UNITED
NATIONS

Case No.: MICT-15-96-PT

Mechanism for International Criminal Tribunals

Date: 27 October 2016

Original: English

IN THE TRIAL CHAMBER

Before: Judge Burton Hall, Presiding
Judge Seon Ki Park
Judge Solomy Balungi Bossa

Registrar: Mr. John Hocking

Date: 27 October 2016

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC WITH PUBLIC ANNEX A AND CONFIDENTIAL ANNEX B

STANIŠIĆ DEFENCE REQUEST TO STAY THE PROCEEDINGS UNTIL THE PROSECUTION RESPECTS THE PRINCIPLE OF FINALITY AND THE APPEAL CHAMBER'S ORDER FOR RETRIAL

The Office of the Prosecutor
Mr. Douglas Stringer

Counsel for Mr. Stanišić
Mr. Wayne Jordash QC
Mr. Scott Martin

Counsel for Mr. Simatović
Mr. Mihajlo Bakrač
Mr. Vladimir Petrović

I. Introduction

1. On 1 May 2003, Mr. Stanišić was indicted by the International Criminal Tribunal for the former Yugoslavia ('ICTY').[1] On 31 May 2013, his trial ended in a full acquittal.[2] On 25 September 2013, the Prosecution submitted its Appeal Brief, appealing selected parts of the acquittal.[3]

2. On 9 December 2015, the Appeals Chamber granted, Judge Afanđe dissenting, the Prosecution's sub-ground of appeal 1(A),[4] and granted, Judge Agius and Judge Afanđe dissenting, sub-ground of appeal 2(A)[5] and ordered a "retrial on all counts in the Indictment".[6] Stanišić made his initial appearance before the Mechanism for International Criminal Tribunals ('MICT') on 18 December 2015, where he pleaded not guilty to the retrial Indictment. On 5 September 2016, the Prosecution filed its Pre-Trial Brief and other pre-trial materials.[7]

3. For the reasons detailed below, the Defence submits that the Prosecution's approach to the retrial amounts to such an egregious violation of the Accused's rights that it is detrimental to the Court's integrity, contravenes any sense of justice, and makes a fair trial impossible. The Trial Chamber should stay the proceedings until the Prosecution fully respects the *res judicata* and *non bis in idem* principles and the order of the Appeals Chamber for a retrial on the previous Indictment without addition or expansion of the counts or charges.

II. Applicable Law

A. The Prosecutor's Duty to Act as Ministers of Justice

4. Prosecutors have a responsibility to act as ministers of justice as they do not represent a single individual, but are assistants of the court in its pursuit of truth and its administration

[1] *Prosecutor v. Stanišić & Simatović,* Case No. IT-03-69, Indictment, 1 May 2003.
[2] *Prosecutor v. Stanišić & Simatović,* Case No. IT-03-69-T, Judgement, 30 May 2013.
[3] *Prosecutor v. Stanišić & Simatović,* Case No. IT-03-69-A, Prosecution Appeal Brief, 11 September 2013 ('Prosecution Appeal Brief').
[4] *Prosecutor v. Stanišić & Simatović,* Case No. IT-03-69-A, Appeal Judgement, 9 December 2015 ('Appeal Judgement'), paras 90, 131.
[5] *Ibid*, paras 108, 131.
[6] *Ibid*, paras 129, 131.
[7] *Prosecutor v. Stanišić & Simatović,* Case No. MICT-15-96-PT, Corrigendum to Prosecution Pre-Trial Brief, 30 September 2016 (confidential with confidential annex A and confidential and ex parte annex B), Confidential Annex A ('Prosecution Pre-Trial Brief); *Prosecutor v. Stanišić & Simatović,* Case No. MICT-15-96-PT, Prosecution Notice of Rule 70(E) Filings, 5 September 2016 (public with confidential annexes A, B and E and confidential and *ex parte* annexes C, D and F) ('Prosecution Notice of Rule 70(E) Filings').

of justice.[8] Throughout the proceedings – investigation, pre-trial, trial, appeal and review – it is expected that the prosecution shall "respect the fundamental rights of…[the] accused".[9]

B. Abuse of Process

5. The concept of abuse of process is well established in international criminal law.[10] It was recognised by the Appeals Chamber in *Barayagwiza* as a "process by which Judges may decline to exercise the court's jurisdiction in cases where to exercise that jurisdiction in light of serious and egregious violations of the Accused's rights would prove detrimental to the court's integrity".[11]

6. In *Karadžić,* the Appeals Chamber found that two situations may qualify as constituting such a serious and egregious violation of the Accused's rights, namely: (i) where a fair trial for the Accused is impossible, usually for reasons of delay; and (ii) where the trial of the Accused is marred by procedures which contravene the court's sense of justice.[12]

C. Finality Principles

i. Res Judicata

7. The principle of *res judicata* is well established in the jurisprudence of the ICTY,[13] the International Criminal Tribunal for Rwanda ('ICTR')[14] and the MICT.[15] In *Delalić et al.*, the Trial Chamber found that "[t]he principle of *res judicata* only applies *inter partes* in a

[8] *See Prosecutor v. Blaškić,* Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2000, para. 32, fn. 23; *Prosecutor v. Kordić & Čerkez,* Case No. IT-95-14/2-A, Decision on Motions to Extend Time for Filing Appellant's Briefs, 11 May 2001, para. 14, fn. 25.

[9] MICT Standards of Professional Conduct of Prosecution Counsel, MICT/12, 29 November 2013, para. 2(a).

[10] *See e.g. Barayagwiza v. The Prosecutor,* Case No. ICTR-97-19-AR72, Decision, 3 Nov. 1999 ('*Barayagwiza* Appeal Decision'), paras 74-77; *Prosecutor v. Šešelj,* Case No. IT-03-67-T, Decision on Oral Request of the Accused for Abuse of Process, 10 February 2010 ('*Šešelj* Decision'), para. 19; *Prosecutor v. Karadžić,* Case No. IT-95-5/18-AR73.4, Decision on Karadžić's Appeal of Trial Chamber's Decision on Alleged Holbrooke Agreement, 12 October 2009 ('*Karadžić* Appeal Decision'), para. 47.

[11] *Barayagwiza* Appeal Decision, para. 74; *Karadžić* Appeal Decision, para. 45.

[12] *Karadžić* Appeal Decision, para. 45; *Šešelj* Decision, para. 21; *Barayagwiza* Appeal Decision, paras 74, 77.

[13] *See e.g. Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-AR73.1, Decision on Haradinaj's Appeal on Scope of Partial Retrial, Partially Dissenting Opinion of Judge Robinson, 31 May 2011 ('*Haradinaj* Dissent of Judge Robinson'), para. 3, fn. 3; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Accused's Motion to Strike Scheduled Shelling Incident on Grounds of Collateral Estoppel, 31 March 2001, para. 5; *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998 ('*Delalić et al.* Trial Judgement'), para. 228.

[14] *See e.g. Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of his Right to Trial without Undue Delay, 29 May 2007, para. 6, fn.7.

[15] *Prosecutor v. Karadžić,* Case No. MICT-13-55-R90.3, Decision to Invite the ICTY Trial Chamber in the Karadžić Case to Determine whether there is "Reason to Believe" that Contempt has been Committed by Members of the Office of the Prosecutor, 21 July 2014, para. 9, where it provided that the MICT is bound to interpret its Statute and Rules in a manner consistent with the jurisprudence of the ICTY and ICTR.

case where a matter has already been judicially determined within that case itself".[16] The Chamber continued that, in criminal cases, *res judicata* relates to whether, "when the previous trial of a particular individual is followed by another of the same individual, a specific matter has already been fully litigated".[17]

8. A finding or decision ought to be considered *final* - i.e. *res judicata* or fully litigated – when there are no available appellate procedures remaining relating to the subject matter. This arises in two principal situations. First, a decision is *res judicata* when an Appeals Chamber dismisses or otherwise rejects a ground of appeal. Second, a finding is *res judicata* when the time to activate available appellate procedures expires, or when – in exercising those procedures - the parties exclude specific findings of an impugned Judgement from the review requested to the higher Court. In other words, when the matter is waived.[18]

ii. Non Bis in Idem

9. The principle of *non bis in idem,* or double jeopardy, is well established in both international criminal law[19] and international human rights law.[20]

10. It is the underlying *acts*, and not the *offence*, which is determinative of whether there is a violation of the *non bis in idem* principle.[21] The *ad hoc* tribunals have repeatedly held that the risk of facing a conviction for *acts* already finally considered would constitute a violation of the *non bis in idem* principle,[22] and hence an infringement of the fundamental rights of the Accused. The MICT has defined "same acts" as acts that do not differ

[16] *Delalić et al.* Trial Judgement, para. 228; *see also Haradinaj* Dissent of Judge Robinson, para. 3.
[17] *Delalić et al.* Trial Judgement, para. 228.
[18] *Infra*, paras 11-12.
[19] Statute of the MICT, UN Doc. S/Res/1966, 22 December 2010 ('MICT Statute'), Article 7(1). *See also* Rome Statute of the International Criminal Court (as amended), 2187 UNTS 90, adopted 17 July 1998, entered into force 1 July 2002 ('Rome Statute'), Article 20; Statute of the ICTR (as amended), UN Doc. S/Res/955, 8 November 1994 ('ICTR Statute'), Article 9(1); Statute of the ICTY (as amended), UN Doc. S/Res/827, 25 May 1993 ('ICTY Statute'), Article 10(1).
[20] *See* International Covenant on Civil and Political Rights, 999 UNTS 171, 16 December 1966, Article 14(7); Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 117, 23 August 2007, Article 4(1). International human rights law generally follows an *idem factum* approach, which focus on the "same conduct" on the applicant's part irrespective of the legal classification. *See e.g. Sergey Zolotukhin v. Russia*, Application No. 14939/03, 10 February 2009, para. 83.
[21] *See* MICT Statute, Article 7(1); ICTY Statute, Article 10(1); ICTR Statute, Article 9(1).
[22] *See e.g. Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision, 31 May 2000, para. 74; *Prosecutor v. Orić,* Case No. MICT-14-79, Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015, 17 February 2016 ('*Orić* Appeal Decision'), para. 13.

fundamentally with respect to the alleged victims and the nature, time, and location of the alleged criminal conduct.[23]

iii. Waiver

11. As mentioned,[24] a matter becomes *res judicata* when it is dismissed on appeal at the highest level within a judicial system, or when the matter is *waived* by the affected party. Waiver occurs when a party has the opportunity to exercise its rights to address, object or appeal a particular matter, but chooses not to do so.

12. The principle of waiver is manifested in a variety of contexts in the jurisprudence of the *ad hoc* tribunals. For example, in the absence of special circumstances, a party cannot raise arguments for the first time on appeal where it could reasonably have done so in the first instance.[25]

D. Finality Principles in Criminal Proceedings during Retrials

13. While the ICTY has routinely applied the principles of *res judicata* and *non bis in idem* in their proceedings,[26] it has not applied them in relation to a retrial of the nature proposed by the Prosecution. The closest jurisprudential cognate arose in the *Haradinaj* retrial.[27] In this case, in addition to the general principles identified above in relation to what makes a matter *res judicata* and *non bis in idem*, the Appeals Chamber established, *inter alia*, the following principles:

- The Trial Chamber during retrial cannot make findings on counts or charges with respect to an Accused's individual criminal responsibility beyond that successfully appealed by the Prosecution, as doing so would be *res judicata* and violate the *non bis in idem* principle;[28]

- Admitting new or previously excluded evidence in support of specific charges that were the basis of the Prosecution's appeal and reversed by the Appeals Chamber

[23] *Orić* Appeal Decision, para. 11.
[24] *Supra*, para. 8.
[25] *See e.g. Prosecutor v. Naletilić & Martinović,* Case No. IT-98-34-A, Judgement, 3 May 2006*,* para. 21; *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004, para. 222, *citing Prosecutor v. Tadić,* Case No. IT-94-1-A, Judgement, 15 July 1999 ('*Tadić* Appeal Judgement'), para. 55.
[26] *See infra,* paras 7-10.
[27] *Prosecutor v. Haradinaj et al.,* Case No. IT-04-84*bis*-AR73.1, Decision on Haradinaj's Appeal on Scope of Partial Retrial, 31 May 2011 ('*Haradinaj* Appeal Decision').
[28] *Haradinaj* Appeal Decision, para. 32.

during the retrial of an acquitted Accused does not *per se* violate the *res judicata* principle; and

- Contextual evidence in support of successfully appealed charges may be presented during a retrial, but findings cannot be made beyond the grounds that were successfully granted on appeal.[29]

14. Moreover, *Haradinaj* further established that "[a]ny potential for undue prejudice to a defendant in a retrial following an acquittal [and in light of the principles outlined] should be addressed through […] the Trial Chamber's continuing *duty to apply fair trial principles*".[30]

III. Submissions

A. The Prosecution's Violation of Core Finality Principles and its Addition to, or Expansion of, the Charges in the Indictment is an Abuse of Process

15. According to the applicable law, the Prosecution's approach to the retrial gravely undermines the Accused's rights through: (i) systemic violations of the *res judicata* and *non bis in idem* principles; and (ii) violation of the Appeals Chamber's order for retrial through the impermissible addition to, or expansion of, the charges.

16. Due to these violations, the Trial Chamber should decline to exercise its jurisdiction and stay the proceedings against Mr. Stanišić until the Prosecution proceeds in full respect for the Accused's human rights.

i. Abuse that Contravenes the Court's Integrity

a. Exculpatory Findings Not Appealed or Not Found in Error by the Appeals Chamber are *Res Judicata* and *Non Bis In Idem*

17. On 9 December 2015, a Majority of the Appeals Chamber found reversible legal errors in the Trial Judgement and consequently granted the Prosecution's sub-grounds of appeal 1(A) and 2(A). The Appeals Chamber dismissed sub-grounds 1(B), 1(C), 2(B) and 3, and ordered a retrial on "all counts of the Indictment" on the basis of 1(A) and 2(A).[31]

[29] *Ibid*, para. 32.
[30] *Ibid*, para. 26 (emphasis added).
[31] Appeal Judgement, para. 131.

i) Sub-ground 1(A): Findings Subject to Finality

18. Under sub-ground 1(A), the Appeals Chamber found an error of law by finding it was not established that Stanišić shared the intent to further the common criminal purpose without adjudicating or providing a reasoned opinion on the existence of, and Stanišić's participation in, the common criminal purpose of the JCE.[32]

19. As summarised by the Appeals Chamber, the Prosecution argued that the predicate determinates to decide on Stanišić's intent were absent from the Trial Chamber's ruling.[33] The Trial Chamber's error was limited to a failure to conduct an analysis of: (i) whether there was a common purpose; (ii) the content of the common purpose; (iii) when the common purpose came into existence; (iv) who shared the common purpose; (v) which crimes formed part of the common purpose; and (vi) how JCE members contributed to the common purpose.[34]

20. As the Appeals Chamber also noted, the Prosecution accepted that the Trial Chamber made legitimate findings concerning whether Stanišić's actions contributed to certain crimes but had failed to assess those actions as contributions to the common criminal purpose.[35] As such, the Prosecution submitted that the Appeals Chamber would not need to undergo extensive fact finding, but to the contrary, given the Trial Chamber had accepted the "vast majority" of its case, this was a "compelling argument" for the Appeals Chamber to agree with the majority of these findings, to enter additional findings if necessary, and to convict the Accused accordingly.[36]

21. The Appeals Chamber thus found that the error of law was the *lack* of findings and a *lack* of an analysis as to what evidence or findings would be indicative of or would establish the existence and scope of a common criminal purpose shared by a plurality of persons, as well as on the Accused's contribution to it.[37] In sum, there was no complaint or error found in relation to the facts that were found, only that more findings were needed to enable the correct analysis. The former are *res judicata* and *non bis in idem*, the latter are the subject of the retrial.

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[32] *Ibid*, para. 62.
[33] *Ibid*, para. 63; Prosecution Appeal Brief, paras 21, 22.
[34] Appeal Judgement, para. 63; Prosecution Appeal Brief, para. 21.
[35] Appeal Judgment, para. 64; *Prosecutor v. Stanišić & Simatović,* Case No. IT-03-69-A, Appeal Hearing, 15 July 2015 ('Appeal Hearing'), pp. 11-12, 15-16, 22.
[36] Appeal Judgement, para. 112; Prosecution Appeal Brief, para. 44; Appeal Hearing, pp. 34-35.
[37] Appeal Judgement, paras 87, 89.

ii) Sub-ground 2(A): Findings Subject to Finality

22. Under sub-ground 2(A), the Prosecution argued that the Trial Chamber erred in law by requiring that the acts of the aider and abettor be specifically directed to assist the commission of a crime and that, had the Trial Chamber not erred, it would have found that Stanišić aided and abetted the crimes committed in Bosanski Šamac, Doboj, and SAO Krajina.[38]

23. In sum, according to the Prosecution, and as found by the Appeals Chamber, what was required was an application of the correct law to the existing factual findings concerning Stanišić's contributions to the crimes. There was nothing wrong with the factual findings concerning Stanišić's contributions. According to the Prosecution, the findings and the evidence on the record show that Stanišić possessed the requisite *mens rea* for aiding and abetting these crimes.[39] The Trial Chamber's factual findings relevant to Stanišić's contributions are *res judicata* and *non bis in idem.*

iii) Modes of liability: Findings Subject to Finality

24. The Prosecution's appeal focused on JCE and aiding and abetting liability. Nonetheless, in the retrial the Prosecution alleges planning and ordering as additional modes of liability in relation to all crimes charged in the Indictment.[40] The Trial Chamber found that it was not proven beyond reasonable doubt that the Accused planned or ordered the crimes charged in the Indictment.[41] These findings were not appealed, nor did the Appeals Chamber reverse these findings. Therefore, the Trial Chamber's findings on these modes of liability are *res judicata* and *non bis in idem.*

25. Furthermore, as concerns aiding and abetting liability, the Prosecution alleges it as an additional mode of liability for all crimes charged in the Indictment.[42] Nevertheless, in sub-ground of appeal 2(A), the Prosecution submitted that the Trial Chamber erred in law in requiring specific direction, and had the Chamber not so erred, it would have concluded, based on its findings alone, that the *actus reus* of aiding and abetting is met with regard to the crimes in Bosanski Šamac, Doboj and SAO Krajina.[43] The Prosecution did not appeal the Trial Chamber's findings in regard to other areas, and the Appeals Chamber, in finding that

[38] Prosecution Appeal Brief, para. 129; Appeal Judgement, para. 93, fn. 341.
[39] Appeal Judgement, para. 113; Prosecution Appeal Brief, paras 129, 153.
[40] Indictment, paras 10, 16-17, 25, 63, 66.
[41] Trial Judgement, para. 2355.
[42] Indictment, paras 10, 16-17, 25, 63, 66.
[43] Prosecution Appeal, paras 129, 131; Appeal Judgement, para. 93, fn. 341.

the Trial Chamber did so err, granted sub-ground of appeal 2(A).[44] Therefore, the findings relating to Stanišić's responsibility for aiding and abetting crimes outside of these three areas are *res judicata* and *non bis in idem.*[45]

iv) Conclusion

26. With regards to sub-grounds 1(A) and 2(A), and the additional modes of liability, certain findings from the previous trial were not the subject of the Prosecution's appeal and were not reversed by the Appeals Chamber. Accordingly, they were waived or have otherwise been finally determined, making them *res judicata* and *non bis in idem*. Annex A to this Motion contains the positive factual findings relevant to sub-grounds 1(A) and 2(A) that are final.

27. As Annex A further shows, the Prosecution's Rule 70(E) filings attempt to ride roughshod over these finality principles through a wholesale inclusion of an extensive range of counts and charges in full knowledge that they have either not been challenged on appeal or have otherwise attained finality.

28. As discussed, the Prosecution's Appeal did not take issue with a majority of the Trial Chamber's findings.[46] Instead, it urged the Appeals Chamber to agree with the findings, enter additional findings as necessary, and to convict Stanišić and Simatović accordingly.[47]

29. This preference explains why the Prosecution did not request a retrial during the appeal proceedings, where it stated:

> […] a retrial is not the most appropriate remedy in this case. Here the problem is not with the existing evidentiary record. The problem is one of failure to properly adjudicate the evidence already on that record. The **interests of justice militate away from a time and resource-intensive retrial and towards a remedy that will correct the problem at issue**.[48]

30. However, having failed to persuade the Appeals Chamber that it ought to enter convictions against Stanišić on all counts of the Indictment on the basis of the Trial Chamber's factual findings and the trial record,[49] the Prosecution now wishes to abandon that purportedly principled approach and relitigate all the charges and counts.

[44] Appeal Judgement, para. 108.
[45] *See* Trial Judgement, paras 2356-2361.
[46] *See e.g.* Prosecution Appeal Brief, paras 11, 18, 44, 101, 105, 108, 129, 173, 215, 250, 275; Prosecution Reply Brief, para. 15.
[47] Appeal Judgement, para. 112; Prosecution Appeal Brief, para. 44; Appeal Hearing, pp. 34-35.
[48] Appeals Hearing, p. 37 (emphasis added).
[49] Appeal Judgement, para. 111.

31. To accept and place reliance on findings as representing final findings of truth significant enough to urge conviction on appeal, only to seek to disregard those findings when expedient during retrial, is a serious and egregious violation of due process that contravenes the Tribunal's sense of justice and is seriously detrimental to the Tribunal's integrity. The Trial Chamber ought to stand against this manipulation of the process and issue a stay of the proceedings until the current Prosecution respects the *res judicata* and *non bis in idem* principles.

b. The Prosecution Has Violated the Order of the Appeals Chamber through the Impermissible Expansion or Addition of Counts/Charges

32. Nothing in the Appeals Judgement permits the Prosecution to add or otherwise expand the counts or charges beyond its original case. On the contrary, the Appeals Chamber expressly limited the retrial and ordered that Stanišić "be retried on all counts of the Indictment".[50] This can only be understood to mean the Prosecution's original Indictment, or case, against Stanišić. The Appeals Chamber's order did not provide the Prosecution with discretion to increase or otherwise expand the counts or charges in the Indictment.

33. The Appeals Chamber reasoned that there were three choices available to ensure justice was done in light of the errors found. None of them permitted the Prosecution's current approach to the retrial. Firstly, it noted that it could conduct an appellate review of "the relevant factual findings of the Trial Chamber" using the existing "trial record";[51] "remitting limited issues to be determined by either the original or a newly composed trial chamber" on the "basis of the original trial record";[52] or a retrial on all counts of the Indictment.[53] The Appeals Chamber ordered a retrial because the first two options were not possible due to the unavailability of two Judges of the original Trial Chamber and the impracticality and unfairness that would arise from an analysis of "the entire trial record without the benefit of having directly heard the witnesses in order to determine whether it is itself satisfied with respect to the requirements of JCE liability and, depending on the result of such an analysis, with respect to the requirements of aiding and abetting liability".[54]

34. Despite this restriction of the Prosecution's appellate case to the original case against the Accused, the Prosecution have sought to not only expand the evidentiary basis for the

[50] *Ibid*, para. 131.
[51] Appeal Judgment, para. 123.
[52] Appeal Judgment, para. 125.
[53] *Ibid*, para. 125.
[54] *Ibid*, para. 124.

retrial related to the contents of sub-grounds 1(A) and 2(A), but also to seek convictions on counts/charges that were not part of the first case against the Accused. As Annex B shows, the Prosecution have in fact sought a massive addition to, or expansion of, the charges against Stanišić in this case. It has proposed the addition of 70 material facts that amount to new charges or an expansion of the existing charges.

35. Undoubtedly, the Prosecution will attempt to explain their approach through a claim that the Indictment in the first trial is the same as the operative Indictment in this retrial.[55] However, as the volume of additional or expanded charges contained in Annex B shows, it is legally immaterial that the Indictment contains the same words.

36. As the ICTY and ICTR have made clear on many occasions when Prosecutions have attempted to use these misconceived arguments to covertly expand their cases against other Accused, this conflates the distinction between counts or charges and the material facts that underpin that charge or count.[56]

37. According to the jurisprudence, substantive changes which seek to add fresh allegations amounting either to separate charges or to a new allegation in respect of an existing charge ought to be the subject of an amendment to the Indictment. The key focus when considering whether the Prosecution is seeking to reply upon "a new charge" is whether there exists a basis for conviction "that is factually and/or legally distinct from any already alleged in the Indictment".[57]

38. Therefore, plainly, the presence or absence of new counts in the Indictment does not determine whether the Prosecution has sought to add new counts or charges. The Prosecution is not permitted to amend the counts of the Indictment under the cover of pleading new material facts that can "readily be characterised as new charges".[58] Whilst it is true that the

[55] *Prosecutor v. Stanišić & Simatović,* Case No. IT-03-69-PT, Prosecution Notice of Filing of Third Amended Indictment, 10 July 2008.
[56] *Prosecutor v. Muvunyi,* Case No. ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal against Trial Chamber II Decision on 23 February 2005, 12 May 2005 ('*Muvunyi* Appeal Decision'), para. 19.
[57] *Prosecutor v. Halilović,* Case No. IT-01-48-PT, Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment, 17 December 2004, para. 30. *See also Prosecutor v. Prlić et al.,* Case No. IT-04-74-PT, Decision on Prosecution Application for Leave to Amend the Indictment and on Defence Complaints on Form of Proposed Amended Indictment, 18 October 2005, para. 13 which provides that "[i]f a new charge does not expose an accused to an additional risk of conviction, then it cannot be considered as a new charge."
[58] *Muvunyi* Appeal Decision, para. 20.

plain terms of the Indictment have not changed, this is only because of the pleading style adopted by the Prosecution.[59] Indeed:

> […] it is at least arguable that there has been an insertion of entirely new factual allegations in support of existing counts, either in substitution for or in addition to the factual situations, which had been placed in the original indictment. Even though the count remains pleaded in the same terms of the Statute, these substitutions may nevertheless amount effectively to new charges.[60]

39. In sum, any argument that seeks to conceal the insertion of entirely new factual allegations either in substitution for or in addition to the factual situations that had been placed in the original Indictment, must be rejected as wholly self-serving and undermining of fundamental fair trial rights. The expansion of counts/charges in the Stanišić retrial violates the Appeal Chamber's ruling. Further, it also runs contrary to the Appeals Chamber's finding in *Haradinaj* that permits new evidence (subject to an assessment of its impact on fair trial rights) in support of successfully appealed counts or charges but no new counts or charges.[61] It amounts to a manipulation of the Court process, contravenes the Court's sense of justice in these proceedings and amounts to an abuse of process.

ii. Abuse: A Fair Trial is Impossible

40. As noted, it is submitted that the Prosecution's approach to the retrial is characterised by serious and egregious violations of fundamental rights and fair trial processes that if allowed to continue would prove detrimental to the court's integrity and sense of justice.[62] Moreover, when viewed singularly or in combination, they have such an effect that if permitted they would make a fair trial impossible.

41. Aside from the violation of the prohibition on new counts or charges,[63] the Prosecution's targeted selection of new counts or charges is designed to optimise its prospects for conviction on the successfully appealed counts or charges (that are properly the subject of the retrial), and the charges or counts that are final (and not properly the subject of the retrial).

42. In sum, the Prosecution's violation of finality principles and the addition or expansion of counts/charges (and not merely evidence) is a calculated strategy that fundamentally

[59] *Prosecutor v. Krnojelac*, Case No. IT-27-95-PT, Decision on Prosecutor's Response to Decision of 24 February 1999, 20 May 1999 ('*Krnojelac* Decision') para. 19.
[60] *Ibid*, para. 20.
[61] *Haradinaj* Appeal Decision, para. 32.
[62] *Barayagwiza* Appeal Decision, para. 74; *Karadžić* Appeal Decision, para. 45.
[63] *Haradinaj* Appeal Decision, para. 32.

violates the presumption of innocence, including through a reversal of the burden of proof. As will be discussed below, seeking to deprive the Accused of a multitude of positive and final findings whilst concurrently adding or expanding specifically selected charges in the circumstances of a retrial, provides the Prosecution with such an overwhelming advantage that a fair trial is not possible.

a. The Presumption of Innocence

43. To have meaning consistent with the principle of legality and personal culpability, the presumption of innocence requires that a Trial Chamber must ensure the procedural balance between the parties is maintained concretely and with exactitude—ensuring that the burden and standard of proof remains firmly upon those bringing the allegations.

44. As noted by the Appeals Chamber in *Orić*, in the context of equality of arms, the burden of proof presupposes that the Prosecution's task is more onerous than that of the Defence:

> The Prosecution has the burden of telling an entire story, of putting together a coherent narrative and proving every necessary element of the crimes charged beyond a reasonable doubt. Defence strategy, by contrast, often focuses on poking specifically targeted holes in the Prosecution's case, an endeavour which may require less time and fewer witnesses.[64]

45. As a core component of the burden of proof, the Trial Chamber shall ensure that a trial is 'fair and expeditious' and there is 'equality of arms', which means that each party must have a reasonable opportunity to defend its interests "under conditions which do not place him at a substantial disadvantage *vis-à-vis* his opponent".[65] An Accused is entitled to "a reasonable and adequate opportunity to present his case".[66]

46. At the ICTY, these principles have been recognised, *inter alia*, as requiring that the Prosecution, but not the Accused, fulfill a wide range of disclosure obligations, including informing the Accused promptly and in detail of the nature and cause of the charges against them through a variety of instruments,[67] including the Indictment;[68] supporting material and all prior statements obtained from the Accused;[69] an enhanced Prosecutor's pre-trial brief

[64] *Prosecutor v. Orić,* Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para. 7.
[65] *Tadić* Appeal Judgement, paras 43, 44, 48, 52.
[66] *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision in Relation to Severance, Extension of Time and Rest, 12 December 2005, para. 25.
[67] *See* MICT Statute, Article 19(4)(a); ICCPR, Article, 14(3)(a); European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended), ETS No. 5, 4 November 1950, Article 6(3)(a).
[68] MICT Rules of Procedure and Evidence, MICT/1/Rev.2, 26 September 2016 ('MICT Rules'), Rule 48(C).
[69] *Ibid*, Rule 71(A)(i).

(with, *inter alia,* "a summary of the evidence");[70] the filing of a list of witnesses it intends to call (including a summary of facts);[71] its list of exhibits;[72] and copies of witness statements, transcripts and written statements.[73] The Prosecution must also notify the Defence of the witnesses it intends to call in rebuttal of any defence plea,[74] and disclose to the Defence any exculpatory evidence.[75]

47. As is plain, there is little by way of corresponding obligations upon the Accused, who is only required to disclose in general terms the nature of his/her defence.[76] Efforts by a series of Prosecutors to up-turn this balance have been consistently resisted by the ICTY.[77]

48. However, in a retrial, the Prosecution has advanced notice of the strengths and weakness of their own case and overly expansive details of the Defence case. They do not begin from a position of having to establish the theory of their case or a coherent narrative. Therefore, the mere fact of a retrial undermines the delicate operation of this procedural framework and risks tipping the balance in favour of the Prosecution to a degree that places the Accused at a serious forensic and tactical disadvantage so that the presumption of innocence is violated.

49. This is not to argue that a retrial must always be unfair or amount to an impermissible lowering of the burden of proof. However, in the context of lengthy and complex international trials, a retrial provides the Prosecution with a considerable advantage and an opportunity to design a more effective but unfair prosecution. This explains the *Haradinaj* Appeals Chamber's approach – allowing the addition of new evidence, but not charges or expanded allegations – but only following a strict application of fair trial principles and an assessment of resulting potential for prejudice.[78] The Appeals Chamber understood that a Prosecutor could misuse the inherent advantages of a retrial and shift the burden of proof onto the Accused through the selective bombardment of new charges and evidence.

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[70] *Ibid*, Rule 70(E)(i).
[71] *Ibid*, Rule 70(E)(ii).
[72] *Ibid*, Rule 70(E)(iii).
[73] *Ibid*, Rule 71(A)(ii).
[74] *Ibid*, Rule 72(B)(ii).
[75] *Ibid*, Rule 73.
[76] *Ibid*, Rules 70(F), 70(M), 72(B)(i)-(ii).
[77] *See e.g. Prosecutor v. Stanišić & Simatović,* Case No. IT-03-69-T, Decision on Urgent Prosecution Motion for Disclosure of Witness Details and for Modification of the Scheduling Order of 1 April 2011, 27 May 2011, paras 11-12. *See also Prosecutor v Blakšić*, Case No. IT-95-14-T, Decision on the Prosecution Motion for Seven Days Advance Disclosure of Defence Witnesses and Defence Witness Statements, 3 September 1998; *Prosecutor v. Krajišnik & Plavšić,* Case Nos. IT-00-39-PT & IT-00-40-PT, Decision on Prosecution Motion for Clarification in Respect of Application of Rules *65ter,* 66(b) and 67(C), 1 August 2007, para. 9.
[78] *Haradinaj* Appeal Decision, paras 32, 39.

50. Notwithstanding, the Prosecution seeks not only to disregard the *Haradinaj* admonishments in regard to finality principles and the prohibition on new charges and counts, but also the cautionary warnings concerning new evidence. In sum, aside from the systematic violation of the prohibition on new counts or charges,[79] the Prosecution's targeted selection of additional or expanded counts and charges (as well as evidence in support) is designed to optimise its prospects for conviction on the successfully appealed counts or charges (that are properly the subject of the retrial), and the material allegations, charges or counts that are final (and not properly the subject of the retrial).

51. In taking this approach, the Prosecution abandons its obligation to respect the fundamental rights of suspects and Accused in favour of pursuing convictions at all costs. By pursuing a strategy that seeks to maximise the efficiency and effectiveness of the Prosecution case (through the selective targeting of a mass of new or expanded charges and a volume of new evidence designed to fill the gaps identified in the first trial) whilst simultaneously seeking to deprive the Accused of the benefit of the reasonable doubt established in relation to findings already made final, the Prosecution seeks to lift the burden from its own shoulder, exhaust the resources of the Defence and shift the burden of proof onto the Accused.

52. This is not the legitimate business of a retrial. Indeed, as Annexes A and B show, to call it a retrial stretches the bounds of language and incredulity to breaking point. As Annex A demonstrates, the Prosecution failed to prove most of their case against Stanišić in the first trial. Despite alleging that Stanišić was the right hand man of Milošević, one of the architects of the crimes and the prime facilitator of the alleged five-year JCE, he was consistently found to be pursuing *legitimate* military activity and *remote* from criminal activity. Having failed to establish the foundation of their Indictment, as Annex B shows, they now seek to construct anew in significantly more favourable procedural conditions and in violation of fundamental rights. It is a new trial, not in pursuit of the truth, but in pursuit of a conviction at all costs.

53. In sum, alongside the violation of the finality principles, the addition of targeted new and expanded charges fatally undermines the presumption of innocence and violates the object and purpose of the retrial. As such, until the additional or expanded charges are dismissed, the proceedings should be stayed as an abuse of process.

[79] *Ibid*, para. 32.

IV. Remedy

54. For the reasons outlined above, the Defence submits that Prosecution's approach to the retrial is an abuse of process that contravenes the court's sense of justice and renders a fair trial impossible.

55. The Defence respectfully requests the Chamber stay the proceedings against Mr. Stanišić until the Prosecution's case is amended to ensure respect for the principles of *res judicata, non bis in idem* and the order of the Appeals Chamber for a retrial.

Respectfully submitted,



Wayne Jordash QC

27 October 2016

Word Count: 5,999

MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Case No. MICT-15-96-PT

THE PROSECUTOR
v.
JOVICA STANIŠIĆ &
FRANKO SIMATOVIĆ

PUBLIC ANNEX A
TRIAL JUDGEMENT FINDINGS THAT ARE *RES JUDICATA AND NON BIS IN IDEM*

ANNEX A – Trial Judgement Findings that are *Res Judicata* and *Non Bis in Idem*

Annex A is divided into two Parts:

- Part I: Positive Findings relevant to Grounds 1(A) and 2(A): a list of all the Trial Judgement's findings related to the scope of the common criminal purpose and the aiding and abetting charges that should not be re-litigated: they include all the positive findings connected to the temporal and geographic limits of the common criminal purpose, the identities of the victims and the commission of crimes in SAO Krajina, SAO SBWS and Bosnia.
- Part II: Positive Findings on Stanišić's Alleged Contributions provides a list of all the Trial Judgement's findings related to Stanišić's contribution to the common criminal purpose and/or the crimes that should not be re-litigated: they include all the positive findings connected to the allegation that he contributed through Serb Forces (i.e. the Unit, Arkan's men, the Scorpions and other Serb Forces) and through acting as a channel of communication between JCE members.

Part I: POSITIVE FINDINGS RELEVANT TO GROUNDS 1(A) AND 2(A)

No.	Trial Judgement's Findings	Paragraph No.
Croatia - SAO Krajina		
Hrvatska Kostajnica, Dubica, Cerovljani and Baćin (killing occurred near Baćin) (Indictment, paras 22-25, 27)		
	Incident involving 13 alleged non-Serb victims from Baćin and Cerovljani on 21 October 1991	
1	The Adjudicated Facts do not establish, nor has the Trial Chamber received sufficient evidence on the location or other circumstances of the killing. The Adjudicated Facts do not address, nor has the Trial Chamber received sufficient evidence regarding the remaining four alleged victims. Therefore, the Trial Chamber will not further consider this part of the incident.	64
Saborsko, Poljanak, and Lipovača (Indictment, paras 22-25, 28)		
Murder of non-Serb villagers of Saborsko, Poljanak, and Lipovača between August and November 1991		

	Lipovača	
2	[…] in Lipovača before the end of October 1991 members of "Serb paramilitary forces" shot and killed Franjo Brozinčević, Marija Brozinčević, Mira Brozinčević, and Katarina Cindrić, all of whom were dressed in civilian clothes. The Adjudicated Facts do not establish the ethnicity of these victims and the Trial Chamber will therefore not further consider this part of the incident. The Adjudicated Facts also establish that Ana Pemper, Barbara Vuković, Juraj Šebalj, Juraj Conjar, and Milan Smolčić were killed in Lipovača. They do not establish, however, the identity or affiliation of the perpetrators. Under these circumstances, the Trial Chamber will not further consider this part of the incident.	67-68
	Poljanak	
3	Kata Matovina and Toma Vuković were shot dead during the attack on Vukovići on 8 October 1991. The evidence does not sufficiently establish the identity or affiliation of the perpetrators. Under these circumstances, the Trial Chamber will not further consider this part of the incident. […] on 7 November 1991 members of a group of JNA soldiers (including from the JNA Niš special unit "Niški Specijalći") and local Serbs committed crimes in Vukovići. […] on the same day, members of that group went to Poljanak where they shot and killed the detained Ivica and Nikola Vuković. […] the victims were of non-Serb ethnicity.	76, 78
4	Saborsko	

	The evidence indicates that during the shelling attacks on Saborsko between August and November 1991, ten persons died. However, the evidence received in relation to these killings is of such a vague and general nature, in particular concerning the manner in which people were killed, that the Trial Chamber will not further consider this part of the incident.	80
Vukovići (Indictment, paras 22-25, 30)		
Murder of nine civilians in Vukovići on 7 November 1991		
5	The Trial Chamber has received insufficient evidence about the identity or death of the alleged ninth victim of this incident.	85
Saborsko (Indictment, paras 22-25, 31)		
Murder of at least 20 Croat civilians in Saborsko on 12 November 1991		
6	The Adjudicated Facts indicate that an additional eleven persons were killed in Saborsko on 12 November 1991, namely Darko Dumenčić, Ivica Dumenčić, Kata Dumenčić, Nikola Dumenčić, Kata Matovina (born 1922), Mate Matovina, Milan Matovina, Slavko Sertić, Mate Špehar, Josip/Joso Štrk, and Petar Vuković. […] However, the Trial Chamber has received insufficient evidence on the circumstances under which or by who these persons were killed.	106-107

	The forensic evidence, exhibit D7, and the testimony of Vlado Vuković indicate that the remains of a further five persons, namely Kata Matovina (born in 1918), Lucija Matovina Marija Matovina, Marta Matovina, and Slavica Matovina were also exhumed from Saborsko. […] The Trial Chamber has received insufficient evidence on the causes, dates, and other circumstances of death in relation to these five persons. The Trial Chamber will not consider this part of the incident.	
Škabrnja (Indictment, paras 22-25, 32)		
Murder of at least 38 non-Serb civilians in Škabrnja on 18 November 1991		
7	[…] Boško Brkić's parents among the victims of this incident. Boško Brkić's testimony clarifies however that his parents were still alive in early December 1991, and were only found dead in the evening of 11 March 1992. As a result, the Trial Chamber will not consider these two persons for the purposes of this finding. Furthermore, the evidence indicates the possibility that Marija Dražina and Marko Župan were killed in Škabrnja on a date other than 18 November 1991. Accordingly, the Trial Chamber will not further consider their deaths in relation to this incident. […] while Petar Rogić, Šime Šegarić, and Bude Šegarić were killed, as found in chapter 3.1.7, such killings did not take place in Škabrnja on 18 November 1991, and will likewise not assess their deaths in relation to this incident. The Trial Chamber further received evidence about the deaths of other people on 18 November 1991 in Škabrnja. It considers, however, that there is a reasonable possibility that these persons died as a result of collateral damage or an	126, 135

	accident. The Trial Chamber will therefore not further consider the deaths of Jela Jurić, Grgo Bilaver, Peka Bilaver, Ana Brkić, Dumica Gospić, Anica Jurić, Mirko Kardum, Milka Žilić, and Pavica Žilić in relation to this incident.	
8	*Status of the victims* […] the evidence regarding four victims (Slavko Miljanić a.k.a. Ćave, Nediljko Škara, Nediljko Jurić, and Stanko Vicković), who were members of the Croatian defence forces, is insufficient to establish that they were *hors de combat* or otherwise not taking part in active hostilities at the time they were killed. As such, the Trial Chamber will not consider their deaths in relation to this finding.	983
Bruška (Indictment, paras 22-25, 35, 64-66)		
Murder of ten civilians in Marinović hamlet in Bruška village on 21 December 1991		
9	[….] there is insufficient evidence as to the exact circumstances of the killings of six of the victims (Ika Marinović, Dragan Marinović, Draginja Marinović, Krsto Marinović, Manda Marinović, and Stana Marinović).	979
Deportation and forcible transfer in the Kostajnica region, in the north-east of the SAO Krajina, July 1991-1993		
10	Glina, Struga, and surrounding villages, July 1991	

	The evidence on the status or affiliation of the "Dvor na Uni Special Purpose Unit" which attacked Unčane is unclear.	184
11	Hrvatska Kostajnica, Hrvatska Dubica, and Predore, August 1991-1995	
	[…] on 23 October 1991, members of the SAO Krajina police drove Witness JF-023 from Hrvatska Dubica to Bosanski Dubica and instructed him not to return until the war was over. Since Witness JF-23 is a Serb this incident falls outside the Indictment and the Trial Chamber will not further consider this incident.	210
Deportation and forcible transfer in the Saborsko region, in the north-west of the SAO Krajina, July 1991-1993		
12	Ljubovo, July 1991	
	[…] on 2 July 1991, members of the SAO Krajina Police attacked Ljubovo, where members of the Croatian MUP were stationed. Witness JF-039's evidence indicates that at some point following the commencement of training at Golubić, SAO Krajina Police members fired a rocket launcher at Ljubovo. The Trial Chamber considers that Witness JF-039 provided insufficient basis for his testimony regarding the purpose of this attack. The evidence does not establish the extent of the rocket fire on Ljubovo or whether it caused any damage to property, injury, or death, nor does the evidence indicate that any persons left Ljubovo during or immediately after the rocket fire. The Trial Chamber further considers	222

	that Croatian MUP members were present in Ljubovo. Under these circumstances, the Trial Chamber will not rely on Witness JF-039's evidence in respect of Ljubovo.	
Deportation and forcible transfer in the Knin region, in the south of the SAO Krajina, 1991-1993		
	Škabrnja, Nadin, and other Croat villages in Benkovac municipality, September 1991-March 1992: Škabrnja, Nadin, and Benkovac, November 1991	
13	[…] while many other sources which are in evidence refer to Serb paramilitary units participating in the attack, only Luka Brkić's evidence indicates members of the White Eagles specifically. The only other evidence suggesting the presence White Eagles in Škabrnja is the testimony of Ivan Jelić, who saw at least one Chetnik with an arm patch of a white eagle in Škabrnja several days after the attack, on 23 November 1991. The Trial Chamber further considers that Brkić's information regarding the location and leadership of the White Eagles is inconsistent with other evidence received in this respect. Under these circumstances, the Trial Chamber will not rely on Brkić's evidence to establish the participation of the White Eagles in the attack. The Adjudicated Facts provide that Goran Opačić was present in Škabrnja at some point on 18 November 1991. […] neither the Adjudicated Facts nor the evidence it has received establish with sufficient certainty that Goran Opačić actually participated in the attack on Škabrnja of 18 November 1991. The Trial Chamber now turns to the presence of Croatian armed forces in Škabrnja. […] around 100 civil defenders were on duty in Škabrnja during the attack on 18 November 1991. […] Croat forces in Škabrnja were equipped with	309-311

	mortars and artillery. […] a ZNG unit armed with anti-tank rocket launchers engaged in combat with Serb forces on 18 November 1991 in Škabrnja and withdrew at 5 a.m. on 19 November 1991.	
	Lovinac, June - September 1991	
14	*June 1991* […] in June 1991, prior to the attack, Franko Simatović, Milan Babić, and Orlović discussed the objective of the attack on Lovinac as being to connect Gračac with other Serb territory and to have as much of the local population leave as possible in order to establish a purely Serb territory. Franko Simatović participated in the attack and later boasted that the attack had razed the village. […] the attack consisted, at least, of firing mortars at Lovinac, including at the police station. The evidence does not clearly establish the duration or extent of the mortar fire in June 1991. Witness JF-039's evidence on the effects of the mortar attack is based on unidentified hearsay sources". Regarding the use of an armoured train during the attack, […] in June 1991, Franko Simatović planned and participated in the use of an armoured train in the Lovinac area. The evidence does not clearly establish the manner in which the train was used between Gračac and Lovinac or whether its use caused any villagers to leave Lovinac. The Trial Chamber considers Witness JF-039's testimony that the train had the objective of intimidating the villagers into leaving Lovinac. According to the report of 21 June 1991 signed or initialled by Simatović, the purpose of the train was to protect the Gračac-Gospić axis and have the ability to target and attack Lovinac.	335-338

	In relation to looting and burning, […] the Trial Chamber is unable to make any further factual findings in relation to the manner in which the attack on Lovinac in June 1991 was carried out. The evidence does not establish with sufficient certainty whether any persons left Lovinac during or immediately following the June 1991 attack. […] Under these circumstances, the Trial Chamber will not further consider the June 1991 attack on Lovinac in relation to the alleged deportation and forcible transfer of non-Serb civilians from the SAO Krajina.	
15	*September 1991 attack* […] in September 1991, members of the JNA Knin Corps attacked Lovinac, after which the village was deserted. There was a large JNA depot nearby Lovinac, at Sveti Rok.	339
	Kijevo and Vrlika, August 1991	
16	In relation to Kijevo, the Trial Chamber recalls its finding that Unit member Borjan Vučković (Boki) participated in the attack on Kijevo of 26 August 1991. However, the evidence insufficiently establishes whether any other members of the Unit participated in the attack. Under these circumstances, the Trial Chamber allows for the reasonable possibility that Borjan Vučković (Boki) participated in the attack on Kijevo independently of the Unit and outside of his capacity as a Unit member.	1426
	Knin, 1990 and April-June 1991	

17	[…] members of the SAO Krajina Police Special Purpose Unit (known as the "Specialists") intimidated people by blowing up Croat businesses in Knin in or after April 1991. The evidence does not further identify any of the members of the unit known as the Specialists, nor specify the date of the destruction. […] this destruction was committed by SAO Krajina Police members under the command of Dragan Karna (and not by members of the Serbian MUP SDB unit formed by Franko Simatović between May and July 1991, as further specified in chapter 6.3.2).	373
Deportation and forcible transfer from the entirety of the SAO Krajina, from April 1991 through April 1992		
18	First incident: departure of between 80,000 and 100,000 Croats and other non-Serbs from the SAO Krajina between April 1991 and April 1992	
	[…] the Trial Chamber has not found that any paramilitary units commanded by the Serbian DB participated in attacks on villages or towns in the SAO Krajina in or after August 1991.	402
Deportation and forcible transfer from the entirety of the SAO Krajina, from May 1992 through 1995		
19	Departure of more than 500 persons from the SAO Krajina in 1995	
	The Radić Report on Expelled Persons in Croatia finally indicates that more than 500 persons left the SAO Krajina portion of the RSK in 1995. The Adjudicated Facts and evidence do not establish the conditions under which these	407

	persons left. In the absence of further information on when within 1995 and from where within the SAO Krajina area these people left specifically, the Trial Chamber will not further consider their departure.	
Croatia - SAO SBWS		
Dalj (Indictment, paras 22-25, 36-37)		
Murder of eleven detainees at the Dalj police building on 21 September 1991		
20	Pavle Beck was also detained at the Dalj police station on or about 21 September 1991 and was taken away from the Dalj police station alongside the ten other detainees. […] The Trial Chamber is unable to determine with sufficient certainty when, by whom, or under which circumstances Pavle Beck was killed. Accordingly, the Trial Chamber will not further consider this part of the incident.	420
Murder of 26 Croat civilians at the Dalj police building on 4 October 1991		
21	[…]. The Trial Chamber finds that 17 of the 22 victims were of Croat ethnicity, while Mihalj Tolaš, Tibor Šileš, and Janoš Šinaš were of Hungarian ethnicity and Ileša Lukač was of Romani ethnicity. There is insufficient evidence to establish the ethnicity of Petar Milić.	432-433

	[…] Ivan Tomičić/Tomiči, Karlo Raj/Raić, Andrija Maksimović, and Martin Banković were also taken away from the Dalj police station on 4 October 1991, alongside the aforementioned 22 victims. However, the Trial Chamber is unable to determine with sufficient certainty whether these people were killed.	
Erdut (Indictment, paras 22-25, 38, 42, 64-66)		
Murder of Croat and ethnic Hungarian civilians at the Erdut training centre on and after 9 November 1991		
9 November 1991		
22	[…] following their arrest on 9 November 1991, members of the SDG and of the SNB took [Josip Bence, Palko/Pavao Bereš, Antun Kalozi, Nikola Kalozi, Nikola Kalozi snr., Ivan Mihaljev, Franjo Pap snr., Mihaljo Pap, Stjepan Senaši, and Josip Senaši] to the Erdut Training Centre, where they interrogated and beat them. [….] The evidence does not establish the ethnicity of Palko/Pavao Bereš. In the absence of sufficient further evidence in relation to [Ivica Astaloš and Atika Paloš] the Trial Chamber will not consider this part of the incident.	451-452
Murder of Croat and ethnic Hungarian civilians at the Erdut training centre on or about 26 December 1991		

23	[…] the Trial Chamber is unable to determine with sufficient certainty the circumstances under which or by who [Andrija Matin, Franjo Pitl, Stjepan Tešenac Nikola Matošević, Andrija Šimek] were killed.	480
Incidents of deportation and forcible transfer		
24	Erdut, July 1991 – April 1992	
	The Trial Chamber considers that those who left Erdut did so out of concern for their safety in light of ongoing combat operations and that other inhabitants had left prior to the take-over. The Trial Chamber considers that there is insufficient evidence to conclude that the take-over of Erdut was conducted so as to create an environment whereby the inhabitants had no choice but to leave.	1018
25	Dalj, 1 August 1991	
	The Trial Chamber found that those who left Dalj did so out of concern for their safety in light of ongoing combat operations. The Trial Chamber considers that there is insufficient evidence to conclude that the take-over of Dalj was conducted so as to create an environment whereby the inhabitants had no choice but to leave.	1032
26	Other villages in Osijek-Baranja county, July 1991 – January 1992	

	The Trial Chamber allows for the reasonable possibility that those who left the villages did so out of concern for their safety in light of ongoing combat operations and that the inhabitants left their villages prior to the take-overs. The Trial Chamber considers that there is insufficient evidence to conclude that the attacks were conducted so as to create an environment whereby the inhabitants had no choice but to leave.	1040
27	Vukovar, November 1991	
	On the basis of the evidence before it, the Trial Chamber is unable to establish that Unit members took part in the take-over of Vukovar town in November 1991.	1490
28	Ilok, October 1991 – April 1992	
	The Trial Chamber notes that those who left Ilok did so after a referendum was held and that the citizens expressed a wish to leave for Croatia-held territory, as the JNA had issued an ultimatum to the armed formations in Ilok to surrender and disarm and the citizens had heard of the conditions in the surrounding villages. The majority, Judge Picard dissenting, considers that there is insufficient evidence to conclude that the environment was such that the inhabitants had no choice but to leave.	1048

Bosnia		
Bosanski Šamac (Indictment, paras 22-25, 50, 64-66)		
Murder of at least 16 non-Serb civilians in Crkvina on or about 7 May 1992		
29	The Trial Chamber concludes that it has received insufficient evidence regarding the person known as Debeli Musa to determine to which armed forces, if any, he belonged.	615
Incidents of deportation or forcible transfer in Bosanski Šamac		
	First incident: attack and takeover of Bosanski Šamac town 17 April 1992	
31	The Trial Chamber has also reviewed exhibits P1418 and P1425 as well as further evidence from Witness B-1108 on the incidents of looting in Bosanski Šamac municipality. The Trial Chamber notes that as all these incidents appear to have occurred a few days after the take-over of Bosanski Šamac town, and that it has not received any evidence that people left the municipality following these incidents and as a result thereof, it will not further consider the aforementioned evidence in this respect.	655
32	Furthermore, the Trial Chamber has received evidence, through exhibits P180 and P183, indicating that Serb authorities in Bosanski Šamac introduced administrative policies forbidding citizens to leave the municipality without a special permit,	656

	and prohibiting Muslims and Croats from gathering in groups in public places. The Trial Chamber notes, however, that these policies were introduced as of 21 May and 4 August 1992 respectively, and that it has not received any evidence indicating that people left after the enforcement of these policies and as a result thereof. Consequently, the Trial Chamber will not further consider this evidence in this context.	
33	However, the Trial Chamber is unable to determine with sufficient certainty whether any persons left Bosanski Šamac municipality after the beatings, sexual assault, and threatening of prisoners other than through the exchanges of prisoners. Consequently, the Trial Chamber is unable to conclude that any persons left Bosanski Šamac as a result of the beatings, sexual assault, and threatening of prisoners. Under these circumstances, the Trial Chamber will not further consider the perpetrators of these acts in relation to Counts 1, 4, and 5 of the Indictment, in chapter 4, below.	685
Doboj (Indictment, paras 22-25, 54, 64-66)		
Murder of approximately 27 non-Serb civilians by using them as human shield on or about 12 July 1992		
34	The Trial Chamber has received evidence indicating that there were more victims than those identified above who died as a result of the abovementioned human shields incident. […] However, in the absence of forensic documentation and detailed evidence on the circumstances of their deaths, the Trial Chamber is unable to determine with sufficient certainty that there were further victims. The Trial Chamber has also received insufficient evidence on the causes, dates, and other circumstances of death in relation to the other ten persons exhumed in or around Makljenovac […]	704

Incidents of deportation and forcible transfer in Doboj		
35	Seventh incident: exchange of 140 Muslims, 4 September 1992	
	[…] the Trial Chamber is unable to determine with sufficient certainty what happened to the detainees from Spreča prison after they were taken to Mount Ozren.	777
36	Eighth incident: moving of 600-720 Croatians from Dagalovci to Croatia in September 1995	
	The Trial Chamber has not received sufficiently specific evidence to establish that these Croats were moved against their will or without a genuine choice. Accordingly, the Trial Chamber is unable to establish that they were forcibly displaced and will not consider this incident further.	1140
37	Forcible transfer in Doboj town in 1995	
	The Trial Chamber finds, […] that in September 1995, the remaining Muslims from Doboj town were gathered at the Doboj stadium and transferred across the front-lines, or otherwise transferred out of the municipality of Doboj. The Trial Chamber has received insufficient evidence regarding the perpetrators of this incident. Under these circumstances, the Trial Chamber will not further consider this incident.	785

Sanski Most (Indictment, paras 22-25, 64-66)		
Incidents of deportation and forcible transfer in Sanski Most		
	Sixth incident: departure of JF-064 on or about 20 September 1995	
38	With regard to the *mens rea* of those constituting the VRS, the majority, Judge Picard dissenting, is unable to conclude that they had the intent to forcibly displace JF- 064 when they forced non-Serbs to perform labour. As the majority, Judge Picard dissenting, does not find that those constituting the aforementioned forces had the intent to forcibly displace JF-064 from Sanski Most municipality, this incident will not be considered further.	1173
	Seventh incident: departure of JF-060 in September 1995	
39	[…] the Trial Chamber finds that on 18 or 19 September 1995, men in camouflage uniforms put the remaining Bosnian Muslims and Croats in Kijevo, including Witness B-1048, on trucks and insulted and beat them. The men in camouflage uniforms transported the men from Kijevo to Poljak and transported the women, elderly, and children to Šehovci. Witness B-1048 did not indicate to which armed group the men in camouflage uniforms belonged, did not see insignia on their uniforms, and testified that they included a local man from Sanski Most. Under these circumstances, the Trial Chamber is unable to determine with sufficient certainty to which armed group, if any, the perpetrators belonged.	873, 876 and 1175

	The Trial Chamber has received insufficient evidence regarding the other persons leaving Šehovci in convoys at the end of September 1995 and will not further consider this part of the incident. With regard to the *mens rea* of those constituting the SDG, the Trial Chamber considers that they intended to kill JF-060 along with the other 65 non-Serb men whom they succeeded in killing. With regard to when they carried out detention, beatings, and rape, the majority, Judge Picard dissenting, is unable to conclude that they had the intent to forcibly displace JF-060. With regard to the *mens rea* of those constituting the VRS, the majority, Judge Picard dissenting, is unable to conclude that they had the intent to forcibly displace him when they forced non-Serbs to perform labour. As the majority, Judge Picard dissenting, does not find that those constituting the aforementioned forces had the intent to forcibly displace JF-060 from Sanski Most municipality, this incident will not be considered further.	
Zvornik (Indictment, paras 22-25, 62, 64-66)		
Murder of approximately 20 non-Serb civilians in Zvornik on or about 8 April 1992		
40	Witness JF-007's testimony, the forensic documentation, and the missing persons certificate suggest that the following persons were killed or went missing on 8 or 9 April 1992: Šemsudin Avdić, Hasan Dušković, Salem Džonlić, Hazim Hadžiavdić, Faruk Hadžiefendić, Mensura Hadžiefendić, Mihdat Halilbašić, Asim Hudović, Taib Hudović, Fehim Kujundžić, Izet Sabirović, Hakija Šehić (1930), Hakija Šehić (1934), and Faruk Uzunić. However, the forensic documentation is based, at least in part, on information provided by relatives whose sources of knowledge are unclear. The	891

	Trial Chamber has received insufficient evidence as to the circumstances under which the aforementioned persons died. The Trial Chamber will not further consider this part of the incident.	
Incidents of Deportation and Forcible Transfer in Zvornik		
	General allegations relating to deportation and forcible transfer in Zvornik	
41	The Trial Chamber has reviewed the Adjudicated Facts and further evidence from Witness B-161, Witness JF-026, and Witness JF-070, as well as documentary evidence, including exhibits P1059 and P1060, concerning arbitrary arrests and detentions of Muslims in the municipality of Zvornik, mistreatment and killings of Muslims in detention facilities, destruction of mosques, killings, and sexual abuse in Zvornik town and throughout the municipality of Zvornik in the aftermath of the attack. The Trial Chamber observes that the alleged killings and other crimes have not been separately charged by the Prosecution in the Indictment. Furthermore, the Trial Chamber has not received any evidence indicating that people left as a result of the alleged incidents. Consequently, the Trial Chamber will not further consider the aforementioned incidents in this context.	948

Part II: Positive Findings on Stanišić's Alleged Contributions

No.	Trial Judgement Positive Findings– Contributions	Source of the Findings
The Unit (Indictment, paras 3-9, 15(b) and (c))		
Directing		
42	The Trial Chamber will now consider the status of Captain Dragan. […] He appears to have operated with more independence than other Unit members.	1425
Training		
43	While the evidence on the duration and scale of training at Golubić prior to April 1991 is unclear, the Trial Chamber does not consider in view of the remainder of the evidence set out below, the submission that a training camp at the Golubić centre was established, financed, and fully functioning prior to April 1991 to be a reasonable interpretation of the evidence.	1296

44	[…] training at Golubić was of a military character and included weapons and ambush training, as well as the treatment of POWs and the treatment of civilians in armed conflict.	1369
45	From July 1991, following a disagreement with Martić, Simatović no longer participated in the Golubić camp, which closed in July or August 1991. Captain Dragan left the SAO Krajina in August 1991.	1370
Specific findings related to SBWS operations, September 1991 - early 1992		
46	In view of the totality of the evidence before it, the Trial Chamber understands that different groups were at different times referred to as the "Red Berets" and that many persons who were trained by the Unit did not become Unit members, but returned to, or became members of, other armed forces.	1493
Specific findings related to Bosanski Šamac Operations		
47	The Trial Chamber now turns to the 18 local paramilitaries sent by Todorović who had been trained in Ilok and who arrived in Bosanski Šamac alongside the 30 Unit members. The evidence reviewed above does not clearly establish who commanded these local paramilitaries and whether they operated as part of the Unit during the operations. In this respect, the Trial Chamber recalls its findings in chapter 6.3.3 that the Unit at the Pajzoš camp in Ilok trained other groups, including local Serbs who were not members of the Unit. In light of the foregoing, the Trial Chamber is unable to determine whether these 18 local paramilitaries were also members of the Unit.	653

48	With regard to directing the involvement of the Unit in the Bosanski Šamac operations, the Trial Chamber recalls its finding that, during the take-over, the Unit was subordinated to the JNA (see chapter 3.4.2). The Trial Chamber has received insufficient evidence to conclude that the Accused directed the Unit during the Bosanski Šamac operations.	1537
Specific findings related to the operations in Doboj		
49	[…] the Trial Chamber finds that the perpetrators of the incident [murder of approximately 27 non-Serb civilians on or about 12 July 1992] included Serb persons who were members of a local paramilitary unit called Predo's Wolves and led by Predrag Kujundžić. These persons wore red berets, camouflage uniforms with the "four Serb Ss" insignia, and black bandanas. One of these persons was referred to as Golub (a.k.a. Crnogorac). Witness JF-008's testimony suggests this may have been Golub Maksimović, a member of Predo's Wolves. The Trial Chamber does not consider this evidence to implicate Živojin Ivanović, who was also known as Crnogorac. The Trial Chamber has considered that the perpetrators wore red berets and that the evidence indicates the presence of a unit referred to as the "Red Berets" stationed in a house in the vicinity of Perčin disko. The Trial Chamber further recalls its findings on the presence and activity of the Unit in Doboj municipality between April and July 1992 in chapter 6.3.3. However, the Trial Chamber considers that the use of red berets was not exclusive to the Unit, nor was the Unit the only armed force referred to as the "Red Berets" in the area at the time. The Trial Chamber concludes that the evidence does not clearly establish that any of the perpetrators of the incident described above were members of the Unit.	703

50	[…] The Trial Chamber concludes there is insufficient evidence to determine whether these "Montenegrin Red Berets" were members of the Unit. […] the Trial Chamber finds that in mid- October 1992 at the Spreča or central prison persons referred to as "Red Berets" beat a detainee to death. […] the Trial Chamber is unable to conclude that the perpetrators referred to as "Red Berets" in mid-October 1992 were members of the Unit.	778, 779
Specific findings related to the operations in SAO SBWS in 1995		
51	[…] the Trial Chamber considers that it has received insufficient evidence to conclude that the Accused directed the SDG, the JATD a.k.a. the Red Berets, and the Skorpions in the SAO SBWS operations between late August and late October 1995.	2057
Specific findings related to Tikveš Camp		
52	Cumulatively, this evidence indicates that the special unit present at the base at Tito's Castle in Tikveš from early to mid-1992 was closely linked to the Unit and the Serbian DB. However, the evidence does not clearly establish that any operations were undertaken from the base at Tito's Castle in Tikveš, nor that any training took place there. In the latter respect, the Trial Chamber considers that Tikveš was not mentioned by Simatović among the training camps of the Unit which he listed at the Kula ceremony in 1997.	1507

Specific findings related to Brčko		
53	This evidence suggests that Captain Dragan ceased to be a member of the Unit after August 1991. In light of the foregoing, the Trial Chamber allows for the reasonable possibility that Rade and Božo Božić and the unit referred to as "Captain Dragan's Red Berets" in Brčko were separate from and operated independently of the Unit, the Serbian DB, and the Accused.	1567
54	However, the evidence on his activities in Brčko does not establish to which armed forces Radovanović belonged when taking part in this operation. In this context, the Trial Chamber recalls the evidence reviewed in relation to the Pajzoš camp and in chapter 3.4.2 that Radovanović received a position in the VRS following the take-over of Bosanski Šamac. Nor does the evidence establish in which operations in Brčko Srećko Radovanović participated. In this context, the Trial Chamber notes that there were, at least, two relevant operations in Brčko prior to May 1993: the operations for the take-over of Brčko town from 30 April to 2 May 1992 and the operations for the Brčko corridor in June 1992. Under these circumstances, the Trial Chamber will not further consider evidence relating to Radovanović's participation in operations in Brčko.	1572
Specific findings related to Bratunac		

55	The evidence above further indicates that from May 1993, the Unit in Bratunac was subordinated to the VRS. In view of the evidence received, the Trial Chamber is unable to establish that the Accused directed the involvement of the Unit in Bratunac in these operations.	1703
Specific findings related to Skelani		
56	In the absence of further indications as to the Accused's involvement in the Skelani operations, the Trial Chamber is unable to conclude that the Accused directed the Unit during the Skelani operations.	1676
Specific findings related to Operation Pauk, 1994-1995		
57	Recalling its understanding of the Indictment's term "to direct the involvement", and in the absence of sufficient evidence on the existence of some sort of a superior-subordinate relationship between the Accused and General Mile Novaković, the Commander of Pauk, the Trial Chamber is unable to conclude that the Accused directed the involvement of the SDG, the Skorpions, and the JATD a.k.a. the Red Berets in Operation Pauk.	2006
Failure to instruct the Unit to refrain from committing unlawful acts		
58	The Trial Chamber has not received any direct evidence in this respect. The Trial Chamber refers to its findings above regarding the Accused's acts and conduct in relation to the Unit.	1756

SAO Krajina Police (Indictment, paras. 5-9, 15(b) and (c))		
Training		
59	The training, which on average lasted approximately 20 days, was of a military character and included weapons and ambush training, as well as the treatment of POWs and the treatment of civilians in armed conflict. However, the Trial Chamber has not received any evidence indicating that the Serbian DB or the Accused played a role in directing and organizing training of the SAO Krajina Police or TO during these years. Evidence on the school operating under the patronage of the Serbian MUP does not, in and of itself, implicate the Serbian DB. Consequently, the Trial Chamber is unable to conclude that the Accused directed and organized training for the SAO Krajina Police or TO members after July 1991. In view of the foregoing and taking into consideration its findings made above, the Trial Chamber considers that the weapons distributed to trainees at the Golubić camp could have been supplied by the Accused, could have originated from the JNA and TO depots in Serbia and in Krajina, or could have come from both sources. The Trial Chamber has further considered Milan Babić's statement that in August 1991, Stanišič arranged weapons for Banija and Kordun, but in the absence of any further evidence in this respect, it is unable to conclude that these weapons were received by the SAO Krajina Police or TO members.	2197-2198 and 2206
Financing		

60	In view of Witness DST-043's evidence, the Trial Chamber observes that at the time, the Krajina Police also received private donations. The Trial Chamber has reviewed the witness's belief that at some point, the funding for the police also came from the Krajina government, but it is unable to come to the same conclusion based on this evidence, which lacks sufficient foundation.	2153
Arming		
61	[The Trial Chamber] has not received any evidence that Simatović or the Serbian DB stopped or in any other way influenced the distribution of weapons by JNA/VJ in the Krajina. As to further assistance to the SAO Krajina Police after April 1991, the Trial Chamber observes that sometime before May 1992, the SSNO delivered 12 combat-armoured vehicles and 100 motor vehicles to the SAO Krajina Police. The Trial Chamber has further reviewed several requests for assistance addressed to the VJ, the (S)FRY Presidency, and the Serbian MUP, but it is unable to conclude whether any of these requests were met or whether the Accused played any role in providing such assistance. The Trial Chamber further observes that the Serbian MUP assisted Martić in solving problems with communication links, and that the RSK and the Serbian MUP cooperated in facilitating cross-border movement of the employees of both organizations, but it has not received any evidence about the Accused's role therein.	2207 and 2212
SAO Krajina TO (Indictment, paras. 5-9, 15(b) and (c))		
Training		

62	The training, which on average lasted approximately 20 days, was of a military character and included weapons and ambush training, as well as the treatment of POWs and the treatment of civilians in armed conflict. However, the Trial Chamber has not received any evidence indicating that the Serbian DB or the Accused played a role in directing and organizing training of the SAO Krajina Police or TO during these years. Evidence on the school operating under the patronage of the Serbian MUP does not, in and of itself, implicate the Serbian DB. Consequently, the Trial Chamber is unable to conclude that the Accused directed and organized training for the SAO Krajina Police or TO members after July 1991. In view of the foregoing and taking into consideration its findings made above, the Trial Chamber considers that the weapons distributed to trainees at the Golubić camp could have been supplied by the Accused, could have originated from the JNA and TO depots in Serbia and in Krajina, or could have come from both sources. The Trial Chamber has further considered Milan Babić's statement that in August 1991, Stanišič arranged weapons for Banija and Kordun, but in the absence of any further evidence in this respect, it is unable to conclude that these weapons were received by the SAO Krajina Police or TO members.	2197-2198, 2206
Financing		
63	The Trial Chamber has not received evidence that the Accused played any role therein. Consequently, the Trial Chamber is unable to conclude that the Accused directed and organized the financing of the SAO Krajina TO.	2203
SDG – Arkan's men (Indictment, paras 3-9, 15(b) and (c))		

Forming		
64	[…] the Trial Chamber is unable to conclude that the Accused directed or organized the formation of the SDG. […] the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding.	1762
Training		
65	The Trial Chamber has received insufficient evidence to conclude that the SDG were trained by the Serbian DB. Further, there is insufficient evidence to conclude that this training was coordinated by the Serbian DB or the Accused. […] The Trial Chamber considers however that it has received insufficient evidence that Badža and the SJB acted on the orders of the Serbian DB or the Accused. In view of all the above, the Trial Chamber cannot conclude that the Accused directed and organized training for the SDG at the Erdut and Mount Tara camps.	1913
Specific findings related to SAO SBWS in 1991		
66	<u>Supplying (arms and other supports)</u> The Trial Chamber has received insufficient evidence to determine that the Accused played any role with regard to supplying, financing, or supporting the involvement of the SDG during the operations in the SAO SBWS in 1991. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding.	1839, 1912

	In relation to supply and other support, […] the SVK, as well as private individuals, supported the SDG *inter alia* with weapons and ammunition. This notwithstanding, […] the Serbian MUP assisted the SDG *inter alia* through providing license plates for SDG vehicles or identity cards for its members. Evidence of support provided by the Serbian MUP in and of itself does not implicate the Serbian DB […]. With regard to Stanišić's presence at a Training Centre in Erdut, the Trial Chamber considers the evidence provided by Witness C-015 and exhibit P1688 to be insufficient on its own to draw any conclusions about the Accused supporting the SDG.	
67	<u>Deploying</u> […] neither in and of itself, nor cumulatively, does the evidence rise to a level sufficient to establish that the Serbian DB or Stanišić directed the involvement of the SDG in the SAO SBWS in 1991. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding. To the extent that TO commanders Kojić and Badža may have had any links to the Serbian DB, the Trial Chamber is nonetheless unable to conclude that such a link, whatever it could have meant at the time, constitutes evidence that the Accused directed the involvement of the SDG in the SAO SBWS. These findings, limited only to directing, are also consistent with the evidence on the general structure and command of the SDG, which indicates that the SDG was subordinated to RSK organs during the war. With regard to organizing the involvement of the SDG, […] The Trial Chamber does not find the evidence on this matter conclusive but in any event, notes that the evidence does not show that the Accused organized the involvement of the	1789-1790, 1840

	SDG to the SAO SBWS in 1991. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding. It is the Trial Chamber's understanding, also considering the link between Arkan and Bogdanović, that reference to the Serbian MUP in the context of this sub-chapter does not refer to the DB part of the Serbian MUP.	
Specific findings related to Bijeljina		
68	Supplying (arms and other supports) With regard to the supply of weapons and ammunition and other support, the Trial Chamber finds, based on the Adjudicated Facts, that the JNA provided arms and equipment, and that the local SDS assisted the SDG during the Bijeljina operation in 1992. The Trial Chamber has received insufficient evidence to show that the Accused financed, supplied, or supported the SDG during the Bijeljina operation in 1992. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding.	1857
69	Deployment Based on the testimony of Witness JF-025, Jovan Dimitrijević, Witness JF-026, and Witness JF-057 reviewed above, and evidence in chapters 3.3.1 and 3.8.2, the Trial Chamber finds that whilst Arkan and the SDG operated in concert with other forces during the take-overs of Bijeljina and Zvornik, the evidence is inconclusive regarding the SDG's operational subordination. Whilst the Trial Chamber has received evidence demonstrating that Biljana Plavšić may have been involved in directing the take-over of Zvornik and, possibly, Bijeljina, the Trial Chamber finds this evidence to be too	1800, 1858

	vague and, thus, inconclusive. Similarly, while Colonel Tačić ordered Arkan to leave the area after the take-over of Zvornik, the Trial Chamber cannot infer from this alone that the SDG was directed by the JNA. The Trial Chamber has not received evidence with regard to the Accused directing the involvement of the SDG in Bosnia-Herzegovina in 1992. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding. With regard to organizing the involvement of the SDG in Bijeljina, whilst the Trial Chamber received evidence that Arkan and the SDG were invited to Bijeljina by the TO (D52 (video)), the Trial Chamber finds that, based on the vast majority of the evidence (P644 (video), Witness JF-057, Borislav Pelević, and Jovan Dimitrijević), Arkan and the SDG were invited to Bijeljina by Biljana Plavšić/the SDS. The Trial Chamber received insufficient evidence to conclude that the Accused organized the involvement of the SDG in Bijeljina in 1992. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding.	
Specific findings related to Sanski Most		
70	<u>Supplying (arms and other supports)</u> The Trial Chamber has not received sufficient evidence to show that the Accused supplied or otherwise supported the SDG during the Banja Luka operations in 1995 in any other way than as set out above.	1881
71	<u>Deploying</u>	1812-1813, 1879

	The evidence set out above suggests two possible ways in which the Accused might have directed the involvement of the SDG in Banja Luka. The first way is through a direct, yet "informal" command, meeting directly with Arkan in Belgrade. The second way is through indirect command, via Simo Drljača. In this regard the Trial Chamber notes that Witness JF-027 testified that his SDG unit was commanded by Drljača, and that Witness JF- 057 testified that Drljača came to Belgrade in September and October 1995 to meet with Arkan and Simatović. The Trial Chamber however considers that the evidence on the meetings is inconclusive in relation to the question of whether the Accused directed the involvement of the SDG in the Banja Luka operations, as it does not specify the content of the meetings, or the effect of them. This is equally applicable to the evidence indicating the direct control of Simatović over the involvement of the SDG in Banja Luka. The Trial Chamber further notes that the basis of Witness JF-057's knowledge that the Banja Luka DB was under the "informal command" of Jovica Stanisić and Franko Simatović is unspecified and that this information is uncorroborated by other evidence. Consequently, the Trial Chamber has not relied on this part of Witness JF-057's testimony. The Trial Chamber considers that it has received insufficient evidence to show that the Accused directed the SDG in the Banja Luka operations in 1995. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG in other ways does not affect this finding. Based on the foregoing, the Trial Chamber considers there to be reasonable doubt as to whether the Accused organized the involvement of the SDG in the Banja Luka operations in 1995.	
Specific findings related to Zvornik		

72	Supplying (arms and other supports) The Trial Chamber has received insufficient evidence that the Accused financed, supplied, or supported the SDG during the Zvornik operation in 1992. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding.	1859
73	Deploying […] the Trial Chamber finds that whilst Arkan and the SDG operated in concert with other forces during the take-overs of Bijeljina and Zvornik, the evidence is inconclusive regarding the SDG's operational subordination. Whilst the Trial Chamber has received evidence demonstrating that Biljana Plavšić may have been involved in directing the take-over of Zvornik and, possibly, Bijeljina, the Trial Chamber finds this evidence to be too vague and, thus, inconclusive. Similarly, while Colonel Tačić ordered Arkan to leave the area after the take-over of Zvornik, the Trial Chamber cannot infer from this alone that the SDG was directed by the JNA. The Trial Chamber has not received evidence with regard to the Accused directing the involvement of the SDG in Bosnia-Herzegovina in 1992. The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding. With regard to organizing the involvement of the SDG in Zvornik, the Trial Chamber received evidence that Arkan was requested to go to Zvornik by the Zvornik Crisis Staff (Witness JF-026) as well as evidence of Borislav Pelević and Jovan Dimitrijević, that after the take-over of Bijeljina, Biljana Plavšić instructed/insisted that Arkan and the SDG proceed to Zvornik. In light of the above discussion on these witnesses' reliability, the Trial Chamber is unable to conclude with sufficient certainty who organized the SDG's involvement in Zvornik. The Trial Chamber received insufficient evidence to conclude that the Accused organized the involvement of the SDG in Zvornik in 1992. The Trial Chamber finds that	1800, 1860

	without further evidence, the mere fact that the Accused were involved with the SDG at a later stage does not affect this finding.	
Specific findings related to Operation Pauk, 1994-1995		
74	In view of its finding above on the position of Tactical Group 2 and the evidence of Witness JF- 029, the Trial Chamber finds that during Operation Pauk, the Skorpions were directed by General Mile Novaković.	2000
75	Recalling its understanding of the Indictment's term "to direct the involvement", and in the absence of sufficient evidence on the existence of some sort of a superior-subordinate relationship between the Accused and General Mile Novaković, the Commander of Pauk, the Trial Chamber is unable to conclude that the Accused directed the involvement of the SDG, the Skorpions, and the JATD a.k.a. the Red Berets in Operation Pauk.	2006
76	[…] the Trial Chamber has not received sufficient evidence to conclude that the Accused Stanišić organized the involvement of the SDG in Operation Pauk.	2010
Specific findings related to operations in SAO SBWS in 1995		

77	[…] the Trial Chamber considers that it has received insufficient evidence to conclude that the Accused directed the SDG, the JATD a.k.a. the Red Berets, and the Skorpions in the SAO SBWS operations between late August and late October 1995. The Trial Chamber will now consider whether the Accused organized the involvement of the SDG, the JATD a.k.a. the Red Berets, and the Skorpions in the SAO SBWS operations. In the absence of any evidence in relation to deploying the SDG and the Skorpions to the SAO SBWS operations, the Trial Chamber is unable to conclude that the Accused organized the involvement of these two units in the 1995 operations.	2057-2058
Failure to instruct the SDG to refrain from committing unlawful acts		
78	The Trial Chamber has not received any direct evidence in this respect. The Prosecution submits that the Serbian DB documented crimes committed by the SDG in the SAO SBWS and in Bijeljina and Zvornik. The Trial Chamber did not find that the Accused directed any of the particular operations in which the SDG participated, something which could have created an obligation to instruct to refrain from committing unlawful acts.	1915
SAO SBWS TO (Indictment, paras 5-9, 15(b) and (c))		
Forming		
79	Alleged links between Kojić and Jovica Stanišić	2233

	In relation to Kojić, the Trial Chamber has partly addressed the Prosecution's allegations in this respect in chapters 6.4.3 and 6.4.4 in relation to the SBWS in 1991, considering that any evidence on the links between Kojić and the Accused was insufficient to conclude that the Accused controlled the SBWS TO. Having further reviewed the evidence summarised in this chapter, the Trial Chamber observes that Ilija Kojić worked for the Serbian MUP, first for the Public Security Organ and later for the SDB. The Trial Chamber considers that the mere fact that a person was employed by the Serbian DB at the relevant time, does not mean that his or her acts can be attributed to the Accused. […] The Trial Chamber also notes that Kojić's employment at the Serbian MUP began in November 1991, that is after the SBWS police and TO forces were formed, and at the time when he was no longer at the command of the SBWS TO. […] As concluded in that chapter, the Trial Chamber has received no evidence about what was discussed at this meeting. Having further reviewed the general statements of Borislav Bogunović, Milenko Lemić and Intelligence Report P1652, the majority, Judge Picard dissenting, considers that it has not received conclusive evidence that in his capacity as TO commander, Kojić was influenced by, or acted at the orders or instructions of the Accused. The picture is further complicated by the testimony of Borislav Bogunović who, on the one hand, believed that there were some links between Kojić and Stanišić, but, on the other hand, testified that Kojić could not do anything without JNA's approval.	
80	<u>Alleged links between Kostić and Jovica Stanišić</u> In relation to Radoslav/Ante Kostić, […] at the relevant time Kostić worked for the SBWS police and was also an employee of the Serbian DB. […] the mere fact that Kostić was employed by the Serbian DB at the relevant time, does not mean that his acts can be attributed to the Accused. In the view of the majority, Judge Picard dissenting, there has	2234

	been no further evidence on the links between Kostić and the Accused, and in any event, there is no conclusive evidence that Kostić played a role in the formation of the SBWS police and TO.	
81	Alleged links between Goran Hadžić and Jovica Stanišić As to any potential links between Goran Hadžić and Jovica Stanišić, […] the majority, Judge Picard dissenting, is unable to come to the conclusion that Stanišić controlled or influenced the SBWS president's decisions in relation to the setting up of the SBWS TO and police. In view of the above, the majority, Judge Picard dissenting, is unable to conclude that the Accused directed and organized the formation of the SBWS police and TO units.	2235-2236
Training		
82	However, in the absence of any further evidence in this respect, the majority, Judge Picard dissenting, is unable to determine the role of the Serbian DB or the Accused in dispatching the Serbian MUP SJB officers and policemen to SBWS, or in the training of SBWS TO and police forces or the setting up of new police stations in the area.	2254
Arming		
83	[…] in view of Witness JF-032's evidence, the Trial Chamber notes that although present at the July 1991 Belgrade meeting with Bogdanović, Stanišić did not contribute to the discussion. Considering further the evidence of Witness JF-	2257-2259

	032 in relation to the arming of the SBWS police, the Trial Chamber notes that the witness implicated Kostić and the Serbian MUP in this respect. In one instance only did the witness testify that the delivery of weapons was organized by the Novi Sad DB, and his source of knowledge in this respect was Ilija Kojić. The majority, Judge Picard dissenting, considers this evidence inconclusive. The Trial Chamber further recalls its discussion above in chapter 6.7.2 about the attribution of the acts of the DB employees to the Accused, and the Accused's positions within the Serbian DB at the relevant time. In this respect, even if Kojić, Kostić, and Šarac arranged for weapons and equipment to be distributed to the SBWS police and TO, as claimed by Witness JF-032, the mere fact that Kojić, Kostić, and Šarac were employees of the Serbian DB, does not mean that their acts can be attributed to the Accused. In the absence of any further evidence in this respect, the majority, Judge Picard dissenting, is unable to determine the role of the Accused in arranging for the distribution of weapons and equipment to the SBWS TO and police. Furthermore, the evidence of Bogunović and Witness JF-032 about Stanišić's presence when supplies for SBWS were discussed or arranged for is not sufficient to enable it to conclude that Stanišić organised the arming of the SBWS forces. The evidence is silent on the role of the Accused in the JNA and MoD arming activities. In respect of the MUP supplying weapons to Arkan, the majority, Judge Picard dissenting, considers that it has not received conclusive evidence that it was the Serbian DB or the Accused, and not the SJB of the Serbian MUP that participated in these arming activities. in view of all the above, the majority, Judge Picard dissenting, is unable to conclude that the Accused directed and organized logistical and other support to the SBWS police and TO units.	
Supplying		

84	In relation to the financing of SBWS forces, the Trial Chamber observes that the Serbian SJB officers and policemen continued to be paid by the Serbian MUP while in the SBWS. There has been no conclusive evidence that it was the Serbian DB or the Accused, and not the SJB of the Serbian MUP that remunerated these SJB officers and policemen. Financing may have also been conducted through private donations. In relation to other members of the SBWS police and TO, in the absence of any further evidence in this respect, the majority, Judge Picard dissenting, is unable to conclude that the Accused directed and organised the financing of the SBWS police and TO units.	2260
Failure to instruct the SBWS police and TO units to refrain from committing unlawful acts		
85	The Trial Chamber has not received any direct evidence on these allegations. As specified in the present chapter, the Trial Chamber did not find that the links between the Accused and the SBWS police and TO units were of such nature that they could give rise to an obligation to instruct the SBWS police and TO units to refrain from committing unlawful acts.	2262
Skorpions (Indictment, paras. 5-9, 15(b) and (c))		
Forming		
86	The Trial Chamber will now consider the evidence received on insignia. In this respect, even assuming that the insignia worn by the Skorpions, the SDG, and the Unit/JATD a.k.a. the Red Berets contained a common nexus - a sword and four Cyrillic Ss – the Trial Chamber has not received conclusive evidence that this insignia was indeed an official emblem of the Serbian DB and that no other unit, apart from those who belonged to the DB, wore a similar patch. To the contrary,	1936

	in view of the pictures of insignia examined above, the Trial Chamber considers that a sword is a rather common element of military emblems and patches. Although Witness JF-024, who claimed that the sword was a DB symbol, testified that the sword insignia was only worn by the SDG and the Skorpions, other witnesses provided evidence further indicating that the Red Berets wore a similar patch, and Stoparić testified that other "DB satellite units", including the Wolves from Vučjak, also wore insignia depicting a sword; Stoparić failed to provide any basis for his general conclusion that these units were DB's satellites. Furthermore, Witness JF-005, an insider himself, did not mention a sword when testifying about the Red Berets' insignia.	
87	In light of the above, the Trial Chamber is unable to determine with sufficient certainty who of the above mentioned persons organized the formation of the Skorpions. Consequently, the Trial Chamber is unable to conclude that the Accused directed and organized the formation of the Skorpions.	1937
Training		
88	In relation to training activities, the Trial Chamber considers the evidence of Goran Stoparić that members of the Skorpions had been trained at the Erdut and Tara camps. In view of its findings in chapter 6.4.3 in relation to the Erdut camp and in chapter 6.3.3 in relation to the Tara camp, and the general nature of Stoparić's evidence in this respect, the Trial Chamber is unable to conclude that the Skorpions received training at these locations.	2103
Supplying		

89	The Trial Chamber has not received evidence that the Accused played any role in financing, training, or supplying the Skorpions with equipment and weapons. Consequently, the Trial Chamber is unable to conclude that the Accused directed and organized financing, training, logistical support, and other substantial assistance or support for the Skorpions outside the time-period of Operation Pauk (in which the Skorpions took part between November 1994 and April 1995), and the June-July 1995 Trnovo/Treskavica and August- October 1995 SAO SBWS operations. According to the Indictment, the Accused failed to instruct the Skorpions to refrain from committing unlawful acts [Indictment paras. 5, 15(c)]. The Prosecution did not address these charges in its Final Trial Brief. The Trial Chamber has not received any direct evidence in this respect. As specified in the present chapter, the Trial Chamber did not find that the Accused directed the involvement of the Skorpions in any of the particular operations, something which may have created an obligation to instruct them to refrain from committing unlawful acts.	2104-2106
Deploying in the Treskavica/Trnovo operation in June-July 1995		
90	The Trial Chamber further recalls its finding in chapter 6.3.2 that at the relevant time, the JATD was a unit subordinate to the Accused. The Trial Chamber further considers Report P1061 which suggests that during the war, Mijović was in charge of a unit connected to the Serbian DB. In view of all the above, and Mijović's membership of the JATD, although it is not convinced that the Accused, through Vasilije Mijović, directed the SDG in the Treskavica/Trnovo operation, the Trial Chamber finds that through him, the Accused supported the involvement of the SDG in the Treskavica/Trnovo operation in June-July 1995.	2037-2041

	The Trial Chamber will now consider the SDG's and the Skorpions' deployment to the Trnovo front. In this respect, it will first consider the context in which the decision to deploy the units was made. In view of the evidence of Borislav Pelević and Witness JF-029, the Trial Chamber considers that the request to assist in the Trnovo operation came from Radovan Karadžić, and was put before Arkan, Boca, Mrgud, Ilija Kojić, and others by Radovan Stojičić, a.k.a. Badža, who said that Serbia could not do much about it. In this respect, the Trial Chamber has not received any evidence about the Accused's involvement in this process. In the absence of any further evidence about the role of the Accused Stanišić in this respect, the Trial Chamber considers that it has not received sufficient evidence to conclude that the Accused Stanišić organized the involvement of the SDG in the Treskavica/Trnovo operation. The Trial Chamber has further considered the evidence on the relationship of Mrgud and Kojić with the Accused, but it does not consider this evidence to show that the Accused played any role in deploying the Skorpions to the operation. In view of the above, the Trial Chamber is unable to conclude that the Accused organized the involvement of the Skorpions in the Treskavica/Trnovo operation.	
Deploying in Operation Pauk, 1994-1995		
91	In view of its finding above on the position of Tactical Group 2 and the evidence of Witness JF- 029, the Trial Chamber finds that during Operation Pauk, the Skorpions were directed by General Mile Novaković. Recalling its understanding of the Indictment's term "to direct the involvement", and in the absence of sufficient evidence on the existence of some sort of a superior-subordinate relationship between the Accused and General Mile Novaković,	2000, 2006

	the Commander of Pauk, the Trial Chamber is unable to conclude that the Accused directed the involvement of the SDG, the Skorpions, and the JATD a.k.a. the Red Berets in Operation Pauk.	
92	In relation to the Skorpions, the Trial Chamber has not received sufficient evidence to conclude that the Accused supported this unit in Operation Pauk. In relation to the Skorpions, as to the witnesses who denied any links between the Serbian DB and the Skorpions, the Trial Chamber will not rely on Witness JF-048's speculations, or the evidence of Gvozden Gagić, who repeated the Medić brothers' statements in this respect, and presented conclusions of his "studies" of the unit, the sources of which he did not share with the Trial The Trial Chamber has therefore not received sufficient evidence to conclude that the Accused organized the involvement of the Skorpions in Operation Pauk. In relation to the Skorpions' escort, the Trial Chamber has compared the still from a video shown in Court to Witness JF-024, with the picture in which Goran Opačić recognized Zoran Rajić, as well as with Rajić's ID pictures submitted by Serbia. The Trial Chamber is unable to conclude with sufficient certainty that the person identified by Witness JF-024 as one of those who helped the Skorpions through the border, is indeed Zoran Rajić. Furthermore, in view of Witness JF-024's hearsay evidence in relation to the Skorpions' escort, the Trial Chamber is unable to conclude with sufficient certainty that the Accused supported the Skorpions' involvement in Operation Pauk, and operations in Trnovo and the SAO SBWS, by helping them cross the borders.	2006, 2009, 2069
Deploying in the in SAO SBWS Operations in 1995		

93	[…] the Trial Chamber considers that it has received insufficient evidence to conclude that the Accused directed the SDG, the JATD a.k.a. the Red Berets, and the Skorpions in the SAO SBWS operations between late August and late October 1995.	2057
94	The Trial Chamber will now consider whether the Accused organized the involvement of the SDG, the JATD a.k.a. the Red Berets, and the Skorpions in the SAO SBWS operations. In the absence of any evidence in relation to deploying the SDG and the Skorpions to the SAO SBWS operations, the Trial Chamber is unable to conclude that the Accused organized the involvement of these two units in the 1995 operations. In relation to the Skorpions' escort, the Trial Chamber has compared the still from a video shown in Court to Witness JF-024, with the picture in which Goran Opačić recognized Zoran Rajić, as well as with Rajić's ID pictures submitted by Serbia. The Trial Chamber is unable to conclude with sufficient certainty that the person identified by Witness JF-024 as one of those who helped the Skorpions through the border, is indeed Zoran Rajić. Furthermore, in view of Witness JF-024's hearsay evidence in relation to the Skorpions' escort, the Trial Chamber is unable to conclude with sufficient certainty that the Accused supported the Skorpions' involvement in Operation Pauk, and operations in Trnovo and the SAO SBWS, by helping them cross the borders.	2058, 2069
Failure to instruct the Skorpions to refrain from committing unlawful acts		

95	The Trial Chamber has not received any direct evidence in this respect. As specified in the present chapter, the Trial Chamber did not find that the Accused directed the involvement of the Skorpions in any of the particular operations, something which may have created an obligation to instruct them to refrain from committing unlawful acts.	2106
Zvornik TO (Indictment, paras 5-9, 15(b) and (c))		
Forming		
96	The Trial Chamber has further reviewed the evidence about the arrest of Legija and three other men on the eve of the Zvornik take-over and Pavlović's role in securing their release, but considers that this evidence neither shows that Pavlović participated in the formation of the Zvornik TO, which already existed at the time, [...]. In fact, the Trial Chamber notes that JNA officials also intervened with the Muslim police in relation to the arrest of the four men.	2272
97	Either way, recalling its discussion in chapter 6.7.2 about the attribution of the acts of the DB employees to the Accused, the Trial Chamber considers that the mere fact that Kostić was a DB employee and that Pavlović may have worked for the Serbian DB at the relevant time, does not mean that their acts can be attributed to the Accused. In the absence of any further evidence in this respect, including insight to any communication between Kostić and Pavlović on the one hand and the Accused on the other, or to content of any instruction coming from the Accused, the majority, Judge Picard dissenting, is unable to determine the role of the Accused, if any, in placing Pavlović in command of the Zvornik TO.	2271, 2273

	In view of the above, the majority, Judge Picard dissenting, is unable to conclude that the Accused directed and organized the formation of the Zvornik TO.	
Training		
98	Either way, further documentary evidence, as well as the evidence of Milovanović suggest that the training centre at Divič belonged to the VRS. Consequently, the majority, Judge Picard dissenting, is unable to conclude that the Accused directed and organised training for the Zvornik TO.	2287
Supplying		
99	Based on the evidence of Witness JF-026, the Trial Chamber finds that the Serbian DB supplied weapons to the Zvornik area in late 1991, and that Branko Grujić, then the president of the SDS, arranged for these supplies. The Trial Chamber cannot conclude however, that these weapons were destined for the Zvornik TO, as the TO was only formed at a later stage. The Trial Chamber has considered the evidence of Witness JF-026 about Stanišić's meeting with Grujić before or after the take-over of Zvornik, but in the absence of further information, the Trial Chamber is unable to determine whether the meeting of Grujić and Stanišić was related to the arming of the Zvornik TO. Furthermore, the Trial Chamber considers that Witness JF-026's hearsay evidence about Pavlović organizing weapons together with the head of the Loznica DB lacks sufficient foundation	2284-2285

	In view of Witness JF-026's testimony and the relevant documentary evidence set out above, the Trial Chamber observes that the Zvornik TO received weapons from the JNA depots. The Trial Chamber accepts the possibility that Radoslav/Ante Kostić and Marko Pavlović participated in organising deliveries of weapons to the Zvornik TO. It further accepts that Pavlović had some contact with Milan Tepavčević, although Witness B-161 did not provide sufficient foundations for his conclusion that the relations between the two men were very close. Either way, recalling its discussion in chapter 6.7.2 about the attribution of the acts of the DB employees to the Accused, the Trial Chamber considers that the mere fact that Kostić and Pavlović were DB employees at the relevant time (assuming it was the case for the latter), does not mean that their acts can be attributed to the Accused. In the absence of any further evidence in this respect, the majority, Judge Picard dissenting, cannot determine the role of the Accused in these arming activities. Consequently, the majority, Judge Picard dissenting, is unable to conclude that the Accused directed and organised logistical support for the Zvornik TO.	
Financing		
100	In relation to the financing of the Zvornik TO, in view of the evidence received, the Trial Chamber observes that the interim government of Zvornik financed the activities of the Zvornik TO and paid salaries to its members. In the absence of any further evidence in this respect, the Trial Chamber is unable to conclude that the Accused directed and organised the financing of the Zvornik TO.	2286
Failure to instruct the Zvornik TO units to refrain from committing unlawful acts		

101	The Trial Chamber has not received any specific evidence in this respect. As specified in the present chapter, the Trial Chamber did not find that the links between the Accused and the Zvornik TO were of such nature that they could give rise to an obligation to instruct the Zvornik TO to refrain from committing unlawful acts.	2289
Mungosi Unit (Indictment, paras. 5-9, 15(b) and (c))		
102	Having considered the evidence in relation to the unit commanded by Boško Nešković (known as the "Red Berets") in the Bratunac area set out above, the Trial Chamber concludes that it has received insufficient evidence to establish a significant link between this unit on the one hand, and the Unit, the Serbian DB, or the Accused, on the other hand. In relation to the unit commanded by Milenko Prodanović (known as the Mungosi), the Trial Chamber notes that according to the Zvornik SJB report, Prodanović formed this unit in September 1993, after "the unit of the MUP of Serbia was disbanded". JATD payment lists indicate that in August and September 1993 and from May to October 1995 the Serbian DB financed Milenko Prodanović and another member of this unit. The evidence does not establish any further links between the Mungosi unit, on the one hand, and the Unit, the Serbian DB, or the Accused, on the other hand. The Trial Chamber will therefore not further consider these groups.	1706
Poskok Detachment (Indictment, paras 5-9, 15(b) and (c))		

103	The Trial Chamber has considered the evidence indicating that the Poskok Detachment was engaged in the defence of the Srem-Baranja District, but considers that it is unable to conclude to what extent the Poskok Detachment was involved in the SBWS operations in 1995 considered in chapter 6.5.3.	1729
Predo's Wolves (Indictment, paras 5-9, 15(b) and (c))		
104	[…] on the basis of the evidence before it, the majority, Judge Picard dissenting, is unable to establish beyond a reasonable doubt that Predo's Wolves were trained by members of the Unit at the Doboj camps.	1606
PJPs (Indictment, paras 5-9, 15(b) and (c))		
Specific findings related to Mount Tara		
105	In the absence of further evidence as to who provided the training of the PJP members at Mount Tara, the Trial Chamber is unable to determine with sufficient certainty whether and, if so, to what extent Unit members were involved. […] the Trial Chamber is unable to conclude that the Accused organized the training of the PJP members at Mount Tara.	1640
Specific findings related to Banja Luka Operations		
106	Financing	1883

	The Trial Chamber has not received sufficient evidence to show that the Accused financed the PJPs during the Banja Luka operations in 1995.	
107	Deploying Accordingly, the Trial Chamber finds that it is unable to conclude that the Accused organized the involvement of the PJPs in the Banja Luka operation.	1882
Drina Wolves (Indictment, paras 5-9, 15(b) and (c))		
108	The Trial Chamber has not received other evidence indicating that the Drina Wolves at the Tara camp were subordinated to Simatović. In this respect, the Trial Chamber considers that it is not clear whether the "Vukovi" mentioned by intelligence report P1075 are the same unit as the Drina Wolves. The remainder of the evidence regarding the status of the Drina Wolves (which appears to have included Dragutin Stanojević) is inconclusive as their status in early 1993. In the absence of evidence clearly establishing whether the Drina Wolves received training at Mount Tara or participated in operations relevant to the present case, the Trial Chamber will not make further findings with regard to the Drina Wolves.	1641
Other Serb Forces (Indictment, paras. 5-9, 15(b) and (c))		
109	In its Final Trial Brief, the Prosecution only makes specific submissions about the police and the TO of the SBWS, and the Zvornik TO, which will be addressed below. Having nevertheless reviewed the evidence on the Accused's	2219

	contribution to other units, as alleged in the Indictment, the Trial Chamber is unable to conclude that the Accused played any role vis-à-vis these units. Consequently, it will not make any specific findings in this respect.	

Channel of Communication (Indictment, para. 15(a))		
Stanišic served as a channel of communication between Milošević and Karadžić, Martić and Babić (SAO Krajina)		
110	…the Trial Chamber finds that the Accused were in direct and frequent contact with many of these members. The Trial Chamber further finds that, on occasion, Stanišic acted in a liaison capacity at least in the contacts between Milošević and Martić, as well as Milošević and Karadžić, when he passed on messages and information. However, the evidence also indicates that Milošević was also in direct contact with both Martić and Karadžić, without any involvement by Stanišić. The evidence further indicates that there was regular direct contact between Milošević, on the one hand, and Babić, on the other. Therefore, the majority, Judge Picard dissenting, cannot conclude that Stanišić enabled, or even greatly facilitated, contact between the aforementioned alleged members of the joint criminal enterprise.	2302
Stanišić served as a channel of communication between Milošević and Hadžić, and the RSK government		
111	With regard to the contacts between Milošević, on the one hand, and Hadžić and the RSK government, on the other, the Trial Chamber has considered Bogunović's conclusion about Milošević controlling Hadžić through Arkan and Badža,	2303

	and Stanišić being the link between Milošević, on the one hand, and Arkan and Badža, on the other. As stated in chapter 6.4.3, the Trial Chamber is unable to come to this same conclusion based on this evidence, which lacks sufficient foundation. Based on the evidence received, the Trial Chamber does not consider that Stanišić had any enabling or facilitating role in the contacts between Milošević, on the one hand, and Hadžić and the RSK government, on the other.	