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JUDGEMENT SUMMARY

TRIAL CHAMBER

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The Hague, 31 March 2016

Trial Judgement Summary for Vojislav Šešelj

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

As a preliminary matter, I wish to define the scope of our judgement. The Chamber's findings, which I will set out below, do not claim to establish the entire truth about the events that occurred, let alone to recount the complex history of a conflict. The Chamber's role is limited to providing a legal response to the allegations made in support of the Prosecution's theory. Therefore, this judgement is dependent on the limited truth that may or may not have been established by the facts presented before the Chamber.

In the course of this trial, which commenced on 7 November 2007, the Chamber admitted close to 1,400 exhibits. It heard 99 witnesses, of whom 90 testified for the Prosecution and 9 were called directly by the Chamber. The judgement consists of just over 100 pages and includes two annexes, a concurring opinion from Judge Antonetti, a statement from Judge Niang and a partially dissenting opinion from Judge Lattanzi.

The Prosecution charges Vojislav Šešelj, a politician, President of the Serbian Radical Party and a member of 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 them by way of his membership in a joint criminal enterprise.

The Prosecution's charges rest on one main basis: the ideology of a "Greater Serbia". The Prosecution claims that the crimes that were committed were an integral part of the means deployed to enable all of the Serbs spread out in 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 displacement of the non-Serbian population living in certain areas that were deemed to be Serbian land.

The Prosecution's argument rests on two pillars:

The first claims that Vojislav Šešelj is associated with the crimes by virtue of his membership in a joint criminal enterprise, whose members included local and national authorities such as the President of the Republic of Serbia, Slobodan Milošević, military leaders and deputies, as well as paramilitaries and volunteer units called "Četniks" and "Šešeljevci". Aside from war propaganda and incitement to hatred against the non-Serbs, Vojislav Šešelj's main role was distinguished by his involvement in the recruitment and organisation of volunteers who would be sent into the field and integrated into units of the "Serbian forces" which allegedly carried out attacks in several municipalities in Croatia and Bosnia and Herzegovina. These "Serbian forces" are claimed to have committed murders, acts of torture and cruel treatment against numerous non-Serb civilians, notably Croats and Muslims. It is also claimed that they forcibly displaced non-Serb civilians and expelled them. Additionally, they are said to have destroyed villages and committed 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 as part of a system of persecution.

The Prosecution does not allege that Vojislav Šešelj was a military leader, nor does it find him criminally responsible under Article 7(3) of the Statute of the Tribunal, applicable to a military or civilian superior. Nevertheless, the Prosecution does impute extensive authority to Vojislav Šešelj, which he also wielded in the conflict zones that he allegedly visited in order to boost the morale of his troops. The Prosecution submits that Vojislav Šešelj 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, notably by conferring upon them the rank of Vojvoda that he himself held.

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

The final version of the Indictment – amended several times – in which all of these charges are included contains nine counts, three of which are counts of crimes against humanity: persecutions (Count 1), deportation (Count 10) and 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 destruction or wilful damage done to institutions dedicated to religion or education, and Count 14 plunder of public or private property).

Vojislav Šešelj pleaded not guilty to all of the charges. He represented himself and was not assisted by counsel. At the close of the Prosecution case, Vojislav Šešelj opted not to call any witnesses or to present additional defence evidence before the Chamber. Nevertheless, he actively participated in the first stage of the trial with a multi-pronged defence strategy which included challenging the legality of the Tribunal and claiming that there was no evidence implicating him in the alleged crimes and that the charges against him were political and biased.

Although at first Vojislav Šešelj refused to concede anything to the Prosecution, as the trial progressed his defence strategy seemed to become more nuanced. Vojislav Šešelj assumes and upholds his nationalist ideology for a "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. Vojislav Šešelj 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 on some of his men was not a military distinction nor did it imply an association with the SRS. According to Vojislav Šešelj, 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. Vojislav Šešelj submits for that matter that there were several groups of volunteers, some of whom were notorious criminals and had nothing to do with his men. He notes some confusion in distinguishing them – this confusion, according to him, is facilitated by the fact that the epithet "Chetnik", far from being exclusively applied to the SRS volunteers was, instead, rather bandied about.

Overall, Vojislav Šešelj presents the Serbs as being the victims of Croat 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 appeared as the defenders of the law. He defines the recruitment and organisation of volunteers as part of a legitimate operation to defend the Serbs, including in Croatia where the challenge to their status as a constitutive people guaranteed by the Constitution, coupled with their harassment and prosecution, constituted a serious threat to their existence. Vojislav Šešelj submits that these attacks needed to be taken seriously in order to avoid a repeat of the Serbs' tragic past. It is in this same vein that Vojislav Šešelj provided a different description of the context in which he gave 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.

Vojislav Šešelj also invites the Chamber to undertake a critical different analysis of the previous judgements rendered before this Tribunal, some of which share the same factual basis as his case, notably the 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 were rejected, including the existence of a joint criminal enterprise and crimes against humanity in certain places such as Vukovar, must be applicable 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.

Finally, it must be pointed out that Vojislav Šešelj cross-examined Prosecution witnesses and witnesses 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* witnesses and, for the same reasons, he objected to the admission of the written statements of Rule 92 *bis* and quarter witnesses.

Prior to conducting a more detailed analysis of the specific crimes that Vojislav Šešelj is charged with, the Chamber, by a majority with Judge Lattanzi dissenting, made a number of observations, the first of which concerns a certain lack of precision in the Prosecution's approach. The Prosecution initially presented the charges very clearly, starting from paragraph 5 of the Indictment, in which it drew a distinction between the crimes physically committed by the Accused by limiting them solely to Counts 1, 10 and 11, and other crimes that were allegedly committed by way of the joint criminal enterprise.

This initial framework was soon obscured by the subsequent allegations. Vojislav Šešelj was ultimately claimed to be a member of a joint criminal enterprise for all of the crimes. The Prosecution merely includes all of the crimes under, initially, the first category and, secondly, under the third category. The alleged criminal purpose of the enterprise also seems to vary depending on the written submissions. To characterise the means of creating a "Greater Serbia", the Prosecution oscillates between ethnic cleansing and the quest for territorial continuity between the Serbs. The Prosecution uses the terms "violence" and "crimes" indistinctly. 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 a synonym for a crime.

Some of the Prosecution's written submissions give the impression that the very ideology of a "Greater Serbia" is of a criminal nature, while others focus more on denouncing the means of its realisation. The Prosecution also seems to assume that the Serbian military campaign was illegal, thereby making it futile impossible to make any distinction between what may have been a legitimate military campaign and a campaign that may have become criminal,, which alone is punishable.

Added to this ambiguity are wide-ranging charges which for the Prosecution consist of targeting 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 described facts. Thus, the same facts have been qualified as acts of direct commission, acts attributed to a criminal enterprise, acts of incitement or aiding and abetting. The same acts that are qualified as murder, torture and cruel treatment, crimes of expulsion, inhumane acts (forcible transfer), wanton destruction and plunder of public or private property, are also referred to as acts of persecution. Overall, the Prosecution applies a circular approach in which practically each crime has multiple qualifications and each mode of participation in crimes seems to absorb or is superimposed on every another.

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

The majority regrets the maximalist approach, but not in order to claim that it impaired the proceedings and compromised Vojislav Šešelj's effective defence. It must be emphasised that the latter was able to present all of his arguments. The majority simply underlined that, regrettably, the Prosecution's ambiguities complicated an approach that could have been more simple for the Prosecution, but also for the Defence and the Chamber. The last two were both condemned to a certain degree to follow the furrow dug out by the Prosecution. The Prosecution Pre-trial and final briefs should have helped to lift some initial ambiguities. On the contrary, instead of presenting the work plan of the Prosecution in regards to the facts to be proved and of reviewing at the end of the trial how the Prosecution completed its task, the briefs rather appeared to the majority as new charging instruments in which each of which one was aimed at presenting the entire Prosecution argument. Thus it is with some difficulty that the Chamber has tried to untangle the disparate submissions of the Prosecution.

I will now present the findings of the Chamber on certain important questions linked to evidence.

The Chamber admitted into evidence many excerpts from books by Vojislav Šešelj. The source of these documents represents for the Chamber important indicia of whether the published speeches are attributable to Vojislav Šešelj. The Chamber does not lose sight of the possibility of exaggeration of some of the statements.

The Chamber has also admitted into evidence the initial written statements given to the Prosecution by witnesses who then partly or completely recanted contradicted them when they testified. The Chamber followed the guidelines outlined by the Appeals Chamber and examined the evidence from these witnesses case by case.

The Chamber admitted considerable evidence that goes to a consistent pattern of conduct. The Chamber, by a majority, with Judge Lattanzi dissenting, did not find it very useful to take into account this evidence which only duplicated the evidence that was already admitted on the relevant facts.

The Chamber received a number of documents and testimonies from other proceedings. For the facts admitted through resulting from the judicial notice under Rule 94 (B) of the Rules, the Chamber recalls that their evidentiary probative value is not binding over the Chamber only rests on a simple presumption. Without even being contested by evidence to the contrary presented by the Defence, it is not definitive. The Chamber may set them aside correctly prefers to dismiss these facts established in favour of more reliable evidence to the contrary, such as the testimonies of witnesses during cross-examination, who were directly examined by the Chamber and subjected to cross-examination which seemed to provide more certainty.

I will now broach the general context of the facts in the Indictment.

The Chamber received ample evidence retracing the chronology of events that led to the disintegration of the former Yugoslavia.

Vojislav Šešelj founded the SPO in March 1990, together with Vuk Drašković. Following their disagreements, on 18 June 1990 Vojislav Šešelj founded the Serbian Chetnik Movement, or the S^P, over which he presided. On 25 February 1991, Vojislav Šešelj, Ljubiša Petković and Tomislav Nikolić founded a new political party, the Serbian Radical Party, or the SRS. Vojislav Šešelj was elected President. The goals of the SRS were essentially the same as those of the SČP. They called for the creation of a united Serbian state or a "Greater Serbia" that would follow the borders defined by the Karlobag-Virovitica-Ogulin-Karlovac line. The SRS had a two-fold structure: (i) a central committee, the core organ of the party; and (ii) municipal committees and sub-committees at the level of small towns and villages. The SRS also had branches in Vojvodina, Croatia, BiH and Montenegro.

With respect to the S^P/SRS volunteers, the Chamber found that the concept of "volunteer" within the Serbian army initially referred to individuals who joined the armed forces in times of war. From August 1991, according to the law on national defence of the Republic of Serbia, the Serbian volunteers had to join the Territorial Defence in order to reinforce the troops of the federal armed forces, regardless of their affiliation.

The Chamber focused on the disputed issue of identifying SČP/SRS volunteers. These men were called "Šešelj's men" or Šešeljevci, a name sometimes confused with "Chetniks", which was used, depending on the case, to refer to Serbian soldiers who identified with the nationalist ideology of Vojislav Šešelj. An analysis of the evidence shows that "Šešelj's men" could be identified by their physical appearance and their clothing and accessories, without this method of identification always being decisive. The Chamber was therefore careful to identify persons associated with the SČP/SRS using various sources, rather than associating any reference to the term "Chetnik" with Vojislav Šešelj.

The Chamber found that the recruitment of SRS volunteers primarily took place in the SRS headquarters in Belgrade. Recruitment was also done at the municipal level. It is not disputed that the SRS also recruited and sent volunteers in response to requests from other armed forces, in particular the local Territorial Defence (or the TO) in BiH and Croatia and the armed forces stationed in BiH and Croatia, including the JNA/VJ and VRS.

The Chamber found that being a member of the SRS was not a criterionum for the recruitment of volunteers. Among them were also persons without any political affiliation or whose affiliation to the SRS came after their deployment in the field.

One of the key findings of the Chamber was to note that while Vojislav Šešelj may have had a certain amount of moral authority over his party's volunteers, they were not his subordinates when they were engaged in military operations. The Chamber has ample proof of this, including the testimony of Prosecution military expert Mr Reynaud Theunens. He explained clearly that, on the one hand, the Yugoslav Constitution and other relevant legal texts envisaged the possibility of declaring an imminent state of war; once such a declaration has been made, the army could resort to using volunteers to reinforce its regular troops. The Yugoslav armed forces were organised on the principle of unity of command. By virtue of this principle, both regular soldiers and volunteers were sent to the field under the same military hierarchy. On the basis of this principle, Vojislav Šešelj could not have had any hierarchical relationship to the volunteers once they became integrated in the structure of the regular armed forces of the JNA, VJ and VRS.

With respect to the Prosecution's allegations that the paramilitary forces participated in the crimes set out in the Indictment, the Chamber received evidence showing that the following paramilitary groups were present during the period relevant to the Indictment in some of the locations where crimes were committed, namely Arkan's Tigers, the White Eagles, the Dušan Silni Detachment, the Red Berets (or the special unit of the Serbian DB

security services created on 4 May 1991), the Yellow Wasps, the Leva Supoderica Detachment, the Vasilje Vidović aka Vaske unit, Gogić's unit, also called the Loznica Group, the Karađorđe unit, the SPO Serbian Guard, the Branislav Gravilović aka Brne and Slavko Aleksić units.

Furthermore, the Chamber examined the alleged relationship between these groups and Vojislav Šešelj.

In the Chamber's opinion, with Judge Lattanzi dissenting, there is not enough evidence to find that an affiliation existed between Vojislav Šešelj and certain paramilitary groups, such as Arkan's Tigers, the White Eagles and the Karađorđe unit. The Chamber also finds, unanimously, that there is no evidence of a direct hierarchical relationship between Vojislav Šešelj and the Loznica group or the Serbian Guard unit.

The Chamber further finds that:

-Vojin Vučković, aka Žućo/Zuca, was the commander of a Serbian volunteer unit but operated independently by taking on the name "Yellow Wasps". Žućo's brother, Dušan Vučković, aka Repić, and a person by the nickname Topola, were also members of this unit. Vojislav Šešelj distanced himself from the Yellow Wasps after the murders committed in Zvornik;

- With respect to the Red Berets, the Chamber found that some SRS volunteers had joined the units of the Red Berets and were even commanders;

-The Leva Supoderica Detachment consisted of SRS volunteers sent to Vukovar by the SRS Staff or recruited locally;

-With respect to Vaske's unit, the Chamber found that Vaske was a member of the SČP from its inception, and a founding member of the SRS. The Chamber finds that from September 1991 to late February 1992, Vaske was an SRS volunteer in Benkovac, Dalmatia;

-With respect to Brne's units and Slavko Aleksić's units, the Chamber found that these units consisted of SRS volunteers in BiH during the period covered by the Indictment, but that Brne and Slavko Aleksić had not been sent by the SRS to the Sarajevo region. Nevertheless, Vojislav Šešelj acknowledged them as being the commanders of the SRS volunteers on the ground. Their units had furthermore been placed under the command of the VRS.

I will now summarise the Chamber's legal and factual findings on the crimes set out in the Indictment.

With respect to the requirements under Article 5 of the Statute regarding crimes against humanity:

The Chamber, by a majority, Judge Lattanzi dissenting, found that the Prosecution failed to prove beyond all reasonable doubt that there was a widespread and systematic attack against the non-Serb civilian population in large areas of Croatia and BiH, notably in the municipalities of Vukovar, Zvornik, the region of Sarajevo, and the municipalities of Mostar and Nevesinje, during the period covered by the Indictment. The evidence tendered and considered establishes instead that there was an armed conflict between enemy military forces with civilian components.

The majority is of the opinion that the Prosecution failed to present the judges with an account that clearly shows that civilians who did not participate in combat were targeted en masse. The Prosecution does no more than make general statements that fail to account for the specific evidence heard by the judges. Under such circumstances, the majority cannot dismiss the Defence's argument – amply supported by some of the testimonies – according to which these civilians had fled the combat zones to take refuge in villages

inhabited by members of the same ethnic or religious group; that the buses that were provided for this purpose did not constitute operations to forcibly transfer the population, but were in fact provided on humanitarian grounds to assist the non-combatants fleeing combat zones in which they no longer felt safe.

In the case of Vojvodina, the majority of the Chamber, Judge Lattanzi dissenting, finds that this area was not a zone of armed conflict. The majority did not note any effort by the Prosecution to argue - let alone prove to the Chamber - that there was a clear nexus with the conflict in Croatia and BiH. The Prosecution has not presented any evidence on the conditions under which Serbian refugees arrived from Croatia in order to establish this nexus.

The majority also noted other shortcomings in the Prosecution's approach. The majority notes the particular weakness of the evidence presented by the Prosecution to establish a nexus between the acts of violence and the departure of civilians from certain areas. The report of expert Ewa Tabeau merely provides a comprehensive list of the departures that occurred throughout 1992, without specifying the cause behind them. Similarly, Witness VS-061, upon whom the Prosecution relies heavily, was not convincing. He was caught out on a number of occasions, and had to admit that there were serious omissions and fabrications in his account. These fabrications concerned essential issues such as the murder of a Croat, Mijat Štefanac, which the witness initially claimed was the event that made the Croats flee. Under cross-examination, he admitted that this murder had been committed in a café in the context of private dispute which got out of hand, and that those responsible for the murder had been arrested and tried.

The majority notes that, generally speaking, the violent acts against the civilians in Hrtkovci, such as they have been described, are not comparable, in terms of their scale and modus operandi, to a widespread and systematic attack against the civilian population. The testimony that has been heard, far from suggesting that there was a large-scale attack against the Croatian civilian population, rather points out acts that were based mainly on local or even private reasons: their primary reason would appear to be the acquiring of accommodation by Serbs who had none because of their refugee status.

The majority notes finally – and without neglecting the particularly troubling speech made by Vojislav Šešelj on 6 May in which he clearly called for the expulsion of Croats, in particular those whom he considered to be disloyal - that it was not alleged that Vojislav Šešelj was directly involved in the exchanges of houses. Yet these exchange contracts are specified as the principle means by which the Croats were expelled from Hrtkovci. At best, the Prosecution could have sought to establish that Vojislav Šešelj bore indirect responsibility, not direct responsibility, for acts of persecution. In any event, the majority notes the absence of any crucial legal elements to establish any form of criminal responsibility for crimes against humanity.

Consequently, the Chamber by a majority, Judge Lattanzi dissenting, finds that the conditions required under Article 5 of the Statute have not been met.

With regard to the requirements under Article 3 of the Statute regarding war crimes, the Chamber notes: (i) the existence of an armed conflict in Croatia and BH during the period covered by the Indictment; (ii) the crimes specified in the Indictment as violations of the laws or customs of war could have been committed by members of the Serbian forces in order to support the armed conflict or as a result of the conflict.

With regard to war crimes, the Chamber notes that it heard certain evidence on crimes not alleged in the Indictment. Given Vojislav Šešelj's right to be informed of the charges against him, the Chamber did not take this evidence into consideration.

Furthermore, the Chamber holds that the Prosecution has not provided sufficient evidence to establish that the following crimes were committed: the murders in the Crna

Rijeka sector; the cruel treatment in the form of forced labour inflicted on the detainees at Ov~ara farm; the cruel treatment inflicted on detainees in the Velepromet warehouse; the torture and cruel treatment of the detainees in Sonja's House, in the Semizovac barracks and at the tyre repair garage at the Vogošća crossroad in the Sarajevo region, and the plunder of private property by Serbian forces in the villages of Nevesinje municipality.

The Chamber by majority, Judge Lattanzi dissenting, holds that the Prosecution has not provided sufficient evidence to establish that the following crimes were committed: the murder of non-Serb detainees on the Žuč hill near Sarajevo; torture and cruel treatment at the Gero slaughter-house near Zvornik; and the plunder of public or private property in the town of Vukovar and its houses.

The Chamber by a majority, Judge Lattanzi dissenting, also did not accept the charges of wanton destruction, or devastation not justified by military necessity, of towns, villages and homes and of the deliberate destruction of institutions dedicated to religion or education. The majority holds that there is insufficient contextual information on the destruction to allow for an assessment that would take all the factors on the ground into account.

The Chamber noted the existence of certain crimes, and will provide a list of them before determining whether they can be attributed to Vojislav Šešelj:

-In Vukovar municipality: murder, torture and cruel treatment, including sexual assault, inflicted on detainees at the Velepromet warehouse and the Ovčara farm.

-In Zvornik Municipality: the murder of Muslim civilians during the attack on Zvornik in April 1992; murder, torture and cruel treatment inflicted on Muslim detainees at the Ekonomija farm, on detainees at the Ciglana factory, on detainees at the Drinjača Dom Kulture, on detainees at the Karakaj Technical School and on detainees in the Čelopek Dom Kulture; the murder of a large number of non-Serb detainees at the Gero slaughter-house; torture and cruel treatment inflicted on detainees in the Standard shoe factory; and the plunder of private property from houses belonging to the inhabitants of Zvornik.

-In the Sarajevo Region: the murder of 17 civilians during an attack in the village of Lješevo; torture and cruel treatment inflicted on detainees in the Iskra warehouse in Podlugovi, and on detainees in Planja's house; and the plunder of Muslim houses after the attack on the village of Svrake.

-In the Municipality of Mostar: the murder of non-Serb civilians in the dump in Uborak and in the buildings of the main city mortuary in Sutina; torture and cruel treatment inflicted on detainees in the locker room of the Vrapčići football stadium, and on the detainees in Sutina; the plunder of private property from houses belonging to Muslims in the Topla hamlet.

-In the Municipality of Nevesinje: the murder of villagers in Presjeka; the muder of Muslims in Breza and at the Kilavci heating factory; the murder of villagers detained at the Zijemlje school ; torture and cruel treatment inflicted on detainees at the Kilavci heating factory, on detainees at the Zijemlje school and on detainees in the SUP building in Nevesinje.

I will now provide a summary of the Chamber's findings on Vojislav Šešelj's liability for the charges in the Indictment.

The Prosecution holds Vojislav Šešelj responsible for the phyical commission of crimes in relation to the crimes of persecutions, deportation and inhumane acts (forcible transfer) with respect to the Accused's speeches, the commission of crimes as a co-perpetrator participating in a joint criminal enterprise (or JCE), and instigation and aiding and abetting.

Seeking to establish responsibility on the basis of a Criminal Enterprise primarily requires the identification of a common criminal purpose. If the purpose is not criminal in itself, at the very least, the crimes committed to achieve the purpose must be an inherent element.

The majority of the Chamber, Judge Latttanzi dissenting, has noted an entire series of shortcomings and cases of confusion.

According to the Prosecution, the plan for a Greater Serbia advocated by Vojislav Šešelj contained an implicit criminal element as a result of its aim to unify "all Serbian territory" in a homogenous Serbian state comprising Serbia, Montenegro, Macedonia and vast swaths of Croatia and BiH, which would involve the deportation or forcible removal of the non-Serbian population. The majority has analysed the evidence admitted on the matter in order to determine whether this definition is tantamount to a joint criminal enterprise.

The Prosecution lays emphasis on the transfer under Serbian control of targeted territories. This "transfer" was allegedly planned and included certain common characteristics such as: (a) declaring vast areas of Croatia and BiH to be Serbian autonomous regions and taking control of public institutions and local administrative bodies; (b) conscripting volunteers and coordinating the actions of the JNA/VJ, MP, TO and other formations; (c) covertly arming Serb civilians; and (d) committing crimes in the field.

The majority is of the opinion that the Prosecution has given a very partial interpretation of the events it claims demonstrate the existence of a criminal plan for a Greater Serbia or for an entity known by a similar name. By depicting the establishment of Serbian autonomous regions in Croatia and BiH as actions that were part of the criminal plan for a Greater Serbia, without clarifying the broader context in which these actions were taken - namely the secession of both Croatia and BH – the Prosecution gives an interpretation which, at best, hides the way events unfolded, and at worst distorts them in relation to the evidence presented to the Chamber, which was mainly Prosecution evidence.

The majority considers that the plan for a Greater Serbia, such as it was advocated by Vojislav Šešelj, was in principle a political plan, not a criminal one. For Vojislav Šešelj, only the SRS pursued the objective of a Greater Serbia which was to include all the Serbs, whether they were of the Orthodox, Catholic or Muslim faith. The statements Vojislav Šešelj made about his vision of a Greater Serbia do not seem to have been contested by the Prosecution. Moreover, such statements can be found in numerous documents drafted prior to the proceedings in this case.

Even if certain attitudes thought to be discriminatory on the part of the Serbs are taken into account, namely the establishment of their local institutions in Croatia and BiH, the majority holds that the totality of the evidence does not lead to the conclusion that declaring the autonomy of the Serbian people of Croatia and BiH was the result of a criminal enterprise.

In fact, it is not in dispute that Vojislav Šešelj was driven by an ardent political ambition to create a Greater Serbia. Nothing, however, indicates that there was a criminal purpose in sending volunteers. There is a reasonable possibility that the sending of volunteers was aimed at protecting the Serbs.

The evidence shows that the recruitment and deployment of volunteers by Vojislav Šešelj and his party and the cooperation therein with other Serb forces, including the JNA/VJ, the MUP, the TO and the other paramilitary formations did not constitute an unlawful activity. On the contrary, it could have been amply justified by the context of the war. The legal framework of the former Yugoslavia allowed resorting to volunteers. These were integrated into the armed forces of the SFRY, including the JNA and the TO. Moreover, the Chamber notes that Vojislav Šešelj was not the hierarchical superior of the volunteers deployed on the ground.

The totality of the evidence substantiates the fact that the purpose of sending volunteers was not to commit crimes, but to support the war effort.

The above findings do not by any means presume to underestimate, and even less to conceal the crimes committed in different localities in Croatia and BiH in which the volunteers deployed by Vojislav Šešelj or his party may have taken part or have been indirectly involved. The majority simply notes that it is not satisfied that the recruitment and subsequent deployment of volunteers implies that Vojislav Šešelj knew of these crimes on the ground, or that he instructed or endorsed them. In the opinion of the majority, these crimes cannot be considered as an inherent element of the political design of Greater Serbia or the activities aimed at protecting the Serbs.

The Chamber has received an abundance of evidence establishing that the local Serbs of Croatia and BiH were arming themselves. Nevertheless, evidence shows that Croat and Muslim civilians were equally arming themselves. In the view of the majority, this global picture gives credence to the reasonable possibility of a scenario in which all the warring factions were preparing themselves for the imminent hostilities in order to preserve the lands they considered as theirs, rather than a singular and unilateral step of the Serbian occupiers driven solely by the criminal purpose of expelling the civilians of other ethnic groups.

The lack of evidence of a criminal purpose is in itself also sufficient to reject the allegation of a criminal enterprise. The majority also explored further, albeit superfluously, the issue of the identity of views between the alleged members of the criminal enterprise, this being a necessary element for the finding of existence of JCE.

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

In its Judgement, the Chamber cited the exchanges that took place between the different protagonists in the Milošević trial during Vojislav Šešelj's testimony in that case. It appears from these exchanges that the judges in that case were as much at a loss as the majority of the Chamber in the present case as to the object of the alleged criminal purpose. The Prosecution first stated that Milošević did not share the ideology of Greater Serbia. It was then confronted with its own earlier written submissions from which it transpired that the notion of Greater Serbia lay at the very heart of the case. The Prosecution prevaricated, changing versions more than once, all the while refusing the adjournment willingly offered to it by the judges so that it could take the time and clarify its submissions that were found to be confusing.

In the view of the majority, not only does the confusion remain, but a lot of the evidence shows that the collaboration was aimed at defending the Serbs and the traditionally Serb territories or at preserving Yugoslavia, not at committing the alleged crimes.

The Chamber by a majority, Judge Lattanzi dissenting, therefore finds that the Prosecution has failed to prove the existence of a JCE.

The Chamber by a majority, Judge Lattanzi dissenting, also rejects the responsibility of Vojislav Šešelj in terms of the actual commission of the crimes of persecution, with all the consequences of its finding that the standards for applying Article 5 of the Statute have not been met. The Chamber unanimously finds that Vojislav Šešelj is not responsible for the actual commission of expulsions and inhumane acts (forcible transfer) as crimes against humanity charged in the Indictment.

I will now summarise the findings of the Chamber regarding the Prosecution's allegations of incitement to commit crimes with which Vojislav Šešelj is charged.

Firstly, the Chamber accepts that the propaganda of a "nationalist" ideology is not in itself criminal. It deemed, however, that it was its duty to analyse and to qualify the statements made by Vojislav Šešelj and their potential effect on the perpetrators of the crimes charged in the Indictment, in the light of their context.

The Chamber examined the substance and the context of several incriminated speeches by Vojislav Šešelj, specifically:

(1)a speech delivered on the Vukovar road on 7 November 1991 where Vojislav Šešelj allegedly stated that "Very soon, there will not be a single Ustasha left in this area."

(2)a speech delivered by Vojislav Šešelj in Vukovar between 12 and 13 November 1991 when he is said to have stated that "Not a single Ustasha must leave Vukovar alive" and "Ustashas, surrender! There is no need to lay down your lives anymore."

(3)a speech made in Mali Zvornik in March 1992 during which he is said to have called upon his Chetnik brothers to take revenge against the "balijas" and push them back towards the east, far beyond the Drina river,

(4)and a speech delivered on 6 May 1992 in Hrtkovci (Vojvodina) when Vojislav Šešelj allegedly stated, among other things, that there was no place for Croats in Hrtkovci.

The Chamber finds that the speeches on the Vukovar road and in Vukovar were indeed made by Vojislav Šešelj. However, the majority, Judge Lattanzi dissenting, could not rule out the reasonable possibility that these speeches were made in a context of conflict and were meant to boost the morale of the troops of his camp, rather than calling upon them to spare no one.

The Chamber by a majority, Judge Antonetti dissenting, also finds that Vojislav Šešelj did indeed deliver the said speech in March 1992 in Mali Zvornik, even if it considers that the precise circumstances of the speech have not been established.

The Chamber by a majority, Judge Lattanzi dissenting, was nonetheless unable to find beyond all reasonable doubt that, in calling upon the Serbs to "cleanse" Bosnia of the "pogani" or the "balijas", Vojislav Šešelj was calling for ethnic cleansing of Bosnia's non-Serbs. The majority, in fact, believes that the evidence supplied by the Prosecution is not sufficient to exclude the possibility, in view of the context, that in making this appeal, Vojislav Šešelj was rather participating in the war effort by galvanising the Serb forces.

The Chamber by a majority finds, Judge Antonetti dissenting, that the statements made by Vojislav Šešelj in his speech in Hrtkovci constituted a clear call for the expulsion or forcible transfer of Croats from this locality. Nevertheless, the Majority, Judge Lattanzi dissenting, is of the view that the Prosecution failed to show that this speech caused the departure of the Croats or the campaign of persecution alleged by the Prosecution.

The Chamber by a majority, Judge Antonetti dissenting, finds that two other speeches, delivered in the Serbian Parliament on 1 and 7 April 1992, constituted clear appeals for the expulsion and forcible transfer of Croats.

In the first speech, on 1 April 1992,, while debating a draft law on refugees, Vojislav Šešelj stated, I quote :

"We 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 the 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 get on with it in Zagreb..” End of quote.

The second speech of 7 April 1992 reiterates substantially the same.

Even though, in the view of the majority, Judge Antonetti dissenting, these speeches were appeals for expulsion, a different Majority, Judge Lattanzi dissenting, holds that these statements, forming part of an opposition to the official Serbian policy, were an expression of an alternative political programme that would never be put into practice. The Prosecution did not offer anything to show its impact.

The lack of any measurable impact, combined with the certainty that the appeals to Serbian authorities to use reprisals against Croats were never favourably received, do not allow the Majority to find that there was incitement to war crimes, even when taking into account the most virulent speeches such as the one in Hrtkovci and those delivered before the Serbian parliament.

The Chamber by a majority, Judge Lattanzi dissenting, therefore finds that the Prosecution has failed to show a causal link between Vojislav Šešelj’s speeches of 1 and 7 April 1992 and the crimes committed in April 1992 in Mostar, Zvornik and the Sarajevo area, or that Vojislav Šešelj could be held even indirectly responsible for the crimes committed between May 1992 and September 1993. Under these circumstances, the Majority is unable to qualify Vojislav Šešelj’s speeches of 1 and 7 April 1992 as physical acts of incitement.

The Chamber by a majority also rejects the Prosecution’s allegation of incitement to crimes on the basis that Vojislav Šešelj failed to take steps to punish the Šešeljevci who had taken part in crimes against non-Serbs. The majority recalls that no formal or de facto hierarchical link was found to exist between Vojislav Šešelj and the volunteers involved in the crimes charged in the Indictment. Failure to punish, however, cannot be invoked in the absence of any hierarchical link that would make Vojislav Šešelj responsible for the volunteers’ conduct. In the view of the Majority, it is established that, in terms of their actions on the ground, the volunteers were under military authority.

With regard to the alleged responsibility of Vojislav Šešelj on the count of aiding and abetting, the Chamber, by a majority, Judge Lattanzi dissenting, rejects it, noting that the underlying allegations of the Prosecution have the same factual basis as its allegations on his responsibility under the JCE and incitement.

I will now read the disposition:

For the reasons summarized above, the Chamber rules as follows:

-On Count 1 (Persecutions, as a crime against humanity): the Majority, Judge Latanzi dissenting, declares the Accused NOT GUILTY;

-On Count 4 (Murder as a violation of the laws and customs of war)): the Majority, Judge Latanzi dissenting, declares the Accused NOT GUILTY;

-On Count 8 (Torture as a violation of the laws and customs of war)): the Majority, Judge Latanzi dissenting, declares the Accused NOT GUILTY;

-On Count 9 (Cruel treatment as a violation of the laws and customs of war)): the Majority, Judge Latanzi dissenting, declares the Accused NOT GUILTY;

-On Count 10 (Expulsion as a crime against humanity): the Majority, Judge Latanzi dissenting, declares the Accused NOT GUILTY;

-On Count 11 (Inhumane acts (forcible transfer) as a crime against humanity): the Majority, Judge Latanzi dissenting, declares the Accused NOT GUILTY;

-On Count 12 (Wanton destruction of villages or devastation unjustified by military necessity as a violation of the laws and customs of war): the Majority, Judge Latanzi dissenting, declares the Accused NOT GUILTY;

-On Count 13 (Destruction or willful damage done to institutions dedicated to religion or education as a violation of the laws and customs of war), the Majority, Judge Latanzi dissenting, declares the Accused NOT GUILTY;

-On Count 14 (Plunder of public or private property as a violation of the laws and customs of war), the Chamber unanimously declares the Accused NOT GUILTY.

With this acquittal on all the 9 counts of the Indictment, the arrest warrant issued by the Appeals Chamber on 17 June 2015 is hereby rendered moot. Following this verdict, Vojislav Seselj is now a free man.

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