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TRIAL CHAMBER

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The Hague, 17 October 2003

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JUDGEMENT IN *THE PROSECUTOR V. BLAGOJE SIMIĆ, MIROSLAV TADIĆ AND SIMO ZARIĆ*

- **BLAGOJE SIMIĆ SENTENCED TO: 17 YEARS**
- **MIROSLAV TADIĆ SENTENCED TO: 8 YEARS**
- **SIMO ZARIĆ SENTENCED TO: 6 YEARS**

Please find below the summary of the Judgement delivered by Trial Chamber II composed of Judge Florence Mumba (Presiding), Judge Sharon Williams and Judge Per-Johan Lindholm, read out by the Presiding Judge.

Background

1. Trial Chamber II is sitting this morning to deliver Judgement in the trial of the three accused persons, Blagoje Simić, Miroslav Tadić and Simo Zarić, who are jointly charged under the Fifth Amended Indictment of 30 May 2002, with individual criminal responsibility pursuant to Article 7(1) of the Statute of the Tribunal, for two counts of crimes against humanity under Article 5 of the Statute, namely persecutions, and deportation; and one count of a grave breach of the Geneva Conventions of 1949 under Article 2 of the Statute, namely unlawful deportation and transfer. For purposes of this hearing, the Trial Chamber delivers a summary of its findings. This is a summary only and forms no part of the Judgement. The only authoritative account of the Trial Chamber's findings, and its reasons for those findings, is found in the written Judgement, copies of which will be made available to the parties and to the public at the conclusion of this hearing. The summary of findings delivered today represent the ruling of the Majority. A separate and partly dissenting opinion of Judge Lindholm, is appended to the Judgement.

2. The Accused were originally indicted together with Slobodan Miljković, aka "Lugar", Milan Simić and Stevan Todorović, in the First Indictment brought against them on 21 July 1995. Following guilty pleas by Stevan Todorović and Milan Simić, the proceedings against these two were separated from the other Accused, and upon the passing away of Slobodan Miljković, the proceedings against him were terminated.

3. The trial of the Accused covered events which occurred in the Municipalities of Bosanski Šamac and Odžak, located as shown in the map appended to the Judgement, and elsewhere in the territory of Bosnia and Herzegovina. The town of Bosanski Šamac was of strategic importance for the conduct of military operations. The municipality formed part of the so-called Posavina Corridor, a narrow strip of flat land along the Sava River connecting the Serb-controlled areas within Croatia to the Bosnian Serb territories and the Republic of Serbia. The Corridor was the easiest and shortest way to establish a ground route between the Serb-controlled areas within Croatia to the west (Republika Srpska Krajina), and Serbia to the east.

Factual Findings

4. The Accused held central positions within these areas covered in the Indictment. Dr. Blagoje Simić, a medical doctor, was President of the Municipal Board of the Serbian Democratic Party and the President of the Serb Crisis Staff in the municipality of Bosanski Šamac, he continued as President when the Crisis Staff was renamed the War Presidency. He was the highest ranking civilian official in the municipality. Miroslav Tadić, a retired school teacher, was Assistant Commander for Logistics within the 4th Detachment, Commander of the Civil Protection Staff, an *ex-officio* member of the Crisis Staff, and a responsible member of the Exchange Commission in the municipality of Bosanski Šamac. Simo Zarić was Assistant Commander for Intelligence, Reconnaissance, Morale and Information in the 4th Detachment, Chief of National Security in Bosanski Šamac from 29 April 1992 to 19 May 1992, and Deputy to the President of the Civilian Council in Odžak.

5. The Trial Chamber finds that the events which took place in the Municipalities of Bosanski Šamac and Odžak between 17 April 1992 and 31 December 1993, constituted a widespread and systematic attack on the civilian population. This attack included the forcible takeover of power in Bosanski Šamac by members of the paramilitaries and Serb police, and the subsequent acts of persecution and deportation against non-Serb civilians. The Trial Chamber is also satisfied that some members of the 17th Tactical Group of the JNA were present in the

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town of Bosanski Šamac on 17 April 1992. A state of armed conflict existed in the Republic of Bosnia and Herzegovina during the above mentioned period and there was a nexus between the armed conflict and the acts of the Accused persons.

6. The Trial Chamber does not consider whether or not the armed conflict was international in character. In the Trial Chamber's view, the Prosecution's pleading in the Indictment of a state of armed conflict did not inform the Defence of the material facts of the jurisdictional requirements of the charge of unlawful deportation or transfer, based on Article 2 of the Statute. The Trial Chamber holds that in determination of the charges against the Accused, it cannot make a legal assessment of the facts that do not conform to the Indictment, and consequently dismisses Count 3 of the Indictment.

7. The Trial Chamber finds that the Amended Indictment and the Prosecution's submissions were not detailed and specific enough to have put the Defence on notice that the Prosecution intended to rely on a joint criminal enterprise theory beyond a basic form of joint criminal enterprise. The Trial Chamber has, therefore, considered only the basic form of joint criminal enterprise, pursuant to Article 7(1) of the Statute, in addition to the other forms of criminal responsibility listed in this Article.

8. The Trial Chamber proceeds to state its findings on individual criminal responsibility for the underlying acts of persecution as charged in Count 1 of the Indictment for each Accused. The Trial Chamber begins with its findings on the Accused's participation through a joint criminal enterprise to commit persecutions.

Individual Criminal Responsibility, Joint Criminal Enterprise, Article 7(1)

9. The Trial Chamber is satisfied upon the evidence that members of the Crisis Staff, including Blagoje Simić as President; the Serb police, including the Chief of Police, Stevan Todorović, who was also a member of the Crisis Staff; Serb paramilitaries, including "Debeli" (Srčko Radovanović, "Pukovnik"), "Crni" (Dragan Đorđević), "Lugar" (Slobodan Miljković), and "Laki" (Predrag Lazarević); and the 17th Tactical Group of the JNA; were participants in a basic form of joint criminal enterprise, sharing the same intent to execute the common plan to persecute non-Serb civilians in the Bosanski Šamac municipality.

10. The Trial Chamber infers the common plan of the joint criminal enterprise from all the circumstances. There is sufficient evidence to conclude that participants in the joint criminal enterprise acted in unison to execute a plan that included the forcible takeover of the town of Bosanski Šamac, taking over vital facilities and institutions in the town, and persecuting non-Serb civilians in the municipality of Bosanski Šamac, within the period set forth in the Amended Indictment. This common plan was aimed at committing persecution against non-Serbs, including acts of unlawful arrest and detention, cruel and inhumane treatment, including beatings, torture, forced labour assignments and confinement under inhumane conditions, deportations and forcible transfer.

11. Blagoje Simić, as President of the Municipal Assembly and the Crisis Staff (later renamed the War Presidency), was at the apex of the joint criminal enterprise at the municipal level. He was the highest-ranking civilian in Bosanski Šamac municipality. He knew that his role and authority were essential for the accomplishment of the common goal of persecution. The Trial Chamber is convinced that Blagoje Simić and the other participants acted with the shared intent to pursue their common goal of persecution. The Trial Chamber holds that while Blagoje Simić was a participant in the joint criminal enterprise, there is no evidence to conclude that Miroslav Tadić and Simo Zarić were participants.

12. The Trial Chamber turns now to deliver its specific findings on Blagoje Simić's participation in the joint criminal enterprise to commit these underlying acts of persecution, and in addition, to give its findings on the responsibility of Miroslav Tadić and Simo Zarić pursuant to Article 7(1) of the Statute for the crime of persecutions charged in Count 1 of the Indictment.

Crimes Against Humanity, Persecutions, Count 1

(a) Forcible Takeover

13. With respect to the act of forcible takeover, as charged as an underlying act of persecutions in Count 1, the Trial Chamber concludes that it does not reach the level of gravity as the other crimes against humanity and on its own does not amount to persecutions. The Trial Chamber notes however that a forcible takeover may serve as the basis for perpetration of other persecutory acts as it provides the conditions necessary for adoption and enforcement of policies infringing upon basic rights of citizens on the basis of their political, ethnic, or religious background.

(b) Unlawful Arrest and Detention

14. The Trial Chamber is satisfied that following the takeover in Bosanski Šamac municipality on 17 April 1992, and continuing throughout 1992, large-scale arrests of Bosnian Muslim and Bosnian Croat civilians were carried out in the municipality by members of the local Serb police, and paramilitaries from Serbia. Some members of the 4th Detachment also conducted arrests. Non-Serbs were arrested on racial and political grounds, not because there was a reasonable suspicion that they had committed any offences, pursuant to national or international law. Non-Serb civilians were detained in facilities in Bosanski Šamac, the Police Station (SUP), Territorial Defence Building (TO), Primary and Secondary Schools, Zasavica, Crkvina, and elsewhere in Bosnia and Herzegovina, including Brčko and Bijeljina. The arrests and continued detention were arbitrary and without lawful basis. Detainees were not given reasons for their arrests and continued detention, and in the very few instances where trials were conducted in Bijeljina and Batković, these did not respect rights to a fair trial, the liberty and security of the person, as enshrined in Articles 5 and 6 of the European Convention on Human Rights, and Articles 9 and 14 of the International Covenant on Civil and Political Rights.

15. The Trial Chamber finds that the only reasonable inference that can be drawn from these facts is that Blagoje Simić shared the intent of the other participants in the joint criminal enterprise, executing the common plan of persecutions, and participated in this joint criminal enterprise through the unlawful arrest and detention of non-Serb civilians. The police, paramilitaries, Crisis Staff and 17th Tactical Group of the JNA, worked together to maintain the system of arrests and detention. As President of the Crisis Staff, Blagoje Simić presided over meetings where the operation of Municipal authorities were discussed. The Chief of Police, Stevan Todorović, reported to the Crisis Staff on the situation of arrests and detention in Bosanski Šamac. Blagoje Simić was in a position of strong influence and control, and did not take any significant steps in this position to prevent the continued arrests and detentions.

16. The Trial Chamber is not satisfied that there is sufficient evidence that Miroslav Tadić participated in the unlawful arrest and detention of non-Serbs. While Miroslav Tadić had knowledge of the discriminatory intent of the joint criminal enterprise, through his position as a member of the Exchange Commission, the actions or omissions of Miroslav Tadić cannot be considered to have had a substantial effect on the perpetration of unlawful arrests and detention, and as such did not aid and abet the joint criminal enterprise.

17. The Trial Chamber is not satisfied that Simo Zarić participated in the unlawful arrest and detention of non-Serbs. In his position as Assistant Commander for Intelligence, Reconnaissance, Morale and Information in the 4th Detachment, he conducted interrogations of detainees at the SUP and in Brčko. The Trial Chamber is not satisfied that these acts had a substantial effect on the perpetration of the unlawful arrests and detention. Simo Zarić did not order any arrests, and in several instances advocated the release of detainees.

(c) Interrogations

18. With respect to the charge against Simo Zarić of interrogation of Bosnian Croat, Bosnian Muslim and other non-Serb civilians who had been arrested and detained and forcing them to sign false and coerced statements, the Trial Chamber finds that while there is evidence that Simo Zarić conducted interrogations of detainees in the police station (SUP) in Bosanski Šamac and in Brčko, there is no evidence that he forced them to sign false and coerced statements. Furthermore, the Trial Chamber holds that interrogations as charged alone, do not meet the seriousness requirement to constitute persecution and a crime against humanity. The Trial Chamber has accordingly considered acts of interrogation together with the charge of persecution for acts of cruel and inhumane treatment.

(d) Cruel and Inhumane Treatment

19. The Trial Chamber considers that the pleading of “cruel and inhumane treatment [...] *including* beatings, torture, forced labour assignments and confinement under inhumane conditions” (emphasis added), is too vague and unspecific to have provided notice to the Defence of the incidents not explicitly set out in the Amended Indictment, this materially impaired the ability of the Accused to effectively prepare their defence. Therefore, the Trial Chamber does not consider any cruel and inhumane treatment falling outside the categories of beatings, forced labour assignments, and confinement under inhumane conditions. The Trial Chamber is, however, satisfied that torture was not pleaded as an *underlying act* of cruel and inhumane treatment, but rather, that cruel and inhumane treatment and torture were pleaded *on the same level*, as underlying acts of persecution.

20. The Trial Chamber finds that detainees were subject to repetitive beatings by paramilitaries and Serb police, causing severe pain and suffering, both mentally and physically, that constituted cruel and inhumane treatment. These acts were committed on discriminatory grounds, constituting persecution. Other acts that included sexual assaults, the extraction of teeth and threat of execution constituted torture. These acts caused severe physical and mental pain and suffering and occurred in order to discriminate on ethnic grounds against the victims. Non-Serb civilians who were detained in facilities in *Bosanski Šamac*, and *Crkvina* and *Bijeljina*, were confined under inhumane conditions which constituted cruel and inhumane treatment. They did not have sufficient space, food or water, and were subjected to humiliation and degradation. They suffered from unhygienic conditions and did not have appropriate access to medical care. The Trial Chamber finds that they

were confined under inhumane conditions on discriminatory grounds. The Trial Chamber is not, however, satisfied beyond reasonable doubt that the living conditions of the non-Serbs who were held in *Zasavica* amounted to confinement under inhumane conditions.

21. The Trial Chamber is satisfied that *Blagoje Simić* participated in the joint criminal enterprise to persecute non-Serb prisoners in the detention facilities in the town of *Bosanski Šamac* through cruel and inhumane treatment, including beatings, torture, and confinement under inhumane conditions. The Trial Chamber, however, is not satisfied that he participated in the joint criminal enterprise to persecute non-Serb detainees through cruel and inhumane treatment in the detention facilities in *Crkvina*, *Brčko* and in *Bijeljina*.

22. The Trial Chamber is not satisfied that the Prosecution has adduced sufficient evidence to prove that *Miroslav Tadić's* conduct had a substantial effect on the perpetration of the crime. The Trial Chamber is not satisfied that *Miroslav Tadić* had the authority to restrain any perpetrator from committing persecutory acts including beatings, torture, and confinement under inhumane conditions against the non-Serb prisoners in the detention centres in *Bosanski Samac*, *Crkvina*, *Brčko*, or *Bijeljina*.

23. The Trial Chamber is satisfied that *Simo Zarić* aided and abetted the joint criminal enterprise to persecute non-Serb prisoners in the detention facilities in *Bosanski Šamac* through cruel and inhumane treatment, including beatings, torture and confinement under inhumane conditions. *Simo Zarić* conducted interrogations with non-Serb prisoners who had been beaten. The Trial Chamber accepts that he did not take part in the beatings and that he did not approve of them. However, the Trial Chamber finds that his participation in the interrogations and in the interview of non-Serb prisoners by TV Novi Sad gave *encouragement* and *moral support* to the perpetrators of the cruel and inhumane treatment of non-Serb prisoners. In this context, the Trial Chamber takes into consideration that *Simo Zarić* was a former chief of the SUP in *Bosanski Šamac*, Assistant Commander for Intelligence in the 4th Detachment, and a person highly engaged and respected in the social and cultural life in *Bosanski Šamac*. The Trial Chamber does not place any weight on his appointment as Chief of National Security. The Trial Chamber finds that these characteristics of *Simo Zarić* prove beyond reasonable doubt that his participation in interrogations had a substantial effect on the perpetration of the mistreatment. While the Trial Chamber is not satisfied that *Simo Zarić* shared the discriminatory intent of the perpetrators, the Trial Chamber finds that *Simo Zarić* was *aware* of such intent. For these reasons, the Trial Chamber is satisfied beyond reasonable doubt that *Simo Zarić* incurred criminal responsibility as an aider and abettor of persecutions. His criminal responsibility covers cruel and inhumane treatment committed until July 1992 when he was appointed assistant president of the civilian military council in *Odžak* municipality.

24. The Trial Chamber is not, however, satisfied that *Simo Zarić* shared or was *aware* of the discriminatory intent of the perpetrators of persecution through cruel and inhumane treatment including beatings, torture, and confinement under inhumane conditions, in *Brčko* and *Bijeljina*. The evidence adduced by the Prosecution does not prove beyond reasonable doubt that *Simo Zarić* had such awareness. *Simo Zarić* himself only acknowledged that he knew of persecutions against non-Serb civilians in the detention facilities in *Bosanski Šamac*. The Trial Chamber is not satisfied beyond reasonable doubt that *Simo Zarić* made a substantial contribution to the persecution of non-Serb prisoners through cruel and inhumane treatment, including beatings, torture, and confinement under inhumane conditions, in *Crkvina*.

(e) Forced Labour Assignments as Cruel and Inhumane Treatment

25. The Trial Chamber is satisfied that in violation of the norms of international humanitarian law, civilians were forced to dig trenches, build bunkers and work on other military assignments on the frontline where they were exposed to dangerous conditions and were under a high risk of being injured or killed. The Trial Chamber accepts that the acts of forcing civilians to work in life-threatening circumstances fail to meet the obligation for humane treatment of civilians enshrined in the Geneva Conventions and amount to cruel and inhumane treatment. The Trial Chamber is satisfied that these assignments were made on a discriminatory basis and that they reach the level of seriousness required for persecution.

26. The Trial Chamber furthermore is satisfied that non-Serb civilians were subjected to humiliating forced labour. While single incidences of humiliating assignments may not reach the level of gravity required for persecution, the Trial Chamber accepts that these assignments were part of a pattern targeting the Bosnian Muslim and Bosnian Croat political and economic leadership. The Trial Chamber is satisfied that the humiliating assignments reach the level of gravity to amount to persecution.

27. The Trial Chamber accepts that certain types of work, that included food preparation, maintaining the power and water supply system, and agricultural work, were necessary for the welfare of the community and even if compulsory, were permissible under international humanitarian law. It has not been established beyond reasonable doubt that the conditions under which this labour was rendered were such as to amount to cruel and inhumane treatment, or that the assignments are of sufficient gravity to constitute persecution.

28. The Trial Chamber accepts that the Bosnian Muslims and Bosnian Croats who were forced to loot the houses of people whom they sometimes knew well and highly respected, were subjected to humiliating treatment. It is not satisfied however that the Crisis Staff's participation in forcing civilians to loot through the forced labour programme has been established beyond reasonable doubt.

29. The Trial Chamber finds that the Secretariat for National Defence, the body responsible for administering the forced labour programme, was accountable to the Crisis Staff. Therefore it finds that the Crisis Staff was ultimately responsible for sending people to work in dangerous conditions.

30. The Trial Chamber is satisfied that the dangerous and humiliating forced labour assignments to which Bosnian Muslims and Bosnian Croats were subjected were part of the joint criminal enterprise to persecute non-Serb civilians in the municipalities of Bosanski Šamac and Odžak. The Trial Chamber is satisfied that Blagoje Simić intended to subject Bosnian Muslims and Croats to dangerous or humiliating work. As the President of the Crisis Staff, and later War Presidency, he participated in the appointment and the dismissal of the head of the Municipal Department for Defence. He was aware of the overall situation in the municipality and of the fact that civilians were used for trench digging and other dangerous military assignments. He did not take any measures within his authority to stop this practice.

31. While the Trial Chamber is satisfied that Miroslav Tadić was aware of the existence of the forced labour programme, it is not satisfied that he shared or was aware of Blagoje Simić's intent and that of the other participants in the joint criminal enterprise to subject Bosnian Muslims and Bosnian Croats to dangerous or humiliating work. While the evidence supports the fact that Miroslav Tadić was involved in the forced labour programme, the Trial Chamber is not satisfied that he participated in forcing non-Serbs to do dangerous or humiliating work.

32. The Trial Chamber is not satisfied that the evidence presented supports a finding that Simo Zarić substantially contributed to the dangerous or humiliating forced labour assignments.

(f) Plunder

33. The Trial Chamber accepts that immediately after the forcible takeover of Bosanski Šamac individual looting on a large scale occurred. While it has been established that paramilitaries, individual members of the 4th Detachment, policemen, and ordinary Serb civilians, were involved in acts of plundering of non-Serb property, the Trial Chamber is not satisfied that the role of the Crisis Staff in these acts has been proved beyond reasonable doubt. The Trial Chamber accepts the evidence of Defence witnesses that some measures were taken by the Crisis Staff to protect property left behind by individual families or property solely owned by public companies.

34. While the Trial Chamber accepts that some civilians who gathered every morning in front of the local commune building for their work assignments were involved in looting, it is not satisfied that there is conclusive evidence beyond a reasonable doubt that the Crisis Staff ordered the looting. Witnesses who were forced to loot testified that sometimes they received instructions from Serb civilians, who were looting along with them, or from the drivers who were looting for their private purposes, that looted goods were loaded onto private vehicles, and that there was no control of any kind.

35. In view of the above the Trial Chamber is not satisfied that the widespread plundering and looting of the property of Bosnian Muslims and Croats was part of the common plan to persecute non-Serb civilians. While the Accused's knowledge of the occurrence of acts of looting is not contested in this case, the Trial Chamber is not satisfied that their intentional participation in any form has been proved beyond reasonable doubt.

(g) The issuance of orders, policies, decisions and other regulations in the name of the Serb Crisis Staff and War Presidency

36. Although the Crisis Staff of the Serbian municipality of Bosanski Šamac issued some decisions violating the right to equal treatment of non-Serb civilians, the Trial Chamber is not satisfied that such decisions were of sufficient gravity to constitute persecution.

(h) Deportation and transfer

37. The Trial Chamber is satisfied that non-Serb civilians were deported from the municipality of Bosanski Šamac to Croatia and from Batković to Lipovac. Other non-Serb civilians were also transferred within Bosnia and Herzegovina, namely from the municipality of Bosanski Šamac to Dubica. The Trial Chamber is not satisfied beyond reasonable doubt that transfers of non-Serb civilians from the municipality of Bosanski Šamac to *Zasavica* and to *Crkvina* were conducted with the intention to permanently displace them, and for this reason concludes that these non-Serbs were not forcibly transferred. Similarly, the Trial Chamber is not satisfied that the relocation of non-Serb prisoners from one detention centre to another within the Serb-held territory in Bosnia and Herzegovina constituted forcible transfer in the absence of the Accused's intent that the victims will not return.

The Trial Chamber finds that none of the Accused is criminally responsible for forcibly transferring non-Serb prisoners from one detention facility to another, as the Trial Chamber is not satisfied that the Accused had the intent to permanently displace these prisoners.

38. With regard to the criminal responsibility of Blagoje Simić, the Majority is satisfied that he took part in the joint criminal enterprise to persecute non-Serb civilians by deporting and forcibly transferring them. The Trial Chamber considered that the Crisis Staff of which Blagoje Simić was the President was regularly informed about the exchanges by Miroslav Tadić. On 2 October 1992 Blagoje Simić, as the President of the War Presidency, signed the appointment of the civilian Exchange Committee that reported on its activities on a monthly basis to the War Presidency. The Trial Chamber also considered that the system of exchanges took place over a period of about one and a half years, and finds that Blagoje Simić did not take sufficient measures to prevent non-Serbs from being unlawfully displaced. The Trial Chamber is satisfied that Blagoje Simić was aware of the non-Serb ethnicity of the people who were unlawfully displaced. The Trial Chamber is convinced that the extensive and continuing mistreatment of non-Serb civilians and their subsequent displacement proves that the participants in the joint criminal enterprise to persecute them had the shared intent to permanently displace them. The only reasonable inference from all these persecutory acts is that the perpetrators intended that the victims should not return. Thus, the Trial Chamber is satisfied that Blagoje Simić had a discriminatory intent with regard to the unlawful displacement of these non-Serb civilians. For these reasons, the Trial Chamber finds that Blagoje Simić participated in the joint criminal enterprise to persecute through deportation and forcible transfer.

39. With respect to the criminal responsibility of Miroslav Tadić, the Trial Chamber finds that it has not been proven beyond reasonable doubt that Miroslav Tadić participated in a joint criminal enterprise to persecute non-Serb civilians by unlawfully displacing them; however, it is satisfied beyond reasonable doubt that Miroslav Tadić substantially *contributed* to the deportation of non-Serb civilians as an aider and abettor. Miroslav Tadić was *aware* that the participants in the joint criminal enterprise to persecute non-Serb civilians through deportation acted with a discriminatory intent. In this context, the Trial Chamber takes into account that Miroslav Tadić knew of the non-Serb ethnicity of the prisoners in Bosanski Šamac who were later displaced, and he knew about their arrest, detention, and cruel and inhumane treatment in the detention facilities in Bosanski Šamac. With regard to Miroslav Tadić's intent to permanently displace non-Serb civilians, the Trial Chamber does not accept Miroslav Tadić's statements that he never wished that some of his fellow citizens would leave forever, and that there was always a possibility to return. The Trial Chamber is satisfied beyond reasonable doubt that the Prosecution has adduced sufficient evidence to prove that Miroslav Tadić had the intent to permanently displace non-Serb civilians from their homes in the municipality of Bosanski Šamac. The Trial Chamber is satisfied that the only inference from his substantial and continuing activity in the exchange of non-Serb civilians is that Miroslav Tadić had the intent that these non-Serb civilians would not return, or that he at least knew that his actions were likely to permanently displace these non-Serb civilians and was reckless thereto. For these reasons, the Trial Chamber is satisfied that Miroslav Tadić incurs criminal responsibility as an aider and abettor to persecutions through deportation.

40. Turning to Simo Zarić, the Trial Chamber finds that he, together with Miroslav Tadić and Božo Ninković, was designated by the Crisis Staff to be involved in compiling lists with the names of Serbs who were detained in Odžak prior to the exchange in Dubica on 25/26 May 1992, as he hailed from Trnjak Zorice in Odžak municipality and could provide information on many of these detained Serbs. However, the Trial Chamber is not satisfied that the Prosecution did adduce sufficient evidence to establish beyond reasonable doubt that Simo Zarić acted with a discriminatory intent or was aware of the persecutory intent of the participants in the joint criminal enterprise to persecute non-Serb civilians through forcible transfers. The Trial Chamber is also not satisfied that Simo Zarić participated in the unlawful deportation of non-Serb civilians on 4/5 July 1992 in Lipovac. Although the Trial Chamber accepts the evidence that Simo Zarić was present at the exchange site, the Trial Chamber finds that the Prosecution has not adduced sufficient evidence to prove beyond reasonable doubt that Simo Zarić's presence or any other activity prior to this exchange constituted a participation in the exchange.

Crimes Against Humanity, Deportation, Count 2

41. The Trial Chamber is satisfied beyond reasonable doubt that *Blagoje Simić* and *Miroslav Tadić* are criminally responsible for the deportation of non-Serb civilians, a crime against humanity pursuant to Article 5(d) of the Statute, based on the same conduct that constituted the underlying act of deportation under Count 1.

42. With regard to Simo Zarić, the Trial Chamber finds that the Prosecution has not adduced sufficient evidence to establish beyond reasonable doubt that he incurs criminal responsibility for deportation pursuant to Article 5 (d) of the Statute.

Sentencing

43. The Trial Chamber turns now to the matter of sentencing. In accordance with the Appeals Chamber jurisprudence on cumulative convictions, the Trial Chamber takes into consideration in the determination of sentence that convictions for different crimes under the Statute based on the same conduct are permissible only if each crime involved has a materially distinct element that requires proof of an element not contained in the other. Where only one of the crimes contains a materially distinct element, the Chamber must enter a conviction for that crime only, as being the more specific one.

44. While the crime of deportation as a crime against humanity does not contain a materially distinct element from the crime of persecution, persecution requires the materially distinct element of discriminatory intent. The Trial Chamber therefore finds that cumulative convictions for deportation as a crime against humanity and persecution through deportation are not permissible and enters a conviction for persecution only, as being the more specific crime.

45. The Trial Chamber has therefore convicted Blagoje Simić of crimes against humanity for persecutions, based upon unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians, cruel and inhumane treatment including beatings, torture, forced labour assignments and confinement under inhumane conditions, and deportation and forcible transfer in Count 1. On the basis of cumulative convictions, no conviction is recorded for Count 2. Miroslav Tadić is convicted of crimes against humanity for persecutions, based upon deportation and forcible transfer in Count 1, and on the basis of cumulative convictions, no conviction is recorded for Count 2. Simo Zarić is convicted of crimes against humanity for persecutions, based upon acts of cruel and inhumane treatment including beatings, torture, forced labour assignments and confinement under inhumane conditions in Count 1.

46. With regard to Blagoje Simić, the Trial Chamber considers his position as a leading member of the joint criminal enterprise, whose purpose was to take over power in the Bosanski Šamac municipality and to remove the Bosnian Muslims and the Bosnian Croats from this territory through heinous persecutory acts, as an aggravating factor. Moreover, the Trial Chamber emphasises that as the most important civilian leader in the municipality, Blagoje Simić had a particular responsibility towards the entire population. The Trial Chamber also accepts that the victims' vulnerable position, as held in detention, and the fact that as a medical doctor Blagoje Simić was well aware of their sufferings, constitute aggravating circumstances. As mitigating factors the Trial Chamber accepts Blagoje Simić's voluntary surrender to the custody of the Tribunal, his general comportment towards the proceedings, good conduct in detention and clean criminal record.

47. With respect to Miroslav Tadić the Trial Chamber takes into consideration his active role in the process of exchanges and the status of the victims, who due to the fact of their detention and other circumstances, were not able to make a genuine choice regarding their exchange. The Trial Chamber accepts as mitigating factors the fact that Miroslav Tadić helped some Bosnian Muslims during the war, his voluntary surrender to the Tribunal, his remorse, and his personal circumstances as well as the lack of prior convictions.

48. Regarding Simo Zarić, the Trial Chamber finds that his role as an active member of the 4th Detachment, his position of power, and the status of vulnerability of the victims who were subjected to regular mistreatment in detention, constitute aggravating factors. The Trial Chamber accepts as mitigating factors his attempts to alleviate the suffering of some of the victims and his attempts to take measures against some of the crimes, his remorse, voluntary surrender, personal conditions and lack of prior criminal convictions.

Disposition

The Trial Chamber concludes by rendering its Disposition.

49. With respect to Blagoje Simić, a conviction is entered for Count 1, crimes against humanity, for persecutions, based upon unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians, cruel and inhumane treatment including beatings, torture, forced labour assignments, and confinement under inhumane conditions, and deportation and forcible transfer. No conviction is recorded for Count 2, as the Trial Chamber finds it to be impermissibly cumulative with Count 1. Count 3 is dismissed due to defects in the form of the Amended Indictment. Pursuant to Rule 101 (C), following his voluntary surrender to the custody of the Tribunal on 12 March 2001, and his subsequent detention at the Tribunal's Detention Unit, Blagoje Simić is entitled to credit for 949 days towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103 (A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

Blagoje Simić is sentenced to seventeen (17) years' imprisonment.

50. With respect to Miroslav Tadić, the Trial Chamber enters a conviction for Count 1, crimes against humanity, for persecutions, based upon deportation and forcible transfer. No conviction is recorded for Count 2,

as the Trial Chamber finds it to be impermissibly cumulative with Count 1. Count 3 is dismissed due to defects in the form of the Amended Indictment. Miroslav Tadić is entitled to credit for 1568 days towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103 (A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

Miroslav Tadić is sentenced to eight (8) years' imprisonment.

51. With respect to Simo Zarić, the Trial Chamber enters a conviction for Count 1, Crimes Against Humanity, for Persecutions, based upon cruel and inhumane treatment including beatings, torture, and confinement under inhumane conditions. The Trial Chamber acquits Simo Zarić of Count 2. Count 3 is dismissed due to defects in the form of the Amended Indictment. Simo Zarić is entitled to credit for 1558 days towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103 (A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

Simo Zarić is sentenced to six (6) years' imprisonment.

Dissent – Judge Lindholm

In agreement with the considerations of the Trial Chamber with regard to cumulative convictions,

- (a) I agree with the Majority's conviction of Blagoje Simić upon Count 1 : persecutions as a crime against humanity.

I find a sentence to seven (7) years' imprisonment proportionate and just.

- (b) I further find that Miroslav Tadić and Simo Zarić are not guilty of Count 1 and Count 2.
- (c) I concur with the Majority in dismissing Count 3.

The full text of the Judgement is available upon request at the Public Information Services and is also available on the Internet site of the Tribunal.