tomislav Nikolić founded a new political party, the Serbian Radical Party ("SRS"), with a view to merging a branch of the People's Radical Party ("NRS") and the SČP. At the close of the Assembly session that gave birth to the SRS, the Accused was elected President of the SRS. Aleksandar Stefanović, also a member of the central administration of the SČP, was elected Secretary General of the SRS.[36]

56. According to Tomić, the aims of the SRS were essentially the same as those of the SČP: to build a unified Serbian State or a Greater Serbia, independent and free, comprising all of the Serbs and all Serbian territories, and extending the borders along the Karlobag-Virovitica-Ogulin-Karlovac line. According to the Accused, this border defined the western border of this Greater

[33] Yves Tomić, T(E) 2968; Aleksa Ejić, T(E) 10321-10322, 10448, 10450-10451; P31, T. 42884, 42885, 43130-43132, 44123; P106; P108; P153, pp. 43-55; P164, part I, pp. 80-81; P686; P998, p. 4; P1180, pp. 13-15.
[34] Yves Tomić, T(E), 2968-2969; P27, pp. 1-2; P1263, p. 2.
[35] Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1863; Yves Tomić, T(E) 2982; P164, part I, p. 83; P1264, pp. 3-4; P1265; P1264, pp. 1-3; C10, para. 6.
[36] P31, T. 42883; Yves Tomić, T(E) 3015; P153, pp. 2-7; P164, part I, pp. 84-85; Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1897-1898; C10, para. 8; C12, para. 36; C18, para. 8. The SRS was registered as a political party with the Ministry of Justice of Serbia on 25 February 1991 (*see* P901, p. 1).

Serbia and represented a Serbian nation based on the Shtokavian language, irrespective of religion. For the Accused, Greater Serbia was the exclusive goal of his party.[37]

57. The building of this State was to be done in two phases: firstly, the creation of Western Serbia, unifying the Republic of Serbian Krajina ("RSK") and the Serbian Republic of BiH – subsequently named *Republika Srpska* ("RS") – or the annexing of these western Serbian territories to the Federal Republic of Yugoslavia and, secondly, the unification of all Serbian territories within a Greater Serbia.[38]

58. The SRS had a two-tiered structure: (i) a main board, the principle organ of the Party consisting of 50 members and based at the Party headquarters in Belgrade; and (ii) municipal boards and sub-boards that were active in small localities and villages. The municipal boards consisted of a president, vice-presidents and a section of the SČP, which also had its own president.[39]

59. The SRS also had branches in Vojvodina, in Croatia, in BiH and in Montenegro. The presidents of these external branches of the SRS were: Drago Bakrač for Montenegro, Nikola Poplašen for RS, Rade Leskovac for the RSK, Maja Gojković for Vojvodina, and Jovan Glamočanin was the co-ordinator and the Accused's deputy for Vojvodina .[40]

60. On 6 April 1991, for the purpose of protecting the Serbian people in case of danger, the SRS created a Crisis Staff – led by Ljubiša Petković, hitherto the Vice-President of the SRS – under the political leadership of the Accused.[41]

61. In the beginning, the mandate of the Crisis Staff was limited to humanitarian activities, notably providing assistance to Serbian refugees and handling information regarding prisoners of war. On 1 October 1991, two days before an imminent threat of war was declared in the SFRY, the central Crisis Staff of the SRS, headed by Ljubiša Petković, was renamed the central "War

[37] Yves Tomić, T(E) 3029-3030; Aleksandar Stefanović, T(E) 12088-12089, 12092; P164, part I, pp. 84-92; Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1881; P31, T. 43220-43221, 43464-43465, 43814; P33, p. 4; P35, pp. 1-4, 7; P56, p. 1; P70, p. 1; P153, pp. 9-15; P329, p. 1; P547, pp. 2-4, 6; P1209, p. 7; P1177 p. 1.
[38] P31, T. 43989; Yves Tomić, T(E) 3120; P164, part I, pp. 91-92; P1208, pp. 10-11; P1209, p. 7.
[39] Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1932. Yves Tomić, T(E) 3028-3029; P31, T. 43952, 43491-43493; P153, pp. 8-9, 16-22; P1062; C10, paras 10 and 27; VS-007, T(E) 6026-6027 (closed session).
[40] Yves Tomić, T(E) 3028; P164, p. 87; P213, p. 8; P1198, p. 2; P1202, p. 1; P1214, p. 3; P1230, p. 9. The SRS War Staff in BiH was headquartered in Banja Luka (*see* P261, part II, pp. 167-168; P974, p. 6).
[41] Ljubiša Petković remained the chief of the War Staff until June 1992, the date on which he was replaced by Zoran Dražilović (*see* P261, part II, pp. 37-38, quoting P217, p. 4; C12, para. 14; C18, para. 42). C10, para. 8; C18, para. 12; C13, pp. 15-16; Yves Tomić, T(E) 3037-3038; Reynaud Theunens, T(E) 4357-4358, in which Expert Theunens points out that he did not have any documents in his possession to confirm that the Accused was in command of the SRS Crisis Staff.

Staff" and was tasked with providing support to the army. Working groups were also formed to ensure greater efficiency and better organisation of the volunteers.[42]

62. The SČP became a section of the SRS, which was officially registered. Members of the SČP were also considered members of the SRS. Under the authority of the SRS, the SČP executed its mandate dedicated to military activities, the principal aim of which was the recruitment, organisation and deployment of volunteers.[43]

C. The armed forces in the SFRY and FRY

1. At the Yugoslav federal level

63. According to the 1974 Constitution of the SFRY and the Law of 23 April 1982 on All People's Defence ("Law on ONO"), the armed forces of the SFRY consisted of the JNA and the TO. These armed forces could be reinforced by the regular and reserve armed forces but, during a state of war, an imminent threat of war or in other emergency situations, also by volunteers – namely persons not liable for military service who were accepted into the armed forces at their own request. The volunteers integrated into the SFRY armed forces had the same rights and duties as the military personnel.[44]

64. According to this Constitution and the Law on ONO, the SFRY armed forces had the duty to defend and protect the territorial integrity, sovereignty, independence and State social order, as defined by the Constitution.[45]

65. The command over the SFRY armed forces rested on the three following principles: the unity of command in the use of forces and resources, unity of authority and the obligation to implement or execute decisions, commands and orders of a superior officer.[46]

[42] Reynaud Theunens, T(E) 3778-3781, (private session) and 3956; P24 under seal, p. 1; P31, T. 43111; P208; P209, p. 1; P210 under seal; P211 under seal, p. 1; P227 under seal, p. 1; P231 under seal, p. 1; P258 under seal, part II, p. 34; P991 under seal, para. 26; P1188, p. 4; C10, para. 14. This declaration marked the beginning of measures being taken to defend the country, including propaganda and the mobilisation and organisation of the intake of volunteers, and their deployment to regions under the command of JNA military units.
[43] Yves Tomić, T(E) 3030-3031; VS-1033, T(E) 15798; P1190, p. 4; P1177, pp. 1, 3-4 and 8; P1230, p. 11.
[44] Reynaud Theunens, T(E) 3652, 3712-3714, 4143; P261, part I, pp. 4, 9-10; P193, Article 118; P194, p. 52.
[45] Reynaud Theunens, T(E) 3669, 3960, 4142-4143; P192, Article 240.
[46] Reynaud Theunens, T(E) 3670: the witness recalls P193, Article 112. On the definition and organisation of "command" and "control", *see* P261, part I, pp. 22-23, 28-29.

(a) The JNA and the Army of the Federal Republic of Yugoslavia ("VJ")

66. In the SFRY, the JNA was a powerful national army consisting of between 45,000 and 70,000 officers and active soldiers, in addition to between 110,000 and 135,000 conscripts; it possessed all the weapons and equipment of a modern army. The soldiers of the JNA – both regular and reservists – wore olive-drab uniforms and insignia consisting of a five-pointed star.[47]

67. At the time of the events relevant to the Indictment, the JNA consisted of five military districts: three Land Army districts, a Naval district, and the Air Force and Anti-Air Defence district. The Land Army districts consisted of corps, divisions, brigades, regiments, battalions, companies and platoons. The Presidency of the SFRY elected a President and a Vice-President for a period of one year. The President exercised power of command over the Armed Forces on behalf of the Presidency of the SFRY. During peacetime, the Federal Secretary of National Defence, assisted by the Federal Secretariat of National Defence, or the "SSNO", and the Chief of General Staff of the JNA, assisted by the General Staff of the JNA, played an advisory role to the Presidency of the SFRY.[48]

68. During a state of emergency, an imminent threat of war or a state of war, the Presidency of the SFRY became the Supreme Command and acted as the national command authority. The Supreme Command was assisted by the Supreme Command Staff, and consisted of the SSNO and the General Staff, including the Chief of the General Staff. The SSNO was at the head of the Supreme Command Staff. The SSNO was able to issue orders directly to the military districts and the operations units, without going through the Chief of the General Staff.[49]

69. At the start of the 1990s, the traditional predominance of Serb officers in the JNA further increased. This change was illustrated by the evolution in the composition of conscripts called up between June 1991 and early 1992. During this period, the number of Serbs in this armed force rose from just over 35% to around 90%.[50]

[47] Decision of 10 December 2007, Annex, fact no. 152; Vilim Karlović, T(E) 4673, 4675.
[48] Reynaud Theunens, T(E) 3686, 3701; P192, Article 328; P194, p. 58; P261, part I, pp. 13, 21, 34-37.
[49] Reynaud Theunens, T(E) 3685-3688, 4133-4135; P192, Article 328; P261, part I, pp. 20 and 21. The General Staff of the JNA, when it was renamed the General Staff of the Armed Forces of the SFRY, became the responsible authority of the JNA and the TO without having a command role; it could only transmit orders issued by the Secretariat to the All People's Defence.
[50] Decision of 10 December 2007, Annex, facts nos 157-158; Decision of 23 July 2010, Annex, facts nos 2, 75.

70. During the months of April and May 1992, following the disintegration of the SFRY and the promulgation of the FRY, the JNA was replaced by the VJ in the FRY.[51]

(b) The forces of the MUP

71. During the period relevant to the Indictment, the Ministry of the Interior of Serbia ("MUP") controlled the police and, in a state of emergency, was to implement security measures ordered by the President of Serbia. The Minister within the MUP became head of the department in charge of Serbs outside of Serbia. The Deputy Minister of the Interior became the Head of Public Security ("JB").[52]

72. The Head of the State Security ("DB") of Serbia had a deputy who was also the commander of the "Special Operations Unit" of the DB of Serbia, created on 4 May 1991, also called the "Red Berets" unit. All units of the JB and DB were placed under the authority of the Deputy Minister of the Interior.[53]

73. According to the Rulebook on Systematisation of MUP Services in Serbia, published in 1990, the work of the JB and DB services came under the control of the MUP of Serbia, notably the inspector in charge of controlling the legality of the work of the police in Serbia. In early 1992, the MUP of Serbia was reorganised and the mandate of the inspector in charge of controlling the legality of the work of the police in Serbia was changed so that he no longer had control over the DB, which was now directly subordinated to President Slobodan Milošević.[54]

(c) The Territorial Defence (TO)

74. Each of the six Republics, and the autonomous regions of the SFRY, had its own TO, which they financed and which was administered by their respective Ministers of Defence. The TO was organised on a territorial basis, at the level of local communes and municipalities, provinces and autonomous republics, with the Republic having the highest degree of command.[55]

75. In case of aggression, the principal mission of the TO units was to remain in the rear area, independently or in cooperation with the JNA, but the units along the border areas could immediately be engaged in combat activities with the JNA/VJ. Depending on their mission, there

[51] Decision of 10 December 2007, Annex, fact no. 179; Reynaud Theunens, T(E) 3671.
[52] P258 under seal, part I, p. 68; P1027 under seal, paras 3, 26; P1028 under seal, pp. 3, 6; P1034 under seal, p. 1.
[53] P131, p. 5; P1026, T(E) 23428; P1027 under seal, pp. 3-4; P1039 under seal.
[54] P1027 under seal, pp. 2-3; P1028 under seal, p. 2; P1030 under seal, Rule 1062, p. 2; P1039 under seal.
[55] Decision of 10 December 2007, Annex, fact no. 151; Decision of 8 February 2010, Annex A, fact no. 164; Reynaud Theunens, T(E) 3701; P261, part I, pp. 7-8, 37-41; P402, p. 2.

existed two types of units: local units, comprising the majority of the TO troops, and mobile (or "manoeuvre") units, representing 20% of these troops.[56]

76. The TO commanders were responsible, within their territorial structures, to their superiors for their work, combat readiness and the use of units, pursuant to the Law on ONO. However, each time the forces of the JNA and the TO were engaged in joint combat operations, they were all subordinated to the orders of the JNA officer in charge of carrying out the operations. The principle of unity of command applied also to the volunteers. That being said, according to Expert Witness Reynaud Theunens, in certain cases "i.e. [when] the enemy has taken part of Yugoslav territory […] then a TO officer could be in command", since the TO units were mainly local units and therefore knew the area well.[57]

77. The TO were equipped mostly with infantry weapons, notably rifles, light machine-guns, some small-calibre artillery, mortars and anti-personnel mines. The TO did not have tanks and depended for transport on the capacity of a Republic to fund its own territorial defence and on equipment discarded from the federal army.

2. The Yugoslav and regional armed forces in Croatia

78. The forces in Vukovar were reorganised into two Operations Groups ("OG") – OG North and OG South – and a single command was introduced to control the forces that were present, namely the JNA, the TO of the Republic of Serbia, the local Serbian TO, the volunteers on the ground, including volunteers affiliated with or sent by the SRS and the SČP, and Arkan's Tigers. On 15 October 1991, the command of the 1st Military District issued an order to all units subordinated to it, including OG South, to establish "full control" within their respective zones of responsibility. As the commander of OG South, General Mile Mrkšić had under his command all of the Serbian forces, including the JNA, the local Serbian TOs, the TO of the Republic of Serbia as well as paramilitary forces.[58]

[56] Reynaud Theunens, T(E) 3701; P261, part I, pp. 38- 39.
[57] Decision of 8 February 2010, Annex A, facts nos 168-169; Reynaud Theunens, T(E) 3700, 3906. The general moral guidance circular from General Adžič, the Chief of General Staff, of 12 October 1991, reiterated in its last paragraph that at all levels, all military units, whether JNA, TO or volunteers, must act under the single command of the JNA (Decision of 8 February 2010, Annex A, fact no. 170). On 15 October 1991, the command of the 1st Military District issued an order to all units subordinated to it, including OG South, to establish "full control" within their respective zones of responsibility. Pursuant to this order, paramilitary units which refused to submit themselves under the command of the JNA were to be removed from the territory (Decision of 8 February 2010, Annex A, fact no. 171).
[58] Decision of 8 February 2010, Annex A, facts nos 147-148, 154-155, 171; Reynaud Theunens, T(E) 3702-3703, 3863, 3878-3879, 3913; Zoran Rankić, T(E) 15934. According to Prosecution Witness Expert Reynaud Theunens, volunteers of the SRS and the SČP operated mainly within the Petrova Gora and Leva Supoderica Detachments, both of which

79. In Western Slavonia in 1991, the units of the local Serbian TO were also subordinated to the JNA.[59]

3. The evolution of the JNA and the TO in Croatia

80. In the course of the conflict in Croatia, during the first phase, the JNA interposed itself between the armed factions present in Croatia and, during the second phase, it protected the interests of the Serbian population.[60]

81. The JNA was perceived in Croatia as being aligned with Serbian interests and effectively commanded from Belgrade by a Serbian dominated leadership. The Croatian population, fed by this resentment, was ready to confront the policy of the Republic of Serbia and the JNA that it considered to be hostile.[61]

82. Throughout 1991, many officers and regular non-Serb soldiers left the JNA to take up arms against the JNA in Croatia. In March 1991, the Croatian forces prevented access to and blocked the JNA barracks in Bjelovar and Varaždin. In July and August 1991, the JNA barracks on Croatian territory were systematically blockaded, with their water, electricity, food supplies and communications cut off.[62]

83. In October 1991, while the JNA was on the territory of SAO Krajina, SBSW and Western Slavonia, the Government of the Republic of Croatia declared this to be an "invading force".[63]

84. Even before the outbreak of hostilities in Croatia, more specifically in 1991, the Croatian TO had been split into Serbian and Croatian structures. Whereas President Franjo Tuđman created the National Guard Corps (*Zbor narodne garde*, "ZNG") to replace the Croatian TO, the Serbs formed their own TOs, loyal to the SFRY and the Republic of Serbia. Consequently, during 1991, local Serbian TOs were set up in regions that had a Serbian majority, notably in SAO Western Slavonia, Krajina and SBWS.[64]

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were present in Vukovar and subordinated to OG South (P261, part I, p. 118); P23; P248, p. 4; P644, p.12; P1283, pp. 1-2; C11, pp. 14-15.

[59] Reynaud Theunens, T(E) 4019-4020; P181.

[60] P31, T. 43409-43410, 43660-43661; Reynaud Theunens, T(E) 3966-3967; P261, part II, pp. 7-9.

[61] Decision of 8 February 2010, Annex A, fact no. 20; Đuro Matovina, T(E) 6763; P1137, T(E) 13064-13065.

[62] Decision of 8 February 2010, Annex A, facts nos 21-23.

[63] Decision of 10 December 2007, Annex, fact no. 202; P246, p. 4; P1137, T(E) 13046.

[64] Decision of 8 February 2010, Annex A, fact no. 72; Reynaud Theunens, T(E) 3939-3940,4019-4020; Đuro Matovina, T(E) 6784; P31, T. 43434 and 43435; P181; P261, part II, pp. 87, 93, 103; P932, p. 7; P1140; P902; P932. In the SAO of SBWS, in November 1991, the local TO consisted of 4,500 members, *see* P932, p. 7.

85. Thus, during 1991, the local TOs of Western Slavonia and SBWS, notably, requested from the SRS War Staff to be provided with additional manpower and weapons.[65]

4. The Yugoslav and regional armed forces in BiH

(a) The JNA and the TO

86. In the second half of 1991, BiH was a vital base for JNA operations in Croatia and the Bosnian Serbs were an important source of recruitment. During this same period, the JNA disbanded the TO units in those zones that were predominantly Croatian and Muslim.[66]

87. By late 1991, Slobodan Milošević had completed 90% of the procedure for the transferral of soldiers, meaning that those originating from BiH were returned there and soldiers originating from other Republics departed. By early 1992, there were some 100,000 JNA troops on BiH territory, with over 700 tanks, 1,000 armoured personnel carriers, a considerable number of heavy weapons, 100 planes and 500 helicopters, all answerable to the JNA Supreme Staff in Belgrade. The 2nd Military District command of the JNA that had just been created, and covered the largest part of BiH territory, began functioning on 10 January 1992.[67]

88. During the first six months of 1992, the composition of the armed forces continued to change. In April 1992, more than 90% of JNA officers were Serbs or Montenegrins.[68]

89. At this same time, the TO sought to fill the void in its ranks left by the departure of non-Serbs. On 19 May 1992, the Assembly of the Serbian Republic of BiH created the Army of the Serbian Republic of BiH ("VRS") to replace the JNA. The JNA officially withdrew from BiH between 19 and 20 May 1992.[69]

90. On 16 April 1992, the Ministry of Defence of the Serbian Republic of BiH decided to establish the TO as the army of the Republic, giving command of the TO over to the municipalities, districts and regions, and to the TO Staff of the Republic. Moreover, it declared an

[65] P31, T. 43161; Reynaud Theunens, T(E) 3886-3887, 3902-3908, 4002-4003; P942; P1074, para. 29; C11, p. 14.
[66] Decision of 10 December 2007, Annex, facts nos 161-162.
[67] Decision of 10 December 2007, Annex, facts nos 160, 165, 181-182; VS-1093, T(E) 11716; Reynaud Theunens, T(E) 4024-4026 and 4030; P935. For example, in July 1991, the JNA seized from the Ministry of Defence of BiH and from the municipalities all the conscription files, including all the registers of conscripts. On 21 November 1991, the Serbian Assembly of BiH expressed its support for the JNA, notably in respect to the mobilisation of the Serbian people in BiH in order to reinforce military units.
[68] Decision of 23 July 2010, Annex, facts nos 75-76, 80; Decision of 10 December 2007, Annex, fact no. 186, referring to early 1991; P198, p. 374, referring to late 1991.
[69] Decision of 10 December 2007, Annex, facts nos 129, 171, 185-186; Decision of 23 July 2010, Annex, facts nos 72, 80-81; Reynaud Theunens, T(E) 3953; P31, T. 43636, 43696; P966, p. 2.

imminent threat of war and ordered the general mobilisation of the TO in the entire territory of the Republic.[70]

91. Between 1 April and 15 June 1992, the municipal and regional organs of the SDS played a major role in organising TO units. These units, sometimes operating jointly with the JNA, proceeded to secure Serbian municipalities. Thus, the SDS Crisis Staffs bridged the transition between the withdrawal of the JNA and the moment when the VRS took over all the armed forces and placed them under the unified command of its Main Staff. However, coordination and contacts between the Crisis Staffs and the armed forces continued and became institutionalised, as illustrated by the fact that certain VRS officers were members of the Crisis Staffs, or attended their meetings.[71]

(b) The VRS

92. Following its creation on 19 May 1992, the VRS used to a large extent the personnel and equipment of the 2nd Military District of the JNA, as well as the personnel of the local Serbian TO units. Due to a lack of soldiers following the dismissal of non-Serbs, those Muslims and Croats who agreed to sign oaths of loyalty to the Serbian Republic of BiH were allowed to remain in the ranks of the VRS. In the months that followed the new mobilisation order of the Serbian Presidency of BiH issued on 21 May 1992, several Serbian TO units were renamed "light brigades" of the VRS. A notable VRS objective was to liberate Serbian territories and "defend the Serbian people against genocide by the Muslim-Ustasha forces".[72]

93. As President of the RS, Radovan Karadžić was the Commander-in-Chief of the VRS. All the VRS soldiers were placed under the orders of the army Main Staff, headed by Ratko Mladić, the former Commander of the 2nd Military District of the JNA.[73]

94. The principle at the heart of the VRS was "unity of command": all the armed Serbian groups in BiH, including the paramilitaries, were required to be under the command of the VRS. Nevertheless, documents from the VRS Staff reveal that the absence of command and control structures and the reluctance of these armed groups to submit themselves to a single command posed numerous practical difficulties. Furthermore, at a meeting on 11 July 1992, the Minister of

[70] Decision of 10 December 2007, Annex, fact no. 120.
[71] Decision of 23 July 2010, Annex, facts nos 115, 119, 126-128.
[72] Decision of 10 December 2007, Annex, facts nos 186-187; Decision of 23 July 2010, Annex, facts nos 79, 129; Reynaud Theunens, T(E) 3953, 4031; P992, pp. 7, 13, 57, 70, 152, 159.
[73] Decision of 10 December 2007, facts nos 193, 195, 197; Decision of 23 July 2010, Annex, fact no. 73; P31, T. 43621; P992, pp. 69-70; P966, p. 2.

Defence Bogdan Subotić explained to Vojin Vučković, aka Žućo, the Commander of the Yellow Wasps, that whoever took orders from VRS officers was considered to be a full member of the VRS, irrespective of his status. In its report of April 1993, the VRS Main Staff reported that, with the help of the MUP, it had successfully integrated the majority of the paramilitary forces under its single command, and that it would proceed to neutralise those groups that were still outside of the military structure.[74]

95. From its inception, the VRS received support in logistics, personnel and training from the FRY and, despite the withdrawal of the JNA, there was no real major change because the military objectives and strategy, equipment, command officers, infrastructure and supply sources remained the same.[75]

96. The JNA's military operations under the command of Belgrade, which began before its withdrawal from BiH, were continued by members of the VJ. The VRS cooperated, moreover, with the SDS and the Serbian Orthodox Church.[76]

97. According to the judgement in the *Krajišnik* case, in June 1992, the VRS numbered 177,341 men, divided into five army corps, the Anti-Aircraft Defence and several units that did not belong to any particular corps. In under a year, it comprised 222,727 persons, of whom 14,541 were officers.[77]

(c) Forces of the MUP

98. The regional organisation of the MUP in BiH was based on nine security services centres and, once the Law on the Ministry of Internal Affairs of the Serbian Republic of BiH came into force, the Serbian authorities planned to have all the security centres and Bosnian public security stations throughout the territory of the Serbian Republic of BiH cease functioning.[78]

99. The Law on the Ministry of Internal Affairs of March 1992 mentioned the "ethnic composition" and invited "employees of Serbian nationality and other employees who so desire" to join MUP. In this way, in order to remain an employee, all personnel in the public services were required to sign an oath of loyalty to the Bosnian Serb authorities. In the months that followed, all

[74] Decision of 10 December 2007, fact no. 194; Decision of 23 July 2010, Annex, facts nos 86-87; VS-1060, T(E) 8579-8581, 8587, 8614, 8620, 8657- 8659, 8664; P992, pp. 7, 13, 47-48, 91.
[75] Decision of 10 December 2007, facts nos 182, 188, 189, 190, 191-192; P31, T. 43625-43626; C10, para. 23.
[76] Decision of 10 December 2007, Annex, fact no. 183; P198, pp. 399-400; P992, pp. 7, 13, 158.
[77] Decision of 10 December 2007, facts nos 196, 198-199; Decision of 23 July 2010, Annex, facts nos 73-74; P953; P970; P985; P992, pp. 11, 158.
[78] Decision of 23 July 2010, Annex, facts nos 6, 104-105.

of the non-Serbs who occupied managerial positions were replaced by Bosnian Serbs, so that the police became a Serbian police force in BiH.[79]

100. The MUP of Serbia and the RS MUP were in frequent contact: both the MUP of Serbia and the Serbian police stations provided assistance in weapons, ammunition, uniforms and communication equipment to the RS MUP and to the local branches of the Serbian MUP in BiH. Pursuant to the Law of March 1992, MUP units could occasionally be placed under the command of the VRS, all the while retaining their original formation and could not be disintegrated or separated.[80]

101. The regular police forces and the special police forces (*Posebne Jedinice Policije*, "PJP"), came under the MUP. Their members generally wore blue camouflage uniforms and had the same weapons as the VRS. In addition to their regular functions, some of the members of the regular police forces also had duties within the PJP, which were trained for combat operations and were activated when needed. Thus, in late June 1992, the MUP noted the presence of the PJP in Sokolac and in Pale. In September 1992, each security services centre had its own PJP unit.[81]

D. Serbian paramilitary forces

102. The notion of "volunteer" within the Serbian army, as established by SFRY military doctrine, referred initially to individuals who chose to rejoin the armed forces (JNA or the TO) during wartime. From August 1991, according to the Law on National Defence of the Republic of Serbia, Serbian volunteers were to join the TO and serve as reinforcements for the federal army forces, irrespective of their affiliation.[82]

103. Historically, the word "Chetnik" refers to a member of an armed guerrilla unit. More precisely, "Chetnik" units are irregular armed forces consisting of volunteers who can be used by the regular army as support units. Thus, "Chetnik" formations were mobilised during the Balkan wars and the First World War. Likewise, during the Second World War, the term "Chetnik" was attributed to a royalist armed force that engaged in resisting the forces of the Axis until 1943, the year in which this movement began cooperating with the forces of the Axis to topple the

[79] Decision of 10 December 2007, Annex, facts nos 137, 145-146; Decision of 23 July 2010, Annex, fact no. 98; P989, p. 2.
[80] Decision of 10 December 2007, Annex, facts nos 142-143, 193; Decision of 23 July 2010, Annex, facts nos 109-110; P1144 under seal, paras 31 and 90.
[81] Decision of 10 December 2007, Annex, facts nos 138-141; Decision of 23 July 2010, Annex, facts nos 107, 138; P1163 under seal.

Communists, who were their main enemies. These "Chetniks" wished to break free from the legacy of the Kingdom of Yugoslavia, which had erased the borders of Serbia and their goal was to create a Serbian national state that would bring together all the Serbs of the Kingdom of Yugoslavia.[83]

1. Volunteers of the SRS/SČP

(a) Definition of the expression "Šešelj's men"

104. One of the important points of evidence in this case has to do with the identification of the SČP/SRS volunteers, which would therefore establish a link between the volunteers and the Accused. Certain distinct signs such as insignia, clothing and physical appearance were mentioned. These men were called, or referred to themselves, as "Šešelj's men" or "*Šešeljevci*", an expression that was sometimes confused with that of "Chetnik", which, depending on the case, was used for Serbian soldiers who identified with the nationalist ideology of the Accused.

105. An analysis of the abundant evidence collected reveals that "Šešelj's men", who were also called "volunteers" or "Chetniks", could be identified by their physical appearance and clothing, without that identification criteria always being conclusive.[84] Thus, in its analysis of the evidence, the Chamber was careful to use various sources so as to identify the individuals associated with the SČP/SRS, rather than associate every mention of "Chetnik" with the Accused.

(b) The recruitment and deployment of SRS volunteers

106. In its Pre-Trial Brief, the Prosecution submits that the Accused recruited volunteers who received uniforms and training at JNA/VJ facilities, and that these arrangements resulted from agreements between the Accused and, *inter alia*, the JNA and the MUP. The Prosecution claims that once at the front lines, the SRS/SČP volunteers were generally deployed as separate units. The unit commanders were appointed by the Accused or by the SRS "War Staff", which was under the command of the Accused.

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[82] Reynaud Theunens, T(E) 3740-3741, 4299 and 4301; P261, part I, pp. 9, 10, 71-74 referring to Article 39 of the Law of 1991 on National Defence of the Republic of Serbia; P193, Article 119, pp. 74-75; P201, Article 39, p. 18; For the Serbian Republic of BiH, *see* P410, Article 43, p. 28.
[83] Yves Tomić, T(E) 3250; P164, pp. 38, 40-44; P261, part I, pp. 71-76.
[84] Among others, the following insignia and uniforms were worn by the SRS/SČP volunteers: uniforms of the TO, of the police, olive-drab JNA uniforms or mismatched uniforms; fur hats with a metal cockade, hats, caps or helmets with a five-pointed star; insignia depicting a two-headed eagle with a sword and four "S". *See* Reynaud Theunens, T(E) 4320-4325; Dragutin Berghofer, T(E) 4874-4875; Sulejman Tihić, T(E) 12558-12559; Redžep Karišik, T(E) 8769, 8795-8796; Fahrudin Bilić, T(E) 8963-8964; VS-002, T(E) 6454, 6564-6566; VS-004, T(E) 3429-3432; VS-033, T(E) 5554-5555; VS-1015, T(E) 5446-5448; VS-1055, T(E) 7812-7814; VS-1064, T(E) 8710-8711, 8718-8720, 8737-

107. In his Statement pursuant to Rule 84 *bis* and in his Final Brief, the Accused states that the SRS had a Crisis Staff that later became the "War Staff", but he objects to the allegation portraying the SRS as a military or paramilitary institution.

108. The Chamber notes that the recruitment of SRS volunteers primarily took place at the SRS headquarters in Belgrade. This recruitment process came under the responsibility of Ljubiša Petković, the SRS vice-president and chief of the "War Staff", Zoran Dražilović, head of the SRS volunteers, and Zoran Rankić, deputy chief of the SRS "War Staff".[85]

109. Recruitment was also carried out at the municipal level in Croatia, BiH and Serbia, through intermediaries approved by the SRS "War Staff". The local SČP/SRS branches in Serbia that were in charge of recruiting volunteers sometimes sent them to Belgrade in order to record their enrolment, while local SRS branches in BiH, in charge of recruiting volunteers in October or November 1991, merely informed the SRS headquarters of the zones to which the volunteers were deployed.[86]

110. It was also established, and furthermore not contested, that the SRS likewise recruited and sent volunteers in response to requests coming from other armed forces. Thus, from October 1991, requests were sent to the SRS by local TOs in BiH and Croatia and, subsequently, by the armed forces stationed in BiH and in Croatia, including the JNA/VJ and the VRS. The JNA cooperated with the Serbian Radical Party through General Domazetović of the JNA Staff. After evaluating the appropriateness of these requests, the Serbian Radical Party in Belgrade would contact the local branches of the Serbian Radical Party, which then selected the volunteers who were ready for deployment or sent volunteers to the headquarters of the Serbian Radical Party in Belgrade for a final selection. In 1992 and 1993, the SČP/SRS deployed volunteers to the RSK in response to requests from the JNA, the RSK authorities and, in certain cases, with the approval of the Accused.[87]

8741 and 8744-8745; VS-1066, T(E) 13833-13834, 13878-13879, 13899-13903, 13907, 13934, 13936-13937, 13942-13945; P184; P185; P455, pp. 1-8.

[85] VS-033, T(E) 5505, 5509-5510, 5586; Zoran Rankić, T(E) 15915-15921; Aleksandar Stefanović, T(E) 12117; P31, T. 43905-43906, 43952, 43958, 44144,-44145; P346; P634, paras 15, 27; P836, para. 57; P843, paras 6, 10; C10, para. 8; C11, pp. 4-6; C12, para. 1; C13, pp. 13-15; C18, para. 12; Statement pursuant to Rule 84 *bis*, T(E) 1901.

[86] VS-1058, T(E) 15627, 15640-15641, 15650, 15653; P55, p. 3; P911; P1074, paras 29, 31; C10, para. 22; C11, p. 13; C12, para. 21; C14, pp. 2-3; C18, para. 31.

[87] Reynaud Theunens, T(E) 3948-3949, 3953; Zoran Rankić, T(E) 15916-15917, 15920-15921; P31, T. 43904-43906; P55, p. 3; P264; P644, p. 16; P648; P652; P942; P1064; P1065; P1074, paras 29, 45, 87-89; P1076, p. 25; P1111, p. C18, paras 32-33.

111. Membership in the SRS was not a criterion for recruiting volunteers, who were made up of individuals without any political affiliation, as well as members of the SČP, the SDS and the SPO. There were also volunteers who became members of the SRS after their deployment in the field.[88]

(c) Hierarchical link between the volunteers and the Accused

112. The Prosecution points out, finally, that although once on the ground these volunteers were generally subordinated to the local TO, the JNA, the VRS or MUP units, the Accused continued having direct contacts with them regarding the situation on the ground and could intervene.[89]

113. Moreover, it was claimed that the volunteers continued to consider the Accused as their supreme commander even though they were at the front lines. The Prosecution submits that the Accused issued ranks to his volunteers, and was the only one who had the power to promote them within the SČP/SRS by giving them the title of *Vojvoda*. The Prosecution alleges that the Accused visited the volunteers on the front line, which motivated them as they saw him as a god. The majority notes a shift in meaning here in the Prosecution's allegations.[90] The Prosecution began by alleging that the Accused had control over his men on the front line, but in its Closing Brief it seems to depart from this argument to contend that although the volunteers were under the authority of the JNA, the Accused nevertheless retained a certain direct authority. The Chamber recalls that the sole aim of the Closing Brief is to present to the Chamber how the Prosecution discharged its mission to prove its allegations in the Indictment. It cannot serve as a new charging instrument for the Prosecution to use to readjust its initial argument to fit the evidence.

114. The Accused also admits that the SRS drew up lists of recruits and ensured their transportation to the JNA posts, but insists that from the second half of 1991 until 19 May 1992, the SRS volunteers were always integrated into the JNA or the TO, under the command of the JNA. He also points out that each SRS volunteer had a military booklet and received the same salary as the mobilised reservists, in addition to receiving clothing and weapons from the JNA. Finally, he submits that the SRS had the moral authority to intervene with those volunteers who lacked discipline. In response to the commission of crimes by the volunteers, the Accused admits that the SRS could expel a member from its organisation for violating SRS statutory norms.[91]

[88] Aleksandar Stefanović, T(E) 12156; VS-033, T(E) 5502-5505, 5570-5571; VS-1058, T(E) 15628-15629; C11, p. 6; C13, p. 61; C18, para. 30. Some volunteers who were members of the SRS had dark-blue party membership booklets (*see* VS-1067, T(E) 15373).
[89] The Indictment alleges that the Accused went to the front line several times and supervised the volunteers following their recruitment, formation, financing and supplying.
[90] Judge Lattanzi disagrees with this analysis.
[91] Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1899-1902. *See* also P1124 under seal.

115. According to the evidence, in the summer of 1991, legislation of the SFRY and the Republic of Serbia was amended to enable volunteers to be registered with the SFRY. Subsequently, in the autumn of that same year, in order to regulate *de facto* the situation of some of the volunteer units, the SFRY issued a decree integrating these units into the armed forces. Expert Theunens explained that the title of *Vojvoda*, given by the Accused to members of the SRS, was more than an honorary title because it conferred upon them a position of authority. However, the expert pointed out that these ranks were not recognised by either the JNA or the VRS.[92] The Chamber did not receive conclusive evidence as to the power of the SRS and of the Accused to promote volunteers within the ranks of the regular army. It seems, rather, that the titles proposed and given to volunteers within the SRS had no official value, nor did they influence the responsibilities assigned to these same volunteers within the JNA and VRS.[93]

116. The Chamber finds that although it is clear that the Accused had a certain moral authority over the volunteers of his party,[94] these volunteers were not subordinated to him in the theatre of military operations. There was no hierarchical link between the Accused and the volunteers once they were integrated into the structures of the JNA, VJ and VRS.

(d) Financing of the SRS volunteers

117. The evidence on the record reveals that the Ministry of Defence of the Republic of Serbia and the Ministry in charge of relations with Serbs outside of Serbia provided financial compensation to SČP/SRS volunteers by way of the SRS War Staff and/or the TO/JNA/VJ.[95]

2. The Serbian paramilitary groups present in the municipalities covered by the Indictment

118. The Chamber presents hereinafter the paramilitary groups that were present in the municipalities covered by the Indictment during the relevant period and examines, in particular, their link with the SRS.

a. "Arkan's Tigers"/ "Arkan's Volunteers"

[92] Reynaud Theunens, T(E) 3823, 3740-3741, 3811, 3815-3816; Yves Tomić, T(E) 3035; P258 under seal, part I, pp. 71-72; P41; P1012, p. 58; P217, p. 3; Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1921-1922. During the trial, it emerged that the three *Vojvoda* who were leading units in the Sarajevo region, namely Vaske, Brne and Slavko Aleksić, had not been sent to the Sarajevo region by Belgrade, that is to say by the SRS central office and/or by the Accused. It also emerged that these same units, including Vaske's unit, were under the authority of the VRS. *See* Reynaud Theunens, T(E) 3815-3816, 4237, 4242-4243, 4247, 4252.

[93] Judge Lattanzi disagrees with this statement.

[94] Judge Lattanzi deems for her part that the Accused had significant moral authority over the SČP/SRS volunteers and the supporters of his ideology.

[95] Reynaud Theunens, T(E) 3935, 3936, 3940-3945, 4340-4341; P31, T. 43118-43120; VS-033, T(E) 5527 and 5528; C10, para. 34; C11, p. 21; P843, para. 21; P1074, p. 55; P1075, pp. 13-14.

119. According to the Prosecution, Željko Ražnjatović, aka Arkan - an alleged member of the JCE and allegedly one of the persons responsible within the MUP of Serbia - was a notorious criminal and the leader of a paramilitary group affiliated with the DB of Serbia. The Prosecution submits that the Accused and Arkan cooperated closely during the conflict. The Accused objects to this claim and points out the lack of proof establishing his link with Arkan, whom he says he always denounced as being a criminal. During his testimony in the *Milošević* case, the Accused stated that SRS volunteers had been instructed to avoid having any contact with Arkan's volunteers, but that it was possible that some of his volunteers could have cooperated with Arkan.[96]

120. The evidence on the record shows that Arkan, a self-proclaimed Serbian war lord, commanded a paramilitary unit called the "Serbian Volunteer Guard – SDG", "Arkan's volunteers", "Arkan's men" or "Arkan's Tigers". Arkan had a deputy known as "Pejo". In the summer of 1991, Arkan commanded a training centre in Erdut, Croatia, which provided logistical support and training to volunteer groups.[97]

121. Members of Arkan's unit came from various backgrounds. Some of Arkan's volunteers were prisoners who were on parole, while others were former army officers. Arkan's men did not have standard uniforms.[98]

122. With respect to links with the SRS, some 20 volunteers who were under Arkan's command in the SAO SBWS acted independently. This information was conveyed through the statements of Ljubiša Petković according to which, of the 150 SRS volunteers sent to the Erdut training centre commanded by Arkan and which served as a transit centre for SRS volunteers, 20 were assigned to Arkan's Tigers unit, which operated separately from the TO of Western Slavonia. The Chamber also notes that Šešelj's men were even able to protect Muslim civilians from violence committed by Arkan's men.[99]

123. In light of the evidence, the Chamber finds that Arkan's Tigers were not a volunteer unit of the SRS, but that a limited number of SRS volunteers had joined this paramilitary group. Furthermore, the Chamber by a majority, Judge Lattanzi dissenting, finds that even if volunteers

[96] P31, T. 43661-43663.
[97] Asim Alić, T(E) 6998-6999; Reynaud Theunens, T(E) 3760; Accused's Closing Argument, T(E) 17373; P31, T. 43153, 43159-43620; P132, p. 1; P132; P261, part I, pp. 81-82; P526, paras 10-11, 14; P528, paras 18, 20, 26, 28; P836, para. 21; P857, para. 50; P953, p. 1; C10, para. 43; C12, para. 24; C18, para. 38.
[98] Jelena Radošević, T(E) 11088-11089; P580, paras 13, 44; Reynaud Theunens, T(E) 4320; Julka Maretić, T(E) 11524, 11527; P608, p. 5.
[99] VS-1062, T(E) 5954-5955, 5958-5960; P918 under seal, p. 2; C12, para. 24; C15, p. 49; C18, para. 38.

recruited by the Accused's party could have at times cooperated with Arkan, there is no proof to establish that the Accused was behind this cooperation.

b. The "White Eagles" and the "Dušan Silni" Detachment, paramilitary groups affiliated with the SNO

124. The White Eagles group, also called "*Beli Orlovi*", was a group of volunteers/paramilitaries commanded by Dragoslav Bokan, a member of the Serbian National Renewal ("SNO") Party. The White Eagles were traditionally considered as being an elite unit and counted as its members notably men posted in the Mostar municipality. The insignia and uniforms of the White Eagles varied and were not regulated. The Dušan Silni Detachment was also affiliated with the SNO.[100]

125. According to the Accused, the White Eagles paramilitary unit, unlike the SRS volunteers, was not integrated into the JNA, and quickly began to operate as an independent paramilitary group.[101] According to Witness Dražilović, members of the White Eagles at times joined the JNA and at others operated on their own initiative.[102]

126. Some evidence points to the White Eagles being members of the SRS, which is refuted by other evidence indicating that this unit was rarely in the same zone as the SRS volunteers (the date is not specified).[103] However, the Chamber received evidence attesting to the presence of the White Eagles in Voćin at the same time as the SRS volunteers. They were all under the command of the local TO.[104]

127. The Chamber finds that there is insufficient proof to establish that there was cooperation on the ground between the *Šešeljevci* and the White Eagles.

[100] Reynaud Theunens, T(E) 3716; VS-1067, T(E) 15287-5289; P261, part I, pp. 75-76; P907, p. 3; P1051 under seal, para. 11; P1277, p. 2; C10, para. 45. This detachment was present in the Zvornik region in late April 1992 and was commanded by Milan Ilić (P521 under seal, p. 6). C10, para. 45; among others, the following insignia and uniforms were worn by the White Eagles: olive drab uniforms; a *šubara*; a cockade; an ammunition belt; insignia on their hats, cockade or on shoulder bearing the inscription "White Eagles Assault Battalion", as well as two white eagles, a coat-of-arms and a crown or a white eagle; black bandanas. *See* Fahrudin Bilić, T(E) 8962; Jelena Radošević, T(E) 11081-11082. The witness recognised the insignia that appears in Exhibits P583 and P584. P580, paras 10-1; P1077 para. 86.
[101] P31, T. 43127 - 43128.
[102] C10, para. 45.
[103] According to Zoran Tot, the "White Eagles" were not present at the same locations as "Šešelj's volunteers", and they were only involved in looting, *see* P843, para. 18 and C11, p. 8.
[104] P1074, para. 81.

c. The "Red Berets" of the DB of Serbia[105]

128. In its Pre-Trial Brief, the Prosecution submits that while the Red Berets belonged to the MUP of Serbia, their leader Srećko Radanović, aka "Debeli", was allegedly the leader of an SRS/SČP unit that was also under the command of Dragan Đorđević, aka "Crni", and Slobodan Miljković, aka "Lugar" of the State Security Department (SDB). According to the Prosecution, Debeli, Crni and Lugar were SČP/SRS volunteers. In his Statement pursuant to Rule 84 *bis*, the Accused maintained that the SRS volunteers were issued very strict instructions not to mix with units such as the Red Berets.

129. On 4 May 1991, the DB of Serbia created a "Special Operations Unit" whose members wore red berets. Franko Simatović, aka "Frenki", was the commander of the Red Berets.[106]

130. The evidence shows that some of the SRS volunteers were under the command of the Red Berets. For example, the SRS War Staff sent 30 or 40 volunteers to Bosanski Šamac in the spring of 1992 to be under the command of Srećko Radanović, aka "Debeli".[107]

131. Furthermore, Dragan Đorđević, aka "Crni", the commander of one of the Red Berets units, and Debeli, his deputy, were both members of the SRS. The following individuals were also members of the Red Berets: Slobodan Miljković, aka "Lugar" – commander of a Red Berets detachment and a member of the SRS –, Aleksandar Vuković, aka "Vuk", Rade Božić and persons known as "Avram", "Laki", "Tralja", "Student" and "Mali".[108]

132. According to witnesses and the Accused, when testifying in the *Milošević* case, Dragan Vasiljković, aka "Captain Dragan", commanded several Red Beret units and had been sent by Jovica Stanišić and Frenki Simatović to Krajina to form and train the RSK police and TO.[109]

133. Thus, it emerges from the evidence that some of the SRS volunteers had joined the Red Berets and had even been under the command of a member of the SRS.

[105] The Chamber points out here that it is interested solely in the Red Berets affiliated with the DB. It notes that another detachment also called the "Red Berets", a part of the VRS, was active in Nevesinje municipality.
[106] P 31, T. 43933; P131, p. 5; P634, para. 21; P1026, T(E) 23248; P49, p. 2; P30; P644, p. 15; P1016.
[107] P644, p. 15; P31, T. 43934-43936, 44329; C18, para. 49.
[108] VS-1033, T(E) 15778; P1016; P1026, T(E) 23427-23428, 23443-23445; VS-1058, T(E) 15678.
[109] Reynaud Theunens, T(E) 3765, 4040; VS-1035, T(E) 13806; Fadil Banjanović, T(E) 12440, 12441, 12483; P31, T. 43393-43395, 43397, 43673-43674, 43907-43909; P1137, T(E) 12920. "Captain Dragan" was also known under the name Daniel Snedden, an Australian citizen (*see* P205).

d. The "Yellow Wasps"

134. In the Indictment and its Pre-Trial Brief, the Prosecution alleges that Serbian forces, including the *Šešeljevci* and Arkan's Tigers, killed a large number of civilians during and after the takeover of Zvornik. In its Closing Brief, the Prosecution refers to the Yellow Wasps as one of the groups of *Šešeljevci*, which notably included a certain Vojin Vučković, aka "Žuca" or "Žućo", specifying that the Yellow Wasps were allegedly a "group of *Šešeljevci*".

135. The Accused claims that Vojin Vučković, aka "Žućo", had been an SRS volunteer in Eastern Slavonia, but was expelled from the SRS in September 1991 for improper conduct and that his group later acted independently. The Accused repeated, in his testimony in the *Milošević* case and in his statement pursuant to Rule 84 *bis*, that he had instructed his SRS members to avoid all contact with the Yellow Wasps.

136. According to the Accused, Žućo's group was initially named the "Igor Marković Detachment", after a fighter who was killed in the battle for Kula Grad. This group, which is said to have later taken the name of the Yellow Wasps, after the expulsion from the SRS, allegedly did not exist before 26 April 1992. After 26 April 1992, the three paramilitary groups remaining within the Zvornik TO were the units of Niški, Pivarski and Žućo. The Accused also stated that he had welcomed the arrest of the Yellow Wasps in Zvornik.

137. The evidence shows that Vojin Vučković, aka "Žućo"/"Žuća" commanded a unit of Serbian paramilitaries/volunteers called the Yellow Wasps or "*Žute ose*", which was previously named "Igor Marković". Žućo's brother, Dušan Vučković, known as "Repić", as well as a man known as "Topola", were also members of this unit.[110]

138. This unit, numbering more than 60 men, was integrated in April-May 1992 into the TO, under the command of Marko Pavlović, and later, into the Zvornik Brigade of the VRS. The TO and, subsequently, the JNA/VRS provided the Yellow Wasps with logistical military equipment.[111]

139. Asim Alić, chief of the Zvornik Public Security Station, stated that he had gone on 8 April 1992 to the Zvornik police station where Žućo and Repić were being held and that they both had membership cards of the SČP and the SRS. According to this witness, Žućo allegedly told Asim

[110] VS-037, T(E) 15014-15015; Asim Alić, T(E) 7125-7139; P443; P836, paras 16-17; P1074, paras 107, 110.
[111] Decision of 23 July 2010, Annex A, facts nos 85, 86-87; Asim Alić, T(E) 7014; P261, part II, p. 196.

Alić, at that time, that he was a member of the SRS and that Vojislav Šešelj was their leader. He also said to Witness VS-1105 that he commanded a unit of "Šešelj's men".[112]

140. In a statement given to the Bijeljina Public Security Service dated 3 August 1992, Slobodan Milivojević, aka "Topola", stated that he had gone to Zvornik with Zoran Rankić, described as the commander of the SRS volunteers in Zvornik, around 20 April 1992, and that, afterwards, he was deployed with Žućo's unit.[113]

141. Witness Zoran Rankić said in his written statement that the Yellow Wasps were part of the SRS until mid-May 1992; that they were present in Zvornik in the spring of 1992 and in Karakaj around 4 or 5 April 1992; that, when the murders they had committed at the Čelopek Dom Kulture were discovered, the Accused allegedly distanced himself and denied that Žućo was a member of the SRS volunteers. In his testimony before the Chamber, Zoran Rankić retracted his earlier statements, denying that Žućo had been an SRS member in April 1992 and stating that, following his resignation from the SRS on 12 December 1991, he no longer participated in the deployment of SRS volunteers to the front.[114]

142. The Chamber has received evidence showing that Žućo and Repić were no longer in the SRS at the beginning of April 1992. According to the expert Theunens, on 8 November 1993, Žućo was interrogated by an investigating judge of the court in Šabac, and stated that his brother Repić and himself had been SRS members "for only three months and that was sometime around September 1991". Repić was also questioned by the same investigating judge and stated that he had been a member of the SRS from March to November 1991. Repić said that, on 4 April 1992, he and his brother had joined Zvornik TO and that his brother Vojin "succeeded in organising his own special unit [called *Igor Marković*] which was composed of volunteers and belonged to the TO".[115]

143. Thus, some members of this unit were former members of other paramilitary units, such as the White Eagles or the SRS volunteers.

144. The Chamber finds that Žućo's group, made up of *Šešeljevci*, operated independently, by taking the name "Yellow Wasps", and that the Accused distanced himself from this group after the crimes perpetrated in Zvornik.

[112] Asim Alić, T(E) 7000, 7005-7015, 7013-7014, 7110-7111; VS-1105, T(E) 9506-9507, 9510-9511; P521 under seal, p. 6.
[113] P1153, p. 1; P1076, pp. 24-25.
[114] Zoran Rankić, T(E) 16027-16029, 16089; P1074, paras 39, 41-42, para. 110; P1075, para. 22; P1076, pp. 21-22, 24.
[115] P261, part II, pp. 196-197.

e. The "Leva Supoderica" Detachment

145. The Leva Supoderica Detachment was a unit consisting of 50 to 150 men, the majority of whom had been sent by the SRS War Staff, while others, such as Kameni, had joined locally. The detachment was present in Vukovar towards the end of 1991 and its mission was to "liberate" the city.[116]

146. On 9 November 1991, Ljubiša Petković, Chief of the SRS War Staff, wrote a letter to Kameni, commander of the Leva Supoderica Detachment, ordering that all the volunteers sent by the SRS be assembled within that detachment and this order was executed.[117]

147. In this letter of 9 November 1991, Ljubiša Petković also requested Commander Kameni to notify the SRS War Staff of all the information concerning SČP/SRS volunteers who were sent back due to lack of discipline or for any other reason, as well as all information about soldiers who had shown exceptional bravery. Several witnesses mentioned that Kameni had expelled Topola from the Leva Supoderica Detachment for violations of military discipline towards the end of November 1991.[118]

148. The headquarters and the command of the detachment were located in an area of the city of Vukovar called "*Petrova Gora*", which was also the location of the TO and the Guards Brigade of the JNA. The detachment was, in hierarchical terms, at the same level as the TO units and coordinated its activities with the TO. It was led by Milan Lančužanin, aka "Kameni", a Serbian resident of Vukovar who had begun to organise the defence of Vukovar with the TO before the arrival of the SRS volunteers. Kameni himself was under the authority of the Guards Brigade as far as the conduct of military operations was concerned. He was assisted by his deputy Predrag Milojević, aka "Kinez".[119]

149. It follows from the evidence that the SČP/SRS members who were present in Vukovar first wore regular JNA uniforms, and then camouflage uniforms supplied by the SČP/SRS. The volunteers subsequently replaced the red stars (a Communist symbol) by cockades worn on the

[116] C10, para. 41; Goran Stoparić, T(E) 2321-2324, 257-2581, 2624; P23; P31, T. 44149-44150; P41; P261, part II, p. 88.
[117] P23; P258 under seal, part II, pp. 110-111.
[118] P23. The reasons given by witnesses vary: according to VS-065, it was a refusal to obey (VS-065, T(E) 13052); according to Witness Goran Stoparić, Kameni expelled him because he had imprisoned a young girl in the house where his squad had lodgings before throwing her into a well (Goran Stoparić, T(E) 2347-2349); according to Zoran Rankić, Topola was accused of having executed five or six Croatian prisoners detained in the Velepromet warehouse (P1074, para. 39).
[119] Goran Stoparić, T(E) 2326, 2349; VS-007, T(E) 6045, 6056-6058 (closed session); P31, T. 44142, 44144; P371; P421; C10, para. 41; P25 under seal; P369; P644, p.12.

šajkača, which was the traditional Chetnik headwear. The Leva Supoderica Detachment was also mentioned in the documents of the SRS and of the SRS War Staff, and in the *Velika Srbija* magazine as a "Chetnik volunteer detachment".[120]

150. While subordinated to OG South, the Leva Supoderica Detachment continued to be in contact with the SRS regarding issues of discipline or promotion. According to Witness Ljubiša Petković, the Accused met regularly with Slobodan Katić and Kameni at the War Staff HQ in Belgrade.[121]

151. A letter of 9 December1991 from the Vukovar TO to Ljubiša Petković and his deputy Zoran Rankić reveals that Slobodan Katić, who called himself the "Chetnik Commander of Vukovar", proposed a number of fighting men for promotion. Among those men were "Milan Lančužanin aka Kameni, Commander of Leva Supoderica", "Predrag Dragojević, Deputy Commander of Leva Supoderica" and "Predrag Milojević, Commander of the 1st Assault Battalion from Leva Supoderica". By an order of 13 May 1993, the Accused conferred on Kameni the title of *Vojvoda*.[122]

152. The evidence also shows that, at the end of operations in Vukovar, the JNA paid the volunteers of the Leva Supoderica unit.[123]

153. In view of the aforesaid evidence, the Chamber finds that the Leva Supoderica Detachment was made up of SRS volunteers who were sent to Vukovar by the SRS Staff or recruited locally and then brought together in this detachment, and that it had a direct link with the SRS.

f. <u>The unit of Vasilije Vidović, aka "Vaske"</u>

154. According to the Prosecution, Vasilije Vidović, aka "Vaske", a native of Ilijaš, commanded a group of Serbian volunteers called "Šešelj's Chetniks" or "Vaske's Chetniks", which often introduced itself as a "*Šešeljevci* unit". At times, this unit is said to have numbered up to 70 volunteers of the SČP/SRS, and other SČP/SRS volunteer units were sometimes put under Vaske's command. According to the Prosecution, he collaborated with Ratko Adžić and the SDS. The Prosecution alleges, moreover, that Vaske was one of the close associates of the Accused and frequently travelled to Belgrade to meet him.

[120] VS-007, T(E) 6037-6038 (closed session) and T(E) 6056 (closed session); Reynaud Theunens, T(E) 3817, 3823-3825, 3884, 4325.
[121] Reynaud Theunens, T(E) 3886, 4325; C16, pp. 20-21; C18, para. 46.
[122] P25 under seal; P217; P258 under seal, part II, p. 88; Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1921-1922.
[123] P31, T. 43533-43534.

155. According to the Statement of the Accused pursuant to Rule 84 *bis*, Vaske was a member of the SRS and fought heroically in Dalmatia in 1991. After the Vance-Owen Plan was adopted, Vaske returned to Ilijaš. He was never sent to Ilijaš by the SRS, but instead formed his own unit which he commanded. The Accused claims that he visited Vaske's unit twice during the conflict, but that the SRS never sent volunteers to that unit. In the words of the Accused, his trust in Vaske was such that, after the Dayton Accords, he appointed him chief of his personal security detail.

156. The evidence shows that Vasilije Vidović, aka "Vaske", was a member of the SČP from the outset, and later a founding member of the SRS. The Chamber is also able to conclude that, from September 1991 to the end of February 1992, Vaske was an SRS volunteer in Benkovac, Dalmatia. From February 1992 onwards, he led an intervention unit in Ilijaš, in the Sarajevo area, that was integrated into the VRS and numbered at least twenty men, all of whom were SČP/SRS volunteers, in particular, from Belgrade, Loznica or Knin. The unit commanded by Vaske was also called "Vaske's Chetniks", "Vaske's unit" or "Vaske's *skalamerija*". Nadan Andrić was Vaske's deputy. Vaske's unit also operated under the command of Dragan Josipović, who led the Tactical Group of the VRS, notably in Vogošća and in Ilijaš.[124]

g. The units of Pivarski and Niški

157. The Chamber notes that the Prosecution mentions for the first time in its Closing Brief that a number of groups, including "Pivarski's men", were allegedly among the "*Šešeljevci* groups" or detachments of the SČP/SRS. Given the tardiness of this allegation, the Chamber did not take it into consideration.

158. The evidence shows that Niški was initially a member of Arkan's Tigers who established his own unit of volunteers after leaving Zvornik.[125] The Chamber does not have any evidence of a link between this unit and the SRS.

h. Gogić's unit / the Loznica group

159. According to the Prosecution's Closing Brief, Gogić's unit was one of the groups of SRS volunteers. This unit was allegedly one of the "*Šešeljevci* groups" in Loznica that were part of the Serbian police. In his Final Brief, the Accused maintains that after 26 April 1992, three paramilitary

[124] Safet Sejdić, T(E) 8216-8219, 8348, 8395-8396; VS-1055, T(E) 7805, 7811; P218, p. 1; Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1934; Reynaud Theunens, T(E) 4237-4238, 4241-4242, 4247-4249; P261, part II, pp. 231-232; P836, p. 10, para. 49; P840, paras 7, 10-12, 16, 19-20, 23.
[125] VS-038, T(E) 10156; P362, p. 5; P1077, para. 86; P1144 under seal, para. 79.

groups remained within the Zvornik TO: those of Niški, Pivarski and Žućo, while the volunteer group from Loznica, including Gogić, formed part of the police.

160. According to the evidence before the Chamber, the volunteers unit commanded by Gogić was called Gogić's unit, the "Loznica group" or the "Loznica men".[126]

161. In April 1992, the unit commanded by Milorad Gogić, consisting of SRS volunteers from Loznica, formed part of the Zvornik TO. It joined the Zvornik MUP in May 1992. The Mali Zvornik TO supplied this group with arms and equipment. This unit stayed in Zvornik until the end of July 1992 when it was disarmed and expelled as part of an operation aimed at removing paramilitaries from that zone. All the members of this unit had uniforms with the insignia of the police and weapons issued by the Zvornik SUP.[127]

162. The Chamber did not receive any evidence of the existence of a hierarchical link between this unit and the Accused.

i. The "Karađorđe" unit

163. The Prosecution alleges that in the summer of 1991, Arsen Grahovac created a unit called "Karađorđe" from members and followers of the SČP and the SRS, which was affiliated with the Accused. This unit was allegedly present in the areas of Nevesinje and Mostar in June 1992.

164. The evidence in the case file shows that in 1991 in Nevesinje, Arsen Grahovac established and commanded the Karađorđe unit numbering about 100 men. The headquarters of this unit was located in a bar in Nevesinje called "Ravna Gora". This unit operated in the areas of Mostar and Nevesinje.[128]

165. As regards a link between the Karađorđe unit of Šešelj's men and the SRS, the two key witnesses who testified to this in their written statements retracted their evidence in court, leaving the majority of the Chamber, Judge Lattanzi dissenting, with no credible evidence on which to base a finding.

[126] VS-1013, T(E) 5217-5218, 5222, 5226, 5321- 5323, 5331.
[127] P997 under seal, pp. 1-3; P362, pp. 4-5; Fadil Kopić, T(E) 5883, 5914; P362, pp. 4-5.
[128] Ibrahim Kujan, T(E) 9658; P524, p. 3; Vojislav Dabić, T(E) 15114, 15125; VS-1067, T(E) 15310-15311; P879, p. 1; P880 under seal, p. 9; P881 under seal, para. 5; P884, p. 1; P886, pp. 1-2.

166. According to Ibrahim Kujan, a Muslim from Nevesinje municipality and member of the Nevesinje SDA Executive Council, the "Chetnik" Karađorđe unit worked with the local police. The police supplied it with ammunition, food and money.[129]

167. The fact that several witnesses described the unit as "Chetnik" does not suffice to establish that it belonged to the SČP or to the SRS. Moreover, the fact that Ibrahim Kujan saw the Accused in Nevesinje next to Arsen Grahovac in February or March 1992 and had heard that the Accused had visited the "*Ravna Gora*" café dressed in military uniform on a particular date[130] is insufficient to establish a link between Arsen Grahovac and the Accused at the relevant time.

168. The majority deems that the evidence does not demonstrate that the Accused was the superior of Arsen Grahovac and the members of his Karađorđe unit.

j. The "Serbian Guard" of the SPO

169. According to the Prosecution's Closing Brief, among the groups of volunteers present in Zvornik as of 8 April 1992 that participated in the takeover of Zvornik were "Vuk Drašković's men".

170. Several pieces of evidence indicate that the "Serbian Guard" was a volunteer unit of the SPO led by Vuk Drašković. According to the Accused, the "Serbian Guard" was created by the SPO in the summer of 1991. It was a paramilitary organisation whose members were motivated by "looting".[131]

171. In 1991, the SPO requested the National Assembly that the "Serbian Guard" be recognised as an "army" whose mission was to protect the Serbs. The Accused publicly opposed this proposal by the SPO. In an interview he gave on 25 July 1991, the Accused stated without specifying the date that members of the "Serbian Guard" had previously been part of the SČP/SRS, but had been expelled for lack of discipline – problems with drinking and behaviour.[132]

[129] Ibrahim Kujan, T(E) 9655-9657; P524, pp. 2-3.
[130] Ibrahim Kujan, T(E) 9644, 9646, 9652-9655; P524, pp. 2-3, 6; Vojislav Dabić, T(E) 15114; VS-1067, T(E) 15347; VS-1051, T(E) 8858, 8896.
[131] P31, T. 43128, 43135, 43137, 43147, 43739; P229, p. 1.
[132] Aleksa Ejić, T(E) 10462; P31, T. 43393; P261, part I, pp. 83-84; P 1181, p. 13.

172. According to the Accused, the "Serbian Guard" was commanded by Đorđe Božović, aka Giška, a "notorious criminal", and from November 1991 by Branislav Lajnović Dugi, followed by Boro Antelj.[133]

173. The Chamber does not have sufficient evidence to find that a hierarchical link existed between the Accused and the group of volunteers/paramilitaries of the "Serbian Guard".

k. The units of Branislav Gavrilović, aka "Brne", and of Slavko Aleksić

174. Branislav Gavrilović, aka "Brne", an SRS member, was appointed in 1991 by the Accused as the commander of the SČP/SRS volunteers of Slavonia, Baranja and Western Srem.[134]

175. Brne's unit was present at the time of the Grbavica attack on 21 April 1992 and in the Ilidža municipality in July 1993. Among the members of Brne's unit, stationed at Golo Brdo on Mount Igman, were Boro Pajković, aka "Pajke", one of Brne's lieutenants, "Major" who was one of the commanders, as well as a man known as "Copo".[135]

176. The Chamber notes that members of the VRS reported to their superiors the criminal conduct of the members of Brne's unit. Thus, on 18 November 1992, Colonel Stanislav Galić, the SRK Commander, informed the VRS Main Staff that this paramilitary unit, consisting of 25 men commanded by Brne and active in the Rakovica sector, was a "a group of criminals whose behaviour is damaging the reputation of the Republika Srpska Army".[136]

177. Several pieces of evidence - including an order signed by the Accused in 1993 which conferred upon Brne the title of Chetnik *Vojvoda* for, among other things, the command positions in "Chetnik units" he had occupied - make it possible to establish that Brne commanded a unit of SRS volunteers in the Sarajevo area during the period covered by the Indictment. However, according to Expert Witness Theunens, Brne's unit was not sent from Belgrade to this area, where it was under the authority of the VRS.[137]

178. As regards the unit of Slavko Aleksić, there is ample evidence to show that he commanded a unit of SRS volunteers based at the Sarajevo Jewish cemetery from April 1992 until at least

[133] P31, T. 43131, 43137-43138.
[134] P215 under seal; P217, p. 186; P999, p. 2; P1000, p. 5.
[135] Perica Koblar, T(E) 7988-7989, 7994; P518, pp. 1-3; P836, para. 47; P999, pp. 3-4; P1000, pp. 3, 10-11, 15; P1230, p. 11; P1319, p. 7.
[136] P985, p. 1.
[137] Reynaud Theunens, T(E) 4041, T(E) 4236-4238, 4242 and 4247-4250; P217, p. 186; P1000, pp. 3, 14-15.

September 1993. This unit was known as the "Novo Sarajevo Chetnik detachment". The members of this unit, some of whom have been identified, were variously referred to as "Šešelj's men" or "Chetniks" by Witness VS-1060; nevertheless, these terms clearly designated, according to him, the members of Slavko Aleksić's unit based at the Jewish cemetery. They had long hair, beards and wore fur hats displaying cockades.[138]

179. Several pieces of evidence demonstrate that Slavko Aleksić, a member of the SRS who led a unit of SRS volunteers, was also present in the Ilidža municipality during the period covered by the Indictment.[139]

180. In his Statement pursuant to Rule 84 *bis*, the Accused admitted that Brne and Slavko Aleksić were indeed present at Grbavica and commanded the SRS volunteers there.[140] However, the Accused maintained that, even though Slavko Aleksić had been a member of the SRS since the summer of 1992, he was already there because he was a native of Sarajevo and that he did not receive instructions from the SRS in Belgrade to join the local armed forces. Incidentally, the Accused promoted Slavko Aleksić to the rank of *Vojvoda* in 1993.[141]

181. In light of the totality of the evidence, the Chamber finds that Slavko Aleksić and Brne commanded units of SRS volunteers in BiH during the period in the Indictment, but were not officially sent to the area of Sarajevo by the SRS. However, the Accused acknowledged them as local commanders of SRS volunteers. Moreover, their units were placed under the command of the VRS.

l. The "*Vladan Lukić*" and "*Dragi Lazarević*" volunteer detachments

182. The Prosecution alleges in its Closing Brief that the *Šešeljevci*, and specifically the "*Vladan Lukić*" unit led by Ljuba Ivanović and the "*Dragi Lazarević"* detachment, numbering 700 to 800 soldiers and commanded by *Vojvoda* Vakić, operated in Nevesinje between May and July 1992, where they were deployed with the local TO before being subordinated to the JNA and subsequently to the VRS. According to the Accused, the presence of SRS volunteers commanded by Branislav Vakić in the territory of Nevesinje was limited to a military operation that lasted a few days on the Podveležje plateau.

[138] Reynaud Theunens, T(E) 3824, 4041, 4226; VS-1060, T(E) 8591, 8596-8597, 8574-8575, 8616, 8637, 8681; P55, p. 20; P217, p. 185; P256; P471; P644, p. 14; P846, p. 3; P1248, p. 6; P1319, pp. 7-9.
[139] P1000, p. 15; P1319, p. 9.
[140] P644, p. 14; P1230, p. 11.
[141] P217, p. 185.

183. From 10 May 1992, the "Vladan Lukić" volunteer detachment, commanded by Ljubo Ivanović, operated in the area of Mostar and Čapljina. Toward the end of June 1992, the "Dragi Lazarević" detachment, consisting of SČP volunteers, operated in the area of Podveležje and was placed under the command of the VRS Herzegovina Corps by a decision of the RS Presidency.[142]

184. With regard to these two detachments, the Chamber notes the lack of allegations in the Indictment and in the Prosecution's Pre-Trial Brief. Moreover, the Chamber only has evidence on the participation of the SRS "Dragi Lazarević" volunteer detachment in the fighting in the Nevesinje area, on the Podveležje plateau.

[142] P28; P29; P55, p. 9; P889, p. 19.

IV. THE CRIMES[143]

A. Preliminary remarks

1. Meaning of the expression "ethnic cleansing"

185. The Prosecution uses the expression "ethnic cleansing" a number of times in its various written submissions. The Accused does not take any position on this point in his Final Brief.

186. The expression "ethnic cleansing", which does not correspond to any specific crime, seems to denote a process involving the commission of a certain number of crimes.[144] Consequently, the Chamber referred to the crimes specifically alleged.

2. The "Serbian forces", perpetrators of the crimes

187. It was at times impossible to identify the actual perpetrators of the crimes, except by naming them the "Serbian forces". Whenever the evidence in the case allowed it, the Chamber made specific findings in this respect. The already difficult task of identifying the perpetrators of crimes on the ground was compounded by the terminological confusion in the witnesses' use of the terms "Chetniks", "Šešelj's men" and other members of the Serbian forces.

B. Article 5 of the Statute: crimes against humanity

188. The Prosecution submits that a widespread or systematic attack was directed against the civilian populations of Croatia, Bosnia and Vojvodina in the period from August 1991 to at least September 1993. It explains that "an orchestrated campaign of violence and mistreatment was directed against the Croatian, Muslim and other non-Serb population residing in the municipalities referred to in the Indictment". Thus, the Accused's speech in Hrtkovci on 6 May 1992 allegedly played a decisive part, the Accused frequently stressing the link between the deportation of the Croats from Hrtkovci, the armed conflict in Croatia and his vision of a homogenous Greater Serbia. According to the Prosecution, "[t]he means and methods of attack, the crimes committed and the attack's discriminatory nature provide further proof that the attack was directed against civilian populations." Moreover, having taken control of the municipalities of Vukovar, Zvornik, Mostar and Nevesinje, the Serbian forces, in collaboration with the local Serbian authorities, allegedly put

[143] Judge Lattanzi does not agree with the overly cursory manner followed by the majority of the Chamber in analysing the evidence on crimes committed on the ground.

in place a system of persecutions designed to drive out from these territories the non-Serb civilian population which was also subjected to deportation and forcible transfer.

189. In his Final Brief, the Accused denies the existence of crimes against humanity in Vukovar, referring to the *Mrkšić* case. With regard to localities in the BiH, the Accused submits that the counts of persecutions, deportation and forcible transfer should be dismissed in the context of the JCE, as in the *Krajišnik* case. As regards Hrtkovci, he maintains that the Tribunal "has no jurisdiction over the events in Hrtkovci because the government which was in power in the territory of Serbia, where Hrtkovci is located, and the Autonomous Province of Vojvodina does not have the status of a warring party in the armed conflict which was unfolding at the time in the territories of Bosnia and Herzegovina and Croatia."

190. The independent nature of the proceedings and the relativity of the adjudicated matter do not allow a Trial Chamber to rely on the legal or factual findings of another Chamber and extend those findings to its own case.[145] Therefore, the Chamber cannot accept the Accused's invitation to adopt, on the strength of the authority of the adjudicated matter, the factual and legal findings made in the *Mrkšić* and *Krajišnik* cases.

191. To qualify as crimes against humanity under Article 5 of the Statute, the crimes must have been committed "in armed conflict", whether international or internal in character.[146] In addition, there has to be an objective link, geographical and temporal, between the acts of the accused and the armed conflict.[147]

192. In light of the totality of the evidence in the case file, the Trial Chamber, by a majority, Judge Lattanzi dissenting, finds that the Prosecution failed to prove beyond all reasonable doubt that a widespread and systematic attack was launched against the non-Serb civilian population living within large areas of Croatia and BiH. The majority finds, in particular, that the Prosecution failed to prove that the non-Serb populations living in the municipalities of Vukovar, Zvornik, Greater Sarajevo and the municipalities of Mostar and Nevesinje, were targeted by a campaign of

[144] *See* the *Tadić* Judgement, para. 84.
[145] This remark does not call into question the procedure of judicial notice envisaged by Rule 94 (B) of the Rules.
[146] Article 5 of the Statute. *See* also the *Tadić* Appeals Chamber's "Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction" ("Appeal Decision on Jurisdiction"), para. 142; the *Blagojević and Jokić* Judgement, para. 542. According to the Tribunal's jurisprudence, an "armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State". For the definition of an armed conflict, *see* the Appeal Decision on Jurisdiction in the *Tadić* case, para. 70. *See* also the *Boškoski and Tarčulovski* Appeal Judgement, para. 21; the *Kordić and Čerkez* Appeal Judgement, para. 336; the *Kunarac et al.* Appeal Judgement, para. 56.
[147] *Kunarac et al.* Appeal Judgement, para. 83; *Mrkšić et al.* Judgement, para. 430; *Kupreškić et al.* Judgement, para. 546.

violence and mistreatment. The majority deems that it did not receive sufficient evidence to irrefutably establish the existence of a widespread and systematic attack against the civilian population; that the evidence that was presented and examined points rather to an armed conflict between enemy military forces, with some civilian components. The presence of civilian combatants in undetermined proportions in the context of clashes that many witnesses described as street fighting, where every piece of territory, every house was fought for, presents a context which does not support the conclusion that there was an attack directed against civilians.

193. It was incumbent on the Prosecution to make its case with clarity and present a picture which clearly demonstrated to the judges that the civilians were targeted en masse, when in fact they were not taking part in the fighting and presented no danger to the Serbian fighters. In the opinion of the majority, the Prosecutor failed to fulfil this obligation, simply limiting himself to general assertions which do not account for the specific evidence received by the judges. Under these circumstances, the majority is unable to dismiss the argument of the Defence - echoed by many of the witness testimonies[148] - which explains that the civilians fled the combat zones to find shelter in the localities occupied by members of the same ethnic or religious group; that the buses that were provided in this context were not part of operations to forcibly transfer the population, but rather acts of humanitarian assistance to non-combatants fleeing the zones where they no longer felt safe.

194. With regard to Vojvodina,[149] the majority, Judge Lattanzi dissenting, wishes first to stress that it was not an area of armed conflict. Moreover, the majority does not find that any effort was made by the Prosecutor to submit to, even less convince, the Chamber that there was an undeniable nexus between the conflict in Croatia and in BiH and the situation in Vojvodina. The Chamber could not infer this nexus solely from the presence of Serbian refugees coming from Croatia to Hrtkovci. It is all the more unable to do so since the Prosecution remained silent on the specific circumstances that surrounded the deportation of these Serbian refugees from Croatia. Were these acts of war or simply acts of reinforcing their identitarian closure that preceded the open conflict? No evidence was offered on this point.[150]

[148] VS-1022, T(E) 9524 to 9525, 9528 to 9530 (closed session); P696 under seal, para. 16.
[149] In regard of Vojvodina, the Chamber relied on the following evidence: Ewa Tabeau; Katica Paulić; Aleksa Ejić; Franja Baričević; Goran Stoparić; VS-007; VS-061 (T(E) 10014-1016); VS-067; VS-1134; C26 under seal; P31; P164; P547; P549; P550; P551 under seal; P554; P555; P556; P557; P558; P559; P560; P561; P564 under seal; P565; P566; P631; P1049 under seal; P1050 under seal; P1104 under seal; P1330.
[150] VS-061 agreed with the Accused on the fact that many of the Serbian refugees had come from the municipality of Grubišno Polje in Western Slavonia where there had never been any fighting. *See* VS-061, T(E) 10015 ff.

195. The Chamber, in its majority, Judge Lattanzi dissenting, also notes other deficiencies in the Prosecution's approach. It notes the specific weakness of the expert report of Ewa Tabeau. The report does not focus on the departures of Croats caused by the speech of the Accused on 6 May 1992 or, even more generally, by the abuses suffered. The expert simply presents a general overview of departures over the whole of 1992 without specifying clearly what had triggered them. The testimony of VS-061 on which the Prosecution relies to make its case has also revealed significant weaknesses. Witness VS-061 admitted more than once on cross examination the omissions he made and his biased version of the facts. Even when he was telling the truth, his testimony was not more useful to the Prosecution case. He recognises the discrepancies between the Croats who registered to obtain baptism or marriage certificates and the proven departures of those same individuals.[151] He acknowledges that certain departures of Croats were the result of perfectly regular arrangements made with Serbian refugees who wanted to exchange their homes in Croatia for a house in Hrtkovci.[152] Finally, admitting his initial omissions and exaggerations during the examination-in-chief, he acknowledged that the thefts and death threats of which he was a victim, and above all the murder of a Croat, Mijat Štefanac, which were presented as the alarm bell that triggered the fear and the flight of Croatian civilians from Hrtkovci, were in fact almost a complete fabrication.[153] He later admitted, speaking with the Accused, that Štefanac's death had occurred in a café as a result of a banal personal conflict that took a bad turn; that the murderers had been apprehended and put on trial.[154]

196. The majority noted, more broadly speaking, that the abuses against civilians described in Hrtkovci, even if considered proven, do not amount, in terms of their scale or the *modus operandi* involved, to a widespread and systematic attack directed against the civilian population. The Prosecution focuses primarily on acts of intimidation perpetrated first by Serbian refugees, most of whom had been expelled from Croatia and had no accommodation, against Croats whose houses were standing unoccupied, which they did to incite the latter to exchange their houses for their houses in Croatia. The evidence presented points to latent harassment, targeted and limited, without any apparent direct link or nexus with the rest of the country.[155] The Accused's speech of 6 May did not extend the actions against Croatian civilians in other places. It was an electoral campaign speech, certainly anti-Croat in tenor, but one that was mainly directed against the actions of the Serbian authorities, judged to be inefficient and insufficiently protective of the Serbian refugees

[151] VS-061, T(E) 10081-10083 (private session).
[152] VS-061, T(E) 10027.
[153] VS-061, T(E) 10044-10067 (private session).
[154] VS-061, T(E) 10044-10058 (private session).

driven out of Croatia.[156] The majority fails to see in what way the Prosecution established that this speech and its hypothetical consequences could have strengthened or even prolonged a Serbian attack on a larger scale directed against the Croatian civilian population. In the view of the majority, the evidence heard points to acts driven by essentially domestic motives, private in nature, whose main focus was the acquisition of housing, which the Serbs did not have due to their refugee status, and by no means allows for a finding of a massive attack against the Croatian civilian population. In this sense, the majority notes several testimonies that speak of complaints lodged by a number of Croats who had been threatened or forcibly removed from their homes, and whose rights were later restituted by the local authorities.[157]

197. Lastly, the majority notes – without losing sight of the Accused's particularly disturbing speech of 6 May, which clearly called for the deportation of Croats, especially those he considered to be disloyal – that it was never even alleged that the Accused took a direct part in the exchange of housing. And yet, these exchange contracts are taken as the principal *medium* through which the deportation of Croats from Hrtkovci was carried out. Moreover, the Prosecution should, at best, have looked for an indirect responsibility of the Accused, and not a direct one, for the acts of persecution. In any event, the majority deems that there is a lack of essential legal ingredients to find any criminal responsibility whatsoever for crimes against humanity.

198. Consequently, for the majority of the Chamber, Judge Lattanzi dissenting, the requirements under Article 5 of the Statute have not been met with regard to Croatia, BiH and Vojvodina.

C. Violations of laws or customs of war

1. Requirements under Article 3 of the Statute

199. The Prosecution alleges, and the Accused does not contest, that Croatia and BiH were the theatre of one or more armed conflicts during the period in question. It adds that the crimes with which the Accused was charged were closely connected with the armed conflict. Thus, the four requirements set out in the *Tadić* Appeal Decision are met for all the crimes covered by Article 3 of the Statute.

[155] VS-061 speaks of spontaneous incidents, caused by Serbian refugees who went from door to door, in groups of three, four or five, to propose an exchange of houses. *See* T(E) 10087.
[156] *See* VS-061, T(E) 10036.
[157] *See* for example: VS-061, T(E) 10023-10025; Aleksa Ejić, T(E) 10328.

200. The Accused does not take any position on the existence of a link between the alleged violations of the laws and customs of war and the armed conflict or on the four conditions set by the *Tadić* Appeal Decision.[158]

201. It is therefore established, in the view of the Chamber that: (i) an armed conflict existed in Croatia[159] and in BiH[160] in the period covered by the Indictment; (ii) the crimes charged in the Indictment as violations of the laws or customs of war were committed by members of the Serbian forces in furtherance of the armed conflict or as a result thereof.

2. War crimes not alleged in the Indictment

202. The Chamber received a certain amount of evidence on crimes that are not alleged in the Indictment, even though they are mentioned, in some cases, in the Prosecution's Pre-Trial Brief and/or the Closing Brief. In view of the right of the Accused to be duly informed of the charges levelled against him, the Chamber did not take this evidence into consideration.[161]

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[158] *Tadić* Appeal Decision on Jurisdiction, para. 94. *See* also the *Galić* Appeal Judgement, para. 120. *Stakić* Appeal Judgement, para. 342; the *Kunarac et al.* Appeal Judgement, para. 55, referring to the *Tadić* Appeal Decision on Jurisdiction, paras 67, 70; the *Tadić* Appeal Decision sets out four additional requirements as follows: "(i) the violation must constitute an infringement of a rule of international humanitarian law; (ii) the rule must be customary in nature or, if it belongs to treaty law, the treaty must be unquestionably binding on the parties at the time of the alleged offence and must not be in conflict with or derogating from peremptory laws of international law ; (iii) the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim; (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule." *Tadić* Appeal Decision on Jurisdiction, paras 94, 143. *See* also the *Kunarac et al.* Appeal Judgement, para. 66.

[159] Decision of 8 February 2010, Annex A, facts nos 29, 44-61; Reunaud Theunens, T(E) 3966-3967, 3974-3975; VS-004, T(E) 3402-3403, 3405-3408; VS-1064, T(E) 8694; Emil Čakalić, T(E) 4910; P31, T. 43562; P244; P245; P278, para. 7; P632, pp. 31-37; P857, para. 11; P859, pp. 29806-29808; P864. The Serbian forces present in Vukovar included the JNA under whose command the TO and the volunteers were placed, *see* P1137, pp. 13064-13065.

[160] Decision of 10 December 2007, Annex, facts nos 167, 171-172; VS-1015, T(E) 5396-5398; Asim Alić, T(E) 7022-7023; P836, para. 12; VS-1065, T(E) 6298-6300; VS-2000, T(E) 14014-14015, 14114; P31, T. 43325-43326, 43690-43691, 43695; P953, pp. 1-2; P956; P992, pp. 46-49; P1044, p. 3.

[161] Generally speaking, the Chamber did not accept the evidence relating to crimes committed against prisoners of war, considering that the totality of the crimes alleged in the Indictment concern exclusively civilians (*see* in particular paragraph 18 of the Indictment which concerns solely the murder of civilians). Evidence concerning the following facts was also not accepted **for the Zvornik municipality**: alleged forced labour by detainees in paragraph 17 (e) of the Indictment refers expressly and exclusively only to the digging of graves, loading ammunition for Serbian forces, the digging of trenches, and other works on the front lines. But this allegation does not cover the looting carried out by detainees at the Ciglana plant mentioned in paragraph 94 of the Prosecution's Pre-Trial Brief. In the opinion of Judge Lattanzi, in paragraph 30 of the Indictment, the only one relevant in this context of war crimes, forced labour is mentioned in general terms, and paragraph 29 (e) also refers to events at the Ciglana plant. **For Greater Sarajevo**: in its Closing Brief the Prosecution specifies that members of Vaske's unit detained Muslims in the garage of Mujo Džafić in Ilijaš and forced them to assemble explosives and to mount weapons on stolen trucks. The Prosecution does not, however, make allegations of forced labour involving detained civilians except in detention centres exhaustively listed in paragraph 29 of the Indictment. This paragraph does not mention the garage of Mujo Džafić. Forced labour by detainees or persons under house arrest is alleged in paragraph 17 (e) of the Indictment which refers solely to grave digging, loading [ammunition] for the Serbian forces, the digging of trenches, and other works on the front lines. This language therefore does not cover any labour that may have been carried out by the detainees in Mujo Džafić's garage. Finally, in its Pre-Trial Brief, the Prosecution alleges the plunder of public or private property by Serbian forces that

3. Alleged war crimes for which there is insufficient evidence

203. The reality of the following crimes has not been ascertained due to insufficient evidence:

a. the murder by beheading of a Muslim in Crna Rijeka and the execution of detainees in the Crna Rijeka sector (Greater Sarajevo) by members of Vaske's unit in the summer of 1993;[162]

b. the murder of non-Serb detainees on Žuč Hill (Greater Sarajevo) in the summer of 1993;[163]

c. cruel treatment in the form of labour consisting of digging graves and trenches, loading ammunition for the Serbian forces and other manual labour on front lines allegedly carried out by the detainees at the Ovčara farm (Vukovar municipality) in November 1991;[164]

d. cruel treatment in the form of forced labour and sexual assaults against the detainees in the Velepromet warehouse (Vukovar municipality) in November 1991;[165]

e. torture and cruel treatment at Gero's slaughterhouse (Zvornik municipality) between April and July 1992;[166]

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occurred in Grbavica, Novo Sarajevo municipality, between April 1992 and September 1993. And yet, paragraph 34 of the Indictment carries a list enumerating a limited number of municipalities of Greater Sarajevo where plunder is alleged. This wording, therefore, does not cover the plunder of public or private property in Grbavica (Novo Sarajevo). **For the Mostar municipality**: the Chamber received evidence showing that Serbian forces engaged in thefts of goods during their retreat from Mostar from approximately 25 May 1992. Yet, paragraph 34 of the Indictment alleges only plunder of residences for the Mostar municipality. **For the Nevesinje municipality**: the Chamber also did not take into consideration evidence relating to murders and mistreatment committed on 16 June 1992 by Krsto Savić, commander of the MUP forces at the Nevesinje police station and at civilian homes in the Nevesinje municipality insofar as these allegations do not feature in the Indictment and were only argued at the stage of the Prosecution's Closing Brief.

[162] The evidence attests to the involvement of Vaske's unit in the military operations at Crna Rijeka, but is not sufficiently specific and does not allow the timeframe to be established. Judge Lattanzi disagrees with this conclusion and deems that this crime should have been taken into account by the Chamber. The majority relied on the following evidence: Safet Sejdić; VS-1055; P836; P840.

[163] La Chamber accepts the testimonies of Safet Sejdić and Witness VS-1055, which make it possible to establish that the detainees at Planja's house were used as human shields by Serbian forces on Žuč hill. Nevertheless, the evidence establishes that the events described by the witnesses took place in September 1992, and not in the summer of 1993, as submitted by the Prosecution (*see* the Indictment, para. 24 and Annex VII; Prosecution's Pre-Trial Brief, para. 103; the Prosecution's Closing Brief, para. 392 and Annex). The majority relied on the following evidence: Safet Sejdić; VS-1055; P975; P1160 under seal.

[164] The Chamber relied on the following evidence: Decision of 8 February 2010, Annex A; Emil Čakalić; Vilim Karlović; Dragutin Berghofer; Milorad Vojnović; Ljubiša Vukašinović; Davor Strinović; Goran Stoparić; VS-002; VS-007; VS-016; VS-021; VS-065; P268 under seal; P278; P604; P621; P1155 under seal.

[165] The Chamber relied on the following evidence: Vilim Karlović; Dragutin Berghofer; Emil Čakalić; VS-002; VS-051; P278; P282; P844 under seal.

f. torture and cruel treatment of detainees at Sonja's house (Greater Sarajevo) between April 1992 and September 1993;[167]

g. torture and cruel treatment of non-Serb detainees at the Semizovac barracks (Greater Sarajevo) between April 1992 and September 1993;[168]

h. torture and cruel treatment of detainees at the tyre repair garage at the crossroad in Vogošća (Greater Sarajevo) between April 1992 and September 1993;[169]

i. plunder of public or private property in the city and the homes of Vukovar between 1 August 1991 and May 1992;[170]

j. plunder of private property by Serbian forces in the villages of Donja Bijenja, Gornja Bijenja, Presjeka, Kljuna, Borovčići, Krusevljani, Pridvorci and Hrušta (Nevesinje municipality) between 1 March 1992 and the end of September 1993.[171]

204. For the same reasons, the Chamber, by a majority, Judge Lattanzi dissenting, was not in a position to find that the following crimes were committed in the period covered by the Indictment:

[166] Judge Lattanzi disagrees with this conclusion and deems that this crime should have been taken into account by the Chamber. The Chamber deems it has been established that, on 5 June 1992, a very large number of non-Serb detainees at the Karakaj Technical School were transported to Gero's slaughterhouse. Nevertheless, the majority does not have evidence of the torture and cruel treatment at Gero's slaughterhouse alleged by the Prosecution, nor of the conditions of detention. The majority relied on the following evidence: VS-1066; VS-1087; P696 under seal.

[167] In the absence of evidence on this issue, the Chamber is not in a position to find that crimes were committed in Sonja's house.

[168] The Chamber accepts the testimony of Safet Sejdić who stated that, after the attack by Serbian forces at Svrake in April 1992, they proceeded to arrest Muslim men and took a number of them to the Semizovac barracks, while others were taken to different detention centres. Nevertheless, the Chamber does not have other evidence on this place of detention or the crimes that may have been committed there. Since evidence regarding the detention of non-Serbs in the Semizovac barracks was not sufficiently supported, the Chamber deems that neither the inhumane conditions of the detention of non-Serb detainees nor the abuses to which they may have been subjected could be established. As regards the forced labour by non-Serbs placed in Semizovac, the Chamber deemed again that the testimony of Safet Sejdić was not sufficiently substantiated.

[169] As no evidence was received concerning this allegation, which, incidentally, the Prosecution does not mention in its Closing Brief, the Chamber was unable to find that any crimes were committed at the tyre repair garage at the crossroad in Vogošća.

[170] The Chamber has evidence enabling it to note that Serbian forces, including SRS volunteers, members of the Leva Supoderica Detachment, stole property from Croatian homes and from the city of Vukovar of which they had taken control. But the Chamber does not have supplementary evidence that would enable it to assess the impact of these thefts on the victims or on the population of Vukovar. The Chamber relied on the following evidence: Nebojša Stojanović; Goran Stoparić; VS-002; VS-016; VS-027; P526; P527; P528; P586 under seal; P644; P857; P1318; P1372 under seal; P1379 under seal.

[171] When Serbian forces entered the villages of Donja Bijenja, Gornja Bijenja, Presjeka, Kljuna, Borovčići, Krusevljani, Pridvorci and Hrušta, they appropriated the private property found in and around houses, such as cars. The Chamber recalls that car thefts were not alleged by the Prosecution. (*See* Indictment, para. 34). In addition, the Chamber does not

a. wanton destruction, or devastation not justified by military necessity of the city and homes of Vukovar;[172] homes in the village of Svrake (Greater Sarajevo);[173] of the city and homes in Ilijaš (Greater Sarajevo);[174] the city and homes of Mostar;[175] and the villages of Donja Bijenja, Gornja Bijenja, Postoljani, Presjeka, Kljuna, Borovčići, Krusevljani, Pridvorci and Hrušta (Nevesinje municipality);[176]

b. deliberate destruction of sacred sites of Muslims in Zvornik;[177] of the mosque of Svrake/Semizovac and the Roman Catholic church of Semizovac, in the Vogošća municipality (Greater Sarajevo);[178] of the three mosques of Stari Ilijaš, Gornja Misoča and Donja Misoča, as well as other institutions dedicated to the Muslim or Catholic religion in the area of Ilijaš (Greater Sarajevo);[179] of the *Sevri Hadži-Hasan* mosque and the Franciscan church in Mostar;[180] and of

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have any evidence that would enable it to assess the scale of these thefts. The Chamber relied on the following evidence: P483 under seal; P524; P880 under seal.

[172] The majority notes that, overall, concerning all the allegations of destruction, in order to find that destruction was committed as a war crime, not justified by any military necessity, the majority first had to be in a position to assess the proportionality of such destruction, the forces that were present and, in particular, the level of resistance offered to the Serbian forces. In the case at hand, however, the evidence in the case file only shows the actions of the Serbian forces. Under these circumstances, the majority was unable to qualify this destruction as a war crime. On the destruction in Vukovar, the majority relied on the following evidence: the Decision of 8 February 2010, Annex; Vesna Bosanac; Emil Čakalić; Dragutin Berghofer; Goran Stoparić; VS-002; VS-021; VS-051; P55; P57; P91; P183; P195; P261; P268 under seal; P275; P278; P291; P407; P594; P595; P603; P844 under seal; P845; P921; P1001; P1076; P1161 under seal; P1260; P1291; P1373 under seal; P1374 under seal; P1376 under seal; P1377 under seal.

[173] The majority relied on the following evidence: Safet Sejdić; P463; P1346.

[174] During the attack on Lješevo village, Serbian forces, including in particular Vaske's unit, members of the Ilijaš TO, but also other Serbs whose affiliation to a particular unit has not been established, destroyed a number of houses and barns, including those of Munib Bulbul, Ismet Omanović and Nimza Sidić. Nevertheless, the majority does not have the supplementary evidence that would enable it to establish whether a considerable amount of property was destroyed. The majority relied on the following evidence: VS-1055; VS-1111; P449 under seal; P451 under seal; P840.

[175] Staring in April 1992, the JNA, which included SRS volunteers in its ranks, attacked the city of Mostar and, from mid-May of the same year, shelled the city indiscriminately with mortars for 30 hours. The majority can therefore reasonably infer that a significant amount of property was destroyed. Nonetheless, the majority does not have sufficient evidence at its disposal to find beyond all reasonable doubt that this destruction was not justified by military necessity. The majority relied on the following evidence: Zoran Rankić; VS-1067; C11; P31; P524; P659 under seal; P843; P846; P1052 under seal; P1074.

[176] The majority relied on the following evidence: the Decision of 23 July 2010, Annex; Ibrahim Kujan; Vojislav Dabić; VS-1022; VS-1051; P483 under seal; P524; P880 under seal; P881 under seal.

[177] The majority relied on the following evidence: András Riedlmayer; VS-037; VS-038; P444; P1044; P1045; P1144 under seal; P1401 under seal.

[178] The majority was able to establish that the mosque at Svrake/Semizovac and the Roman Catholic church at Semizovac were completely or partially destroyed. Yet, the majority does not have other information that would enable it to identify, for example, the perpetrators. The majority relied on the following evidence: Safet Sejdić; P1045.

[179] The majority was able to note this destruction, but was not in a position to establish that it occurred during the period covered by the Indictment. The majority relied on the following evidence: VS-1055; P840; P1045.

[180] The Chamber accepts the testimony of the expert András Riedlmayer who testified to the destruction between April and May 1992 of the *Sevri Hadži-Hasan* mosque in Mostar. The Chamber also accepts the evidence of Zoran Tot who said in his written statement that, in the period between March and May 1992, Srđan Đurić, a member of the SRS volunteers, went out at night into the city of Mostar carrying two to four hand-held rocket launchers, and opened fire of his own accord on the minaret of a mosque in Mostar. The majority notes that the statements of Zoran Tot and the evidence provided by Expert Witness András Riedlmayer are mutually corroborative on the destruction of the minaret

several mosques and one Catholic church after the Serbian forces had taken control of the town of Nevesinje in June 1992.[181]

4. Alleged war crimes established by the Chamber

(a) Vukovar municipality

205. The Prosecution alleged in its various written submissions that on the evening of 19 November 1991, the Serbian forces, including volunteers recruited and/or encouraged by the Accused, murdered a number of persons selected from the 2,000 people who had found refuge or had been forced by Serbian forces into the Velepromet warehouse. Also, on or around 20 November 1991, Serbian forces, including SČP/SRS volunteers, murdered 264 non-Serbs who had been transported from the Vukovar hospital to the Ovčara farm. The Prosecution also maintains that, on 19 November 1991, the Velepromet warehouse was used by Serbian forces as a detention centre where 1,200 non-Serb civilians were living in inhumane conditions and where some of them were mistreated. On or around 20 November 1991, members of the Serbian forces, including SČP/SRS volunteers, allegedly beat and tortured victims from among 300 or so Croats and other non-Serbs at the Ovčara farm. The Serbian forces, including volunteers and, among them, "Šešelj's men", allegedly destroyed a large number of homes belonging to non-Serbs in this municipality.

206. In his statement pursuant to Rule 84 *bis*, his closing argument and his Final Brief, the Accused does not deny that crimes were committed in Vukovar, but asserts that he was not present at the crime scenes and that the SRS did not exist there. As regards the Ovčara farm, he adds that the events in question happened at a time when a great many SRS volunteers had already left the city and that, consequently, the volunteers could not have taken part in the murders committed in that place. Regarding the Velepromet warehouse, he maintains that it is impossible to establish a

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of a mosque, and that this was an isolated act. The majority also notes that the periods indicated by these two witnesses concerning this destruction overlap. The majority deems, nonetheless, that it is not in a position to establish a link between these two testimonies because of, on the one hand, a lack of precision between the dates indicated as the time of the mosque's destruction and, on the other hand, even if in both cases the destruction of the minaret of a mosque is involved, the majority is not able to find beyond all reasonable doubt that the mosque Zoran Tot described as having been destroyed by Srđan Đurić was indeed the *Sevri Hadži-Hasan* mosque whose destruction is described in the expert report of András Riedlmayer. The majority finds that the *Sevri Hadži-Hasan* mosque in Mostar was destroyed in an isolated act, but the available evidence does not allow it to determine either the exact circumstances or the perpetrators of this destruction. Similarly, the majority notes that the available evidence does not allow it to make any precise finding on the time of the destruction of the Franciscan church. The majority is therefore unable to find beyond all reasonable doubt that these incidents fall within the period of the Indictment. The majority relied on the following evidence: "Decision on Expert Status of András Riedlmayer", 8 May 2008; András Riedlmayer; P843; P1044; P1045.

[181] The majority relied on the following evidence: Ibrahim Kujan; András Riedlmayer; VS-1067; P524; P880 under seal; P1045; P1052 under seal.

link with the SRS or the volunteer detachment of Leva Supoderica since the military police was in control of that zone and the SRS was not present.

207. The Chamber analysed all the evidence regarding the events in Vukovar. With regard to the concurring testimonies and other evidence that is not seriously contested, the Chamber finds that, in the locations listed here below, the following crimes were indeed committed:[182]

a. the murder of detainees at the Velepromet warehouse on 19 and 21 November 1991 by Serbian forces, including "Šešelj's men", members of the Leva Supoderica Detachment;[183]

b. the murder of detainees at the Ovčara farm on 20 November 1991 by members of the Vukovar TO and the Leva Supoderica Detachment;[184]

c. torture and cruel treatment of detainees at the Ovčara farm on 20 November 1991 by Serbian forces, including members of the TO and "Šešelj's men", members of the Leva Supoderica Detachment;[185] torture and cruel treatment taking the form of grave bodily harm and, in the case of one victim, sexual abuse;

d. torture and cruel treatment of detainees at the Velepromet warehouse on 21 November 1991 by Serbian forces, including "Šešelj's men", members of the

[182] On the Serbian forces present in Vukovar: the Decision of 8 February 2010, Annex; Reynaud Theunens; Milorad Vojnović; Ljubiša Vukašinović; Goran Stoparić; Jovan Glamočanin; VS-002; VS-007; VS-016; VS-027; VS-033; VS-065; C10; C11; C18; P23; P25 under seal; P31; P41; P60; P185; P199; P217; P255; P288; P291; P292; P369; P391; P392; P423 under seal; P586 under seal; P604; P607; P644; P857; P858; P889; P1001; P1056 under seal; P1058 under seal; P1074; P1243; P1283; P1318.

[183] The Chamber relied on the following evidence: the Decision of 8 February 2010, Annex; Vilim Karlović; Dragutin Berghofer; Emil Čakalić; Ljubiša Vukašinović; Goran Stoparić; Višnja Bilić; VS-007; VS-021; VS-051; P60; P268 under seal; P277; P278; P282; P285; P528; P603; P746; P747; P748; P749; P752; P753; P777; P787; P788; P819; P844 under seal; P845; P1074; P1156 under seal.

[184] The Chamber relied on the following evidence: the Decision of 8 February 2010, Annex; Reynaud Theunens; Dragutin Berghofer; Vilim Karlović; Milorad Vojnović; Emil Čakalić; Vesna Bosanac; Ljubiša Vukašinović; Davor Strinović; Višnja Bilić; Goran Stoparić; VS-002; VS-007; VS-016; VS-021; VS-027; VS-033; VS-034; VS-051; VS-065; C10; C12; C26 under seal; P183; P229; P253; P261; P268 under seal; P269; P270; P278; P280; P283; P284; P526; P528; P597; P599; P600; P601; P602; P603; P604; P609; P611; P612; P613; P614; P615; P616; P617; P618; P619; P621; P630; P644; P771; P777; P780; P781; P782; P787; P819; P844 under seal; P858; P974; P982; P1056 under seal; P1058 under seal; P1155 under seal; P1156 under seal; P1242; P1370 under seal; P1372 under seal.

[185] The Chamber relied on the following evidence: Decision of 8 February 2010, Annex A; Emil Čakalić; Vilim Karlović; Dragutin Berghofer; Milorad Vojnović; Ljubiša Vukašinović; Davor Strinović; Goran Stoparić; VS-002; VS-007; VS-016; VS-021; VS-065; P268 under seal; P278; P604; P621; P1155 under seal.

Leva Supoderica Detachment;[186] torture and cruel treatment taking the form of grave bodily harm.

(b) Zvornik municipality

208. In its various written submissions, the Prosecution alleges that on or around 9 April 1992, during the attack on the town of Zvornik and the surrounding villages, Serbian forces executed a large number of non-Serb civilians. Following the takeover of Zvornik, Serbian forces, including "Šešelj's men", committed murder on the following dates: between 12 and 20 May 1992 at the Ekonomija farm (detainee beaten to death); in June or July 1992 at the Ciglana factory; on 30 and 31 May 1992 in the Drinjača Dom Kulture (in addition to the allegations of torture); between 1 and 5 June 1992 at the Karakaj Technical School; between 7 and 9 June 1992 at Gero's slaughterhouse; between 1 and 26 June 1992 in the Čelopek Dom Kulture. Between April and July 1992, hundreds of non-Serb civilians were allegedly detained in or around Zvornik, at the "Standard" shoe factory, the "Ciglana" factory, the Ekonomija farm, the Drinjača Dom Kulture and the Čelopek Dom Kulture in brutal and inhumane conditions (overcrowding, starvation, forced labour, inadequate medical care and systematic physical and psychological assault) and were allegedly subjected to abuse. In April 1992, the Serbian forces – "Šešelj's men" and "Arkan's Tigers" in particular – allegedly destroyed numerous mosques and other places of worship, as well as a religious archive in the municipality of Zvornik. Finally, from 1 March 1992 until the end of September 1993, Serbian forces allegedly plundered hundreds of homes in the municipality of Zvornik.

209. In his Final Brief, the Accused claims that neither he nor volunteers from the Serbian Radical Party were mentioned in the *Krajišnik* case, and that the judges should take this into account when assessing the probative value and relevance of the adduced evidence. The Accused claims that since the Prosecution did not consider him a direct perpetrator, it was incumbent on it to prove the existence of a nexus between himself and the direct or principal perpetrators, which it has failed to do. The Accused also points out that the crimes with which he has been charged were committed at a time when there were no SRS members in Zvornik.

210. The Trial Chamber has analysed all the evidence presented in relation to the events in Zvornik. With regard to the concurring testimonies and other evidence not seriously contested, the Chamber finds that the following crimes were in fact committed at the sites listed below:[187]

[186] The Chamber relied on the following evidence: Emil Čakalić; Vilim Karlović; Dragutin Berghofer; VS-002; VS-051; P278; P282; P844 under seal.

a. the murder of Muslim civilians in the course of the attack by Serbian forces on Zvornik on 8 and 9 April 1992; in particular, the murder of 13 Muslim men by Arkan's men on 9 April 1992;[188]

b. the murder of Nesib Dautović, Remzija Softić, Bego Bukvić and Abdulah Buljubašić, detained at the Ekonomija farm in May 1992 by members of the White Eagles (or the Kraljevo group), the Loznica group, Arkan's Tigers and SRS volunteers;[189]

c. the murder of Muslim detainees, including Ismet Čirak, at the Ciglana factory between May and July 1992, by members of the White Eagles (or the Kraljevo group) and the Loznica group;[190]

d. the murder of 50 detainees by Serbian forces, including an unidentified paramilitary group, in the Drinjača Dom Kulture on 30 May 1992;[191]

e. the murder of a large number of Muslim detainees in the Karakaj Technical School by members of the Serbian forces and the MUP between May 1992 and the beginning of June 1992; [192]

f. the murder of a large number of non-Serb detainees by Serbian forces at Gero's slaughterhouse on 5 June 1992;[193]

[187] On the Serbian forces in Zvornik: Decision of 23 July 2010, Annex; Reynaud Theunens; Asim Alić; Fadil Kopić; VS-037; VS-038; VS-1013; VS-1014; VS-1015; VS-1016; VS-1063; VS-1065; P31; P67; P121 under seal; P261; P306 under seal; P362; P438; P440; P441; P542 under seal; P545 under seal; P644; P854 under seal; P953; P954; P977; P1017; P1022; P1023; P1028 under seal; P1029 under seal; P1056 under seal; P1058 under seal; P1077; P1085 under seal; P1129 under seal; P1144 under seal; P1146 under seal; P1149 under seal; P1233.

[188] The Chamber relied on the following evidence: Decision of 23 July 2010, Annex; Reynaud Theunens; Nenad Jović; Asim Alić; Zoran Stanković; VS-037; VS-038; VS-1012; VS-1013; VS-1062; VS-1087; VS-2000; C11; C14; C16; C18; P31; P364 under seal; P365 under seal; P366 under seal; P696 under seal; P697 under seal; P704 to P732; P836; P954; P1077; P1085 under seal; P1144 under seal.

[189] The Chamber relied on the following evidence: Fadil Kopić; VS-037; VS-1015; VS-1063; VS-1087; P302 under seal; P304; P359; P360; P362; P854 under seal; P855 under seal; P1077; P1085 under seal; P1144 under seal; P1148 under seal.

[190] The Chamber relied on the following evidence: Fadil Kopić; VS-1013, VS-1015; VS-1065; P306 under seal; P307; P361; P362.

[191] The Chamber relied on the following evidence: VS-1064; VS-1087; P475; P476 under seal; P477 under seal; P478 under seal; P696 under seal; P1166 under seal.

[192] The Chamber relied on the following evidence: Nenad Jović; VS-036; VS-1012; VS-1066; VS-1087; VS-1105; P466 under seal; P467 under seal; P468 under seal; P469 under seal; P521 under seal; P696 under seal; P821; P822 under seal; P823 under seal; P1028 under seal; P1029 under seal; P1077; P1085 under seal; P1144 under seal; P1404 under seal.

[193] The Chamber relied on the following evidence: VS-1066; VS-1087; P696 under seal; P824; P825 under seal; P826 under seal.

g. the murder of a number of Muslims detained at the Čelopek Dom Kulture by members of the Zok group (the Kraljevo group or White Eagles) and the Yellow Wasps, including Repić, in June 1992;[194]

h. torture and cruel treatment of the detainees at the Standard shoe factory in May 1992 by members of the Loznica group;[195] torture and cruel treatment in the form of grave acts of violence;

i. torture and cruel treatment of detainees at the Ekonomija farm in May 1992 by members of the White Eagles (or the Kraljevo group), the Loznica group, Arkan's Tigers and SRS volunteers; cruel treatment in the form of inhumane detention conditions;[196]

j. torture and cruel treatment of detainees at the Ciglana factory by members of the White Eagles (or the Kraljevo group) and the Loznica group between May and July 1992; cruel treatment in the form of inhumane detention conditions for the Muslim detainees;[197]

k. torture and cruel treatment of detainees in the Drinjača Dom Kulture by the Serbian forces, including an unidentified paramilitary group, on 30 May 1992; cruel treatment in the form of inhumane detention conditions;[198]

l. torture and cruel treatment of detainees at the Karakaj Technical School by Serbian forces, notably members of the MUP, around 1 June 1992; cruel treatment in the form of inhumane detention conditions;[199]

m. torture and cruel treatment of detainees in the Čelopek Dom Kulture by members of the Zok group (the Kraljevo group or White Eagles) and the Yellow Wasps, including Repić, in June 1992;[200] torture and cruel treatment in the form of grave acts of violence and sexual assault;

[194] The Chamber relied on the following evidence: Nenad Jović; VS-1065; VS-1087; P121 under seal; P381 under seal; P382; P383; P696 under seal; P1077; P1085 under seal.
[195] The Chamber relied on the following evidence: Nenad Jović; VS-1013; P302 under seal; P303 under seal; P305 under seal; P306 under seal; P1077; P1085 under seal.
[196] The Chamber relied on the following evidence: Fadil Kopić, VS-1013; VS-1015; VS-1063; P302 under seal; P304; P306 under seal; P362; P854 under seal; P855 under seal.
[197] The Chamber relied on the following evidence: Fadil Kopić; VS-1013; VS-1015; VS-1065; P302 under seal; P306 under seal; P307; P359; P362.
[198] The Chamber relied on the following evidence: VS-1064; P475; P476 under seal; P477 under seal.
[199] The Chamber relied on the following evidence: VS-037; VS-1012; VS-1066; VS-1105; P466 under seal; P521 under seal; P822 under seal; P823 under seal; P1144 under seal.
[200] The Chamber relied on the following evidence: VS-027; VS-1013; VS-1065; P121 under seal; P306 under seal; P381 under seal; P384; P1379 under seal; P1380 under seal; P1381 under seal; P1382 under seal.

n. plunder of private property from houses belonging to the inhabitants of Zvornik by members of the White Eagles, the Loznica group and SRS volunteers in May and July 1992.[201]

(c) Greater Sarajevo

211. In its various written submissions, the Prosecution alleges that during the attacks on towns and villages in the Sarajevo area, the Serbian forces – and in particular the volunteers known as "Šešelj's men" - murdered non-Serb civilians and "prisoners of war": on 5 June 1992 in the village of Lješevo; in the summer of 1993 in the Crna Rijeka sector in Ilijaš municipality; in the summer of 1993 at Žuč in the municipality of Vogošća; in the summer of 1993 on Mount Igman in the municipality of Ilidža. The Prosecution also alleges that Serbian forces, including SRS volunteers, arrested, beat and detained non-Serbs between April 1992 and September 1993 at the Iskra warehouse in Podlugovi; in Planja's house; in Sonja's house; at the barracks in the village of Semizovac and in the tyre repair garage at the Vogošća crossroad. It is alleged that non-Serbs were subjected to inhumane living conditions in the detention centres, and were tortured, mistreated, sexually assaulted and forced to perform labour at the front lines. Finally, the Serbian forces – "Šešelj's men" in particular – allegedly plundered homes and places of worship in the municipalities of Ilijaš and Vogošća.

212. In his Final Brief, the Accused claims that the facts had already been established in the *Krajišnik* case and that neither the SRS nor the Accused were implicated at the time. According to him, the SRS volunteer units deployed in BiH were still part of the VRS and never operated independently of the VRS nor did they follow the instructions of the SRS or the Accused himself. Furthermore, he claims that the SRS volunteers did not commit the crimes alleged in the Indictment nor did they participate in military operations within the VRS at the sites where – and during the periods when – the alleged crimes were committed. In the opinion of the Accused, there is insufficient evidence for the Prosecution's allegations to allow for a finding of guilt to be reached.

213. The Chamber has analysed all the evidence submitted in relation to the events in the Sarajevo area. With regard to the concurring testimonies and other evidence not seriously contested, the Chamber holds that the following crimes were indeed committed at the sites listed below:[202]

[201] The Chamber relied on the following evidence: Fadil Kopić; VS-1013; VS-1015; P302 under seal; P306 under seal; P362; P1028 under seal; P1029 under seal.
[202] On the Serbian forces present in Greater Sarajevo: Decision of 10 December 2007; Reynaud Theunens; Safet Sejdić; Perica Koblar; VS-1055; VS-1060; P55; P217; P256; P347; P471; P518; P644; P836; P840; P843; P846; P999; P1000; P1056 under seal; P1057 under seal; P1058 under seal; P1102 under seal; P1207; P1319.

a. the murder by Serbian forces of 17 Muslim civilians, including women and elderly people, and of Hasan Fazlić and Asim Karavdić in the village of Lješevo on 5 June 1992; the murder of Amir Fazlić by Vaske or SRS volunteers; the murder of Arif Omanović and Meho Fazlić during the attack on Lješevo;[203]

b. torture and cruel treatment of approximately 130 detainees by Serbian forces in the Iskra warehouse in Podlugovi between June and August 1992; cruel treatment in the form of inhumane detention conditions;[204]

c. torture and cruel treatment of more than 100 detainees by the VRS in Planja's house between June and October 1992; cruel treatment in the form of labour performed by the detainees;[205]

d. plunder of Muslim homes after the attack by members of the VRS on the village of Svrake in Vogošća municipality on 14 October 1992.[206]

(d) Mostar municipality

214. In its various written submissions, the Prosecution alleges that during the attack on the town of Mostar and the surrounding villages, the Serbian forces, including volunteers known as "Šešelj's men" murdered non-Serb civilians: on or around 13 June 1992 at the Uborak dump and the municipal mortuary in Sutina. On or around 13 June 1992, following the takeover of the town of Mostar, Serbian forces, including volunteers known as "Šešelj's men", allegedly detained non-Serb civilians in the locker room at the Vrapčići football stadium and the municipal mortuary in Sutina. While these non-Serb civilians were being held in detention, the Serbian forces, including volunteers who had been recruited and/or encouraged by the Accused, allegedly beat and tortured them and subjected them to brutal and inhumane living conditions. In addition, the Serbian forces allegedly forced them to perform frequent and prolonged labour. Finally, between 1 March 1992 and the end of September 1993, Serbian forces allegedly plundered numerous homes and several mosques, when in fact these actions were not justified by military necessity.

[203] The Chamber relied on the following evidence: VS-1055; VS-1111; P450 under seal; P453 under seal; P840.
[204] The Chamber relied on the following evidence: Decision of 23 July 2010, Annex; VS-1055.
[205] The Chamber relied on the following evidence: Decision of 23 July 2010, Annex; Safet Sejdić; VS-1055; P457; P464; P975; P1159 under seal; P1160 under seal.
[206] The Chamber relied on the following evidence: Safet Sejdić; P463; P1346.

215. In his Final Brief, the Accused claims that Mostar was never mentioned in the *Krajišnik* Trial Judgement. "Šešelj's men" were no longer present in Mostar when the alleged crimes were committed. None of the evidence refers either to him or the SRS volunteers participating in the criminal acts alleged by the Prosecution.

216. The Chamber has analysed all the evidence presented in relation to the events in Mostar. With regard to the concurring testimonies and other evidence not seriously contested, the Chamber holds that the following crimes were indeed committed at the sites listed below:[207]

a. the murder of at least 40 civilians in mid-June 1992, most of whom were of Muslim origin, as well as that of a disabled Croat, at the Uborak dump by soldiers attached to the Zalik TO and "Šešelj's men";[208]

b. the murder of at least seven civilians in the building of the main mortuary in Sutina by soldiers from the Zalik TO and members of paramilitary units in June 1992;[209]

c. torture and cruel treatment of around 90 detainees - lasting several hours, days and even weeks for some of them - by Serbian forces and paramilitaries, some of whom were SRS volunteers, in the locker room of the Vrapčići football stadium from 13 June 1992; cruel treatment in the form of inhumane detention conditions;[210]

d. torture and cruel treatment of more than 20 detainees by local Serbian soldiers from the Zalik TO and paramilitaries in the building of the mortuary of the Sutina municipal cemetery around mid-June 1992; cruel treatment in the form of inhumane detention conditions; [211]

[207] On the Serbian forces present in Mostar: Redžep Karišik, Ibrahim Kujan; Vojislav Dabić; Goran Stoparić; VS-1067; VS-1068; C10; C11; C18; P31; P524; P659 under seal; P843; P846; P879; P880 under seal; P881 under seal; P891; P1002; P1051 under seal; P1052 under seal; P1344; P1345.
[208] The Chamber relied on the following evidence: Redžep Karišik; Vojislav Dabić; Fahrudin Bilić; VS-1067; P479; P480; P481; P658 under seal; P843; P846; P847 under seal; P848 under seal; P849 under seal; P851 under seal; P852 under seal; P853 under seal; P880 under seal; P881 under seal; P1051 under seal; P1052 under seal.
[209] The Chamber relied on the following evidence: Fahrudin Bilić, Redžep Karišik; Vojislav Dabić; VS-1068; P658 under seal; P659 under seal; P660 under seal; P853 under seal; P880 under seal; P881 under seal.
[210] The Chamber relied on the following evidence: Fahrudin Bilić, Redžep Karišik; VS-1067; VS-1068; P658 under seal; P659 under seal; P1051 under seal; P1052 under seal.
[211] The Chamber relied on the following evidence: Fahrudin Bilić, Redžep Karišik; VS-1068; P479; P480; P658 under seal; P659 under seal.

e. plunder of private property by SRS volunteers from houses belonging to Muslims in the Topla hamlet in April 1992.[212]

(e) Nevesinje municipality

217. In its various written submissions, the Prosecution alleges that Serbian forces and volunteers known as "Šešelj's men" murdered Muslim civilians and other non-Serbs when the town of Nevesinje was taken and several Muslim villages in the municipality were attacked: on or around 22 June 1992 in the primary school in the village of Dnopolje in the Zijemlje Valley; on or around 22 June 1992 at the Lipovača dump; on or around 22 June at the Boračko Jezero resort; on or around 26 June 1992 in the Zijemlje Primary School ("Zijemlje School"). On 22 June 1992, Serbian forces, in particular volunteers known as "Šešelj's men", allegedly arrested and detained a group of Muslim civilians at the Kilavci heating factory, made them live in inhumane living conditions and subjected them to acts of physical, psychological and sexual violence. Around 26 June 1992, Serbian forces allegedly arrested and detained another group of Muslim civilians in the Zijemlje School, subjected them to inhumane living conditions and beat and tortured them. Subsequently, the Serbian forces allegedly took some of the surviving detainees to the SUP building in Nevesinje and detained them there for several days in inhumane living conditions, subjecting them to beatings and torture. Finally, the Prosecution alleges that the Serbian forces, including volunteers, some of whom were "Šešelj's men", destroyed numerous homes and several religious buildings in the municipality of Nevesinje in June 1992.

218. In his Final Brief, the Accused claims that the SRS volunteers were no longer present in Nevesinje at the time the alleged crimes were committed and that there was no connection between the crimes committed there and either himself or SRS volunteers. He claims that the Prosecution testimonies were modified and fleshed out to include his name and the expression "Šešelj's men". He mentions the *Krajišnik* case in support of his position and invokes the same arguments as those presented in relation to wanton destruction.

219. The Chamber analysed all the evidence presented in relation to the events in Nevesinje. With regard to the concurring testimonies and other evidence not seriously contested, the Chamber holds that the following crimes were indeed committed at the sites listed below:[213]

[212] The Chamber relied on the following evidence: Vojislav Dabić, Redžep Karišik; VS-1067; P843; P880 under seal; P891; P1051 under seal.

a. the murder by Serbian forces of villagers from Gornja Bijenja, Postoljani, Kljuna and of Habiba Colaković in Presjeka during the attack on their village in June 1992;[214]

b. the murder of 27 Muslim men at the Dubravica natural pit in Breza by members of the Nevesinje Brigade 5th Battalion and local Serbs on 26 June 1992;[215]

c. the murder by Serbian forces of Muslim women and children who remained at the Kilavci heating factory around 30 June 1992;[216]

d. the murder by Serbian forces of at least six villagers from Hrušta, Luka and Kljuna detained at the Zijemlje School around 27 June 1992;[217]

e. torture and cruel treatment by members of the Red Berets of the women and children detained at the Kilavci heating factory from 26 to 30 June 1992; cruel treatment in the form of inhumane detention conditions;[218]

f. torture and cruel treatment of 12 detainees by Serbian forces, including the White Eagles, at the Zijemlje School from 26 June 1992; cruel treatment in the form of inhumane detention conditions;[219]

g. torture and cruel treatment of detainees in the SUP building in Nevesinje by Serbian forces, including MUP officers and members of the Red Berets, around the end of June 1992; cruel treatment in the form of inhumane detention conditions.[220]

220. In the light of all of these findings, it is apparent that war crimes were committed by Serbian forces, including the *Šešeljevci*, during the period covered by the Indictment. That being the case, it was necessary for the Chamber to determine whether the Accused could be held responsible on

[213] On the Serbian forces present in Nevesinje: Vojislav Dabić; Ibrahim Kujan, Goran Stoparić; VS-1022; VS-1051; VS-1067; P28; P55; P524; P880 under seal; P881 under seal; P1074.
[214] The Chamber relied on the following evidence: Decision of 23 July 2010, Annex; Ibrahim Kujan; Vojislav Dabić; VS-1022; P483 under seal; P524; P880 under seal; P881 under seal.
[215] In the absence of information on the circumstances surrounding the death of Esad Čopelj, the Chamber is unable to conclude that the soldiers of the Nevesinje Brigade 5th Battalion were responsible for his death. The Chamber relied on the following evidence: Decision of 23 July 2010, Annex; Vojislav Dabić; Ibrahim Kujan; VS-1022; VS-1067; P523 under seal; P524; P880 under seal; P881 under seal.
[216] The Chamber relied on the following evidence: Decision of 23 July 2010, Annex; Ibrahim Kujan, Vojislav Dabić; VS-1022; P523 under seal; P880 under seal.
[217] The Chamber relied on the following evidence: VS-1051; VS-1052; P483 under seal; P485 under seal; P487 under seal.
[218] The Chamber relied on the following evidence: Decision of 23 July 2010, Annex; Ibrahim Kujan; VS-1022; VS-1051; P523 under seal.
[219] The Chamber relied on the following evidence: VS-1051; VS-1052; C8; P483 under seal; P487 under seal; P880 under seal.

account of the commission of those crimes in the field. What follows is a presentation of the analysis made.

[220] The Chamber relied on the following evidence: Ibrahim Kujan; VS-1022; VS-1051; VS-1052; P487 under seal; P524; P880 under seal.

V. CRIMINAL RESPONSIBILITY OF THE ACCUSED

221. While all the modes of participation under Article 7 (1) of the Statute have been alleged in the Indictment, the Chamber notes that the Prosecution in fact limits the responsibility of the Accused to physical commission for the crimes of persecution, deportation and inhumane acts (forcible transfer) through speeches,[221] commission as co-perpetrator in a joint criminal enterprise ("JCE"), instigation and aiding and abetting.[222] The Chamber will examine the Prosecution's allegations for each mode of participation charged.

A. Individual Criminal Responsibility pursuant to Article 7 (1) of the Statute for the Commission of a Crime

1. Commission through a Joint Criminal Enterprise[223]

(a) Allegations and submissions of the Parties

222. The Prosecution alleges in the Indictment that the Accused was a member of a JCE whose objective was to force, through the commission of crimes, the majority of non-Serbs to leave permanently approximately one third of the territory of Croatia, large areas of BiH and parts of Vojvodina, in Serbia. In the Prosecution Closing Brief, the common purpose was "to forcibly create ethnically-separate territories in Croatia and Bosnia and Herzegovina." The Prosecution maintains that this new state was also called "New Yugoslavia" or a "State for all Serbs" by some members of the JCE. The Prosecution appears to claim that the "fundamental objectives" of the JCE participants, in particular the goal of "all Serbs in one state", overlap, which would be sufficient to meet the condition of a common purpose. This JCE allegedly came into existence before 1 August 1991 and continued until at least December 1995. However, the Accused's participation in the JCE ended in September 1993.

223. The Prosecution maintains in its various submissions that, for the Accused, this meant putting into practice the Chetnik ideology founded on persecutions in order to achieve the ideal of a Greater Serbia. The Accused also allegedly supported other members of the JCE in their

[221] The Chamber notes that, while the physical commission of the crime of persecution through public and direct denigration of non-Serb communities was initially alleged in the Indictment for the speeches given by the Accused in Vukovar, Mali Zvornik and Hrtkovci, in its Closing Brief (para. 529) the Prosecution no longer referred to the speech in Mali Zvornik in relation to the physical commission of persecution. The Chamber considers that this allegation was therefore abandoned by the Prosecution.
[222] Prosecution Closing Brief, paras 527-529.
[223] Judge Lattanzi does not agree with the majority's interpretation of the Parties' allegations on the common purpose or with the interpretation of the evidence on the existence of this purpose and on the participation of the Accused in this purpose with other members of the joint criminal enterprise.

actions aimed at creating distinct Serbian ethnic territories. Finally, the crimes that were allegedly committed by parallel structures and Serbian forces were part of the common criminal purpose.

224. In his Final Brief, the Accused notes the Prosecution's confused approach which describes the JCE objective in various ways without providing any evidence of the existence of the common objective. He reiterates that the "*jus ad bellum*" to create a Greater Serbia remained an objective in accordance with the Constitution of the former Yugoslavia and international law and is not, in any case, within the jurisdiction of the Tribunal. For him, the recruitment and deployment of volunteers were lawful activities in the legitimate defence of Serbs.

(b) Analysis[224]

(i) On the allegation of a common purpose

225. Attributing responsibility on the basis of a JCE requires, above all, the identification of a common criminal purpose.[225] If the purpose is not criminal in itself, at least the crimes that were perpetrated in its realisation must be consubstantial with it.[226]

226. The Chamber, by a majority, Judge Lattanzi dissenting, notes hereinafter a whole series of shortcomings and cases of confusion in the Prosecution's approach.

227. The Prosecution used different terms to define the alleged criminal purpose. However, it has failed to clarify anywhere in its submissions the meaning of "a new Serb-dominated state." A comprehensive reading of the Indictment gives the impression that this expression could be taken to mean the plan for a Greater Serbia supported by the Accused. This plan allegedly contained an implicit criminal element arising from the aim to unify "all Serbian lands" in a *homogenous* Serbian state which included Serbia, Montenegro, Macedonia and considerable

[224] Judge Lattanzi does not agree with this evaluation that brings into question the Prosecution's argument on the JCE, a matter on which Trial Chamber II already ruled in its decision entitled "Decision on Motion by Vojislav Šešelj Challenging Jurisdiction and Form of Indictment", filed on 3 June 2004 (*see* para. 55 of the Decision which clearly specifies what the purpose of the joint criminal enterprise alleged by the Prosecution was: "Paragraph 6 of the Indictment identifies the purpose of the joint criminal enterprise as the 'permanent forcible removal … of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia and large parts of Bosnia and Herzegovina and from parts of Vojvodina … in order to make these areas part of a new Serb-dominated state'.").
[225] *Krnojelac* Appeal Judgement, para. 116.
[226] *Tadić* Appeal Judgement, para. 227; *Martić* Judgement, para. 442, upheld on appeal in *Martić* Appeal Judgement, para. 112. *See* also *Brima et al.* Appeal Judgement, para. 76: "[it] can be seen from a review of the jurisprudence of the international criminal tribunals that the criminal purpose underlying the JCE can derive not only from its ultimate objective, but also from the means contemplated to achieve that objective. The objective and the means to achieve the objective constitute the common design or plan."

parts of Croatia and BiH, implying the expulsion or forcible removal of the non-Serb population.[227] This formulation seems to correspond to what the Accused would have understood.[228] The majority analysed the evidence admitted for this purpose in order to determine whether this definition corresponded to a common criminal plan.

228. The Prosecutor notes, among other activities showing the existence of a common criminal purpose, the transfer of targeted territories to Serbian control. This "transfer" was allegedly planned in accordance with a common scheme that included a number of elements such as: (a) declaring large areas of Croatia and BiH as Serbian autonomous regions and taking over public institutions and local governmental structures; (b) enlisting volunteers and coordinating efforts between the JNA/VJ, MUP, TO and other formations; (c) covertly arming Serbian civilians; and (d) the commission of crimes on the ground.

229. The majority is of the opinion that the Prosecutor provides a very fragmented reading of the events which he regards as showing a criminal plan for a Greater Serbia, or an /entity/ known by some such name. By presenting the establishment of Serbian autonomous regions in Croatia and BiH as acts that have the nature of a criminal plan for a Greater Serbia, without explaining the broader context of the double secession of Croatia and BiH within which these actions were taken, the Prosecution offers a reading which, at best, obscures the chronology of events and, at worst, misrepresents them, with regard to the evidence submitted to the Chamber, especially by the Prosecutor himself.

230. The plan for a Greater Serbia, as supported by the Accused, is *a priori* a political and not criminal goal. In his testimony in the *Milošević* case, the Accused described his vision of a

[227] However, the Prosecution uses various formulations in different submissions to describe this common criminal purpose, such as: (i) establishing Serbian control in the targeted territories (Prosecution's Pre-Trial Brief, para. 3); (ii) creation of a Serb-dominated "Greater Serbia" by force (Prosecution's Final Pre-Trial Brief, para. 4); (iii) creation of a Serbian state by force (Prosecution's Final Pre-Trial Brief, para. 8.); (iv) including all the Serbian people in one state (Prosecution's Final Pre-Trial Brief, fn. 52); (v) creating "Greater Serbia" by using all necessary means, including violence (Prosecution's Final Pre-Trial Brief, para. 22); (vi) forcibly removing the non-Serb populations from the targeted areas through the commission of crimes or, alternatively, being aware that the crimes charged were the foreseeable consequences of their actions (Prosecution's Final Pre-Trial Brief, para. 23); (vii) permanent forcible removal of the majority of non-Serbs from targeted areas of Croatia, BiH and Serbia through the commission of crimes (Prosecution's Final Pre-Trial Brief, para. 130). With regard to the BiH objective, the Prosecution presents a more restricted purpose with respect to territory, that is "forcibly removing the Muslim population from the targeted territories in BiH [...] in order to link all of the Serb territories in BiH" (Prosecution's Final Pre-Trial Brief, paras 41 and 54). In its Closing Brief, the Prosecution describes the JCE objective as [having] "the common criminal purpose […] to forcibly create ethnically-separate territories in Croatia and Bosnia and Herzegovina" or "Serb-dominated territories" (Prosecution Closing Brief, para. 1).

[228] Pre-Trial Submission of the Accused, pp. 34, 36 to 38. He specified that the use of force was never part of the plan for a Greater Serbia and never relied on the expansion of Serbian borders. *See* also, Statement pursuant to Rule 84 *bis*, hearing of 8 November 2007, T(E) 1881-1882, in which the Accused denies that the notion of a Greater Serbia involved

Greater Serbia as the establishment of a unified, independent and free Serbian state that includes all the Serbs and all the Serbian territories and follows the borders defined by the Karlobag-Virovitica-Ogulin-Karlovac line.[229] According to the Accused, this western border of Greater Serbia would represent a nation based on the Shtokavian language, irrespective of religion.[230] For the Accused, only the SRS pursued this objective for a Greater Serbia that would include all the Serbs, whether of Orthodox, Catholic or Muslim faith.[231] According to him, there were no organised "forcible transfers" of the Croatian and non-Serb population either from[232] or to Serbia,[233] or coming from Bosnia and Herzegovina,[234] but a spontaneous movement of the population due to the inter-ethnic troubles.[235] The Prosecution does not seem to have challenged the statements the Accused made about his vision for a Greater Serbia.[236] Besides, they are supported by abundant documentation which predates the proceedings in this case, which shows their consistency. The Accused's assertion on the lack of safety for civilians in some of the combat zones, in particular Vukovar, was confirmed by several witnesses who, in fact, described scenes of fighting in the street and mortar fire, which made it generally unsafe for civilians, regardless of their origin; thus both Serbian and Croatian civilians found refuge in the Vukovar hospital and received the same treatment from medical professionals.[237]

a "homogenous" element and states that it had never crossed his "mind" to resort to forcible removal to achieve this objective.

[229] P31, T. 43221, 43813-43814; Yves Tomić, T(E) 3000, 3001, 3029; Aleksandar Stefanović, T(E) 12088, 12089 and 12092; P33, p. 4; P35, pp. 1-4 and 7; P56, p. 1; P70, p. 1; P153, pp. 9 to 15; P163, p. 6; P164, pp. 81, 82, 85-92; P329, p. 1; P547, p. 2-4 and 6; P1177, p. 1; P1209, p. 7; P1214, p. 1.

[230] P31, T. 43221 and 43222, 43813 and 43814; Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1881-1882.

[231] *Ibid.*, T. 43465.

[232] *Ibid.*, T. 43557.

[233] *Ibid.*, T. 43553.

[234] *Ibid.*, T. 43612 and 43613.

[235] *Ibid.*, T. 43387, 43553 and 43554.

[236] During the Accused's testimony in the *Milošević* case, Prosecutor Nice frequently returned to Šešelj's particular vision of a Greater Serbia.

[237] Emil Čakalić, T(E) 4914; 4916. *See* also VS-002, T(E) 6484-6488 (both Serbian and Croatian civilians became refugees due to the fighting between the various forces); P603, para. 40.

a. Proclamation of Serbian autonomous regions

231. The Accused maintained that the armed conflict was initially caused by the secession of Croatia and BiH from the Federation of former Yugoslavia, and this statement has generally been backed up by the evidence provided by the Prosecution. The act of secession was deemed in breach of the Yugoslav Constitution.[238] Many Serbs in Croatia were opposed to this secession and wanted to remain in Yugoslavia.[239]

232. Moreover, evidence shows that the new Croatian authorities adopted insignia and symbols associated with the regime that was in power in Croatia during the Second World War, which would have brought back painful memories for the Serbian population.[240] All in all, the centrifugal identitarian movement of the new Croatian nation was not without response in the centripetal Serbian identitarian movement born of a feeling of vulnerability and a lack of safety in the regions in question.[241] It is in this context that the Serbian and Croatian autonomous regions declared their autonomy in response to the new Croatian authorities.[242] This autonomy inevitably led to the creation of parallel local public and administrative institutions. The testimonies heard, including those of witnesses extremely hostile to the Accused,[243] generally substantiate such an interpretation of the events.

233. Milan Babić, who testified in the *Milošević* case, explained that the aim of the association of the municipalities of Northern Dalmatia and Lika, created at the end of May/beginning of June 1990 with its seat in Knin, was to improve the economic situation of the inhabitants in these municipalities and, following the initiative of the Croatian Government, to amend its Constitution, to "preserve national equality for the Serb people living in Croatia."[244] According to the witness, a meeting organised by the SDS was held on 25 July 1990 in Srb and attended by representatives of the municipal assemblies, the Croatian Parliament, political parties, the Serbian Orthodox Church and 100,000 citizens of Croatia; at the end of the meeting, a declaration on the sovereignty and autonomy of the Serbian people was adopted.[245] Babić specified that this meeting was in response to a meeting of the Croatian Parliament, held on the

[238] Statement of the Accused pursuant to Rule 84 *bis*, T(E) 1878 and 1896; Decision of 10 December 2007, facts nos 51-52, 85; Decision of 8 February 2010, facts nos 14 and 18.
[239] P31, T. 43276; Yves Tomić, T(E) 2986; Decision of 10 December 2007, fact no. 90; P836, para. 10.
[240] P608, p.2; Yves Tomić, T(E) 3254; VS-004, T(E) 3380.
[241] Jelena Radošević, T(E) 11083-11084 ; P580, paras 4 to 6; VS-004, T(E) 3380-3382.
[242] Mladen Kulić, T(E) 4414 ; VS-004, T(E) 3585 to 3587; P1137, pp. 12903-12904; P916; P895.
[243] VS-065 spoke of the Serbian population being subjected to intimidations, which prompted the Serbs to arm themselves (*see* VS-065, T(E) 13030 et seq. *See* also Mladen Kulić, T(E) 4414; VS-004, T(E) 3585 to 3587; Yves Tomić, T(E) 2974 and 2975; P895; P1137, pp. 12903-12904).
[244] P1137, pp. 12901-12902.

same day, at which the issue of amendments to the Croatian Constitution was examined, and more specifically, the possibility of ruling out the existence of the associations of municipalities; the Serbs questioned the validity of this.[246]

234. Witness Mladen Kulić explained that after the elections in May 1990 which propelled the Croatian Democratic Union ("HDZ") to power,[247] an amendment to the Croatian Constitution was adopted, changing the status of the Serbian people in Croatia, who had until that time been regarded as a founding people in the republic, into that of a minority.[248] It was as a reaction to the HDZ taking over power that the Serbian minority started to organise itself on a national basis, independently of Belgrade.[249]

235. Witness VS-004 specified that the new Croatian Government had voted in laws that discriminated against the minorities in Croatia, including the Serbs.[250] He even said that the Serbs working in public service, the judiciary, the media, the police and in large Croatian companies were dismissed.[251] The witness also explained that the Western Slavonia SAO was created on 12 August 1991 in order to protect the political interests of this territory where the Serbs were a majority,[252] and not for the purpose of committing crimes.

236. With respect to BiH, Witness VS-037 explained the circumstances that surrounded the adoption of directives by the BiH Serbian Assembly. According to this witness, the context of the strategic objectives changed and developed. At the start, it related to the fall of communism in Eastern Europe, then to the preservation of Yugoslavia and, finally, to the tense situation in which the Serbs boycotted the referendum of the Muslims of Bosnia and Herzegovina.[253] According to the witness, these objectives led to the conclusion that all those who wanted to respect the laws of Yugoslavia and coexist could stay; otherwise, they could go where they wanted to go.[254]

237. In the same vein, General Kadijević, Chief of Staff of the JNA, explained the objective of the Serbian forces at the time of the break-up:

[245] *Ibid.*, pp. 12903-12904; P896.
[246] *Ibid.*
[247] Mladen Kulić, T(E) 4413-4415, 4417.
[248] Mladen Kulić, T(E) 4414, 4418 and 4419.
[249] Mladen Kulić, T(E) 4420 and 4421.
[250] VS-004, T(E) 3483 and 3484.
[251] VS-004, T(E) 3485 and 3486.
[252] VS-004, T(E) 3364 and 3366.
[253] VS-037, T(E) 14859-14861; P870.
[254] VS-037, T(E) 14862.

> At the beginning of this phase, the armed forces' task radically changed and was to 1) defend the Serb nation in Croatia and its national interest; 2) pull JNA garrisons out of Croatia; 3) gain full control of Bosnia-Herzegovina, with the ultimate aim of defending the Serb nation and its national rights when the issue arose; 4) create and defend the new Yugoslav state of those Yugoslav nations that desire to be a part of it, meaning in this phase the Serb and Montenegrin nations. The basic concept for deployment of the armed forces was thus adjusted to this modified task.[255] [underlining added]

238. Even taking into account some Serbian attitudes that were deemed discriminatory - in particular the establishment of their local institutions in Croatia and BiH, which obviously illustrates their identitarian closure and the ensuing distrust, and even animosity, which developed among the various groups - in the opinion of the majority, the overall evidence does not support a finding beyond all reasonable doubt that the proclamations of the autonomy of the Serbian people in Croatia and BiH stemmed from a criminal design.

b. Enlistment and deployment of volunteers

239. According to Expert Witness Tomić, deploying volunteers had a two-fold objective that was defensive and offensive: on the one hand, the defence of the endangered Serbs and, on the other, the political wish to redefine the borders of this region to conform to the Karlobag-Ogulin-Karlovac-Virovitica line.[256] It is not disputed that the Accused was driven by political fervour to create a Greater Serbia. However, there is nothing in the deployment of volunteers to point to a criminal purpose. There is a reasonable possibility that the aim of deploying these volunteers was to protect the Serbs.

240. Incidentally, confidential reports from the JNA and the VRS indicate that the military forces did not look kindly on the presence of volunteers in their ranks. This is largely confirmed by, among others, Expert Witness Reynaud Theunens, one of the Prosecution's key witnesses, who was moreover a member of the Office of the Prosecutor.[257] This hostility of the JNA and the VRS towards the volunteers is not very compatible with the alleged criminal conspiracy between these entities.[258]

[255] P196, pp. 49-50.
[256] Yves Tomić, T(E) 2999-3000. Expert Witness Tomić, who was called by the Prosecutor, also acknowledged that more non-Serbs than Serbs lived within those lines, which was all the more inevitable as the Accused did not even recognise Bosniak ethnic identity. Thus, even from a conceptual point of view, the Prosecution's argument is faulty as it is anchored to an intrinsically contradictory premise.
[257] P261, part II, pp. 223-233. During his cross-examination, this witness admitted that he had been closely associated with the preparation of the Indictment (*see* Reynaud Theunens, T(E) 4097-4101).
[258] If the JNA considered the volunteers to be undisciplined, and in particular, criminal elements, this implies that it did not itself have any wish to engage in crimes.

241. Expert Theunens described the legal and constitutional framework of the former Yugoslavia that governed the use of reservists and other non-military categories to support the regular army. This description and many other items of evidence show that the recruitment and deployment of volunteers by the Accused and his party, and the cooperation in this respect with other Serbian forces, including the JNA/VJ, MUP, TO and other paramilitary units, was not unlawful. On the contrary, the backdrop of war could provide a solid justification. The legal provisions in the former Yugoslavia allowed for recourse to volunteers. They were integrated into the armed forces of the SFRY, including the JNA and the TO.[259] There was no hierarchical relationship between the Accused and the volunteers who were deployed.[260]

242. The evidence in its entirety substantiates the fact that the deployment of volunteers was not done in order to commit crimes, but in order to support the war effort.[261] This territorial war was essentially organised around the ethnic groups that made up the former Yugoslavia. The majority cannot discard the reasonable possibility that the objective of recruiting, funding and transporting volunteers was protection of the Serbian population in Croatia and BiH.[262] The other ethnic groups organised themselves in the same way.[263] It was also established during the proceedings that, due to a high incidence of desertion of their non-Serb troops, the federal armed forces considered calling up volunteers as a useful alternative that would reduce the deficit in manpower.[264] Within this context, we cannot draw the drastic conclusion that the absence of a rigorous selection process for volunteers implied a willingness to be involved in crimes committed further along the line.

243. The Accused does not deny the allegation of coordination as presented by the Prosecutor. Nonetheless, he specified that the purpose was not the forcible transfer of the non-Serb population from targeted territories, but rather the protection of the Serbian population which, according to him, was in danger.

244. Witness VS-004 stated that the SRS volunteers were sent to villages in Western Slavonia at the invitation of the local Serbs in order to support the defence of the local Serbian population.[265] Aleksandar Stefanović corroborated his earlier statements by saying that the

[259] P688, para. 51. *See* also Asim Alić, T(E) 6975-6976.
[260] Asim Alić, T(E) 6975 and 6976.
[261] Asim Alić, T(E) 7013, 7014, 7017, 7018, 7047, where the volunteers specifically stated that their goal was to protect the Serbs who were endangered in Zvornik.
[262] Aleksandar Stefanović, T(E) 12115-12118 and 12120-12122; VS-037, T(E) 14889 and 14891.
[263] Emil Čakalić, T(E) 4975-4976; P608, p. 2.
[264] P857, para. 54.
[265] VS-004, T(E) 3491.

principal goal of the SRS was to provide material, spiritual and moral support to the Serbian people.[266] The goal of the SRS was to protect the endangered Serbian population.[267] According to Witness Goran Stoparić, the Accused encouraged the volunteers to fight bravely, and he never heard the Accused ask the volunteers to kill anyone in Vukovar.[268] Rather, he insisted on the need to respect discipline and said that they should not forget how a "Serb soldier" conducts himself.[269] According to Witness VS-008, the Accused would give a speech to the new volunteers in which he instructed them that "Serbdom should be defended."[270] Witness Jovan Glamočanin stated that what mattered to the SRS was to help the combat forces on the front, the JNA and the TO, which were defending the Serbian people.[271] Former volunteer Nenad Jović explained that his main reason for joining the ranks of the volunteers was "to stop the carnage against the Serbian population in Slavonia."[272] During his testimony, Zoran Rankić also stated that in 1991, SRS volunteers were being deployed secretly, without the knowledge of Milošević's regime.[273] The few allegations made against the Accused, sometimes by witnesses of questionable credibility, which ascribe to him ambivalent or implicitly dangerous statements,[274] do not sufficiently substantiate the Prosecutor's case on the criminal design that was allegedly linked to the recruitment and deployment of volunteers.

245. The above findings by no means purport to underestimate, much less to conceal the crimes committed in the various parts of Croatia and BiH, crimes in which the volunteers deployed by the Accused or his party may have participated or have been indirectly involved. In these findings, the majority simply notes that it is not satisfied that the recruitment and subsequent deployment of volunteers implies any knowledge about the crimes on the part of the Accused, or that he gave instructions for these crimes in the field, or supported them. In the opinion of the majority, these crimes cannot be considered as an inherent element of the political plan for a Greater Serbia or to protect the Serbs.

246. In its Closing Brief, the Prosecution claimed that in view of the profile of some of the volunteers, their criminal past, or even their present, it was foreseeable that, once they found

[266] P634, para. 28.
[267] P634, para. 28.
[268] Goran Stoparić, T(E) 2593-2595.
[269] Goran Stoparić, T(E) 2591-2593. The witness acknowledges that the Accused said, "Fight like heroes, but show chivalry, behaving humanely towards prisoners, civilians on the other side, women and children like the Serb Knights did through history." He was reminded of these responses by the Accused during cross-examination, but he could not remember the exact words used by the Accused at the time (T(E) 2593).
[270] VS-008, T(E) 13287-13290 (closed session).
[271] Jovan Glamočanin, T(E) 12839, 12843.
[272] P1077, para. 20; P1085 under seal, para. 29.
[273] Zoran Rankić, T(E) 16044 and 16045.
[274] VS-008, T(E) 13287-13290, 13329-13330 (closed session).

themselves in the field, they would engage in some criminal activity. It also noted that some information regarding criminal behaviour was brought to the attention of the Accused. The Accused did not react forcefully enough to this information to disassociate himself clearly from the crimes or to prevent their recurrence, thus demonstrating his willingness to take part in them.

247. The majority cannot subscribe to this line of argument, which, moreover, is incoherent and even contradictory in several respects. It has been established that the Accused was not the superior of the volunteers in the field. The Prosecution therefore intentionally confuses the limited connection of an advocate with military command authority, a confusion which is all the more unacceptable since the Prosecution never alleged that the Accused was a military superior responsible for operations in the field. The lack of such an allegation was naturally reflected in the Prosecution's deliberate choice not to charge the Accused as a superior, or even with *de facto* responsibility.[275] Given that there is no *de jure* or *de facto* legal basis, the Prosecution is at pains to explain the Accused's responsibility to act - which it assigns to him *a posteriori* - on information relating to acts of indiscipline or crimes by volunteers in the field; it should be recalled that the volunteers were subordinated to the army command, in accordance with the principle of unity of command, which was explained in depth by the expert Theunens. In this context, the majority is not able to draw any conclusions supporting the charges against the Accused for an alleged failure to act. Moreover, a careful examination of the incidents presented in the Indictment does not lead to the conclusion that he endorsed the crimes.[276]

c. <u>The covert arming of Serbian civilians</u>

248. The Chamber received abundant evidence establishing that local Serbs in Croatia and BiH were arming themselves. Nonetheless, the evidence shows that Croatian and Muslim civilians were also arming themselves. This global picture also makes it reasonably possible to envisage a scenario in which all the warring factions were preparing for imminent hostilities in order to preserve the territories that they considered as their own, rather than one in which the

[275] The Prosecution seems to raise in a cryptic manner the possibility of *de facto* authority, by mentioning the visits to the field. Yet, these visits have been described by some witnesses as essentially a communication campaign (*see* P1057 under seal, para. 19; P1058 under seal, para. 62; P31, T. 43478; P688, para. 99; C11, p. 16). The Prosecution also mentioned the title of *Vojvoda* that was conferred upon some of the combatants, often on militants or sympathisers of his party. In fact, these titles were not of any relevance in relation to the military command structure of the former Yugoslavia and Serbia (*see* Reynaud Theunens, T(E) 3815 and 3816, 3824 and 3825).

[276] We are told that the Accused suggested that a volunteer who was implicated in crimes was tired and should be transferred. More unexpectedly, the Prosecution presents a case in which the Accused asked for volunteers to be excluded (from his party, but not from the theatre of operations because he did not have the authority to make decisions in the field). For the Prosecution, this exclusion was proof of the Accused's authority. However, this authority is exercised within the party, but not over activities in the field. Moreover, it showed that he did not agree with the crimes

Serbian occupiers - driven solely by the criminal purpose of expelling the civilians belonging to other ethnic groups - acted unilaterally.

d. The commission of crimes in the field

249. The majority also notes that in fact the bulk of the recorded crimes do not implicate "Šešelj's men." When the perpetrators of the crimes were identified, they were often local people, frequently serving in the local TO or in especially violent paramilitary groups, such as Arkan's Tigers. Witnesses were often not able to distinguish between a "Chetnik" - wearing the clothing, colours and with attributes characteristic of those who sympathised with the Serbian ideology - and "Šešelj's men." Even when they could be identified, as was the case for the crimes committed by a certain Vaske, the parties agreed that he came under the command of the VRS.

(ii) On the allegations of a plurality of persons sharing the same views

250. The lack of evidence for the existence of a criminal plan provides sufficient legal grounds to reject the charge of a JCE. The majority also explored, supererogatorily, the issue of the shared views of the alleged members of the criminal enterprise, this being a necessary element for establishing the existence of a JCE.[277]

251. The Prosecution focused most of its allegations on the shared views of the Accused and Milošević, as representing the JNA/VJ and the Serbian MUP; of the Accused and other members associated with the RS and the VRS; and of the Accused and other paramilitary groups, such as Arkan's Tigers.

252. A lot of the evidence rather shows that the collaboration was aimed at defending the Serbs and the traditionally Serbian territories and at preserving Yugoslavia, not at committing the alleged crimes.[278]

253. Moreover, the evidence brings into question the Prosecutor's allegation that different protagonists acted in coordination with the Accused or the volunteers, meaning that there was a conspiracy between them and that they acted together in order to achieve the criminal objective of forcibly transferring the non-Serb civilian population from targeted areas. The evidence rather

committed. In particular, the Chamber notes that Topola's criminal activities were sanctioned by the SRS (*see* VS-065, T(E) 13052-13053 (public) and T(E) 13199 (closed session); P23).

[277] *Brđanin* Appeal Judgement, para. 430.

shows that the military units were often bothered by Šešelj's volunteers, whom they considered as undisciplined and did not regard as soldiers. There were also considerable differences between JNA and TO officers, particularly in Vukovar, in regard to Croatian prisoners. The extremely tense meeting between members of the local forces in Vukovar, described by Witness VS-051, clearly illustrates the difficulty involved in finding that the various Serbian fighting units shared the same views. VS-051 was threatened with death by members of the local Serbian forces,[279] while his own associates turned away leaving him to face the threat alone. His testimony shows that the local Serbs in Vukovar rejected the transfer procedure for the prisoners of war sanctioned by the JNA, because they considered themselves to be the victims of the so-called crimes that were committed by these prisoners of war, not the Serbs who had come from outside Croatia.[280] According to him, the killing of Croatian prisoners of war went beyond retaliation and was an attack on the integrity of the JNA.[281]

254. Another element introduced by the Accused to reject the argument of a criminal plan, and which should be taken into account, is the *Cutileiro* plan in BiH (March 1992), which he mentioned during his testimony in the *Milošević* case, and which was not contested by the Prosecution.[282] This plan was supposed to allow the various communities to continue to live together. It was initially accepted by all the Serbs, Muslims and Croats, but was then rejected by the Muslims, according to the Accused, following external pressure.[283] As part of the Belgrade initiative (August 1991), Milošević had also negotiated with the BiH leader, Mr Izetbegović, and would have agreed to the latter becoming the first president of a truncated Yugoslavia in order to subdue the effects of the break-up in process.[284] This is clearly incompatible with the alleged contemporaneous implementation of the joint criminal enterprise.

255. Exhibit P196 is a book written by Kadijević. He describes his work as a contribution to understanding the role of the Yugoslav Armed Forces, especially the JNA, during the break-up of SFRY and the creation of FRY.[285] Kadijević explained how the JNA deployment strategy changed from a mission of internal defence to the creation and the defence of a new Yugoslav state.[286] He described the initial wait-and-see attitude of the JNA as an attempt to avoid being

[278] Yves Tomić, T(E) 3104. The expert explained that the defence of Serbian interests was a point of agreement between Milošević's party and the Accused's party.
[279] VS-051, T(E) 7542-7544, 7548-7549 (closed session).
[280] VS-051, T(E) 7543 (closed session).
[281] VS-051, T(E) 7552 (closed session).
[282] P31, T. 43323 and 43325.
[283] P31, T. 43276.
[284] P31, T. 43277- 43268 (at the initiative of Belgrade).
[285] P196, p. 3.
[286] *Ibid.*, pp. 49-50.

perceived as an aggressor. He also stated that the protection of the Serbs in Croatia entailed liberating the areas that had a majority Serbian population from the presence of the Croatian army and authorities.[287] Kadijević concluded that the JNA had been successful in defending the right of the Serbian and Montenegrin nations to a common state. He assigns blame to the Croats for the eruption of an armed conflict.[288]

256. Zoran Rankić confirmed that the Milošević regime was against the Serbian Chetnik movement.[289] He added that Milošević and the Accused were initially political opponents, but that they had to deploy volunteers together in order to protect the Serbian population living outside the territory of the Republic of Serbia. In his testimony, and in contradiction of his earlier statements,[290] Rankić specified that, other than this war situation, there was no open cooperation between the SRS and the Socialist Party of Serbia, which was headed by Milošević.[291]

257. Another weakness in the Prosecutor's argument can also be seen in Exhibit P1012, the shorthand notes from the 10th session of the Supreme Defence Council held on 5 July 1993.[292] At that session, Colonel General Života Panić, Chief of Staff of the VJ and formerly commander of the JNA in Vukovar, complained that members of the SRS continued to "penetrate" the VJ and evoked the contacts between "their leader" and Domazetović and other high-ranking officers. He deplored the fact that "their leader" was influencing other commanding officers who maintained communication with "the group leaders."[293] Panić stated the following:

> The strategy of the Serbian Radical Party is the creation of the alliance of all-Serbian states and gaining absolute power. In that respect, they believe that in the Republic of Serbian Krajina they have all prerequisites already fulfilled to take over the power. In Republika Srpska they are establishing connections with the Serbian Democratic Party, and they are estimating that some 80 % of the members of the Party have the same positions as the radicals. The fact that Šešelj has recently promoted 18 new dukes /*vojvode*/ in Pale supports this claim.[294]

258. The question is not so much whether the content of this report is truthful. This report, whether true or exaggerated, reveals a climate of mistrust and suspicion between the different Serbian entities, undoubtedly driven by the same desire to defend the Serbs, while everything else divides them.

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[287] *Ibid*, pp. 72-73.
[288] *Ibid.* p. 78.
[289] Zoran Rankić, T(E) 15908.
[290] P1074, paras 54, 84.
[291] Zoran Rankić, T(E) 15909.
[292] The session was attended by: Zoran Lilić, Slobodan Milošević, Momir Bulatović, Radoje Kontić, Pavle Bulatović, Colonel General Života Panić, Lieutenant General Dane Ajduković and Colonel Slavko Krivošija (*see* P1012, p.1).

259. Panić also mentioned the terror and the robberies in the area of Eastern Herzegovina. He claimed that the Chief of Staff of the RS had no control over these activities, but they tolerated them.[295]

260. The 92 *quater* statement of Zoran Dražilović is another indication of the discord between Milošević and the Accused. Dražilović notes, *inter alia*, that Milošević did not support the Accused during the war, except through the police and the army, because he constantly arrested Chetniks.[296] He explained that on 4 January 1992 all the media endorsed Milošević's position that Western Slavonia had fallen because of the Accused and the "Chetniks", who had not succeeded in defending Serbian territories.[297]

261. In the same vein, Exhibit P974 consists of a report from the VRS Department for Intelligence and Security Affairs, dated 28 July 1992. In this report, Colonel Tolimir, head of the department, condemns the criminal activities of the various paramilitary units, including the SRS.[298] He emphasises the negative influence of the activities of these paramilitaries on the morale of the VRS troops and recommends that either the armed Serbs be placed under the command of the VRS or demobilised.[299]

262. Exhibit P1347 is a notebook belonging to Mladić covering the period from 27 May 1992 to 31 July 1992 with notes about the meeting Mladić attended with representatives of the Zvornik municipality.[300] Mladić notes the exceptional success enjoyed by volunteers under Arkan and the Accused.[301] Nonetheless, several passages reveal troubled relations between "Šešelj's men", such as Žućа, Crni and Captain Dragan.[302]

263. With respect to paramilitary groups, such as Arkan's Tigers, according to Witness Jovan Glamočanin, the Accused did not have much respect for Arkan with whom it was not possible to cooperate as he was a great individualist.[303] For Witness Jovan Glamočanin, the only point in common between the SRS and Arkan was the wish to defend the Serbian people in Croatia and

[293] P1012, p. 56.
[294] *Ibid*, pp. 57-58.
[295] *Ibid*., p. 58.
[296] C10, para. 76.
[297] C10, para. 36.
[298] P974, p. 6.
[299] *Ibid*., p. 11; P261, part II, 223 to 233.
[300] P1347.
[301] *Ibid*, p. 7.
[302] *Ibid*, pp. 250, 252, 260, 264.
[303] Jovan Glamočanin, T(E) 12968 to 12970.

in the other areas where the Serbian people were endangered.[304] The evidence on hand also demonstrates that "Šešelj's men" protected civilians from Arkan's Tigers.[305]

264. To complete this examination, the majority notes that it could see how the Prosecutor wanted to establish his JCE theory on the basis of a main criminal plan, a plan that would not be fundamentally brought into question by the occasional differences between the members or by opportunistic acts in the field that could be attributed only to some of the members of the JCE. However, this does not seem to be the logic applied by the Prosecution. For the Prosecution, these "incidents" or "opportunistic acts" were seen as proof of the existence of the JCE, rather than possible deviations from it.

265. The majority notes, with the same reservation, that the Prosecution's submissions appear to suggest, at times, the existence of a criminal enterprise with variable principles, whose objectives and modes of execution changed depending on the dynamics of power. For the majority, such an approach, which offers alternative outlines that lack clarity, could not be accepted without violating the rights of the Accused to be informed unequivocally of what he is being charged with. Moreover, even if one of the theories presented by the Prosecution were deemed admissible – the theory according to which the goal of a Greater Serbia became illegal or illegitimate only when the Croatian and BiH states had been recognised by a significant part of the international community - such a position would involve unacceptably simplifying the very complex matter of the recognition of states and the ensuing legal consequences. Moreover, this simplification would ride roughshod over the seemingly contradictory efforts of the international community that launched numerous initiatives to bring together once more the Serbian, Croatian and Muslim communities, calling for institutional entities that would generally match ethnic distinctions.[306]

266. The majority made a finding without having cleared up all the confusion surrounding the alleged object of the JCE, and it does not seem to be alone in this confusion. The question of a Greater Serbia, which is at the core of the Prosecutor's allegations regarding a criminal enterprise, resulted in lengthy new explanations[307] during the testimony of the Accused in the

[304] Jovan Glamočanin, T(E) 12970.
[305] VS-1062, T(E) 5954, 5958-5960.
[306] The Vance-Owen, Owen – Stoltenberg and Cutileiro plans, and the Belgrade initiative, all stem from those same efforts. The fact that some Serbian authorities agreed to them would be incompatible with the ideology of ethnic cleansing which underpinned the alleged JCE.
[307] The clarification of the nature of the charges is not normally done during a testimony, but rather when presenting preliminary objections on the form of the Indictment; objections governed by Rule 72 of the Rules of Procedure and Evidence.

Milošević case.[308] Some passages from the testimony show the general confusion of the participants in the trial, and especially of the Prosecutor, and deserve to be reproduced, underlining the most relevant parts:

267. Mr KAY (*amicus curiae* assisting the Accused):

> I did have a matter to raise, and it is over this troubling issue of Greater Serbia and how far or whether it is relevant to the Prosecution's case […] And the accused has to know what he's got to deal with […]
>
> JUDGE ROBINSON: I am fully in agreement with you, Mr Kay, and I'm going to ask Mr Nice now if his position is different, then say so.
>
> Mr NICE: My position has never been different.
>
> JUDGE ROBINSON: Because I had the clear impression that this was an essential foundation of the Prosecution's case.
>
> Mr NICE: Your Honour, I'm very sorry about that, because I think Mr Kay's quotation, by the way, doesn't deal with the fact that what he's citing from is my citation from a witness. Now, I have always made it plain -- and at the moment I've got in front of me the joinder arguments as well. You'll find it quite helpful to […] see who refers to Greater Serbia. [The accused does not]. […] what I always made plain – and made it plain through all the expert witnesses that have been called and that I've cross-examined - that the words "Greater Serbia" come from others and not from the accused. […]. And that distinction is one I've always made, because I've recognised that the accused doesn't use these words.
>
> JUDGE ROBINSON: But you're not saying it was one of the basic foundations that one of the basic ideas prompting the joint criminal enterprise?
>
> Mr NICE: The concept that all Serbs should live in one state is different from the concept of a Greater Serbia as you've just heard from this witness who has given you a great historical overview from his perspective of what Greater Serbia is all about. It's different. [The Chamber …] will need to deal with the fact that there is a historical concept to a Greater Serbia to which he never associated himself or read, as far as I can see, never, with his taking power. Maybe with his being put in the driving seat of movements of others that did espouse Greater Serbia he pursued policies that may have had a similar effect. But have we ever said that that was his driving force, the historical concept of a Greater Serbia; no, we haven't.[309]

268. One of the judges did not fail to point out the overall difficulty of untangling the web:

> JUDGE KWON: Mr Nice, can [I] ask you, how you understand the difference of the Greater Serbia idea and the idea of one -- all Serbs living in one state. How do

[308] This testimony was admitted at the hearings at the request of the Prosecution. The Accused was also in favour of this.
[309] P31, T(E) 43223-43225.

> you understand? […] Are you not saying that it is saying the same thing in the - at the end of the day?
>
> Mr NICE: At the end it may be that the accused's aim was for that which could qualify as a *de facto* Greater Serbia, yes. Did he – did he find the source of his position, for I don't wish to identify it as an ideology or a platform. Did he find the source of his position at least overtly in historical concept of Greater Serbia; no, he didn't. His was perhaps to borrow His Honour Judge Robinson's term or was stated to be the pragmatic one of ensuring that all the Serbs who had lived in the former Yugoslavia should be allowed for either constitutional or other reasons to live in the same unit. That meant as we know historically from his perspective first of all that the former Yugoslavia shouldn't be broken up because he argued, well, then, if they all live in the same place one where they can do it in the former Yugoslavia.[310]

269. It should be noted at this stage that the idea of a joint criminal enterprise would then also be associated with opposing the break-up of Yugoslavia. The Prosecutor continued:

> Once the former Yugoslavia breaks up, the Prosecution case is the only way you can achieve the desire that all Serbs should live in the same state [is by doing the various things that happened] in the three different territories. Now -- or in particular in the two different territories of Croatia and Bosnia. […] We analyse it in the terms of his desire or his expressed desire that all Serbs should live in one state, accepting that at the end of the exercise the factual position may be [little different] from that which would have been wanted by this particular witness under his long-term historical concept of Greater Serbia.[311]

270. Here the Prosecutor suggests that Milošević and the Accused do not agree in their views. The Presiding Judge took the floor again:

> JUDGE ROBINSON: It may be, Mr Nice, as you say, that there is no essential difference, but for my part I'd like -- I'm going to have my Chamber staff look at the evidence and see whether it bears out the points that you have -- that you have made, because if -- it's important to ascertain whether it was or was not a part of the Prosecution's case.
>
> Mr NICE: We better look at those filings as well then.
>
> JUDGE ROBINSON: -- dealing with that as one part of the Prosecution case, and looking at evidence which might have supported it. Yes, Mr Milošević.
>
> THE ACCUSED: [interpretation] Mr Robinson, for the duration of 15 minutes here Mr Nice has been explaining that I did not advocate a Greater Serbia and then that I did advocate a Greater Serbia. I don't see how it is possible to have a coherent conversation if one doesn't know what the accusations are. He is now talking about the historical idea and separating out from the non-historical idea and so on. At the beginning, before a single witness was brought, Mr Nice did not

[310] *Ibid.* T(E) 43227.
[311] *Ibid.* T(E) 43227-43228.

deal with any historical concepts. What he did was present vague and incredible nebulous arguments [just as was done in the Indictment. Mr Kay just read to him what he set out in his introductory remarks, where he expressed his intention to show] through witnesses […] what the accused did. Look at this logical caricature presented by Mr Nice just a while ago. On the one hand, he admits what I am saying, and that is that the thesis of all Serbs in one state can be implemented through Yugoslavia, which is why we advocated the preservation of Yugoslavia since it was an existing state in which all the Serbs lived in one state. Then he goes on that in three different places [- Kosovo, Croatia and Bosnia -] and he's referring to the three parts of this alleged indictment, [I]wanted to implement this in various ways. These were three separatist movements breaking up Yugoslavia. If this hasn't become clear to you by now, then nothing is clear to you. I did not organise these three separatist movements in Croatia, Bosnia, and Kosovo in order to create a Yugoslavia in which all Serbs could live in one state when Yugoslavia has been existing [for 70 years]. Is there any logic in this? This is insulting to the average intelligence of an average man.

JUDGE ROBINSON: Thank you, Mr Milošević [*sic*]. Let's proceed now.[312]

271. Later on the Prosecutor takes the floor again:

Mr NICE: Your Honour, with your leave, in light of the observations that have been made and the concern of the Court, I would invite you just to -- I'll just find it for you in the -- because it's -- actually encapsulates the position right from the beginning. If you'll just give me one second. It's in the opening, and -- what I said was this dealing with Western Slavonia. I think it's on about page 50. "The creed openly espoused by the man Šešelj went by the title of Greater Serbia." […]

I'm sorry. The creed openly espoused by the man Šešelj went by the title of Greater Serbia. It's a phrase that is bound to be heard in this Court. We will not ourselves encourage its excessive use […] We don't particularly associate it as a title with the approach of the accused whose purposes we have already separately described. […] Now, that I think is the first time in the opening that the words "Greater Serbia" featured on my lips, and if you go back to the joinder motion it featured on the lips of the accused and not I think until reply from me.

JUDGE ROBINSON: In response to the comment that I just made that I would have the Chamber staff research it, I've just been handed a copy of the section of the 98 *bis* decision, paragraph 249, which refers to Ambassador Galbraith testifying that he believed that the accused, and here I quote: "Was the architect of a policy of creating Greater Serbia and that little happened without his knowledge and involvement." And then in paragraph 288 the Chamber identifies seven bases for its conclusion that the Chamber could infer that the accused not only knew of the genocidal plan but that he also shared with its members the intent to destroy. And this second matter referred to is the accused's advocacy of and support for the concept of a Greater Serbia.

Mr NICE: I don't think you'll find […] that we expressed ourselves differently or inconsistently from the way we had throughout.

[312] *Ibid.* T(E) 43228-43230.

> JUDGE ROBINSON: It's an important clarification to make, Mr Nice, that the Prosecution's case is not so attached -- is not as attached to the concept of a Greater Serbia as it is to the idea of all Serbs living in the same land. In one state. In one state. Although I would have to say that I still have it -- I still have a doubt as to whether there isn't a proper basis for saying that that was the Prosecution's case. Yes. Initially, at any rate. [Mr Milošević, yes].
>
> [The Judges of the Trial Chamber confer] […]
>
> THE ACCUSED: [interpretation] Allow me, Mr Robinson, to say that my meagre intellectual faculties are insufficient for me to understand what Mr Nice has said. I wish to have it explained to me whether the existence of Yugoslavia […] in which all Serbs, Croats, and the Slav Muslims lived, whether my advocation of the preservation of this Yugoslavia or the historical concept that was not spoken of, what it is actually that Mr Nice is alleging against me. He is using concepts he does not understand, and you don't understand what he is saying and neither do I. This is utter confusion. [I simply want to understand.][313]

272. Judge Robinson came back to the matter:

> […] I've just been handed another part of the Chamber's decision […] this is the Prosecution's response. In paragraph 262 of the Prosecutor's response it says: "This amounted *de facto* to planning for a Greater Serbia." […] And then in paragraph 273, in the middle of that paragraph: "However, the self-determination of the Serbian people would include the territories with Serb majorities in Croatia and Bosnia and Herzegovina, including a *de facto* Greater Serbia […] And in paragraph 276, the third-to-last line: "More generally, witnesses were clear that the accused wanted to create a Greater Serbia."
>
> So, Mr Nice, I give you my personal view. I don't think we have settled the matter. Clearly it's an important matter to be settled. [… T]he accused needs to know the case that he's facing, and if there has been what I term advisedly a retreat from a particular position, then we need to know that. And if the present position is in substance the same […] then of course we still need to deal with it.
>
> Mr NICE: Well, Your Honour, our position has in no way changed. There's no question of a retreat or change of position.[314]

273. Mr Nice later cited what he had said at a previous hearing:

> […. A]nd indeed the only other passage I think which you may find […] is in the joinder application […] And I said this: "Greater Serbia features, of course, in the writing and it features only to a very limited extent in the pleadings […]."[315]

274. Judge Kwon invited the Prosecutor to read a passage in the 98 *bis* Decision, in particular paragraph 252 which states the following: "It is the Prosecution case that the accused intended to

[313] *Ibid.*, T(E) 43231-43234.
[314] *Ibid.*, T(E) 43240-43241.
[315] *Ibid.*, T(E) 43241-43242.

destroy the Muslim population of those parts of Bosnia and Herzegovina essentially earmarked for the inclusion into a Greater Serbia." Judge Robinson added: "That seems clear enough, Mr Nice. That was the Prosecution's – " Denying the evidence, Prosecutor Nice added: "That's the Chamber's interpretation of what we expressed in our submissions."[316]

275. Faced with this situation, Judge Robinson returned to the matter later, having checked some of the Prosecutor's submissions:

> JUDGE ROBINSON: Mr Nice, I've had more time to consider this matter, and I am clearly of the view that the concept of a Greater Serbia was indeed a central plank in the Prosecution's case. It was the basis on which the motion for joinder was made, and I refer to two passages, paragraph 13 of the motion: "In the present case the three indictments concern the same transaction in the sense of a common scheme, strategy, or plan, namely the accused Milošević's overall conduct in attempting to create a Greater Serbia, a centralised Serbian state encompassing the Serb populated areas of Croatia and Bosnia and Herzegovina and all of Kosovo."
>
> And then on page 18 -- sorry, paragraph 18, page 7, at the bottom, "He, that is Milošević, later exploited these [fears] in Croatia, Bosnia-Herzegovina and Kosovo in order to further his campaign to create a Greater Serbia."
>
> And indeed it was for that reason that the Appeals Chamber overturned the decision of this Trial Chamber rejecting the motion for joinder, because the Trial Chamber found that there was no common thread, that the concept of a Greater Serbia was not a common thread. It was not the same transaction and the Appeals Chamber held otherwise. So I find it startling now to hear you say that it was not part of the Prosecution case.
>
> It may be that you now say, you now take a more pragmatic decision […] but I cannot allow you to say that it was not a part of the Prosecution's case. The accused needs to know what he's facing. And if you need time to consider this matter, Mr Nice, as I consider it extremely important to the case, then we'll give you time.[317]

276. Prosecutor Nice, undoubtedly aware of the disaster that agreement to such an offer would represent, replied that he did not need time because, for him, there was no change.[318] However, he almost immediately continued arguing the complete opposite of his earlier assertions. Forgetting that he mentioned the difference in approach between Milošević and the Accused, he said: "I was cautious in the extreme in [the] way we argued for and presented [Milošević's] thinking processes [which] would have led to a *de facto* position, a *de facto* Greater Serbia,

[316] *Ibid.*, T(E) 43243.
[317] *Ibid.*, T(E) 43244-43246.
[318] *Ibid.*, T(E) 43246.

similar in geographical extent to that which might have been argued for by this witness [Šešelj]."[319]

277. Judge Bonomy then asked the Prosecutor why his submissions referred to Greater Serbia if the Prosecution knew that the historical context was radically different. The evasive reply offered by Prosecutor Nice blamed, without spelling it out, difficulties due to the passage of time which prevented his team from having a coherent approach.[320] He ended by inviting the Trial Chamber to choose from several arguments, including smoothing out any difference between the approach of Milošević and that of Šešelj.[321] This did not prevent him, when asked another pressing question by Judge Bonomy, from immediately acknowledging once again Šešelj's singularity with regard to the substance that he assigned to Greater Serbia.[322]

278. This to-ing and fro-ing went on for some time before Prosecutor Nice attempted, with the help of his colleague, Mr Saxon, to summarise once more the position of the Prosecution, which this time attributed the concept of a Greater Serbia to the Accused Milošević. Mr Nice said: "[…] Once the possibility for preserving federal Yugoslavia was gone, […] then a second plan has to come […] into effect […] that's the stage at which a Greater Serbia became the reality in [Milošević's] mind, we would argue."[323]

279. The Accused Milošević did not fail to note the peculiarity of the situation and to turn it to his advantage:

> Now, this is probably the first and the only instance in any trial […] [three quarters of the way through the trial, we have been here since 2002 and it is now 2005] that the Prosecution, after three and a half years since the beginning of their case, is not aware of what exactly their charges are.[324]

280. This lengthy exchange in another trial is not part of this trial. The Chamber is well aware of the independence of each trial. However, there is a clear connection, which no doubt prompted the Prosecutor to tender into evidence the testimony of Vojislav Šešelj in the *Milošević* case. This testimony is therefore evidence in this case. It relates to a question at the heart of the Prosecutor's theory of a joint criminal enterprise. The JCE assumes that there are members who are nurturing the same criminal design. Yet, what emerges from the above-cited exchange is that the Prosecutor's approach is confused, to say the least. This confusion in the *Milošević* case is

[319] *Ibid.*, T(E) 43247.
[320] *Ibid.*, T(E) 43250.
[321] *Ibid.*, T(E) 43250-43251.
[322] *Ibid.*, T(E) 43253.
[323] *Ibid.*, T(E) 43259.

strongly reflected in this case and reinforces the judges' doubts in regard to the Prosecution's demonstration of the very existence of such a common criminal plan.

(c) Finding

281. In view of the aforementioned, the Chamber, by a majority, Judge Lattanzi dissenting, finds that the Prosecutor has not proved the existence of a JCE.

2. Physical perpetration

(a) Allegations and analysis

282. Paragraph 5 of the Indictment charges the Accused with physical perpetration in relation to persecutions (Count 1) by ethnic denigration (paragraphs 15 and 17 (k)) with respect to the Accused's speeches in Vukovar and Hrtkovci, and in relation to the charges of deportation and inhumane acts (forcible transfer) (Counts 10 and 11, paragraphs 31 to 33), with respect to the Accused's speech in Hrtkovci.[325]

283. These charges became void of a legal basis once the Chamber, by a majority, rejected the existence of crimes against humanity. Moreover, the majority recalls that the Prosecution often conflated the calls by the Accused aimed at rallying the Serbian forces and fighters in the face of the enemy (mobilisation against the Ustashas or the *Balijas*) and the calls that were directed against the non-Serb civilians. The mere use of an abusive or defamatory term is not sufficient to demonstrate persecution. Furthermore, the Prosecution did not offer any contextual evidence that would allow one to measure the real significance or impact of the speeches in Hrtkovci or Vukovar; bearing in mind that the Chamber, by a majority, with Judge Lattanzi dissenting, distinguishes between speeches and actions that stem from a conflict between the communities and actions that stem from deliberate and discriminatory criminal violence.

284. The majority also notes that even if we narrow down the calls to those which, given their context, could be said to have targeted non-Serb civilians (Croatian civilians, especially in the Hrtkovci speech), the analysis of the real significance of this speech suffers from the same noticeable insufficiency. The Accused, as the majority already recalled, did not take part in any

[324] *Ibid.*, T(E) 43265.

exchange of houses. Even if he encouraged them, in a context that was deemed coercive, he would not be a direct perpetrator of persecutory acts, if these exchanges can be qualified as such. In regard of calls to "cleanse" the area from Croats, it was also understood during the hearings that these calls, which went against the policies of the Serbian government at the time - deemed as fearful and as offering little protection to the interests of the Serbian refugees - were not accepted, let alone executed. Finally, the Chamber, by a majority, Judge Lattanzi dissenting, does not consider that the Prosecutor has proven the existence of persecutory acts. Even if he had, these criminal acts would not suffice to convict, since this is a Tribunal whose jurisdiction is confined to acts the magnitude of which is sufficient to be qualified as crimes against humanity.

(b) Conclusion

285. The Chamber, by a majority, Judge Lattanzi dissenting, finds that in the present case the Accused cannot be held responsible under Article 7 (1) of the Statute for having physically perpetrated the crimes of persecution, as crimes against humanity as charged in the Indictment. The Chamber, unanimously, finds that in the present case the Accused cannot be held responsible under Article 7 (1) of the Statute for having physically perpetrated the crimes of deportation and inhumane acts (forcible transfer), as crimes against humanity, as charged in the Indictment.

B. Individual criminal responsibility under Article 7 (1) of the Statute for instigating crimes

1. Allegations and submissions of the parties

286. In the Indictment, the Prosecution alleges the instigation of crimes as a form of responsibility that the Accused bears both as an "individual" and as a participant in a JCE of the first category, or alternatively, of the third category. The alleged acts of instigation are dealt with in the Indictment as part of the JCE. With respect to the *actus reus* of instigation, the Prosecutor alleges that there are several ways in which the Accused instigated the key participants to commit the crimes charged: through his inflammatory speeches in the media, during public events, and during visits to volunteer units and other Serbian forces in Croatia and Bosnia and Herzegovina; by openly espousing and encouraging the creation by violence of a homogeneous Greater Serbia encompassing the territories specified in the Indictment; by calling publicly for

[325] The Chamber notes that in its Closing Brief the Prosecution explicitly abandoned charges of direct and public denigration as a persecutory act in relation to the speeches in Mali Zvornik (Prosecution Closing Brief, para. 562, note

the expulsion of Croatian civilians from parts of the Vojvodina region in Serbia (namely Hrtkovci, Nikinci, Ruma, Šid and other places bordering Croatia); by indoctrinating the volunteers connected to the SRS, whom he had recruited, with his extremist rhetoric vis-à-vis other ethnicities.

287. Moreover, the Prosecution claims that the Accused instigated the direct perpetrators of the alleged crimes: by using inflammatory and denigrating propaganda against non-Serbs in his speeches, publications and public appearances; by travelling to the frontlines to visit and encourage Serbian forces, including *Šešeljevci*, in the fight against non-Serbs; by dispatching high-ranking SRS/SČP members or commanders to spread his message of hate, revenge and ethnic cleansing; by failing to act against *Šešeljevci* who participated in crimes against non-Serbs; and, more generally, by using propaganda techniques to create a climate of threat, to stoke fear and hatred amongst the Serbian and non-Serb populations, and to advance by all means available his vision of ethnically pure Serbian territory encompassing Serbia and parts of Croatia and BiH.

288. The Prosecution also maintains that the Accused was aware of the power of his propaganda; that he was aware of his influence with Serbian volunteers and in particular the *Šešeljevci*, that his words would have been heard by the "nationalists" and sympathisers of his ideology and that they would have instigated a violent reaction in the average listener; and that he understood the substantial likelihood that crimes would be committed as a consequence of delivering his message to nationalist Serbs, including *Šešeljevci*.

289. The Accused disputes in general the allegations of the Prosecution which, according to him, are solely based on an erroneous or exaggerated interpretation of his words. For the Accused, the conditions for instigation have not been met because the Prosecution confuses the *actus reus* and the *mens rea* of instigation by relying on the same evidence – his speeches - in order to establish them. The Accused cites the judgement rendered in the *Kordić* case and the ICTR judgement in the *Akayesu* case to claim that incitement of hatred through speeches is not a crime under customary international law.

290. Moreover, the Accused disputes the credibility of many witnesses. He further claims that other witnesses had been subjected to pressure by the Prosecution in order to sign preliminary statements that allegedly misrepresented their words.

1715).

291. The Accused acknowledges that he advocated his ideology but considers that this was a lawful activity.[326] On the allegation of systematic denigration of the non-Serb populations, he maintained that the term *Ustasha* is not abusive to Croats, that, contrary to the claims of the Prosecution, he never made generalisations such as: "all Croats are Ustashas, worse than the Nazis" and that the Prosecution ascribed words to him that he never uttered, as was confirmed by some of the witnesses. Moreover, the Accused alleges that he could not be held responsible for creating a climate of terror since it was not he who had created it but Tuđman and his Ustashas. The Accused maintains that there was nothing to prevent him from calling on the Serbian volunteers to fulfil their legal obligation by enlisting, and that the Prosecution did not present any evidence to support its allegations that the Accused had ordered or invited volunteers to commit crimes in the zones of conflict. With respect to the requirement of a substantial contribution in instigating the crimes committed, the Accused considers that it has not been proved since none of the volunteers have been convicted of war crimes.

292. The Accused acknowledges that anyone who is engaged in political activities has an influence on public opinion and is aware of this influence, but that in this case it is important to asses the extent of such an influence. He confirms that he was aware of the war context at the time, but says that he was not the only one to be aware of it and that others have not been prosecuted for this. He maintains, moreover, that the Prosecution did not present any proof that he had been informed of the criminal past of some of the volunteers. He also alleges that none of the testimonies have shown that he knew what was happening in the field and that crimes were being committed in the combat zones to which the SRS/SČP volunteers had been deployed. With regard to his alleged intent to provoke his listeners into persecuting the non-Serb population for political or religious reasons, the Accused maintains that this has not been established by the Prosecution.

2. Preliminary observation

293. The Chamber first notes that, in view of the fact that the majority of the Chamber has not accepted the existence of crimes against humanity, the analysis that follows will be limited to the examination of the responsibility of the Accused for having instigated the commission of violations of the laws or customs of war.

[326] The Chamber notes that the Accused's demonstration relied on the legal analysis of the *actus reus* of instigation as a mode of participation made by the Chamber in its oral Decision of 4 May 2011, pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence. *See* T(E) 16826-16886 (98 *bis* Decision) and the partially dissenting opinion of Presiding Judge Antonetti (T(E) 16886-16925, 16926-16988).

3. Applicable law

294. For a Chamber to be able to find that instigation to commit crimes existed, it must establish that there was a physical element, or *actus reus*, for the acts constituting instigation, which must have contributed substantially to the commission of the crimes, and that there was a mental element, or *mens rea*, showing the intention of the instigator to cause the commission of the crimes.

295. The physical element of instigation involves prompting another person to commit an offence.[327] It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused, it is sufficient to demonstrate that the instigation was a factor contributing to the conduct of another person committing the crime.[328] The Chamber, by a majority, Judge Lattanzi dissenting, considers that it should also be demonstrated that the instigator used different forms of persuasion such as threats, enticement or promises to the physical perpetrators of the crimes.[329] Furthermore, it considers that the incriminating statements must be clearly identifiable and their existence firmly established.

296. With respect to the definition of the instigator's state of mind, he must have had the intent to provoke or induce the perpetration of a crime by the person who committed it[330] or at least have had the awareness of the substantial likelihood that a crime would be committed in the execution of this instigation.[331]

[327] *Kordić and Čerkez* Appeal Judgement, para. 27, upholding the *Kordić and Čerkez* Trial Judgement, para. 387. *See* also *Nahimana et al.* Appeal Judgement, para. 480; *Ndindabahizi* Appeal Judgement, para. 117.
[328] *Kordić and Čerkez* Appeal Judgement, para. 27. *See* also *Kordić and Čerkez* Judgement, para. 387; *Kvočka et al.* Judgement, para. 252; *Naletilić and Martinović* Judgement, para. 60; *Brđanin* Judgement, para. 269; *Orić* Judgement, para. 274.
[329] Moreover, the Prosecution seems to subscribe to the same logic (*see* Prosecution's Pre-Trial Brief, para. 146 referring to Article 91 (1) of the Rwandan Penal Code in footnote 498).
[330] *Kordić and Čerkez* Appeal Judgement, paras 32 and 112; *Boškoski and Tarčulovski* Appeal Judgement, para. 68; *Brđanin* Judgement, para. 269; *Kvočka et al.* Judgement, para. 252; *Nahimana et al.* Appeal Judgement, para. 480; *Taylor* Appeal Judgement, para. 433 citing the *Čelebići* Appeal Judgement, para. 352.
[331] *Kordić and Čerkez* Appeal Judgement, paras 32 and 112; *see* also *Boškoski and Tarčulovski* Appeal Judgement, para. 68; *Brđanin* Judgement, para. 269; *Kvočka et al.* Judgement, para. 252; *Nahimana et al.* Appeal Judgement, para. 480; *Taylor* Appeal Judgement, para. 433 citing the *Čelebići* Appeal Judgement, para. 352.

4. Analysis

(a) The Accused promoted his ideology by every means and use of propaganda techniques

297. The Accused does not deny that he promoted his ideology from speaker's platforms, at meetings, press conferences, through publications, books or by other legitimate means such as propaganda at the times relevant to the Indictment.[332]

298. The Chamber received several pieces of evidence on the use of propaganda techniques by the Accused, in particular in the testimony and report of Anthony Oberschall.[333] According to him, propaganda is a persuasion technique that spreads ideas, uses images, slogans and symbols that influence our prejudices and our emotions and whose goal is to lead the person listening to these messages to accept and adopt the position of the person conveying the message, regardless of whether their content is true or not.[334] It is different from "deliberative discourse" in that it involves the repetition of messages whose aim is to stimulate fear in the public and to direct it to support the political leaders resorting to violence aimed at eliminating this threat.[335] During his testimony Anthony Oberschall used several examples taken from the Accused's speeches[336] to explain that his speeches between 1990 and 1994 were characterised by "xenophobic nationalism" exacerbated by the incessant repetition of the same discourse which did not change depending on the media or the different audiences that he addressed.[337] According to him, the Accused used persuasion techniques such as fear, victimisation, repetition and negative stereotypes which are well-known propaganda techniques.[338] For Oberschall, the speeches of the

[332] The Accused asserts, and this is confirmed by Defence Witness Aleksandar Stefanović, that he used propaganda as a means of achieving his political goals (*see* Final Brief of the Accused, pp.101-102 and p. 496).
[333] P5, P3 and P4. *See* "Decision regarding the Admission of Evidence Presented during the Testimony of Anthony Oberschall", 24 January 2008, paras 2, 13 and 24.
[334] P5, p. 4. *See* also Anthony Oberschall, T(E) 2053-2054.
[335] Anthony Oberschall, T(E) 1971-1975.
[336] *See* Exhibit P1, "Video – Šešelj's speech at Jagodnjak, clip B", April 1991; P2, "Video - Without Incisions and without Anesthesia, TV NS", May 1991; P6, "Video - interview with TV *Politika*, clip A", 25 July 1991; P7, "Video - interview with TV *Politika*, clip C", 25 July 1991; P8, "Video - interview with TV *Politika*, clip D", 25 July 1991; P9, "Video - interview with TV *Politika*, clip E", 25 July 1991; P10, "Video - interview with TV *Politika*, clip F", 25 July 1991; P11, "Video - The Other Side of the Face on TV Novi Sad, clip A", 1 June 1991; P12, "Video – The Other Side of the Face on TV Novi Sad, clip B", 1 June 1991; P13, "Video – The Other Side of the Face on TV Novi Sad, clip D", 1 June 1991; P14, "Video – Šešelj's speech at Jagodnjak, clip A", April 1991; P17, "Video – current affairs programme on NTV Studio B", 6 November 1991; P18, "Video – visit by SRS leadership to Banja Luka on RTS", 13 May 1993; P20, "Video - Vukovar 1991, clip C"; P21, "Video – Vukovar, The City of Lost Souls, clips A, B and C".
[337] Anthony Oberschall, T(E) 1969-1970. *See* P5, p. 2, for reference to the relevant period (1990-1994).
[338] Anthony Oberschall, T(E) 1975-1977, 1980-1981, 1983-1984.

Accused contained a heavy dose of misinformation or lies,[339] such as the reference to "a civilised exchange of population" rather than speaking of an ethnic cleansing.[340]

299. The Chamber analysed several exhibits, such as P1337, which is an extract from the Accused's book entitled *Ideology of Serbian Nationalism*, published in September 2002. In it, the Accused says that propaganda is based on the fact that the majority of people are ready to believe indiscriminately in everything they read, hear or see on television;[341] or Exhibit P1201 which contains the transcript of a discussion on 12 June 1992 on *TV Politika*, in which the Accused emphasised that he had studied the mass psychology of fascism.[342]

300. While the Chamber acknowledges together with the Accused that the propaganda of a "nationalist" ideology is not criminal in itself, contrary to the Accused's claims, it must analyse and qualify, in accordance with the law applicable in this matter, the statements made by the Accused and their potential impact on the perpetrators of the crimes referred to in the Indictment, in light of the cultural, historical and political context.[343]

(b) Calls to commit crimes through inflammatory speeches

301. The Chamber, by a majority, Judge Lattanzi dissenting, did not consider as relevant evidence the speeches not covered by the period in the Indictment, deeming that the present judgement should be based on the facts and speeches that fall within the temporal framework precisely defined by the Prosecution. For these reasons, the Chamber rejected the speeches of no known date or transmitted by an unverified source. Furthermore, the majority only assigned limited probative value to press articles that did not come from official SČP/SRS newspapers – *Velika Srbija* and *Zapadna Srbija* – or ones that were not published in the works of the Accused, and whose authors were not heard as witnesses – and for which no other contextual element was provided.

302. The Chamber is of the opinion that, for several reasons, the press articles must be analysed with great caution, depending on which paper they come from. A press article often only reflects the subjective view of its author, whose view might be affected by political

[339] Anthony Oberschall, T(E) 2076.
[340] P5, p. 24, referring to excerpts nos 187, 189, 191, 192 and 251 of Annex 2 of the report. For other examples of misinformation and lies, *see* also P5, pp. 25 to 27.
[341] P1337, p. 7.
[342] P1201, p. 16.
[343] *See* in this respect the *Nahimana et al.* Judgement, paras 1011, 1020-1022; *Nahimana et al.* Appeal Judgement, paras 698-703; *Akayesu* Judgement, para. 557; *Bikindi* Judgement, para. 247; *Nzabonimana* Appeal Judgement, para. 134; ECHR, *Perinçek v. Switzerland* case, Appeal Judgement of 15 October 2015, paras 207, 234 and 280.

affiliation; some newspapers may also exaggerate or misrepresent statements made or the nature of events. When the author of an article in question has not appeared before the Chamber to testify, the judges and the parties are unable to test the reliability of the content of the article.

303. Similarly, the Chamber, by a majority, Judge Lattanzi dissenting, did not consider as detrimental to the Accused his speeches that could be assessed as nothing more than support for the war effort,[344] as electoral speeches or as speeches that concerned territories that did not come under the geographic scope of the Indictment.[345]

(i) Speeches on the way to Vukovar and in Vukovar in November 1991

304. The Chamber has exhibits P1283 and P1285 on the matter of the speech on the way to Vukovar, which the Accused gave on 7 November 1991.

305. In Exhibit P1283, an article in the *Politika* daily, entitled "We're Fighting against Fascism" of 8 November 1991, the Accused is mentioned as having stopped in Šid where he attended a press conference, the content of which, however, is not reported.[346]

306. According to Exhibit P1285, an article of 8 November 1991 also from *Politika* and entitled "Mopping-up Operation between Bosut and Sava to Be Launched", while on his way to Vukovar to see the Serbian volunteers, the Accused stopped off in Šid on 7 November 1991 and held a press conference there. He allegedly stated that "this entire area will soon be cleared of the Ustashas" and told the Catholics in the region that they would have nothing to fear if they did not cooperate with the *Ustashas* and join their units.

307. The Chamber nonetheless notes that Exhibit P1285 is a newspaper article whose author did not testify and that there was no witness who could provide the context. However, more decisively, the Chamber, by a majority, Judge Lattanzi dissenting,[347] does not deem that the reported speeches, even if we assume they have been proven, can be considered as acts of

[344] Judge Lattanzi does not have the same notion as the majority of what constitutes a speech in support of the war effort.
[345] Thus, for example, the Chamber did not accept as relevant proof the speeches of the Accused calling for the expulsion of the Albanian minority in Kosovo and Macedonia and using a pejorative (*Shiptar*) when speaking of this minority (*see* for example P1203, pp. 11-12; P1197; P1213, p. 22).
[346] P1283, p. 4.
[347] For her part, Judge Lattanzi considers that the content of what was said did constitute a form of instigation. However, as the only proof for this speech is a press article that was not admitted through a witness and was not from one of the Accused's newspapers, it should be analysed in light of the totality of the evidence.

instigating a crime. Their context rather suggests that these were speeches aimed at reinforcing the Accused's political party.[348]

308. With respect to the Accused's speeches in Vukovar on 12 and 13 November 1991, the Chamber has heard many testimonies and seen several exhibits that show they were given and confirm their content.[349]

309. Witness VS-027 said that on 13 November 1991 he had heard the Accused say in front of high-ranking members of the Serbian forces that, "No *Ustashas* must leave Vukovar alive."[350]

310. According to Witness VS-007, a member of the SČP who was in Vukovar,[351] the Accused came to Vukovar around 11 November 1991 for a surprise visit to the SRS volunteers.[352] He explained that the Accused was surrounded by a crowd of at least fifty volunteers, members of the Leva Supoderica unit and soldiers from the Guards Brigade whom he encouraged through his words and by his presence,[353] telling them in particular to "fight heroically against them [*Ustashas*], show no mercy".[354] Witness VS-007 also explained that, on the evening of 11 November 1991 or the following day, the Accused cruised around town in a vehicle with a loudspeaker, addressing the Croatian soldiers; the witness gave several versions of what was said, either remembering a call to surrender, telling the "*Ustashas*" that they would be given a fair trial, or the fact that if they did not do so, they would die.[355]

311. Witness VS-002, a member of the Serbian forces that were in Vukovar during the events,[356] claimed that the members of the Guards Brigade had called the Croatian soldiers over the loudspeaker to surrender, but he had not heard that the Accused had done the same.[357]

312. Witness Vilim Karlović, a member of the National Guards, asserted having heard on the streets of Vukovar, sometime between 10 and 15 November 1991, after the fall of the town, a

[348] *See* for example: VS-004 T(E) 3380 (the term *Ustasha*, as used by the Accused, meant "Croats who massacred the Serbs during the Second World War"); P1074 para. 69 (the term *Ustasha*, as used by the Accused, referred to the uniformed and armed enemy).
[349] In addition to the evidence mentioned below, *see* also, for example: C10, para. 37; C11, pp. 15-16; P1056 under seal, paras 37-39; P1058 under seal, paras 45-47; P1372 under seal, pp. 1-2.
[350] VS-027, T(E) 14579-4580 (closed session); P1370 under seal, p. 27, but *see* VS-027, T(E) 14574-14576 and 14591 (closed session); P868 under seal, T. 11683 to 11687. *See* also VS-016, T(E) 11119-11120, 11170-11171, 11173-11174 (closed session), 11192-11193, 11196-11197, 11290 (closed session).
[351] VS-007, T(E) 6028, 6030, 6032, 6069, 6070, 6072 (closed session).
[352] VS-007, T(E) 6069-6071 (closed session).
[353] VS-007, T(E) 6070- 6072 (closed session), 6093, 6096, 6097-6098 (closed session).
[354] VS-007, T(E) 6096 (closed session).
[355] VS-007, T(E) 6073 (closed session), 6099-6100 (closed session).
[356] VS-002, T(E) 6450, 6451 (private session), 6458, 6461 and 6473.
[357] VS-002, T(E) 6614-6616.

pre-recorded call to surrender in a voice that was identical to that of the Accused, saying: "*Ustashas* surrender. There's no need to lay down your lives anymore."[358]

313. Witness Vesna Bosanac, who became Director of the hospital in Vukovar in the summer of 1991,[359] explained that the Accused had come to Vukovar in October and November 1991 and that she had heard him encouraging the soldiers, "whether they were volunteers or any other unit members."[360]

314. In his prior statement, Witness Zoran Rankić explained that in mid-November 1991 he had gone to Vukovar together with Zoran Dražilović and the Accused. The Accused was welcomed by Veselin Šljivančanin, Mile Mrkšić and Miroslav Radić in front of at least fifty volunteers who fired into the air in approval, and stated that "Not one *Ustasha* is to leave Vukovar alive."[361] The witness also said that on several occasions, he had seen the Accused saying the following over the megaphone: "*Ustashas*, you are surrounded. Surrender, because you have no way out."[362] The witness also stated that in his opinion the term "*Ustasha*" was directed at Croatian soldiers; he believes that people may have their own understanding of this term.[363] However, in court the witness changed his testimony, claiming that what he said had not been accurately reproduced, that he did not remember the Accused having said that "Not one *Ustasha* is to leave Vukovar alive," and that he had simply called on the Croats to surrender.[364]

315. Witness Nebojša Stojanović said in his prior statement that he had been present during the visit to Vukovar by the Accused, who was accompanied by Vakić, and Kameni and his unit; according to the witness, the Accused was there to encourage the volunteers.[365] Nebojša Stojanović also said that every day Chetnik music and a pre-recorded message by the Accused were played from a loudspeaker mounted on a military vehicle, calling on the Croats to surrender and promising to spare their lives.[366] However, in court the witness changed his testimony, claiming that he had not seen the Accused but had only heard that he had been there; nonetheless, he confirmed having heard the voice of the Accused being broadcast over the

[358] Vilim Karlović, T(E) 4685-4686, 4708-4709.
[359] Vesna Bosanac, T(E) 11391.
[360] *Ibid.*, T(E) 11421-11422.
[361] P1074, pp. 17-19.
[362] P1074, p. 19.
[363] P1074, pp. 18-19; P1075, p. 4.
[364] Zoran Rankić, T(E) 15952, 16058-16059.
[365] P526, p. 10; P527, p. 5; P528, p. 10.
[366] P526, p. 10; P527, p. 5; P528, p. 10.

loudspeaker mounted on a military vehicle, telling the Croats to surrender in order to avoid a bloodbath in Vukovar.[367]

316. In an interview for the BBC documentary *The Death of Yugoslavia*, the Accused acknowledged that he had visited the Vukovar front a few times, where he even briefly took part in combat, and that his volunteers had been engaged until the fall of the town.[368]

317. Finally, in his testimony in the *Milošević* case, the Accused admitted going to Vukovar twice, first 30 days and then 20 days before the fall of the town, and making statements on Serbian radio in Vukovar calling on the Croats to surrender and promising them protection under the rules governing the treatment of prisoners of war.[369] This time he also specified that the term "Ustasha" referred to fascist Croats who had fought on the side of the Nazis in the Second World War and had massacred Serbs.[370] In the context of the 1990s, this term for him meant the Croatian extremists, promoted by Franjo Tuđman, who persecuted Serbs.[371]

318. In light of the relevant facts set out above, it seems that the speech on the way to Vukovar (of 7 November 1991) and the speech in Vukovar (around 12-13 November 1991) had been given by the Accused.[372] However, the Chamber notes the contradictions between witnesses and the variations between a number of statements by the same witnesses. These variations sow a seed of doubt as regards the exact content of the Accused's statements. Incidentally, even if the statements ascribed to the Accused in their most controversial version are accepted, the Chamber, by a majority, Judge Lattanzi dissenting, cannot dismiss the reasonable possibility that the speeches were made in a context of conflict and were aimed at reinforcing the morale of the troops on the Accused's side, rather than being an appeal to them to show no mercy (for otherwise, calling on the *Ustashas* to surrender over a megaphone in the streets of Vukovar would make no sense). Moreover, the Chamber notes that testimony has been heard according to which the Accused's visit to Vukovar was essentially a public relations

[367] Nebojša Stojanović, T(E) 9692-9694, 9781.
[368] P644, p. 12.
[369] P31, T. 43449-43456, 43564 and 44130.
[370] P31, T. 42965, 43090, 43106, 43204-43205, 43818, 43829 and 44132.
[371] P31, T. 43093, 43098, 43099, 43205, 43319, 43818 to 43820, 43875, 44106, 44114, 44116, 44274 and 44276.
[372] Judge Antonetti subscribes to the finding that the Accused held speeches on the way to Vukovar and in Vukovar. However, with regard to the content of the Vukovar speeches, he found for his part that the contradictions arising from witness testimonies do not allow a reasonable trier of facts to qualify the exact nature of the so-called Vukovar speeches.

exercise, without any military significance, by a politician seeking publicity who had no control over the operations; it was the semi-theatrical posturing of a comic-opera general.[373]

(ii) Mali Zvornik speech in March 1992

319. The Chamber then turned its attention to a speech purportedly given by the Accused in Mali Zvornik in March 1992, as alleged by the Prosecution in the Indictment.

320. Paragraph 22 of the Indictment and paragraph 91 of the Prosecution Pre-Trial Brief make an express reference to this speech that was allegedly given in March 1992.

321. These allegations are based on the testimony of VS-2000, the testimony of the Accused in the *Milošević* case and a report of the Ministry of Defence of the Republic of Serbia dated 20 April 1992, filed under number P831.

322. According to VS-2000, the Accused allegedly said the following:

> Brothers, Chetniks, [...] The time has come for us to give the *balijas* tit for tat. [...] The Drina, the River Drina, is not a boundary between Serbia and Bosnia. It is the backbone of the Serbian state. Every foot of land inhabited by Serbs is Serbian land. Let's rise up, Chetnik brothers, especially you from across the Drina. You are the bravest. [... L]et us show the *balijas*, the Turks and the Muslims [...] the direction to the east. That's where their place is.[374]

323. Almost 1,000 people had gathered outside, including Muslims who had come to protest against this "nationalist" meeting,[375] as well as a large number of policemen from Serbia.[376] According to VS-2000, a little while after the Accused left the hall, having spoken for five or six minutes, a general fight broke out outside.[377] The following day, a photo of the Accused with a band-aid on his face and a bandage on his hand was published in the newspapers.[378]

324. The Accused maintained that this speech was not given in March 1992, but in August 1990.[379] This statement however contradicts what the Accused said when he testified in the

[373] VS-007, T(E) 6049, 6097 (closed session); VS-027, T(E) 14595 (closed session); P1056 under seal, pp. 8-9; P1058 under seal, p. 11. The majority moreover recalls that the Chamber has already found that the volunteers and soldiers in the field had been placed under a single command, that of the JNA or that of the TO, depending on the case.
[374] VS-2000, T(E) 13994-13995.
[375] *Ibid.* T(E) 13992-13993, 14039-14040, 14042-14043.
[376] *Ibid.* T(E) 13995-13996, 14042.
[377] *Ibid.* T(E) 13995-13997, 14044, 14046, 14131-14132.
[378] *Ibid.* T(E) 13995-13997, 14046-14047.
[379] VS-2000, T(E) 14058, 14062-14063, 14085-14086.

Milošević case, where he confirmed that he had given the following speech in Mali Zvornik in March 1992:[380]

> Dear brother Chetniks, especially you across the Drina, you're the bravest, and we're going to clear up Bosnia from the pagans and show them the road to the east where they belong.

325. In *Milošević*, the Accused also stated that he had attacked fundamentalist Muslims and pan-Islamists who wanted Bosnia to separate from Yugoslavia, and called them "*pogani*"; according to him, this should be translated as "waste" or "faeces."[381]

326. Finally, according to the Republic of Serbia Ministry of Defence report of 20 April 1992, the Accused did indeed go to Mali Zvornik on 17 March 1992.[382] This report also says that the Accused left after a brief conversation, [383] which confirms what VS-2000 said, i.e. that the Accused spoke for five or six minutes.

327. The Chamber, by a majority, Judge Antonetti dissenting,[384] consequently finds that the above speech was given by the Accused in March 1992 in Mali Zvornik. However, the precise circumstances surrounding the speech, and described by VS-2000, have not been established. The Chamber deems that it is possible that Witness VS-2000 confused what happened during the speech in Mali Zvornik in March 1992 with another speech given by the Accused at a different time.

328. The Chamber, by a majority, Judge Lattanzi dissenting, is however not in a position to find, beyond all reasonable doubt, that by calling on the Serbs to "clear up" Bosnia of the "*pogani*" and the "*balijas*", the Accused was calling for "ethnic cleansing" of the non-Serbs of Bosnia. In fact, the majority considers that, given the context, the evidence provided by the Prosecution is not sufficient to exclude the possibility that this call by the Accused was more a matter of contributing to the war effort by galvanising the Serbian forces. Moreover, nothing has established that this speech – the words spoken that were described as a "brief conversation" in the police report tendered into evidence by the Prosecutor – had even a limited impact.

(iii) Hrtkovci Speech of 6 May 1992

[380] P31, T. 43724-43726. The Chamber notes that in so doing, the Accused was replying to a question asked by Slobodan Milošević.
[381] P31, T. 43725.
[382] P831, p. 2.
[383] *Idem*.
[384] Judge Antonetti deems that Witness VS-2000 was at least mistaken about the date of this speech. Moreover, Judge Antonetti has doubts about the content of what was said.

329. According to the Prosecution, on 6 May 1992, the Accused made an "inflammatory" speech in the village of Hrtkovci, calling for the expulsion of Croats from the area. As a result of this speech, many Croatian inhabitants decided to leave the village. In his 84 *bis* Statement and Final Brief, the Accused stated that this speech was made as part of his electoral campaign and that non-Serbs had not been persecuted, expelled or forcibly transferred. According to him, they had only participated in voluntary exchanges of homes on the basis of contracts, and these exchanges had started well before May 1992.

330. The Chamber is able to rely on numerous testimonies and exhibits[385] describing the circumstances and the content of the speech made by the Accused on 6 May 1992 in Hrtkovci, but especially on Exhibits P547 and P548, to which the Chamber has assigned high probative value.

331. According to Exhibit P547, a transcript of the "Promotion Rally of the Serbian Radical Party" held on 6 May 1992 in Hrtkovci and published in his book *The Devil's Apprentice*, the Accused stated that the SRS "is fighting for the restoration of an independent and free Serbian state" that will encompass Serbian territories defined by the Karlobag-Karlovac-Mitrovica line within Yugoslavia,[386] and that the village of Hrtkovci was in Serbian Srem.[387] He expressed his wish for democratic multi-party elections to be held quickly.[388] He also stated that there was no room for Croats in Hrtkovci; that only the Croats who had shed blood in combat together with Serbs, who were described as "Catholic Serbs", could remain; that Croats had to leave Serbia and that the Serbian "refugees" would move into the houses of Croats who no longer lived in Hrtkovci and whose addresses would be provided by the police, and that these Croats would have "nowhere to return"; that the Serbian refugees would give the Croats their former addresses in Zagreb in exchange; that the Croats who had not yet left of their own accord would be escorted to the border by bus; he said he firmly believed that the Serbs from Hrtkovci and the surrounding villages would be able to preserve their unity and would "promptly get rid of the remaining Croats in [their] village and the surrounding villages."[389]

[385] The Chamber relied on the following evidence: Ewa Tabeau; Yves Tomić; Katica Paulić; Aleksa Ejić; Franja Baričević; Goran Stoparić; VS-007; VS-034; VS-061; VS-067; VS-1134; C10; C26 under seal; P31; P164; P537 under seal; P547; P548 under seal; P549; P550; P551 under seal; P554; P555; P556; P557; P558; P559; P560; P561; P564 under seal; P565; P566; P571; P631; P836; P1049 under seal; P1050 under seal; P1056 under seal; P1104 under seal; P1201; P1215; P1300; P1330.
[386] P547, pp. 2-4. 6.
[387] P547, p. 4; Aleksa Ejić, T(E) 10357-10358.
[388] P547, p. 6; Aleksa Ejić, T(E) 10338.
[389] P547, pp. 4-5, 9.

332. What was said in this speech was confirmed by Exhibit P548 from which it transpires, moreover, that at the end of his speech, slogans such as "Ustashas out", "Croats, go to Croatia" and "This is Serbia" were chanted by the crowd.[390]

333. On the basis of the evidence presented, the Chamber has found, by a majority, Judge Antonetti dissenting, that the speech made by the Accused on this occasion clearly constitutes a call for the expulsion or forcible transfer of Croats from the village. However, the Chamber deems, by a majority, Judge Lattanzi dissenting, that the Prosecution has failed to prove that this speech was the reason for the departure of the Croats[391] or for the campaign of persecution that the Prosecution alleges was carried out in the village following the speech. It notes, on this matter, the weakness of Expert Tabeau's report on which the Prosecution relied and which, rather than focus on the departures that followed the speech of 6 May 1992, provides a comprehensive list of the departures that took place throughout 1992, while neglecting to specify the reasons behind them. The majority also notes the unreliability of the other evidence presented in order to establish a connection between the speech made by the Accused and the departures of the Croats. The credibility of Witness VS-061 was severely tested during cross-examination. Given the lack of a specific war context in Vojvodina, the majority holds that the evidence on the apparently disparate reasons for the departure of some Croats is insufficient in the extreme; given the questionable methods of evaluation, it was not possible to determine the number of departures, and sometimes even whether they took place.

[390] P548 under seal, p. 2.
[391] Witness VS-067 stated that the Accused's speech had led him to leave Hrtkovci. *See* VS-067, T(E) 15450 (private session); P1049 under seal, pp. 3-4; P1050 under seal, p. 5. However, even if we assume that this single departure had been provoked by the speech made by the Accused, this is not sufficient to establish the crime of deportation, especially as the majority did not find that a widespread or systematic attack against Croatian civilians had taken place.

(iv) Other speeches made by the Accused

334. As part of its analysis of the evidence relating to the speeches made by the Accused in other locations during the period relevant to the Prosecution, the Chamber was in a position to examine, in particular, the report and testimony of Anthony Oberschall. The Chamber thus noted the different warnings the Accused issued to the Croats, to which Oberschall refers,[392] and the examples Oberschall provided of statements denigrating non-Serbs.[393] Nonetheless, the Chamber, by a majority, Judge Lattanzi dissenting, is of the opinion that these warnings should be seen in the context in which they were made; that Witness Oberschall had not taken sufficiently into account the context, which he sometimes failed to identify correctly, subsequently concluding that this constituted "a tremendous change;"[394] that in any case it is not enough for a statement to be insulting or defamatory to qualify as an act of instigation to commit war crimes. Its intrinsic and contextual gravity must be taken into account.

335. Nevertheless, the Chamber, by a majority, Judge Antonetti dissenting, was able to find that two other speeches (in addition to the one made in Hrtkovci on 6 May 1992), made in the Serbian Parliament on 1 and 7 April 1992, clearly constituted calls for the expulsion and forcible transfer of Croats.[395]

336. In the first speech on 1 April 1992, while discussing a draft law on refugees, the Accused stated the following:

> If the Croats have seized Serbian houses in Zagreb, Rijeka and other Croatian cities, it is only normal that Serbian refugees occupy the remaining Croatian houses […].[396]
>
> […] if the Croats are expelling Serbs from their homes on a large scale, then what are the Croats waiting for, here in Belgrade, what are the Croats in Serbia waiting for? An exchange of population: we expel as many Croats from Belgrade, as TUĐMAN has expelled Serbs from Zagreb. Any Serbian family, which arrives from Zagreb, can go to the address of a Croat in Belgrade, and give him his keys and say, go over to Zagreb, an exchange.[397]

[392] P5, pp. 18-22. *See* also: Goran Stoparić, T(E) 2310-2312, 2440; P1075, p. 17; P1215, pp. 7 and 24; P35, pp. 2-6; P153, pp. 41-43; P179.
[393] P5, Annex 2 (*see* for example Exhibits 1, 15, 85, 192).
[394] Anthony Oberschall, T(E) 2155-2160.
[395] During his testimony in the *Milošević* case, the Accused confirmed that he had made these two speeches (P31, T. 44170-44175).
[396] P75, p. 2. The Chamber notes that exhibit P75 is an excerpt from the Accused's book *Speeches of the Deputies* published in 1993.
[397] P75, p. 3.

> […] [I]n International Law, there is the principle of retortion, which in the Serbian language means retaliation. If one state expels members of an ethnic minority from its territory to another state where the majority of this expelled nation lives, it is permissible under International Law to implement this retaliation, and execute a counter-expulsion of the ethnic minority of the state that was the first to expel. Anyway, such population exchanges are not a world novelty. Anyway, if we had grounds after World War Two to expel, who knows how many, hundreds of thousands of Germans because of their collaboration and servitude to fascist Germany, there are many more grounds for the Croats to be expelled, because the crimes, which the Croats have perpetrated, the Germans could not even dream about.[…] It is according to the same principle that TUĐMAN resorted to, to expel the Serbs from Croatia, that we shall expel the Croats from Serbia.[398]

> […W]e are going to expel the Croats, exercising the same right that TUĐMAN has exercised to expel the Serbs. […] We are not going to resort to genocidal activities, because it is not in the blood of us Serbs. We are not going to start killing you, of course. We are simply going to pack you into trucks and trains and let you manage in Zagreb.[399]

337. The second speech of 7 April 1992 reiterated the same message: "[P]erhaps the best solution -- if they pity the Croats so much -- would be simply putting them on buses and trucks and taking them to Zagreb."[400]

338. While it is true that the Chamber finds, by a majority, Judge Antonetti dissenting, that these speeches are barely disguised calls for expulsion, the Chamber, by another majority, Judge Lattanzi dissenting, deems that these statements, which can be categorised as opposition to the official Serbian policies, are the expression of an alternative political programme that was never implemented. The Prosecution has not succeeded in assessing their impact, and the work of Witness Oberschall does not seem to assist greatly. At the end of his testimony he admitted, in reply to a question from Judge Harhoff, that it was almost impossible to establish the impact of these speeches.[401] The same witness, Oberschall, had previously indicated that he had not been able to identify direct calls to commit crimes by the Accused.

339. The lack of any measurable impact, taken in conjunction with the certainty that, at times, calling on the Serbian authorities to resort to retortion against the Croats did not win any favour,[402] does not permit the majority to find that there had been incitement to war crimes, even

[398] P75, pp. 4-5.
[399] P75, p. 6. The Chamber notes that this speech was also reprinted in the report of Anthony Oberschall (*see* P5, Annex 2, record number 182).
[400] P75, p. 7.
[401] Anthony Oberschall, T(E) 2224-2225.
[402] The Accused's speech in parliament was the subject of harsh criticism by the parliamentary authorities, which clearly disassociated themselves from the content (*see* P75, pp.7-8).

if the most inflammatory speeches are taken into account, in particular the ones made in Hrtkovci and before the Serbian Parliament.

340. Similarly, it is not possible to rely on the collection and categorisation of the speeches studied by Oberschall – whose dates, sources, intended audience and context were not always specified or clarified by the Prosecution – to support a finding of instigation. Such context is an important element in the analysis. Its absence makes determining the impact of the speeches unrealistic. In fact, a call to combatants and the authorities, an interview given to a journalist (for which there is no indication whether it had been broadcast and, if so, to what audience) and the statements made at an electoral campaign rally or in parliament by a deputy from a minority party, do not necessarily have the same impact, if any.

341. This lack of certainty with respect to the impact of the Accused's speeches does not mean that the Accused did not have some influence and sway, especially with members of his party[403] or with some combatants.[404] One of them – VS-002 – stated that the Accused "was a *vojvoda*. We would not have refused his orders."[405] Other witnesses specified that the Accused had been the ideological leader of the volunteers,[406] who looked up to the Accused as if he were a god.[407] The Chamber also heard several witnesses who claimed that the Accused's speeches had a significant impact on those who listened to them.[408] However, as in the case of Oberschall's testimony, these testimonies do not provide any reliable indicia through which the impact of the Accused's speeches could be measured or even remotely discerned in any concrete way.

342. Moreover, the insubstantial evidence presented by the Prosecution, together with the poor argumentation set out in its Closing Brief, does not allow the majority to find beyond all reasonable doubt that the speeches made on 1 and 7 April 1992 were heard by, or could have influenced, the perpetrators of the crimes committed in April 1992 in Mostar, Zvornik and the Sarajevo area.

343. With regard to the totality of evidence, the Chamber, by a majority, Judge Lattanzi dissenting, finds that the Prosecution did not present evidence of a causal link between the

[403] C13, p. 9.
[404] VS-002, T(E) 6556.
[405] *Ibid.* T(E) 6557. The Chamber notes on this point that the Accused explained in an interview with Radio Belgrade on 13 February 1993 that he had been appointed a Serbian Chetnik *vojvoda* on account of his activities within the SČP (*see* P1213, p. 2).
[406] VS-007, T(E) 6097 (closed session); Vesna Bosanac, T(E) 11421-11422.
[407] VS-033, T(E) 5543 and 5544. VS-007, T(E) 6099 (closed session); Fadil Kopić, T(E) 5912-5913, 5920.
[408] Goran Stoparić, T(E) 2442 and 2443; VS-016, T(E) 11120, 11171 and 11181; Aleksa Ejić, T(E) 10343; VS-061, T(E) 9924.

Accused's speeches of 1 and 7 April 1992 and the crimes committed in April 1992 in the cities of Mostar, Zvornik and in the area of Sarajevo, or that the crimes committed between May 1992 and September 1993 could be attributed to the Accused, even indirectly. In these conditions, the majority is not in a position to qualify the speeches the Accused made on 1 and 7 April 1992 as physical acts of instigation.

(c) Encouragement to create a Greater Serbia through violence and indoctrination of members of the SČP/SRS

344. The Chamber analysed in detail the factual evidence on such allegations, as part of its review of the context and the JCE. The majority rejected the JCE. It considered in particular that the Accused's identitarian stance and his Greater Serbia ideology could be seen as being something other than the pursuit of a criminal plan. The majority is only able to make a finding based on its own assumptions. Therefore, the acts of encouragement by the Accused aimed at the SČP/SRS volunteers, which gave concrete expression to, and further developed, the political and ideological engagement of the Accused - which, as already ruled by the majority, was not criminal but may have been a matter of participating in the war effort - could not be considered criminal.

345. In these conditions, the Chamber, by a majority, Judge Lattanzi dissenting, rejects the Prosecution's allegation that the Accused was responsible, through instigation, for crimes committed by encouraging the creation of Greater Serbia through violence and the indoctrination of members of the SČP/SRS.

(d) Failure by the Accused to punish the *Šešeljevci* who were involved in crimes against the non-Serbs

346. In its Closing Brief, the Prosecution also argues that the Accused had instigated the commission of crimes as set out in the Indictment by not taking any measures against the *Šešeljevci* who had committed crimes against non-Serbs.

347. This allegation is not set out in the Indictment but in the Pre-Trial Brief,[409] in which the Prosecution maintains that the superior's failure to punish past crimes may constitute instigation of future crimes. The majority deems that the Prosecution's approach is once again ambivalent, to say the least, since it makes an allegation based on the premise that the Accused had superior

[409] Judge Lattanzi is of the opinon that the Chamber cannot take into consideration an allegation that has no basis in the Indictment.

authority over the SRS volunteers, while choosing not to argue *de jure* or *de facto* superior responsibility under Article 7 (3) of the Statute.

348. The majority recalls its findings that no formal or *de facto* superior/subordinate relationship has been proved between the Accused and his volunteers, who participated in crimes set out in the Indictment. The Chamber considers that the allegation of failure to punish cannot reasonably be accepted, as there was no hierarchical link that would make the Accused accountable in any way for the actions of his volunteers. Nevertheless, the majority notes that the Accused sanctioned volunteers on many occasions. However, this sanctioning was necessarily limited in its purpose and effect as it only involved the expulsion of volunteers from his party for conduct deemed unacceptable during the conflict. Witness Goran Stoparić is a case in point.[410] As far as activities in the field were concerned, the volunteers answered to a military authority.

349. The majority therefore rejects as baseless the Prosecution's allegations of instigation on account of the Accused's failure to take any measures against the *Šešeljevci* who allegedly committed crimes against non-Serbs.

5. Conclusion

350. The Chamber, by a majority, Judge Lattanzi dissenting, finds that the Accused cannot be held responsible in the present case pursuant to Article 7 (1) of the Statute for having instigated the commission of crimes referred to in the Indictment.

C. Individual criminal responsibility pursuant to Article 7 (1) of the Statute for aiding and abetting

1. Allegations and submissions of the parties

351. It is generally alleged that the Accused aided and abetted the crimes charged in the Indictment. In its Closing Brief, the Prosecution limits this allegation to crimes that were committed by the *Šešeljevci* and explains in greater detail that the Accused had abetted the crimes they committed through his propaganda and by recruiting and deploying them. The

[410] Goran Stoparić was expelled from the SRS in 1993, officielly for having obstructed the work of the SRS but, according to him, it was because he had taken sides with Milenko Petrić, President of the SRS, against Nikola Vasić, an SRS deputy (T(E) 2475, 2682-2683, 2692-2693). The Accused suggested during cross-examination that the reason for this expulsion was in fact Goran Stoparić's participation, within the Army of Republika Srpska, in battles alongside Croats (T(E) 2690-2693).

Prosecution further argues that the Accused was aware of the real likelihood that the crimes would be committed as "he in fact intended their commission."

352. The Accused replied that there is no evidence that he supported any crimes and states that, on the contrary, it had been shown that he publicly criticised those who committed crimes and demanded that they be held responsible. He added that there was also no evidence that he had been present at the locations of the crimes at the time of their commission. Moreover, the Accused maintains that the SRS had not sent volunteers to all the locations, and the he could not be held responsible for the fact that certain individuals went to some of the locations as SRS members on their own initiative. The Accused also argues that there is no evidence establishing that SRS volunteers had committed crimes.

2. Applicable law

353. For a Chamber to be able to reach a finding of aiding and abetting, it must be able to establish that the Accused had provided practical assistance, encouragement, or moral support that had a substantial effect on the perpetration of the crimes. Moreover, the aider and abettor must have known that these acts had contributed to the perpetration of the crime[411] and been aware of the essential elements of the crime,[412] including of the intent of the principal perpetrator,[413] without necessarily knowing the exact crime that was intended or committed.

3. Analysis

354. The arguments of the Prosecution based on the allegation that the Accused is liable for the crimes committed by the *Šešeljevci* under aiding and abetting have, in part, the same factual basis as its allegations on the Accused's liability under JCE and instigation.

[411] *Popović* Appeal Judgement para. 1732; *Perišić* Appeal Judgement, para. 48; *Stanišić and Simatović* Judgement, para. 1264; *Lukić and Lukić* Appeal Judgement, paras 428 and 440; *Haradinaj et al.* Appeal Judgement, para. 58; *Simić et al.* Appeal Judgement, para. 86; *Blagojević and Jokić* Appeal Judgement, para. 127; *Krnojelac* Appeal Judgement, para. 52; *Tadić* Appeal Judgement, para. 229.
[412] *Popović* Appeal Judgement, para. 1794; *Šainović* Appeal Judgement, para. 1772; *Perišić* Appeal Judgement, para. 48; *Lukić and Lukić* Appeal Judgement, paras 428 and 440; *Haradinaj et al.* Appeal Judgement, para. 58; *Blagojević and Jokić* Appeal Judgement, para. 127; *B. Simić* Appeal Judgement, para. 86.
[413] *Popović* Appeal Judgement, para. 1732: "the *mens rea* requires 'knowledge that these acts assist the commission of the offense'. The *mens rea* also requires that the aider and the abettor were aware of the essential elements of the crime which was ultimately commited, including the intent of the principal perpetrator. It is not necessary that the aider or the abettor knows the precise crime that was intended and was commited – if he is aware that one of a number of crimes will probably be commited, and one of those crimes is commited, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor."; *Šainović et al.* Appeal Judgement, para. 1772; *Haradinaj et al.* Appeal Judgement, para. 58; *Orić* Appeal Judgement, para. 43.

355. Yet, the Chamber has already found that the recruitment and the deployment of volunteers in the field by the Accused and his party could have been legal activities.[414] Moreover, the Chamber, by a majority, also considered that it was not able to exclude the possibility that the Accused was simply providing legitimate support for the war effort.

356. The majority of the Chamber also concluded that the "nationalist" propaganda of the Accused was not criminal in itself and that if some of the speeches could constitute a call for the expulsion and forcible transfer of non-Serbs, the Prosecution had not presented evidence that the speeches had substantially contributed to the perpetration of the crimes charged in the Indictment.

4. Conclusion

357. The Chamber, by a majority, Judge Lattanzi dissenting, finds that the Accused cannot be held responsible pursuant to Article 7 (1) of the Statute for having aided and abetted the commission of the crimes set out in the Indictment.

[414] Judge Lattanzi notes that the legality of the activities of assistance is of no relevance when analysing the criteria of aiding and abetting, in particular in order to establish whether such and such an activity contributed significantly to the crimes.

VI. DISPOSITION

FOR THE FOREGOING REASONS, the Trial Chamber:

- Under Count 1 (Persecution, a crime against humanity), finds by a majority, Judge Lattanzi dissenting, the Accused not guilty;

- Under Count 4 (Murder, a violation of the laws or customs of war), finds by a majority, Judge Lattanzi dissenting, the Accused not guilty;

- Under Count 8 (Torture, a violation of the laws or customs of war), finds by a majority, Judge Lattanzi dissenting, the Accused not guilty;

- Under Count 9 (Cruel treatment, a violation of the laws or customs of war), finds by a majority, Judge Lattanzi dissenting, the Accused not guilty;

- Under Count 10 (Deportation, a crime against humanity) finds by a majority, Judge Lattanzi dissenting, the Accused not guilty;

- Under Count 11 (Inhumane acts (forcible transfers), a crime against humanity) finds by a majority, Judge Lattanzi dissenting, the Accused not guilty;

- Under Count 12 (Wanton destruction of villages or devastation not justified by military necessity, a violation of the laws or customs of war) finds by a majority, Judge Lattanzi dissenting, the Accused not guilty;

- Under Count 13 (Destruction or wilful damage done to institutions dedicated to religion or education, a violation of the laws or customs of war) finds by a majority, Judge Lattanzi dissenting, the Accused not guilty;

- Under Count 14 (Plunder of public or private property, a violation of the laws or customs of war), unanimously finds the Accused not guilty.

The Trial Chamber, therefore, concludes that the arrest warrant issued by the Appeals Chamber on 17 June 2015, which was suspended, is now moot.

Judge Antonetti appends a concurring opinion.

Judge Niang appends a statement.

Judge Lattanzi appends a partially dissenting opinion.

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

_____/signed/_____
Judge Jean-Claude Antonetti

_____/signed/_____
Judge Mandiaye Niang

_____/signed/_____
Judge Flavia Lattanzi

Done this thirty-first day of March 2016
At The Hague,
The Netherlands

VII. INDIVIDUAL STATEMENT OF JUDGE MANDIAYE NIANG

1. My appointment to this case at a time when the hearing was already closed was a huge challenge in terms of its sheer size, but also physically. It meant I needed to digest the record of proceedings that had lasted ten years. And my time was limited since the delayed closure of the Tribunal has become an increasing source of irritation.

2. I believe I have met the challenge. Firstly, by tapping into my physical and mental resources to familiarise myself with the record. Secondly, by confronting or by ignoring, depending on the situation, subtle and indirect, but nonetheless brutal pressure. These forms of pressure came from various quarters and had one thing in common: to dispose, without delay, of a case that had already lasted too long.

3. I never lost sight of the pressing need for expeditious international justice, delivered by an *ad hoc* Tribunal; all the more so in the context of a ten year long trial, languishing victims and an Accused detained for a long time and now ill. A Judge, however, may under no circumstances relinquish his obligation to be familiar with the record even when faced with the dictates of urgency. I have taken the necessary time to familiarise myself with the record.

4. If indeed it were possible to compare emotions with tangible reality, I would say that the physical challenge was perhaps less difficult than the mental challenge, which involved trying a case without ever having seen the parties, other than by scrutinizing them on video. There is a chemistry in a trial and relations form in the course of verbal sparring in the courtroom. There is an emotional dimension within which trust or mistrust are forged, and which gives the parties the privilege of getting to know the Judges well. I have thus been deprived of a substantial symbolic attribute. However, I would like to believe that my function as a Judge has, in essence, been preserved. Familiarisation with the record is a useful component of the regulatory function of a Judge. Nevertheless, a Judge may be familiar with a case without being fair. Conversely a Judge who is not familiar with a case may do a proper job.

5. I have accessed the evidence and all procedural documents. I was able to recall witnesses or seek additional actions that I deemed absolutely necessary. My feeling of partial impotence was also mitigated by my conviction that no international Judge can draft a judgment on the sole basis of his memories of the court hearings. The volume of the material is such that one's memory needs to be constantly refreshed. The Judgment is rendered on the basis of documentary evidence.[1] Most

[1] As I understand it to mean, in the broad sense of the term, all exhibits, other documents and hearing transcripts.

witnesses were heard in 2007 and in 2008. What is left of fading recollections seven or eight years after the testimonies? Transcripts of trial hearings and videos become indispensable. In that respect I did not feel very different from my colleagues who have sat in the case for the entire length of the trial.

6. Therefore, it is with this modicum of comfort that I undertook my work. At times, I even considered my late designation as a fortunate stroke of serendipity. Had I been a member of the original bench I am not sure the trial would have ended this way. There were ten times, a hundred times when, upon reading the transcripts and viewing the videos, I had difficulty containing my irritation and my frustration at the conduct of an Accused who knew no limits other than the ones he had set himself. Within the solitary confines of my office, I faced the dilemma of a Judge torn between the duty to consider the objections of the Accused – that proved, at times, to be very relevant - and the temptation to discipline him by excluding him from the proceedings, if need be, for his words were tainted by such irreverence, contempt, condescendence and disregard towards his audience that he became unbearable.

7. It is therefore not such a bad thing that my dilemma remained platonic. I praise the patience of my colleagues who were able to endure such an ordeal and who made it possible for the proceedings to continue until the end. I do not, however, endorse what I consider to be the many procedural flaws in this lengthy trial. The Accused spared no one. He bullied and ridiculed witnesses well beyond any acceptable level of tolerance, even for a vigorous cross-examination.[2] He was not always admonished.[3] And when he was, he frequently turned a deaf ear to the Chamber's injunctions.[4] He did what he pleased. An educated and, without a doubt, an intelligent man, the Accused did, however, have a mediocre knowledge of procedural law. Yet, with absolute certainty, he laid claim to conducting not only his defence but the entire trial. He interrupted the Prosecution when it put its questions. His objections were often a pretext for long tirades aimed at explaining to all and sundry a complex reality that escaped them.[5]

8. Several hearings were the setting of a surreal performance on the part of the Accused who, while not testifying, managed to steal the floor and lecture the Prosecution, the witnesses and the

[2] He regularly called witnesses liars and continued in that vein despite being admonished by the Chamber on numerous occasions. He attempted to ridicule witnesses with his totally irrelevant remarks, such as witness VS-007 (establishing, *inter alia*, a parallel with Agent 007, *see* VS-007, T(E) 6124, 6129, 6180, 6183, 6197-6198), Reynaud Theunens (recalling the witness' memory of his bike ride after his testimony, to ridicule him, *see* Reynaud Theunens, T(E) 4277-4279) and many other witnesses.
[3] VS-061, T(E) 9998. Instead of taking harsh measures against the Accused, the Chamber advised him to be wary of what the Prosecution might say before the Appeals Chamber.
[4] *See* András Riedlmayer, T(E) 7375, 7385 *et seq.*, 7393 *et seq.*.
[5] As an example, *see* Yves Tomić, T(E) 3255.

Judges. And, strange as it may seem, this unusual approach often proved successful. On each occasion, the Accused was able to "shed light" on the facts, although how these oral statements, made outside procedural rules, would be treated was a matter that was never clarified. The Prosecution's objections, sometimes relayed by one of the members of the bench in the form of a timid reminder of more orthodox practices, were to no avail.[6]

9. The Registry was no better off. The Accused decided to represent himself without counsel. This was an untenable choice in light of the scope of the trial, combined with the inherent restrictions on his detention. The attempts by the first Judges to assign him some sort of counsel were certainly driven by pragmatic necessity; however, they came up against an obstinate Accused, who found support in the statutory guarantee of his right to represent himself.

10. In the end, after many twists and turns, the Accused's position prevailed. He did not, however, accept the consequences of his choice. By representing himself, the Accused set himself outside the framework of legal assistance: a system designed and organised around assigned counsel, to provide the resources necessary for his defence.[7] The Registry, in a show of flexibility, nonetheless supported the Accused and his choice of investigators and legal assistants. The Accused refused to comply with the first formality, which is the first step towards being granted legal assistance, by proving his indigence. In this case, the justification requested from him was, to my mind, a mere formality (in the first stage, at least), in that all that was required of him was to fill in the relevant forms. But that was too much to ask of him. The Accused never filled them in, and all the while initiated multiple procedures to force the Registry to do what he wanted. The Decision of the Chamber of 29 October 2010, upheld on appeal on 8 April 2011, proved him partly right, and nothing more was expected of him.[8] His intransigence remained intact.

11. In all likelihood, I would not have agreed with my colleagues' position, including the position of the Appeals Chamber that upheld the Decision, although I do understand that they wished to avoid a deadlock. In my mind, respecting the rights of the Defence does not mean that the Accused can be exonerated from the elementary rules that govern the proceedings. This remains true even if his stubbornness affects the full exercise of some of his other recognised rights.

12. This is in fact what happened when, on 5 May 2011, the Accused presented a series of demands, including the retroactive financing of his Defence as a prerequisite to the presentation of

[6] *See supra*, footnote p. 2.
[7] The directive on legal assistance is entitled, "Directive on Assignment of Defence Counsel".
[8] *See infra*, Annex 2, procedural background, para. 57.

his defence case.[9] The Chamber dismissed some of these prerequisites,[10] and I approve of this. The Accused then decided not to present a defence case. Thereafter, he refused to comply with any of the injunctions of the Chamber, including the filing of a public version of his Final Trial Brief. The Chamber filed it in his stead.[11] I do not find this substitution of roles to be orthodox. However, as it concerned a purely formal matter it was not capable of substantially vitiating the proceedings.

13. In my view, it is the Accused alone who is responsible for the fact that a defence case was not presented. His rights were not violated. I must hasten to add, however, that this observation applies only to the issue of assignment of counsel and the related issue of the financing of his defence. On the other hand, the issue of how evidence is dealt with seems more sensitive to me. The Chamber's unclear position regarding rules of admission and their effective application has certainly had an impact on all of the parties, but, more importantly, it could have obliterated the rights of the Defence.

14. At the start of the trial, the Chamber decided to outline the guidelines that were to govern the admission of evidence. Documentary evidence, according to this directive, was to be admitted through witnesses called to testify in court.[12] The advantage of such a procedure is to allow for contextualisation of a document, that would otherwise "speak" for itself, which could result in its misinterpretation. Unfortunately, these guidelines died a natural death as soon as they were issued. The Prosecution was allowed to file hundreds of documents, including the famous Bar Table documents, without going through a witness.[13]

15. The Chamber's freedom to admit evidence, as prescribed by Rule 89 (C) of the Rules, inasmuch as it is still legal, should not serve as a pretext to circumvent the more stringent requirements for admission. I have noted the admission of witness testimonies - including that of the Accused - in other cases on fragile and erroneous grounds.[14] I have personally found some merit

[9] *Ibid*., para. 58.
[10] *Ibid*., para. 59.
[11] *Ibid*., para. 9.
[12] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, "Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial", 15 November 2007, Annex, para. 1.
[13] *See* also *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, "Decision on Prosecution's Second Motion for Admission of Evidence from the Bar Table and for an Amendement to the 65*ter* Exhibit List", 23 December 2010; "Decision on Admission of Expert Report Regarding the Mladić Notebooks and on Prosecution Motion for Admission of Evidence Relating to Mladić Notebooks, with Dissenting Opinion of Presiding Judge Jean-Claude Antonetti in Annex", 7 March 2011; "Decision on Prosecution's supplement on admission of evidence from the bar table filed on 24 February 2011", 3 August 2011.
[14] The Decision of 30 October 2007, granting the Prosecution's motion to admit into evidence transcripts of Vojislav Šešelj's testimony given in the *Milošević* case, erroneously invokes Article 21 of the Statute of the Tribunal as a basis. In doing so, it sanctions the blurring of the distinction between the status of a witness and the status of the Accused, as if the two could be merged through two different proceedings. The Accused, nonetheless, agreed to the admission of

in the Accused's objection to the admission of statements pursuant to Rules 92 *ter* and 92 *quater* of the Rules, adopted after the commencement of proceedings initiated against him.[15] I am very familiar with the case-law of the Tribunal on this issue.[16] I remain committed, however, to the protection of acquired rights that, in my view, are far more extensive than would appear in the Tribunal's case-law. Beyond the rights enshrined in Article 21 of the Statute, acquired rights pertain to any previous more favourable legal regime. Moreover, Judge Antonetti clearly indicated the risks attached to a broader admission of written statements.[17]

16. I also noted certain weaknesses in the approach to examining the status of expert witnesses. The Chamber did not clearly dissociate the preliminary phase of reviewing witness qualifications from reviewing the merits of the expertise.[18] The standards applied to determine whether a witness had the status of an expert witness or not were not always clear.

17. The decision to recognise as an expert witness a member of the Office of the Prosecutor left me sceptical, all the more so since that particular expert admitted, during cross-examination, that he had been instrumental in developing the prosecution strategy in this case.[19] However, in terms of its content, Reynaud Theunens' testimony, to a large extent, restored the sheen of objectivity that could have initially been tainted by legitimate suspicion.

18. As regards witness Anthony Oberschall, it is the Chamber's refusal to grant him the status of an expert witness which I found difficult to comprehend. Oberschall is not a factual witness in this case. The Prosecutor called him to testify for one reason only: to rely on his expertise on propaganda techniques. The Prosecution provided him with the Accused's speeches (44 volumes). He analysed them, namely by identifying key words and the number of occurrences to determine their objective and scope. He filed a summary report of his work. By denying him the status of an expert witness against the view of the Accused, the Chamber left no room for Oberschall to be heard. He was simply dismissed. The Accused pointed out this evidence to the Chamber but was not heard.

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this piece of evidence. *See The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, "Decision on the Prosecution's motion to admit into evidence transcripts of Vojislav Šešelj's tesimony given in the *Milošević* case", 30 October 2007.

[15] Witness statements taken pursuant to Rules 92 *ter* and 92 *quater*.

[16] Acquired rights are limited to the rights prescribed in Article 21 of the Statute. *See The Prosecutor v. Prlić et al*, Case No. IT-04-74-T, "Decision on Slobodan Praljak's motion on the application of Rule 67 (A) of the Rules", 4 April 2008, pp. 4-5.

[17] During his testimony, Witness Vojislav Dabić revisited certain important points of his written statement by specifying that the information provided was based on hearsay, whereas it appeared to be first-hand information. Judge Antonetti rightfully indicated that if the statement had been admitted pursuant to Rule 92 *quater*, this information could in no way have been contradicted. *See* Vojislav Dabić, T(E) 15229-15230.

[18] *See* Anthony Oberschall, T(E) 1955.

[19] Reynaud Theunens, T(E) 4097-4101.

19. The Chamber endeavoured to grant Oberschall the status of a regular witness (he was not allowed to be qualified as a factual witness) by once again resorting to Rule 89 of the Rules and its apparent permissiveness. This approach was legally unsound and untenable in practice, so much so that, during examination, the Judges forgot their previous ruling and constantly referred to Oberschall as an expert witness.[20] This oversight produced an unexpected but fortunate result since it obliterated a bad decision. Thus, even though this was involuntary, Oberschall was reinstated as an expert witness and, in fact, testified throughout as such. In light of that situation, I would be inclined to say the Chamber's error turned out to be pardonable.

20. I do not intend to draw up a list of all the decisions rendered during the trial that may, in all likelihood, not have met with my approval. I wished only to highlight those that seem to me to be the most representative. As for the rest, I note that the Chamber's approach to the admission of evidence is essentially liberal. The Prosecution has been allowed to present its best evidence, or at any rate all the evidence it wished to adduce. The acquitted Accused, in the end, will not have suffered from such permissiveness. The admission of suspect evidence is now a matter of no consequence.

21. My conviction, as presented in this Judgement, is based on the analysis of the substance of the evidence, irrespective of any reservations I may have expressed regarding the admission of such evidence.

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

/signed/
Judge Mandiaye Niang

Done this thirty first day of March 2016
At The Hague,
Netherlands

[20] Anthony Oberschall, T(E) 1955. Oberschall confirms in his summary that he is testifying as an expert witness (Anthony Oberschall, T(E) 2075). *See* also a direct reference to the status of expert witness by Judges Lattanzi (Anthony Oberschall, T(E) 2095) and Antonetti (Anthony Oberschall, T(E) 2166). Judge Harhoff also had a long exchange with the expert on the remit of his assignment (Anthony Oberschall, T(E) 2208 *et seq.*, 2222-2223).

ANNEX 1: GLOSSARY AND LISTS OF REFERENCES

A. Terms and abbreviations frequently used in the Judgement

BiH	Bosnia and Herzegovina
ECHR	European Court of Human Rights
T(E)	Transcript (English)
T(F)	Transcript (French)
Croatia	Republic of Croatia
DB	State Security
JCE	Joint Criminal Enterprise
OG	Operations Group
HDZ	Croatian Democratic Union (*Hrvatska Demokratska Zajednica*)
JB	Public Security
JNA	Yugoslav People's Army (*Jugoslovenska Narodna Armija*)
KOKV Line	Karlobag – Ogulin – Karlovac – Virovitica Line
MUP	Ministry of the Interior of Serbia
fn.	footnote
NRS	National Radical Party
ONO	All-people's defence
NATO	North Atlantic Treaty Organisation
p./pp.	Page/pages
Para./paras	Paragraph/paragraphs
PJP	Special Police Unit (*Posebne Jedinice Policije*)
FRY	Federal Republic of Yugoslavia

RS	Serbian Republic of BiH (*Republika Srpska*)
SR BH	Socialist Republic of Bosnia and Herzegovina (before independence)
SFRY	Socialist Federative Republic of Yugoslavia
RSK	Republic of Serbian Krajina (*Republika Srpska Krajina*)
SAO	Serbian Autonomous Region
SAO SBWS	Serbian Autonomous Region of Slavonia, Baranja and Western Srem
SČP	Serbian Chetnik Movement (*Srpski četnički pokret*)
SDA	Party of Democratic Action (*Stranka demokratske akcije*)
SDB	State Security Service (*Služba državne bezbednosti*)
SDG	Serbian Volunteer Guard
SDS	Serbian Democratic Party (*Srpska demokratska stranka*)
SNO	Serbian National Renewal (*Srpska narodna obnova*)
SPO	Serbian Renewal Movement (*Srpski pokret obnove*)
SRS	Serbian Radical Party (*Srpska radikalna stranka*)
SSNO	Federal Secretariat of National Defence (*Savezni sekretarijat za narodnu odbranu*)
SUP	Secretariat of the Interior (*Sekretarijat unutrašnjih poslova*)
T.	Transcript of trial proceedings (English version)
TO	Territorial Defence
ICTR	International Criminal Tribunal for Rwanda
ICTY or Tribunal	International Criminal Tribunal for the Former Yugoslavia
VJ	Yugoslav Army (*Vojska Jugoslavije*)
VRS	Army of the Serbian Republic of BiH (*Vojska Republike Srpske*)
ZNG	National Guard Corps (*Zbor narodne garde*)

B. Terms and abbreviations relating to proceedings

Prosecution	Office of the Prosecutor of the Tribunal
Accused	Vojislav Šešelj
Indictment	"Third Amended Indictment", 7 December 2007; French version filed on 2 January 2008
Chamber	Trial Chamber III of the Tribunal
Chamber I	Trial Chamber I of the Tribunal
Chamber II	Trial Chamber II of the Tribunal
Chamber III	Trial Chamber III of the Tribunal
Commission of Experts	Commission of three medical experts appointed by the Chamber on 12 March 2012
Registry	Registry of the Tribunal
Registrar	Registrar of the Tribunal
Prosecution's Final Pre-Trial Brief	*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Prosecution's Final Pre-Trial Brief and Corrigendum to Final Pre-Trial Brief", 31 July 2007
Pre-Trial Submission of the Accused	*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Professor Vojislav Šešelj's Pre-Trial Submission", 2 November 2007 (confidential)
Prosecution's Closing Trial Brief	"Re-Filing of Prosecution Final Trial Brief", 6 February 2012 (confidential); "Corrigendum to Prosecution's Closing Brief", 16 May 2012 (confidential with confidential annex); "Prosecution's Notice of Filing a Public Redacted Version of the Prosecution's Closing Brief", 20 April 2012 (public with public annex)
Accused's Final Trial Brief	Filed on 30 January 2012; public version filed on 22 June 2012
Panel	Panel of three Judges appointed on 25 July 2013 by the Acting President to examine the Request for Disqualification of Judge Harhoff
President	President of the Tribunal
Acting President	Acting President of the Tribunal
Detention Unit	United Nations Detention Unit

C. International instruments and doctrine

Common Article 3	Article 3 of the Geneva Conventions (I to IV) of 12 August 1949
1st Geneva Convention	Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949
2nd Geneva Convention	Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949
3rd Geneva Convention	Geneva Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949
4th Geneva Convention	Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949
Rules	Rules of Procedure and Evidence of the Tribunal
Statute	Statute of the Tribunal

D. Cited Case-law

1. ICTY Judgements and Appeal Judgements

(a) Judgements

Blagojević and Jokić Judgement	*The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005
Brđanin Judgement	*The Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Judgement, 1 September 2004
Kordić and Čerkez Judgement	*The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001
Kupreškić et al. Judgement	*The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić, alias "Vlado"*, Case No. IT-95-16-T,

	Judgement, 14 January 2000
Kvočka et al. Judgement	*The Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Judgement, 2 November 2001
Martić Judgement	*The Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008
Mrkšić et al. Judgement	*The Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Case No. IT-95-13/1-T, Judgement, 27 September 2007
Naletilić and Martinović Judgement	*The Prosecutor v. Mladen Naletilić, alias "Tuta" and Vinko Martinović, alias "Štela"*, Case No. IT-98-34-T, Judgement, 31 March 2003
Orić Judgement	*The Prosecutor v. Naser Orić*, Case No. IT-03-68, Judgement, 30 June 2006
Stanišić and Simatović Judgement	*The Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Judgement, 30 May 2013
Tadić Judgement	*The Prosecutor v. Duško Tadić, alias "Dule"*, Case No. IT-94-1-T, Judgement, 7 May 1997

(b) Appeal Judgements

Aleksovski Appeal Judgement	*The Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Appeal Judgement, 24 March 2000
Blagojević and Jokić Appeal Judgement	*The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Appeal Judgement, 9 May 2007
Boškoski and Tarčulovski Appeal Judgement	*The Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Appeal Judgement, 19 May 2010
Brđanin Appeal Judgement	*The Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Appeal Judgement, 3 April 2007
Čelebići Appeal Judgement	*The Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, Case No. IT-96-21-A, Appeal Judgement, 20 February 2001
Galić Appeal Judgement	*The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Appeal Judgement, 30 November 2006
Haradinaj et al. Appeal Judgement	*The Prosecutor v. Haradinaj et al.*, Case No. IT-04-84, Appeal Judgement, 19 July 2010
Kordić and Čerkez Appeal Judgement	*The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Appeal Judgement, 17 December 2004

Krajišnik Appeal Judgement	*The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Appeal Judgement, 17 March 2009
Krnojelac Appeal Judgement	*The Prosecutor v. Milorad Krnojelac*, Case No. IT-95-14/2-A, Appeal Judgement, 17 September 2003
Kunarac et al. Appeal Judgement	*The Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23 & IT-96-23/1-A, Appeal Judgement, 12 June 2002
Kvočka et al. Appeal Judgement	*The Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1-A, Appeal Judgement, 28 February 2005
Lukić and Lukić Appeal Judgement	*The Prosecutor v. Lukić (Milan) and Lukić (Sredoje)*, Case No. IT-98-32/1, Appeal Judgement, 4 December 2010
Martić Appeal Judgement	*The Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Appeal Judgement, 8 October 2008
Orić Appeal Judgement	*The Prosecutor v. Naser Orić*, Case No. IT-03-68, Appeal Judgement, 3 July 2008
Perišić Appeal Judgement	*The Prosecutor v. Momčilo Perišić*, Case No. IT-04-81, Appeal Judgement, 28 February 2013
Popović Appeal Judgement	*The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Appeal Judgement, 30 January 2015
Šainović et al. Appeal Judgement	*The Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić*, Case No. IT-05-87-A, Appeal Judgement, 23 January 2014
Simić Appeal Judgement	*The Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Appeal Judgement, 28 November 2006
Stakić Appeal Judgement	*The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Appeal Judgement, 22 March 2006
Tadić Appeal Judgement	*The Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Appeal Judgement, 15 July 1999

2. ICTR Judgements and Appeal Judgements

(a) Judgements

Akayesu Judgement	*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998

Bikindi Appeal Judgement	*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Appeal Judgement, 18 March 2010
Nahimana et al. Judgement	*The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Case No. ICTR-99-52-A, Judgement, 3 December 2003
Nzabonimana Appeal Judgement	*Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-A, Appeal Judgement, 29 September 2014

(b) Appeal Judgements

Akayesu Appeal Judgement	*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Appeal Judgement, 1 June 2001
Nahimana et al. Appeal Judgement	*Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Appeal Judgement, 28 November 2007
Ndindabahizi Appeal Judgement	*Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Appeal Judgement, 16 January 2007
Semanza Appeal Judgement	*Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Appeal Judgement, 20 May 2005

3. Special Court for Sierra Leone Appeal Judgements

Brima et al. Appeal Judgement	*The Prosecutor v. Brima et al.*, Case No. SCSL-04-16, Appeal Judgement, 22 February 2008
Taylor Appeal Judgement	*The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-A, Appeal Judgement, 26 September 2013

4. European Court of Human Rights Appeal Judgement

Perinçek v. Switzerland Appeal Judgement	ECHR, Appeal Judgement of the Grand Chamber, 15 October 2015

E. Decisions, Orders, Judgements and Appeal Judgements of ICTY Chambers related to the present case

Decision of 9 May 2003	"Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Šešelj with His Defence", public, 9 May 2003
Decision of 26 May 2004	"Decision on Motion by Vojislav Šešelj Challenging Jurisdiction and Form of Indictment", public, 3 June 2004
Decision of 9 March 2005	"Decision on the Accused's Motion to Re-Examine the Decision to Assign Standby Counsel", public, 9 March 2005
Decision of 21 August 2006	"Decision on Assignment of Counsel", public, 21 August 2006
Appeals Chamber Decision of 20 October 2006	"Decision on Appeal against the Trial Chamber's Decision on Assignment of Counsel", public, 20 October 2006
Order of 25 October 2006	"Order concerning Appointment of Standby Counsel and Delayed Commencement of Trial", public, 25 October 2006
Decision of 8 November 2006	"Decision on the Application of Rule 73 *bis*", public, 8 November 2006
Decision of 14 September 2007	"Decision on Prosecution's Motion for Leave to File an Amended Indictment", public, 14 September 2007
Decision of 20 September 2007	"Decision on Submission Number 311 Requesting that Chamber III Clarify the Prosecution's Pre-Trial Brief", public, 20 September 2007
Statement of 8 November 2007	"Statement of the Accused Pursuant to Rule 84 *bis*", T(E) 1863
Decision of 27 November 2007	"Decision on Preliminary Motion Filed by the Accused", public, 27 November 2007
Decision of 10 December 2007	"Decision on the Prosecution Motion to Take Judicial Notice of Facts under Rule 94 (B) of the Rules of Procedure and Evidence", public, 10 December 2007
Decision of 27 December 2008	"Redacted Version of the Decision on Monitoring the Privileged Communications of the Accused with Dissenting Opinion by Judge Harhoff in Annex", public, 1 December 2008

Decision of 11 February 2009	"Decision on Prosecution Motion for Adjournment with Dissenting Opinion of Judge Antonetti in Annex", public, 11 February 2009
Contempt Judgement of 24 July 2009	"Public Edited Version of 'Judgement on Allegations of Contempt' Issued on 24 July 2009", public, 24 July 2009
Decision of 24 November 2009	"Public Version of the 'Consolidated Decision on Assignment of Counsel, Adjournment and Prosecution Motion for Additional Time with Separate Opinion of Presiding Judge Antonetti in Annex'", public, 24 November 2009
Decision of 8 February 2010	"Decision on Prosecution Motions to Take Judicial Notice of Facts Concerning the *Mrkšić* Case", public, 8 February 2010
Decision of 10 February 2010	"Decision on the Accused's Oral Request to Reinstate Messrs. Zoran Krasić and Slavko Jerković as Privileged Associates", public, 10 February 2010
Decision of 10 February 2010 on abuse of process	"Decision on Oral Request of the Accused for Abuse of Process", public, 10 February 2010
Contempt Appeal Judgement of 19 May 2010	"Appeal Judgement", public redacted version, 19 May 2010
Decision of 23 July 2010	"Decision on Prosecution Motion for Judicial Notice of Facts Adjudicated by *Krajišnik* Case", public, 23 July 2010
Decision of 29 October 2010	"Redacted Version of 'Decision on Financing of Defence', Filed on 29 October 2010", redacted version, 2 November 2010
Decision of 9 June 2011	"Consolidated Decision Regarding Oral Motions by the Accused Concerning the Presentation of his Defence with a Separate Concurring Opinion by Presiding Judge Jean-Claude Antonetti in Annex", public, 9 June 2011
Decision of 29 September 2011	"Decision on Motion by Accused to Discontinue Proceedings", public, 29 September 2011
Decision of 28 October 2011	"Decision on the New Filing of Public Redacted Version of the A*micus Curiae* Report", public, 28 October 2011
Contempt Judgement of 31 October 2011	"Public Redacted Version of 'Judgement' Issued on 31 October 2011", 31 October 2011
Decision of 21 March 2012	"Decision on Accused's Claim for Damages on Account of Alleged Violations of his Elementary Rights During Provisional Detention", public, 21 March 2012

Decision of 23 March 2012	"Decision on the Accused Vojislav Šešelj's Request for Provisional Release", public, 23 March 2012
Order of 5 April 2012	"Redacted Version of the 'Order further to the "Order to Proceed with a New Medical Examination"' of 12 March 2012", public, 5 April 2012
Contempt Judgement of 28 June 2012	"Public Redacted Version of Judgement Issued on 28 June 2012", public, 28 June 2012
Contempt Appeal Judgement of 28 November 2012	"Judgement", public, 28 November 2012
Order of 12 April 2013	"Scheduling Order" setting the date of delivery of the Judgement for 30 October 2013
Decision of 28 August 2013	"Decision on Defence Motion For Disqualification of Judge Frederik Harhoff and Report to the Vice-President", public, 28 August 2013
Order of 17 September 2013	"Order to Rescind Scheduling Order of 12 April 2013"
Order of 5 November 2013	"Order Assigning a Judge Pursuant to Rule 15" (Assignment of Judge Niang)
Decision of 13 December 2013	"Decision on Continuation of Proceedings"
Appeals Chamber Decision of 6 June 2014	"Decision on Appeal against Decision on Continuation of Proceedings", public, 6 June 2014
Order of 13 June 2014	"Order Inviting the Parties to Make Submissions on Possible Provisional Release of the Accused *proprio motu*"
Order of 24 June 2014	"Order Inviting Host Country and Receiving State to Present Their Comments with Regard to Guarantees for a Possible Provisional Release of the Accused *proprio motu*"
Order of 10 July 2014	"Order Terminating the Process for Provisional Release of the Accused *proprio motu*"
Order of 6 November 2014	"Order on the Provisional Release of the Accused *proprio motu*"
Decision of 13 January 2015	"Decision on Prosecution Motion to Revoke Provisional Release", public, 13 January 2015
Decision of 30 March 2015	"Decision on Prosecution Appeal against the Decision on the Prosecution Motion to Revoke the Provisional Release of the Accused", public, 30 March 2015

Decision of 22 May 2015	"Decision on Urgent Prosecution Motion for Enforcement of Decision on Revocation of Provisional Release", public, 22 May 2015
Decision of 21 October 2015	"Decision on Request of the Government of the Republic of Serbia for Further Clarification", confidential and *ex parte*
Order of 12 February 2016	"Scheduling Order" setting the date of delivery of the Judgement for 31 March, public, 12 February 2016
Report of 4 March 2016	"Report of the Ministry of Justice of the Republic of Serbia pursuant to the Order of 12 February 2016", confidential and *ex parte*

ANNEX 2 – PROCEDURAL BACKGROUND

A. Introduction

1. The initial Indictment, issued against the Accused on 15 January 2003, was confirmed on 14 February 2003 by Judge Kwon, who also issued an arrest warrant.

2. On 24 February 2003, the Accused surrendered voluntarily to the Tribunal and was remanded in custody. He made his initial appearance on 26 February 2003. On 25 March 2003, he pleaded not guilty to all the charges in the Indictment. On 3 November 2005, he refused to enter a plea to the amended Indictment. The Pre-Trial Judge, Judge Carmel Agius, concluded that the Accused pleaded not guilty.

3. The trial commenced on 7 November 2007.

4. A total of 1,399 exhibits were tendered into evidence, of which 1,367 by the Prosecution, six by the Accused and 26 through the Bar Table on the initiative of the Chamber. Ninety-nine witnesses were heard, 90 of whom were called by the Prosecution and nine directly by the Chamber in accordance with Rule 98 of the Rules of Procedure and Evidence ("Rules"). Six witnesses testified as expert witnesses. The testimony of 14 witnesses was taken pursuant to Rule 92 *ter* of the Rules. Lastly, four written statements were admitted in lieu of oral testimonies pursuant to Rule 92*bis* and 14 statements were admitted in accordance with Rule 92 *quater* of the Rules, three of which *proprio motu* by the Chamber. Pursuant to a Prosecution motion, the Chamber took judicial notice of 594 adjudicated facts and admitted them into evidence. The Chamber rendered 475 written decisions and 85 oral decisions.

5. On 11 February 2009, at the request of the Prosecution and due to allegations of pressure exerted by the Accused and his associates on some of the witnesses,[1] the Chamber, by a majority, ordered an adjournment of the proceedings until another Chamber was able to dispose of the contempt case against the Accused.[2] On 24 November 2009, the Chamber granted the Accused's Motion for reconsideration of the Decision of 11 February 2009. It ordered the resumption of the remaining witnesses' testimonies from 12 January 2010, notwithstanding the still pending contempt case. Noting that nine witnesses seemed to want to testify for the Defence rather than for the

[1] Prosecution Appeal Brief, 2 September 2008. Decision of the Appeals Chamber of 16 September 2008. Prosecution's oral motion of 15 January 2009, T(E) 13591.
[2] The Chamber, however, indicated that it intended to hold regular hearings to deal with potential administrative matters for the period of the adjournment.

Prosecution, the Chamber held that it was in the interest of justice to hear them as witnesses of the Trial Chamber. These witnesses testified between January and July 2010.

6. At trial, the Prosecution used a total of 165 hours and 45 minutes to present its case. The Accused used a total of 169 hours and 30 minutes during the presentation of the Prosecution evidence to cross-examine witnesses and discuss procedural matters. The trial lasted overall 652 hours and 46 minutes, including interventions by the Chamber. The Prosecution presented its last witness on 13 January 2010, and other witnesses came to testify thereafter as witnesses of the Trial Chamber, until 7 July 2010.

7. On 4 May 2011, the majority of the Chamber, Judge Antonetti partially dissenting, rendered an oral Decision dismissing the Motion for Acquittal filed by the Accused pursuant to Rule 98 *bis* of the Rules.

8. The Accused did not present a Defence case.

9. The Prosecution filed its Closing Brief on 5 February 2012 and the Accused his Final Brief on 23 February 2012. On 26 April 2012, having noted that the Accused had not filed a public redacted version of his Final Brief, the Chamber ordered him to do so by 31 May 2012 at the latest. The Accused did not comply with this instruction. The Chamber itself thus proceeded with the redaction and filed a public redacted version of the brief on 22 June 2012.

10. The trial stage ended on 20 March 2012; the Prosecution presented its closing arguments on 5 and 6 March 2012, and the Accused presented his closing arguments from 14 to 20 March 2012. On 12 April 2013, the Chamber issued a Scheduling Order setting the date for the delivery of the Judgement as 30 October 2013, which was "rescinded" on 17 September 2013, following Judge Harhoff's disqualification on 28 August 2013. On 12 February 2016, the Chamber issued a new Scheduling Order setting the date for the delivery of the Judgment as 31 March 2016.

B. Amendments to the Indictment

11. On 15 January 2004, the Accused filed a preliminary motion challenging jurisdiction and defects in the form of the initial Indictment of 15 January 2003. In the Decision of 26 May 2004, Trial Chamber II ("Chamber II") ordered the Prosecution to "clarify the ambiguity in paragraph 11 of the Indictment with respect to the meaning of 'committed'". By a motion dated 1 November 2004, the Prosecution sought leave to amend the Indictment, in accordance with Rule 50 of the Rules.

12. In the Decision of 27 May 2005, Chamber II confirmed the operative amended Indictment and ordered the Prosecution to specify what it meant by "SČP", an acronym used in the new paragraph 33 of the amended Indictment. On 8 July 2005, Chamber II also ordered the Prosecution to amend paragraph 33 of the amended Indictment and to file a modified Indictment. The "Modified Amended Indictment" was filed on 12 July 2005.

13. On 31 August 2006, Trial Chamber I ("Chamber I") invited the Prosecutor to propose means of reducing the scope of the amended Indictment by at least one third, by reducing the number of counts charged in the Indictment and/or crime sites or incidents comprised in one or more of the charges in the Indictment. On 21 September 2006, the Prosecution filed its proposal for a reduction, *inter alia*, of counts relating to Croatia and Bosnia-Herzegovina. It its Decision of 8 November 2006, Chamber I concluded that : (i) Counts 2, 3, 5, 6 and 7 would be removed from the Indictment,[3] (ii) the Prosecution would therefore not be able to adduce evidence on the crimes allegedly committed in the "redacted municipalities" (namely Brčko, Bijeljina, Bosanski Šamac and the Boračko Jezero/ Mount Borašnica resort), but (iii) the Prosecution may lead "non-crime base evidence" in relation to the crime sites in these municipalities. Pursuant to this Decision, the Prosecution filed a reduced modified redacted version of the Indictment on 10 November 2006. On 30 March 2007, pursuant to the instructions of the Pre-Trial Judge, the Prosecution filed a new version of the Amended Indictment, thus removing some of the redacted municipalities that still appeared in the latest version of the Indictment.

14. In his motion of 28 September 2007, the Accused challenged the "reduced modified amended Indictment" of 30 March 2007. On 14 September 2007, the Chamber ordered the Prosecution to file a second amended Indictment. On 28 September 2007, the Prosecution filed a "Second Amended Indictment".

15. On 27 November 2007, the Chamber ordered the Prosecution to submit a modified version of the Second Amended Indictment. The Prosecution complied on 7 December 2007 and filed the "Third Amended Indictment". In the Decision of 9 January 2008, the Chamber retained this version of the Indictment and recognised it as authoritative ("Indictment").[4]

[3] The Prosecution indicated that the counts were cumulative and that their removal would not affect the scope of the evidence it wished to present. On the contrary, their removal would reduce "the scope of both the arguments of the parties and of the Judgement."

[4] The Chamber notes that the Third Amended Indictment still contains a reference to crimes committed in the resort of Boračko Jezero when this entry should have been removed.

C. Challenge to the legality and jurisdiction of the Tribunal

16. In its Decision of 3 June 2004, Chamber II dismissed the Accused's arguments challenging the jurisdiction of the Tribunal. On 16 December 2004, Chamber II rejected the Accused's new Motion challenging the legality of the establishment of the Tribunal and the jurisdiction *rationae personae* of the Tribunal over nationals from the former Federal Republic of Yugoslavia and requesting an advisory opinion of the International Court of Justice ("ICJ"). In a Decision filed on 25 April 2005, Chamber II also rejected the request for a ruling from the ICJ.

D. Changes of the Chambers and new composition of the Bench

1. Changes of the Chambers seised

17. On 25 February 2003, the President of the Tribunal assigned the case to Trial Chamber II composed of Judges Wolfgang Schomburg, Florence Mumba and Carmel Agius. On 28 February 2003, Judge Schomburg was appointed as the Pre-Trial Judge in this case. On 8 October 2003, the acting President of the Tribunal appointed Judge Jean-Claude Antonetti to this case to replace Judge Schomburg. On 9 October 2003, Judge Agius was appointed as the Pre-Trial Judge.

18. By an Order dated 7 June 2005, the President of the Tribunal assigned the case to the present Chamber. In an Addendum to the Order of 7 June 2005, the President ruled that Chamber II would nonetheless remain competent to rule on motions it had been regularly seised of before the case was assigned to the Chamber. On 4 July 2005, the President of the Tribunal assigned the case once again to Chamber II.

19. By an Order dated 3 May 2006, the President of the Tribunal transferred the case to Chamber I, composed of Judges Alphons Orie, Patrick Robinson and Bakone Justice Moloto. On 15 May 2006, Judge Orie was appointed as the Pre-Trial Judge.

20. On 2 October 2006, the Accused filed a Motion with the President of Tribunal for the disqualification of Judges Orie and Robinson. On 12 October 2006, the Accused moved for the disqualification of Judge Moloto. On 7 November 2006, the President of the Tribunal dismissed the motions of the Accused.

21. On 25 October 2006, the Accused reiterated his motion for the withdrawal of Judges Orie, Robinson and Moloto; the motion was denied on 20 November 2006. On 31 October 2006, *ad litem* Judge Franck Höpfel was assigned to the case. On 27 November 2006, Judge Ole Bjørn Støle was

assigned to the case. On 5 December 2006, the Accused once again moved for the disqualification and withdrawal of Judges Orie, Robinson and Höpfel; the motion was denied on 16 February 2007.

22. The commencement of trial was postponed by twelve months, between October 2006 and November 2007, following the Accused's hunger strike and the reassignment of the case to Chamber III by an Order issued by the President of the Tribunal on 20 February 2007. On 22 February 2007, Judge Antonetti was appointed as the Pre-Trial Judge. On 26 October 2007, Judge Agius, the acting President of the Tribunal, entrusted the case to Judges Antonetti, Frederik Harhoff and Flavia Lattanzi. Since that day, Judge Antonetti has served as the Presiding Judge.

2. Disqualification of Judge Harhoff

23. On 8 January 2008, during the presentation of its case, the Prosecution filed a Motion for the disqualification of Judge Harhoff in light of his association with the Helsinki Committee that had heard a witness who was due to testify in this case.[5] The President of the Tribunal denied the Motion on 14 January 2008.

24. On 9 July 2013, the Accused filed a Motion for the disqualification of Judge Harhoff on the ground of bias.

25. On 28 August 2013, a Panel of three Judges ("Panel"), by a majority, granted the Accused's Motion. Judge Harhoff was not heard and the Presiding Judge's report was not considered either.

26. On 3 September 2013, the Prosecution seised the acting President of the Tribunal of a Motion for reconsideration and request for stay of execution of the Decision of 28 August 2013. On 6 September 2013, the acting President of the Tribunal ordered the Panel to reconvene.

27. On 7 October 2013, the Panel dismissed the Motion for Reconsideration. On 31 October 2013, the acting President of the Tribunal concluded that the Decision of 28 August 2013 on Judge Harhoff's disqualification was final.

3. Appointment of Judge Niang and familiarisation with the record

28. By his Order dated 31 October 2013, the acting President of the Tribunal assigned Judge Mandiaye Niang to replace Judge Harhoff. On 13 November 2013, the newly formed Chamber

[5] Procedural matters: Hearing of 8 January 2008, T (E) 2232-2238.

invited the parties to present their observations on the continuation of the proceedings; the Accused did so in November 2013,[6] and the Prosecution in December 2013.

29. On 13 December 2013, the Chamber decided to continue the proceedings with the new Judge, from the point after the closing arguments, as soon as Judge Niang had finished familiarising himself with the record. In his separate opinion, Judge Niang gave himself an initial period of six months to familiarise himself with the record.

30. On 6 June 2014, the Appeals Chamber dismissed the Accused's appeal and upheld the Decision on the continuation of the proceedings.

31. In an Order issued by the Chamber on 13 June 2014, Judge Niang indicated that he would need additional time to familiarise himself with the record. The time required for Judge Niang to familiarise himself with the record lasted until June 2015.

E. Representation of the Accused

1. The Accused's refusal of assigned counsel

32. In a letter dated 25 February 2003 and addressed to the Registrar of the Tribunal ("Registrar"), the Accused informed him of his intention to represent himself. On 9 May 2003, Chamber II ordered the Registrar to assign a standby counsel for the Accused.

33. On 5 September 2003, the Registrar assigned Mr Aleksandar Lazarević as standby counsel. On 16 February 2004, the Registrar revoked the assignment of Counsel Aleksandar Lazarević and replaced him by Mr Tjarda van der Spoel.[7] On 9 March 2005, Chamber II, by a majority, Judge Antonetti dissenting, dismissed the Accused's Motion to re-examine the Decision of 9 May 2003 and removed the requirement that standby counsel must speak B/C/S.

34. In the Decision of 21 August 2006, Chamber I decided to limit the Accused's right to represent himself. It asked the Registrar to assign counsel to the Accused. The Accused informed the Registry that he did not wish to participate in the selection of his counsel and reiterated his wish to represent himself.

[6] The Chamber notes that the Accused cites abuse of process.
[7] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision", 16 February 2004, p. 2. The Registrar revoked the assignment of Mr Aleksandar Lazarević on the ground of conflict of interest, since Mr Aleksandar Lazarević has instituted proceedings in a domestic court against the Accused following the allegations made by the Accused against Mr Aleksandar Lazarević and his family.

35. On 30 August 2006, the Deputy Registrar of the Tribunal withdrew the assignment of Mr Tjarda van der Spoel as standby counsel for the Accused and assigned Mr David Hooper to represent the Accused. The Deputy Registrar also assigned Mr Andreas O'Shea as co-counsel for the defence of the Accused on 13 September 2006.

36. In the Decision of 20 October 2006, the Appeals Chamber reversed the Decision of Chamber I of 21 August 2006. In its Order of 25 October 2006, Chamber I again ordered the assignment of standby counsel to assist the Accused. On 30 October 2006, the Deputy Registrar assigned Mr Andreas O'Shea as standby counsel and Mr David Hooper as co-counsel.

37. On 11 November 2006, the Accused began a hunger strike, denouncing the restricted visiting hours accorded to his wife and requesting certain facilities to prepare and present his defence case, as well as the removal of his assigned standby counsel.

38. On 27 November 2006, Chamber I instructed standby counsel to "permanently take over the conduct of the Accused's defence" in accordance with the Order of 25 October 2006.

39. In the Decision of 8 December 2006, the Appeals Chamber reversed the order of 25 October 2006 and instructed Chamber I not to impose standby counsel on the Accused, unless he exhibited obstructionist behaviour fully satisfying the Trial Chamber that, in order to ensure a fair and expeditious trial, he would require the assistance of standby counsel. Following the Decision of 8 December 2006, the acting Deputy Registrar terminated the duties of Mr David Hooper and Mr Andreas O'Shea as counsel in the present case.

40. The trial finally commenced on 7 November 2007 before this Chamber, with the Accused representing himself.

41. By a Motion dated 29 July 2008, the Prosecution once again sought for the Accused to be assigned counsel for the remainder of the trial.

42. In the Decision of 25 November 2008, the Chamber ordered a stay of its ruling pending the Trial Chamber's conclusions on contempt allegations. In the Decision of 24 November 2009, the Chamber denied the Prosecution's motion.

43. In the Decision of 21 March 2012, the Chamber dismissed the Accused's request for compensation on account of violations of his fundamental rights, including the imposition of counsel against his will.

2. Legal assistance and privileged communication

44. In a letter dated 29 September 2008, the Registrar informed the Accused of his Decision to monitor his "privileged" [*sic*] communications for a renewable period of 30 days. On 29 October 2008, the Registrar renewed this measure. On 4 November 2008, before the Chamber, the Accused orally challenged the action taken by the Registrar.

45. On 27 November 2008, the Chamber ruled that if the monitoring were to be renewed beyond 28 November 2008, it would infringe on the rights of the Accused, thus inviting the Registrar to draw the consequences thereof.

46. In a letter dated 28 November 2008, the Registrar notified the Accused that Zoran Krasić's privileged status was being revoked due to allegations of witness intimidation, of having disclosed confidential information to a third party, and due to his public statements aimed at discrediting the Tribunal.

47. On 1 September 2009, the Accused requested once again that Zoran Krasić be designated as his privileged associate. The Registry dismissed the motion on 10 September 2009. On 15 September 2009, the Accused lodged an appeal before the President of the Tribunal. On 21 October 2009, the President denied the Accused's appeal.

48. On 12 January 2010, the Accused then turned to the Chamber, requesting that it grant his request to have Zoran Krasić reinstated as his privileged associate. In the Decision of 10 February 2010 on privileged associates, the Chamber noted that it did not have the authority but decided, nonetheless, to allow Zoran Krasić to assist the Accused in open sessions during his defence case - should that presentation take place - and invited the Registry to reimburse his travel expenses in order to assist the Accused during this stage.

49. In a letter sent to the Accused on 23 February 2011, the Registry agreed, at the request of the Accused, to recognise Dejan Mirović as his privileged associate in the main case, but did not agree to recognise Nemanja Šarović as the case manager in the case. In a letter sent to the Accused on 17 March 2011, the Registry refused to bear Nemanja Šarović's travel expenses and recalled that Mr Šarović, case manager solely for the contempt case, was not entitled to privileged communication in the main case. The Accused lodged an appeal before the President against the Decisions of 23 February 2011 and 17 March 2011; the President dismissed them.[8]

[8] President's Decision of 10 August 2011, para. 25.

50. On 9 June 2011, the Chamber examined the Accused's oral request to have Zoran Krasić reinstated as his privileged associate – which it approached as a request for reconsideration of the Decision of 10 February 2010 - and rejected it. The Chamber also rejected the Accused's oral motion to put an end to the disciplinary proceedings instigated against Boris Aleksić, his other associate. During the hearing of 23 August 2011, the Accused informed the Chamber that the Registry had instigated disciplinary proceedings against another of his associates, Dejan Mirović.

51. In a letter dated 12 October 2011, the Registry informed the Accused that there were reasons to believe that the facilities granted to him for communication with his legal associates were utilised as a means to facilitate the disclosure of confidential information and invited the Accused to comment on this issue. On 19 October 2011, the Accused made a submission before the Chamber that was filed on 1 November 2011, objecting to the contents of the Letter of 12 October 2011. On 10 November 2011, the Chamber decided that, in this case, the Accused had not exhausted all the means of recourse envisaged in the Rules of Detention and that the Chamber did not have the competence, at this stage, to assess whether a Registry decision to monitor his privileged communication was liable to infringe on the Accused's right to a fair trial.

52. In a letter dated 28 October 2011, the Registry notified the Accused of its decision to renew the monitoring of his "privileged" [*sic*] communication for a period of 30 days. On the same day, the Accused seised the President of a request filed on 16 November 2011 to annul this Decision. On 14 December 2011, the President denied the request.

53. On 27 January 2012, the Registry informed the Accused that in light of the advanced stage in the proceedings and the fact that no further confidential documents were to be disclosed, it was suspending the restrictive measures on "privileged" [*sic*] communication between the Accused and his associates.

54. In the Decision of 21 March 2012, the Chamber denied the Accused's request for compensation on account of violations of his right to legal assistance and to adequate time and facilities to prepare and present his defence case. Furthermore, the Chamber dismissed the Accused's allegations according to which the termination of his privileged telephone conversations and visits amounted to a violation of his right to legal assistance, warranting compensation.

3. Financing and presentation of the defence case

55. As early as 31 October 2003, the Accused requested financing of his defence and then proceeded to reiterate this request regularly during his trial. On 30 July 2007, the Pre-Trial Judge

ordered the Registry to implement the procedures applicable to the provision of legal aid in respect of the Accused and urged the Accused to provide the Registry with all useful information to assess his state of indigence and the qualifications of his associates. On 30 October 2007, the Chamber once again invited the Accused to provide the Registry with documents so that it could assess his state of indigence.

56. On 23 April 2009, the Chamber denied the Accused's request to secure the financing of his defence and invited the Accused, once again, to provide the Registry with the requested information. During the hearing of 2 March 2010, the Accused indicated that he would need two years to prepare his defence if it was not financed by the Tribunal. On 6 July 2010, the Registry denied the Accused's request to fund his defence.

57. In the Decision of 29 October 2010, the Chamber ordered the Registrar to fund 50% of the funds allocated in principle to a totally indigent Accused, to the defence team for the Accused consisting of three privileged associates, a case manager and an investigator, based on the Scheme for Persons Assisting Indigent Self-Represented Accused and on the basis of a determination of the complexity of this case at Level 3. Following an appeal lodged by the Registry on 19 November 2010, the Decision of 29 October 2010 was upheld by the Appeals Chamber in the Decision of 8 April 2011.

58. On 5 May 2011, the Accused set a number of conditions for the presentation of his defence, namely: (1) the regularisation of the status of his associate Zoran Krasić, (2) suspension of disciplinary proceedings against his associate Boris Aleksić, (3) retroactive payment of the costs of his defence since his arrival at the Tribunal in February 2003, (4) disclosure of a contempt motion against the Accused filed *ex parte* by the Office of the Prosecutor in 2008, (5) return of the binders containing the documents disclosed and then withdrawn by the Prosecution and (6) the translation of two of his books.

59. On 9 June 2011, the Chamber dismissed motions 1, 2, 3 and 4 of the Accused's submission. The Chamber partially granted motion 5 and declared motion 6 moot. In this Decision, the Chamber ordered the Accused to file his 65*ter* witness and exhibit list within six weeks at the latest, with time running from his receipt of the B/C/S translation of the said Decision.

60. By 5 August 2011, the Accused had not filed the list. During the status conference of 23 August 2011, the Accused stated that he would not present a defence case, that he did not have the necessary resources to file a final trial brief and requested 10 days for his closing arguments.

F. Contempt of court proceedings at the Tribunal

1. Contempt proceedings against the Accused

61. The Accused was the subject of three contempt proceedings initiated against him by the Prosecution for deliberately violating the protective measures ordered by the Chamber and the confidentiality of some information. The Judges of the Chamber withdrew from these contempt proceedings against the Accused.

62. In the Judgement of 24 July 2009,[9] Chamber II found the Accused guilty of contempt of the Tribunal and sentenced him to 15 months in prison for deliberately and knowingly hindering the course of justice by revealing confidential information about three witnesses, in violation of the protective measures ordered by the Chamber, and by publishing excerpts from a confidential written statement by one of them in a book he wrote. In the Judgment of 19 May 2010, the Appeals Chamber dismissed all eight grounds of appeal raised by the Accused and upheld the sentence against him.

63. In the Judgement of 31 October 2011,[10] Chamber II found the Accused guilty of contempt of the Tribunal and sentenced him to 18 months in prison for having deliberately and knowingly hindered the course of justice by revealing confidential information regarding ten protected witnesses in a book he wrote, in violation of the protective measures ordered by the Chamber. In the Judgement of 28 November 2012, the Appeals Chamber upheld the 18-month sentence and held that, as the Accused had been detained for a period exceeding his 15-month sentence and his 18-month sentence, he had already served this 18-month prison term.

64. In the Judgement of 28 June 2012,[11] Chamber II once again found the Accused guilty of contempt of the Tribunal and sentenced him to a two-year prison term for failing to remove confidential information from his personal internet site. On 30 May 2013, the Appeals Chamber dismissed the Accused's appeal and confirmed the two-year prison term.

[9] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2, "Judgment on Allegations of Contempt", confidential, 24 July 2009.
[10] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, "Public redacted version of Judgment issued on 31 October 2011", public, 31 October 2011.
[11] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4, "Public redacted version of the Judgment issued on 28 June 2012", public, 28 June 2012.

2. Proceedings initiated against the Prosecution

65. On 29 June 2010, the Chamber ordered the Registry to appoint an *amicus curiae* to investigate the Accused's allegations of witness intimidation and pressure exerted on witnesses by some OTP investigators. In his report, the *amicus curiae* concluded that there were no grounds on which to initiate contempt proceedings against the OTP investigators.

66. On 28 October 2011, the Chamber filed a public redacted version of the *amicus curiae*'s report and ordered the parties to file their submissions on this issue. On 22 December 2011, the Chamber upheld the report and denied the Accused's motion for contempt against some of the OTP investigators.

67. On 16 June 2014, the Chamber stated that it is not competent to consider the Accused's motion for contempt filed before the President of the Tribunal against Carla del Ponte, former Prosecutor of the Tribunal, which the Accused had requested the Chamber consider.

G. Time in detention and provisional release

1. Motion by the Accused seeking provisional release before trial

68. On 24 June 2004, the Accused filed a Motion seeking provisional release while awaiting the commencement of his trial. On 28 July 2004, Chamber II denied the Motion of the Accused.

69. In a Motion dated 16 November 2005, the Accused claimed that his long detention before his trial was arbitrary and requested Chamber II to commence the trial, or alternatively, to order his provisional release. The Chamber denied the Accused's Motion on 13 December 2005.

2. Request for provisional release by the Accused during his trial

70. In the oral request of 20 October 2009, the Accused invoked abuse of process by the Chamber on account of the excessive length of his detention, notably in light of the almost five years that had elapsed before the commencement of his trial. In the Decision of 10 February 2010, the Chamber deemed that, in light of the complexity of the case, the number of witnesses heard and exhibits tendered before the Chamber, the conduct of the parties and the seriousness of the charges against the Accused, the right of the Accused to be tried without undue delay had not been violated.

71. In the Decision of 29 September 2011, the Chamber dismissed another motion of the Accused on the same subject. The Chamber also dismissed the Accused's allegations of abuse of process and excessive length of detention.

72. On 27 January 2012, the Accused filed a claim for damages on account of alleged violations of his fundamental rights, including the length of his detention. In the Decision of 21 March 2012, the Chamber denied the Accused's submission.

73. On 20 March 2012, during closing arguments, the Accused seised the Chamber of an oral request for provisional release, claiming that there were no longer any reasons to keep him in detention. On 23 March 2012, the Chamber denied this request.

3. Provisional release by the Chamber *proprio motu*

74. On 30 July 2010, having found that the Accused appeared very tired and that his health seemed to have deteriorated, the Chamber deemed it necessary that he undergo a medical evaluation. Three medical reports were filed confidentially and *ex parte* in September 2010, pursuant to this order. On 19 October 2010, the Chamber requested additional information on the Accused's health and ordered that he be examined by a panel of three experts.

75. On 16 March 2011, the Registry informed the Chamber of the execution of the Chamber's decision. On 5 July 2011, the Registry filed the medical report of the panel of experts. According to this report, the health of the Accused was such that it would allow him to attend hearings, on condition that he follows the medical treatment set out in detail in the report.

76. Following the hospitalisation of the Accused on 6 January 2012 and his refusal to disclose information regarding his health to the Chamber, on 12 January 2012, the Chamber *proprio motu* ordered the Registrar: (i) to obtain a report from the Commanding Officer of the Detention Unit on the circumstances under which the Accused was hospitalised and the procedure followed by the personnel involved, (ii) to obtain a detailed medical report from the Detention Unit physician on the health of the Accused within 30 days of the return of the Accused to the Detention Unit and (iii) to appoint as medical expert the Russian doctor Dr Sergei Nickolaevitch Avdeev.

77. On 3 February 2012, the Registry informed the Chamber that the Accused had refused to be examined by the appointed Russian cardiologist and that he would refuse to be examined by any doctor appointed pursuant to the orders of the Chamber. At the status conference of 7 February 2012, the Accused confirmed that he refused henceforth to be examined by any medical expert appointed by the Tribunal and to disclose any information on his health. The Chamber noted this refusal which, moreover, made it impossible to implement fully the Order of 12 January 2012.

78. Following another hospitalisation of the Accused on 9 March 2012, the Chamber *proprio motu* ordered the Registrar, on 12 March 2012, to appoint a panel of three medical experts ("panel

of experts"), and to submit, as soon as possible, and within 30 days at the latest, their report on whether the detention of the Accused at the Detention Unit was compatible with his state of health.

79. On 5 April 2012, on account of the Accused's refusal to be examined by the panel of experts, the Chamber redefined the mandate of the said panel. On 21 May 2012, the Registry filed the report of the medical panel of 2 May 2012, which concluded, *inter alia*, that the doctors and medical staff at the Detention Unit were able to take care of the Accused's health.

80. In a Motion dated 27 January 2012, the Accused filed a request for compensation on account of violations of his fundamental rights since his arrest, including violations of his right of access to medical staff. The Accused, more specifically, alleged that he had been deprived of direct contact with his family during his recent hospitalisation. The Accused objected to the type of medical treatment that he had been prescribed, claimed that the medical treatment provided was delayed and that the Registry had not allowed him to be examined by a panel of Russian medical experts. In the Decision of 21 March 2012, the Chamber considered that the Accused had "adequate access to medical care."

81. On 13 June 2014, the Chamber invited the parties to make submissions on the possible provisional release of the Accused *proprio motu.* The parties responded to the invitation of the Chamber and presented their submissions, the Accused on 17 June 2014 and the Prosecution on 20 June 2014.

82. On 24 June 2014, the Chamber invited the governments of the Kingdom of the Netherlands and of the Republic of Serbia to present their comments with regard to guarantees for the possible provisional release of the Accused. Following the comments provided by the host country and the receiving state, the Chamber requested that the Accused commit himself to complying with these guarantees. Following the Accused's refusal to abide by the measures that the Chamber intended to impose on his provisional release, the Chamber put an end to the procedure for provisional release it had initiated *proprio motu* on 10 July 2014.

83. On 6 November 2014, the Chamber, by a majority, Judge Niang dissenting, ordered *proprio motu* the provisional release of the Accused. On 13 January 2015, the Chamber unanimously dismissed the Prosecution Motion seeking the revocation of the provisional release of the Accused. On 30 March 2015, the Appeals Chamber ordered the immediate revocation of the provisional release. Before ordering the revocation requested by the Appeals Chamber, on 10 April 2015 the Chamber ordered the Registry to take appropriate action to verify the medical condition of the Accused. In the Decision of 22 May 2015, the Appeals Chamber granted the Prosecution's request

for execution of the Decision of 30 March 2015 and issued an arrest warrant against the Accused on 17 June 2015.

84. On 21 October 2015, the Appeals Chamber suspended the request to arrest and detain the Accused, either until the end of his prescribed treatment or until the date set for the delivery of the Judgment, or until the Chamber ordered the Accused's return to detention. On 9 February 2016, the Appeals Chamber amended the disposition of its Decision of 21 October 2015 in order to remove the reference number associated with the Accused's treatment.

85. In the Order of 12 February 2016, the Chamber ordered the Serbian authorities to take all appropriate measures to ensure the appearance of the Accused on the day of the delivery of the Judgment, set for 31 March 2016, and to inform the Chamber before the 15 March 2016 of any difficulty relating thereto. The report of the Serbian authorities was filed on 4 March 2016.

86. In the Order of 16 March 2016, the Chamber noted that it follows from the report of the Serbian authorities that the medical treatment of the Accused cannot be interrupted or continued in The Hague. The Chamber ruled that, under these conditions, the transfer of the Accused to the Tribunal was not required and that the Judgement would be delivered on 31 March 2016 in his absence.