

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-15-96-A

Date: 12 December 2022

Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Graciela Gatti Santana
Judge Lee G. Muthoga
Judge Aminatta Lois Runeni N’gum
Judge Yusuf Aksar
Judge Claudia Hofer

Registrar: Abubacarr Tambadou

THE PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**NOTICE OF FILING OF PUBLIC REDACTED VERSION OF
PROSECUTION RESPONSE TO SIMATOVIĆ DEFENCE
APPEAL BRIEF**

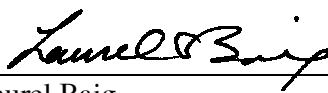
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1. The Prosecution hereby files a public redacted version of its Response to the Simatović Defence Appeal Brief.¹

Word count: 41



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Dated this 12th day of December 2022
At The Hague, The Netherlands

¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No.MICT-15-96-A, Prosecution Response to Simatović Defence Appeal Brief, 31 January 2022.

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-15-96-A

Date: 31 January 2022

Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Lee G. Muthoga
Judge Aminatta Lois Runeni N’gum
Judge Yusuf Aksar
Judge Claudia Hofer

Registrar: Abubacarr Tambadou

THE PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC REDACTED VERSION

**PROSECUTION RESPONSE TO
SIMATOVIĆ DEFENCE APPEAL BRIEF**

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I. OVERVIEW

1. Franko Simatović, a high-level official in the Serbian State Security Service (SerbianDB)¹ trained and deployed forces to participate in the ethnic cleansing operation in Bosanski Šamac. As a senior official in the SerbianDB's intelligence administration—and right-hand man to SerbianDB Chief Jovica Stanišić—Simatović had extensive and detailed knowledge of the events on the ground.² He knew that the senior political, military and police leadership in Serbia and Serb-claimed territories shared a common criminal plan to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina through violent means and possessed detailed knowledge of the pattern of crimes of which the Bosanski Šamac operation formed a part.³ He knew that the Bosanski Šamac operation was intended to forcibly displace the non-Serb population through violent means.⁴

2. Simatović's power and authority, which he used to assist the crimes, exceeded his official positions. Together with Stanišić,⁵ Simatović formed an elite fighting force of the SerbianDB, the Unit.⁶ Both Stanišić and Simatović had authority over the Unit and determined how Unit members would be used and where they would be deployed.⁷ Simatović used the Unit to train others and deployed Unit members and Bosanski Šamac locals together to Bosanski Šamac.⁸ He briefed them in person the day before their deployment,⁹ with full knowledge that they were going into an ethnic cleansing operation.¹⁰ The forces he trained and deployed executed the common criminal purpose in Bosanski Šamac, committing persecution, forcible displacement and murder, working together with other Serb forces.

3. The Chamber only convicted Simatović of aiding and abetting the crimes in Bosanski Šamac.¹¹ It rejected the Prosecution's case that Simatović shared the common criminal

¹ Judgement, paras.354, 628.

² Judgement, para.594.

³ Judgement, paras.594, 606-607.

⁴ Judgement, para.594.

⁵ In this brief the Prosecution focuses on the individual criminal responsibility of Simatović. The Prosecution has not included Stanišić's name in each sentence where his name could be relevant. This should not be construed as taking any position in relation to the case against Stanišić.

⁶ Judgement, paras.388, 405, 409.

⁷ Judgement, paras.388, 405, 409.

⁸ Judgement, paras.416, 419, 605.

⁹ Judgement, paras.417, 419.

¹⁰ Judgement, para.594.

¹¹ Judgement, para.608. *Also* Judgement, p.270.

purpose. It limited even his aiding and abetting liability only to Bosanski Šamac, where he personally briefed the Unit-trained forces the day before their deployment.¹²

4. Simatović's challenges to his conviction and sentence should be rejected.

5. Many of his alleged legal and factual errors should be summarily dismissed. Simatović alleges legal errors, without specifying the error or developing his arguments. He challenges factual conclusions without showing that they had any impact on his conviction for aiding and abetting crimes in Bosanski Šamac.

6. Even when he develops his arguments, Simatović fails to show error. His attempts to reopen the debate on the legal standard for aiding and abetting liability should be rejected since he does not show cogent reasons to depart from the settled Appeals Chamber jurisprudence.

7. Simatović's many factual challenges fail to show that no reasonable trier of fact could have found him liable for aiding and abetting the crimes in Bosanski Šamac. He challenges individual findings in isolation without showing impact on the overall conclusion. He relitigates trial arguments that were considered and rejected by the Chamber and disagrees with the Chamber's conclusions, but does not show that the Chamber committed an error.

8. Simatović's challenges to his 12-year sentence should equally be rejected. The crimes in Bosanski Šamac were particularly grave and the victims vulnerable.¹³ The forces trained and deployed by Simatović were extremely violent. To force the non-Serb population to flee, they—and the other Serb forces with whom they worked—detained non-Serbs in inhumane conditions, beat them, tortured them, forced them to engage in sexual acts and killed them. They looted property and destroyed religious buildings and cultural sites.¹⁴ Nothing less than a 12-year sentence reflects the gravity of the crimes and Simatović's role in them, a role in which he abused his authority as a high-ranking member of the SerbianDB.¹⁵

9. Simatović's appeal should be denied in its entirety.

¹² Judgement, paras.417, 419, 608.

¹³ Judgement, para.620.

¹⁴ Judgement, para.619.

¹⁵ Judgement, para.628.

II. GROUND 1: SIMATOVIĆ PLAYED AN IMPORTANT ROLE IN THE SERBIANDB

10. Although presented as errors of law and fact,¹⁶ all of Simatović's challenges in Ground 1 are questions of fact, in respect of which the Chamber is entitled to considerable deference.¹⁷ Simatović fails to demonstrate that any of the challenged findings was unreasonable.¹⁸ Ground 1 should be dismissed.

A. Sub-grounds 1(1) and 1(2): Simatović was a high-ranking member of the SerbianDB

11. The Chamber carefully considered, and ultimately rejected, Simatović's attempts to portray himself as a "minor cog in the wheel"¹⁹ of the SerbianDB with no choice but to follow the orders of his superiors and no power to act autonomously.²⁰ On appeal, he challenges the Chamber's finding that he held "high-level positions with significant powers and authority within the State Security Service and later the State Security Department,"²¹ primarily by repeating trial arguments that were reasonably rejected by the Chamber.²²

12. It was reasonable for the Chamber to conclude that Simatović held "high-level" positions within the SerbianDB.²³ The Chamber's finding was justified, even based solely on evidence Simatović does not dispute, including:

- Simatović joined the SerbianDB in 1978 and, by 1990, he had risen through the ranks from probationer to Junior Inspector to Inspector. On 8 January 1991, he was promoted to Senior Inspector.²⁴
- On 8 January 1991, he was made "Chief of the section that was responsible for monitoring and preventing intelligence activities of the United States of America,

¹⁶ Simatović-AB, p.3, Ground 1.

¹⁷ Šainović AJ, para.23; Galić AJ, para.9; Boškoski AJ, para.13; Kupreškić AJ, para.30; Rutaganda AJ, para.21.

¹⁸ Kupreškić AJ, para.41.

¹⁹ Judgement, para.386. *E.g.* [REDACTED].

²⁰ Judgement, para.354.

²¹ Judgement, para.354.

²² Compare Simatović-AB, paras.7-19 with [REDACTED].

²³ Judgement, para.354.

²⁴ Judgement, para.351. Although appointed on 8 January 1991, his promotion was effective 15 December 1990.

where he had approximately eight subordinates.”²⁵ Simatović introduced evidence that this position involved the execution of “highly complex” tasks.²⁶

- Effective 1 May 1992, Simatović was appointed to the post of Deputy Chief of the Second Administration (the intelligence organ) of the newly re-organised and re-named Serbian State Security Department.²⁷
- Effective 1 May 1993, Simatović was appointed to the post of Special Advisor to the Chief of the SerbianDB (Stanišić).²⁸ According to Simatović’s expert, Milan Milošević, there were only six Special Advisors within the entire SerbianDB.²⁹

13. That the Chamber referred to Simatović being appointed to the rank of Senior Inspector in the State Security Service’s Second “Administration” in Belgrade on 8 January 1991, as opposed to the Second “Branch”, “Section” or “Department” of the SerbianDB Administration in Belgrade, does not demonstrate error.³⁰ It is clear from the Chamber’s description of the size and responsibilities of the office in question,³¹ that the Chamber was referring to the correct office and understood Simatović’s official responsibilities.³²

14. Simatović also fails to demonstrate the Chamber erred in concluding that, as Deputy Chief of the Second Administration effective from May 1992, he had “*up to* a maximum of 94 employees” directly subordinated to him.³³ This finding was reasonably available to the Chamber based on the evidence of Prosecution expert witness Christian Nielsen.³⁴ Simatović’s own expert witness Milošević confirmed that the number of employees

²⁵ Judgement, para.351.

²⁶ [REDACTED].

²⁷ Judgement, paras.332, 352. Although his appointment was made on 29 April 1992, it came into effect on 1 May 1992.

²⁸ Judgement, paras.352, 354.

²⁹ M.Milošević:Exh.2D00451, paras.402, 406.

³⁰ Judgement, para.351, fn.1491 *citing* to both the Prosecution Expert Nielsen, who describes the position as being within the “2nd Department of The Belgrade State Security Service administration”, and “in the rule-book in Article 42, number 18”: C.Nielsen:T.32-33 (14-Nov-2017); C.Nielsen:Exh.P00850, para.85; the Defence Expert who describes the position as in the “2nd Branch of the SDB Administration in Belgrade” and at “Article 42, serial number 18”: M.Milošević:Exh.2D00451, para.382; the Personnel File of Franko Simatović, which describes the position as “in the 2nd Section of the SDB/ State Security Service/ Administration in Belgrade” and at “Article 42, ordinal number 18”; Exh.P00831, p.47. *Contra* Simatović-AB para.8.

³¹ Judgement, para.351: “Chief of the Section responsible for monitoring and preventing intelligence activities of the United States of America, where he had approximately eight subordinates.”

³² Judgement, para.351.

³³ *Contra* Simatović-AB, paras.12-13. *See* Judgement, para.352.

³⁴ Judgement, para.352, fn.1496 *citing* C.Nielsen:T.35-36 (14-Nov-2017).

potentially subordinated to him in this position was 94.³⁵ The Chamber made no finding as to the number of employees that were actually reporting to Simatović during the relevant time period, nor was it required to do so. This was not an essential fact.

15. Simatović also fails to demonstrate that the Chamber erred in rejecting his contention that he never enjoyed any real power as he had superiors whose orders he was obliged to implement.³⁶ The question of the scope of Simatović's power and influence was squarely before the Chamber. After considering all of the evidence and Simatović's submissions,³⁷ the Chamber rejected Simatović's position:

Irrespective of [...] Simatović's submission that he was limited in his work and influence by different management levels within the Ministry of the Interior and by the decisions of his superiors, the Trial Chamber considers that, during the period relevant to the Indictment, Simatović held high-level positions with significant powers and authority within the State Security Service and later the State Security Department.³⁸

Further, the Chamber undertook to examine—and did subsequently examine³⁹—how that “power and authority manifested itself in relation to the specific events charged in the Indictment.”⁴⁰

16. Simatović's formation of the Unit, authority over the Unit and the Unit camps at Ležimir and Pajzoš and related acts concerning the Bosanski Šamac operation were, in any event, beyond the scope of his official duties as Chief of the section of the USDB Administration in Belgrade⁴¹ responsible for monitoring US intelligence activities.

³⁵ Simatović-AB, para.12, fn.10 *citing* C.Nielsen:T.36 (14-Nov-2017), fn.11 which reads: “[T]he theoretically maximum number of employees is also indicated in 2D00451 para. 374”.

³⁶ *Contra* Simatović-AB, paras.9-11, 13-17.

³⁷ Judgement, para.354, fn.1504 *citing* Simatović-FTB, paras.88-90, 92-94, 97-98, 100-103, 107, 110 (confidential) and Simatović Closing Arguments, T.72-74, 77-78 (13-Apr-2021). *Also* Judgement, fns.1502-1503.

³⁸ Judgement, para.354.

³⁹ *E.g.* Judgement paras.388, 405, 419, 605.

⁴⁰ Judgement, para.354.

⁴¹ C.Nielsen:Exh.P00850, p.274.

B. Sub-ground 1(3): The events in Lovinac are not relevant to Simatović's conviction

17. The events in Lovinac in August 1991 played no role in the Chamber's reasons for convicting Simatović. Simatović fails to show an error impacting the verdict. This sub-ground of appeal should be summarily dismissed.⁴²

C. Sub-grounds 1(4), 1(5), 1(10): Simatović selected the original Unit members and controlled the Unit's use and deployment

18. The Chamber found that Simatović formed, and exercised authority over,⁴³ the Unit (including selecting Unit members) from at least August/September 1991 until at least mid-April 1992, during which time he determined the Unit's use and deployment.⁴⁴ Simatović fails to demonstrate that no reasonable trier of fact could have reached these conclusions.⁴⁵ These findings were reasonably available based on the first-hand account of [REDACTED],⁴⁶ [REDACTED].⁴⁷ The evidence of a single witness may be accepted without corroboration, even if it relates to a material fact.⁴⁸ RFJ-137 testified:

- After he completed training at Golubić,⁴⁹ [REDACTED].⁵⁰
- The Unit was established in August 1991 under Simatović's (Frenki's) command to serve as a combat Unit for the SerbianDB.⁵¹
- [REDACTED].⁵²
- Stanišić and Simatović were the leaders of the Unit.⁵³ [REDACTED].⁵⁴
- Only Stanišić and Simatović were able to give orders to the Unit.⁵⁵

⁴² Kupreškić AJ, para.15.

⁴³ Simatović's argument in relation to his controlling the use and deployment of Unit members is not developed in these sub-grounds of his Appeal Brief. They are addressed in sub-grounds 2(2), 2(3), 2(7) and 2(11) below.

⁴⁴ Judgement, paras.388, 405.

⁴⁵ Judgement, para.388.

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ Haradinaj AJ, para.219 citing Kupreškić AJ, para.33; Tadić AJ, para.65; Aleksovski AJ, para.62; Čelebići AJ, paras.492, 506.

⁴⁹ Below paras.23-28.

⁵⁰ Judgement para.405, fn.1631 citing RFJ-137:Exh.P00245, paras.29-30 (confidential). Also [REDACTED].

⁵¹ RFJ-137:Exh.P00245, para.22 (confidential) cited at Judgement, para.405, fn.1631.

⁵² [REDACTED] cited at Judgement, para.405, fns.1631, 1633.

⁵³ [REDACTED] cited at Judgement, fn1633, para.405. Also Exh.P00260, p.33 (confidential).

⁵⁴ [REDACTED].

- While the Unit was based at Ležimir, only Stanišić and Simatović visited Unit members.⁵⁶

19. Given RFJ-137's evidence that [REDACTED] Simatović was in command of the Unit, and considering that the other Unit members were also selected from graduates of Golubić, it was a reasonable inference that Simatović chose all 28 of the Unit members.⁵⁷ That RFJ-137 [REDACTED]⁵⁸ has no bearing on whether the witness was correct in his view that Simatović selected the Unit members and that Simatović (and Stanišić) were in charge of the Unit.

20. Simatović argues that, pursuant to the Law on Internal Affairs, he did not have the legal authority to form an organisational unit without Stanišić's consent,⁵⁹ [REDACTED].⁶⁰ Simatović overlooks that the Chamber did not conclude that Simatović acted alone—it was satisfied that “from at least August or September 1991, the Unit operated under the command and control of Stanišić and Simatović. The Unit was established to serve as the SerbianDB combat unit. [Stanišić and Simatović] were ultimately in charge of this Unit, and only they were able to issue orders to its members.”⁶¹

D. Sub-ground 1(6)

21. Sub-ground 1(6) is addressed under sub-grounds 1(13) and 1(14) below.⁶²

E. Sub-grounds 1(7), 1(8) and 1(9): The Chamber's findings on Simatović's role in the Golubić training camp are reasonable

22. The Chamber's findings with respect to Golubić played no role in its reasons for conviction; Simatović fails to show an error impacting the verdict. In any event, Simatović does not demonstrate the Chamber's findings of fact were unreasonable.

⁵⁵ RFJ-137:Exh.P00245, paras.13, 50, 70 (confidential); [REDACTED]; RFJ-137:T.29-32 (18-Jul-2017) (confidential).

⁵⁶ [REDACTED]; RFJ-137:T.20 (20-Jul-2017) (confidential). *See* Exh.P00059 (00:53:56-00:54:17) (01:05:33-01:05:49), pp.19, 25.

⁵⁷ *Contra* Simatović-AB, para.27.

⁵⁸ *Contra* Simatović-AB, paras.27-28.

⁵⁹ Simatović-AB, para.29. *Above* para.16.

⁶⁰ [REDACTED].

⁶¹ Judgement, para.405.

⁶² *Below* paras.30-34.

23. The Chamber reasonably concluded that Simatović played a role in organising training at Golubić camp, including by contributing to the training of members of the SAO-Krajina police, the SAO-Krajina TO and other volunteers through the use of SerbianDB affiliated trainers.⁶³

1. Captain Dragan cooperated with the SerbianDB and reported to it

24. Dragan Vasilković (aka Captain Dragan or Daniel Snedden)⁶⁴ was the main instructor at Golubić.⁶⁵ Simatović fails to establish that no reasonable trier of fact could have concluded that Captain Dragan “co-operated with the Serbian State Security Service in relation to the organization and conduct of the training at Golubić” or that Captain Dragan “reported to the Service on the conduct of the training and suggested improvements to the training program.”⁶⁶ These findings were reasonably available to the Chamber based on all of the available evidence, including documents, as well as evidence of Milan Babić, RFJ-137 and RFJ-066.⁶⁷ The Chamber accepted, for example, that in August 1991 Stanišić told Babić that Captain Dragan was “in the service” of the SerbianDB.⁶⁸

25. While Simatović disagrees with the Chamber’s findings, he does not demonstrate error. The Chamber did not “disregard” evidence regarding the circumstances surrounding Captain Dragan’s arrival in Knin.⁶⁹ Simatović made extensive arguments in his [REDACTED] about Captain Dragan’s arrival, arguments he improperly incorporates by reference on appeal.⁷⁰ The Chamber “considered the evidence indicating that Captain Dragan was [the] subject of intelligence processing by the Serbian State Security Service during this time period.”⁷¹ It nevertheless concluded that this did not undermine its conclusion that Captain Dragan cooperated with the SerbianDB in relation to the training at Golubić: “The Trial Chamber sees no contradiction in the Serbian State Security Service both using and simultaneously monitoring an asset.”⁷² Similarly, the Chamber considered “the fact that other SAO-Krajina officials may have been involved in bringing Captain Dragan to the area to

⁶³ Judgement, paras.396-397, 403, 409.

⁶⁴ Judgement, para.391.

⁶⁵ Judgement, para.399.

⁶⁶ Judgement, paras.399, 400, 406. *Contra* Simatović-AB, para.33.

⁶⁷ Judgement, para.399, fns.1617-1621.

⁶⁸ Judgement, para.399, fn.1621 *citing* M.Babić:Exh.P01246, pp.666-667, 1015 (T.13528-13529, 13877).

⁶⁹ *Contra* Simatović-AB, paras.35, 37, 39-40.

⁷⁰ *Hadžihasanović* AJ, para.47. *See* Simatović-AB, paras.34-35, fn.46 *citing* [REDACTED], where he attempts to re-litigate this point.

⁷¹ Judgement, para.400. *Below* para.113. *Contra* Simatović-AB, paras.34-35.

⁷² Judgement, para.400.

oversee training.”⁷³ It was satisfied the participation of other officials in the process of bringing Captain Dragan to the camp did not “alter the fact that the Accused played a role in this process.”⁷⁴

26. Similarly, Simatović fails to show the Chamber erred in finding that Captain Dragan reported to the SerbianDB.⁷⁵ It was reasonable for the Chamber to conclude that Exhibit P00248⁷⁶ was directed to the SerbianDB given that: (i) the Chamber accepted that Stanišić told Babić that Captain Dragan was in the service of the SerbianDB;⁷⁷ (ii) RFJ-137’s evidence that Captain Dragan [REDACTED] the document;⁷⁸ and (iii) the contents of the report, which included a recommendation that individuals who had completed their training at Golubić should return to their homes and establish field units, and that prominent men like Captain Dragan, Milan Martić and “Frenki” (Simatović) should visit those units in order to bolster morale.⁷⁹ Further, the report appears to have been written shortly prior to 23 June 1991, at a time when the Chamber found there were close links between the SerbianDB, Simatović, Stanišić and the SAO-Krajina State Security Service.⁸⁰

2. Simatović facilitated training by SerbianDB instructors

27. The Chamber did not find that Simatović’s contribution to training at the Golubić camp was limited to permitting Captain Dragan to serve as the camp’s main instructor, nor did the Chamber refuse to analyse the relationship between the SerbianDB and the Golubić trainers.⁸¹ The Chamber accepted, based on the evidence of Milan Babić and RFJ-066,⁸² that at least two other SerbianDB employees, Dragan Filipović and Milan Radonjić, were also instructors at Golubić.⁸³ Filipović was Simatović’s direct subordinate in the SerbianDB.⁸⁴ The reasonableness of the Chamber’s finding that both Filipović and Radonjić were

⁷³ Judgement, para.400.

⁷⁴ Judgement, para.400. *Contra* [REDACTED].

⁷⁵ Judgement, para.399. *Contra* Simatović-AB, para.36.

⁷⁶ Judgement, para.399, fn.1620 *citing* Exh.P00248.

⁷⁷ Judgement, para.399, fn.1621. It is noteworthy that the Chamber also appears to have accepted Captain Dragan made similar admissions in a letter authenticated by Witness Maksić and to Minister Tomislav Simović. See Judgement, para.399, fn.1618 *referencing* R.Maksić:Exh.P00025, para.105; Exh.P01962, p.2.

⁷⁸ RFJ-137:Exh.P00245, para.19 (confidential) *cited at* Judgement, para.399, fn.1620.

⁷⁹ Exh.P00248, p.2.

⁸⁰ Judgement, paras.483-484; *Also* Exh.P00248.

⁸¹ *Contra* Simatović-AB, para.32 *citing* Judgement, paras.397, 399.

⁸² Judgement, para.399, fn.1617 *referring to* RFJ-066:Exh.P00202, paras.101-102 (confidential); RFJ-066:T.26 (10-Jul-2017); RFJ-066:T.2 (11-Jul-2017); M.Babić:Exh.P01246, p.272 (T.13127).

⁸³ Judgement, paras.399, 403.

⁸⁴ Judgement, para.399.

instructors is not undermined by the fact that [REDACTED].⁸⁵ The Chamber accepted that Stanišić issued a backdated decision on 18 March 1992, retroactively ordering a false secondment for Simatović to work in Kosovo in 1991.⁸⁶ The record shows that the personnel files of [REDACTED] Radonjić contain near-identical backdated decisions, for similar dates, also to Kosovo and also signed by Stanišić.⁸⁷ The Chamber accepted that the purpose of Stanišić's order to Simatović, and therefore by extension his orders to Filipović and Radonjić, was to "conceal covert activities" in the SAO-Krajina.⁸⁸

28. Simatović accuses the Chamber of taking an inconsistent approach to the evidence of Babić and RFJ-066.⁸⁹ His argument ignores that a trier of fact may reasonably accept parts of a witness's evidence, while rejecting others.⁹⁰ The Chamber was not required to set out in detail why it accepted the evidence of Babić and RFJ-066 on this issue.⁹¹ An accused's right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of a particular witness.⁹² In any event, while the Chamber decided to approach the *individual* evidence of both Babić and RFJ-066 with some caution,⁹³ both witnesses independently confirmed that Filipović was an instructor at Golubić.

F. Sub-grounds 1(11) and 1(12)

29. Sub-grounds 1(11) and 1(12) are addressed in sub-ground 2(7) below.⁹⁴

G. Sub-grounds 1(6), 1(13), 1(14): Simatović controlled the JATD

30. The Unit was formalised as the JATD in mid-1993, a year after the events in Bosanski Šamac. Simatović acknowledges sub-grounds 1(6), 1(13) and 1(14) are irrelevant to his conviction appeal.⁹⁵

31. In any event, the Chamber reasonably concluded that Simatović had authority over the use and deployment of the JATD from its creation in August 1993.⁹⁶ While Simatović

⁸⁵ *Contra* [REDACTED].

⁸⁶ Judgement, para.351, fns.1493-1495 *citing inter alia* Exh.P00831, p.50.

⁸⁷ Exhs. [REDACTED]; P02297, p.19; C.Nielsen:T.47-48 (14-Nov-2017); C.Nielsen:Exh.P00850, para.86.

⁸⁸ Judgement, para.351.

⁸⁹ Simatović-AB, paras.37, 42-43.

⁹⁰ *Popović* AJ, paras.131-133; *Boškoski* AJ, para.59; *Krajišnik* AJ, para.354; *Blagojević* AJ, para.229; *Kupreškić* AJ, para.333.

⁹¹ *Krajišnik* AJ, para.139.

⁹² *Popović* AJ, para.133.

⁹³ Judgement, paras.14-16.

⁹⁴ *Below* paras.91-104.

⁹⁵ Simatović-AB, para.30.

disagrees with the Chamber's findings, he has not demonstrated the Chamber erred in making them. The Chamber found that the "JATD was established in early August 1993 as an independent organizational unit within the [SerbianDB]".⁹⁷

32. The Chamber reasonably concluded, based on Dragoslav Krsmanović's evidence, that the JATD both reported to Simatović and was responsible to him.⁹⁸ Krsmanović's evidence was corroborated by other evidence on the record.⁹⁹

33. Simatović takes issue with the Chamber accepting parts of Krsmanović's evidence, and rejecting contradictory statements he made during the retrial.¹⁰⁰ It is open to a trier of fact to accept some, all, or none of a witness's evidence.¹⁰¹ The assessment of a witness's credibility involves the exercise of discretion; Simatović fails to demonstrate the Chamber committed a discernible error in its selective reliance on Krsmanović's testimony.¹⁰²

34. The Chamber also found that Radonjić sent JATD reserve forces to the Pajzoš camp for training in late 1993 or 1994 and that there was evidence JATD forces were trained at the camp from at least June until the autumn of 1995.¹⁰³ Simatović disputes that training took place at Pajzoš during this time period as the surrounding areas were mined.¹⁰⁴ [REDACTED].¹⁰⁵ He fails to demonstrate the Chamber erred in [REDACTED]. It was open

⁹⁶ Judgement, paras.388, 432-434. See D.Krsmanović:Exh.1D00384, para.26.

⁹⁷ Judgement, para.432.

⁹⁸ *Contra* Simatović-AB, paras.31, 49. Also Judgement, para.432, fn.1723 citing D.Krsmanović:Exh.1D00384, para.26: "Within the Service system, the unit was an independent organizational unit and following the work line was responsible to the Assistant Chief of the Service, more concretely Franko SIMATOVIC. The unit was submitting reports to the Assistant and Deputy Chief of the RDB. We did not submit reports directly to the Chief of the Service, but we respected the reporting hierarchy."; D.Krsmanović:T.48-50 (1-Oct-2019). In referring to Simatović in his witness statement, Krsmanović sometimes referred to him as the "Assistant Chief" of the SerbianDB and at other times he referred to him as the "Deputy Chief" or "Assistant and Deputy Chief" (language the Chamber has repeated in para.432 of the Judgement). Simatović's precise title at that time is immaterial; it is clear Krsmanović (and, thus, the Chamber) was referring to Simatović receiving the reports. Simatović was later appointed to the position of the Assistant Chief of the SerbianDB. M.Milošević:Exh.2D00451, para.387; [REDACTED].

⁹⁹ [REDACTED]; [REDACTED]; D.Krsmanović:T.48 (1-Oct-2019).

¹⁰⁰ Simatović-AB, paras.49-50, 54 citing Krsmanović's testimony under cross-examination of 25 September and 1-2 October 2019.

¹⁰¹ *Popović* AJ, paras.131-133; *Boškoski* AJ, para.59; *Krajišnik* AJ, para.354; *Blagojević* AJ, para.229; *Kupreškić* AJ, para.333.

¹⁰² *Popović* AJ, paras.131-133.

¹⁰³ Judgement, para.434. In making this finding, the Chamber implicitly rejected the defence position that the JATD reserve staff were security in Pajzoš. See Simatović-AB, para.54.

¹⁰⁴ Simatović-AB, paras.52-53.

¹⁰⁵ [REDACTED]. Below para.72

to the Chamber to accept, as it did,¹⁰⁶ the evidence of [REDACTED] RFJ-150, who attested to the fact that [REDACTED] trained at Pajzoš between June and the fall of 1995. RFJ-150's evidence regarding training at Pajzoš in 1995 was corroborated by a SerbianDB internal memorandum dated 23 October 1995, which the Chamber referenced.¹⁰⁷

H. Sub-ground 1(15): Simatović provided financial support to the SAO-Krajina Police

35. The Chamber's findings with respect to Simatović's role in financing the SAO-Krajina police¹⁰⁸ played no part in its reasons for conviction. None of the arguments Simatović advances in sub-ground 1(15) are capable of impacting the verdict.

36. In any event, Simatović's challenge to RFJ-066's credibility should be dismissed. The Chamber carefully considered the arguments advanced by Stanišić and Simatović attacking RFJ-066's credibility,¹⁰⁹ including the alleged "inconsistencies" to which Simatović refers.¹¹⁰ It chose to approach the witness's evidence with caution.¹¹¹ The Chamber accepted that the witness provided "reasonable explanations for what appeared to be inconsistencies with some of his prior evidence."¹¹² It was open to the Chamber, in the exercise of its discretion,¹¹³ to accept RFJ-066's evidence to the effect that "Stanišić and Simatović were involved in the provision of financial assistance to the SAO-Krajina police, as well as the delivery of communications equipment and some limited technical support, until mid-1991",¹¹⁴ without affirming the underlying details.¹¹⁵

37. To the extent Simatović implies the Chamber was required to explain its credibility findings in greater detail,¹¹⁶ he is mistaken. The Chamber was not required to set out in detail why it accepted particular testimony; an accused's right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of a particular witness.¹¹⁷ In any

¹⁰⁶ Judgement, para.434, fn.1732 *citing* RFJ-150:Exh.P02276, paras.35-51 (confidential); RFJ-150:Exh.P00277, pp.14581-83, 14585, 14618 (confidential); Exh.P00258, p.11.

¹⁰⁷ Judgement, para.434, fn.1732 *citing* Exh.P00258, p.11.

¹⁰⁸ Judgement paras.494, 499, 505.

¹⁰⁹ Judgement, para.490, fn.1969 *citing inter alia* Simatović-FTB, paras.240-250 (confidential).

¹¹⁰ Simatović-AB, para.61, fns.77-84 *citing* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. All of these sources are cited, and considered by the Chamber, at Judgement, para.494, fn.1981, with one exception: [REDACTED].

¹¹¹ Judgement, paras.16, 494.

¹¹² Judgement, para.494, fn.1981.

¹¹³ *Popović* AJ, paras.131-133; *Šainović* AJ, paras.437, 464; *Lukić* AJ, para.296; *Kupreškić* AJ, para.333; *Blagojević* AJ, para.82. *Contra* Simatović-AB, para.63.

¹¹⁴ Judgement, paras.480, 491, 505.

¹¹⁵ Judgement, para.494.

¹¹⁶ Simatović-AB, para.60.

¹¹⁷ *Popović* AJ, para.133.

event, the Chamber's reasons for finding the witness generally credible on issues pertaining to financing are apparent: his testimony was corroborated.¹¹⁸ In particular, his evidence regarding Stanišić and Simatović funding the training that took place at Golubić¹¹⁹ (where members of the SAO-Krajina police were trained)¹²⁰ was corroborated by Babić.¹²¹

38. Contrary to Simatović's assertion, the Chamber did not fail to consider the criminal liability of Stanišić and Simatović separately.¹²² The Chamber set out, in paragraphs 492 and 493, the evidence RFJ-066 provided with respect to the different roles played by both Stanišić and Simatović in the procurement and delivery of cash payments to the SAO-Krajina police. The Chamber was satisfied that *both* Simatović and Stanišić provided financial assistance to the police.¹²³ Since the only conduct RFJ-066 attributed to Simatović was that Simatović transported bags of cash from Stanišić to the SAO-Krajina police in Knin,¹²⁴ it follows that the Chamber was satisfied that at least some of the bags Simatović delivered to Knin contained money.

I. Sub-ground 1(16): Simatović supplied the SAO-Krajina Police with weapons

39. As with the previous sub-ground, Simatović merely reiterates arguments attacking RFJ-066's credibility,¹²⁵ without demonstrating any error in the Chamber's rejection of them.

40. The issue of the credibility of RFJ-066's evidence was squarely before the Chamber. The Chamber clearly considered all of the arguments advanced by the parties in both their closing submissions and their Final Trial Briefs (including paragraphs 240-250 of Simatović's Final Trial Brief, which he improperly incorporates by reference¹²⁶ on appeal).¹²⁷ Having considered Simatović's arguments, and despite approaching RFJ-066's evidence with caution,¹²⁸ the Chamber was nevertheless prepared to rely on RFJ-066's evidence as

¹¹⁸ *Contra* Simatović-AB, para.60.

¹¹⁹ Judgement, para.495, fn.1986 *citing* RFJ-066:Exh.P00202, para.96 (confidential).

¹²⁰ Judgement, para.409.

¹²¹ Judgement, para.495, fn.1986 *citing* M.Babić:Exh.P01246, p.279 (T.13134).

¹²² Simatović-AB, paras.57, 59.

¹²³ Judgement, paras.480, 491, 494.

¹²⁴ Judgement para.493.

¹²⁵ Simatović-AB, para.66, fn.91 *citing* [REDACTED]. *Also* Simatović-AB, para.68 referring the Chamber to Simatović-FTB, paras.240-250 (confidential).

¹²⁶ *See* Hadžihasanović AJ, para.46.

¹²⁷ Judgement, para.490, fn.1969 *citing* Simatović-FTB, paras.240-250 (confidential). *Also* Judgement, para.497, fn.1990 *citing* Simatović-FTB, paras.123-129, 132-144, 147, 153 (confidential); Judgement, para.497, fn.1991 *citing* Simatović-FTB, paras.132, 145, 150, 152 (confidential) and Simatović Closing Arguments, T.98 (13-Apr-2021); Judgement, para.497, fn.1992 *citing* Simatović-FTB, paras.145, 153 (confidential), together with the relevant paragraphs from the Stanišić-FTB (confidential).

¹²⁸ Judgement, para.501.

demonstrating that “Stanišić and Simatović were involved in the provision of weapons to the SAO-Krajina police in late 1990 and early 1991.”¹²⁹ The Chamber did not accept all the underlying details the witness provided with respect to that support.¹³⁰ Simatović fails to demonstrate the Chamber erred in the exercise of its discretion in relying on RFJ-066,¹³¹ and he is mistaken in suggesting the Chamber was required to provide a detailed explanation of its reasons for accepting some, but not all, of the witness’s evidence.

41. In any event, the Chamber’s reasons for finding the witness credible on the issue of the supply of weapons are apparent. While there was no direct corroboration for RFJ-066’s evidence pertaining to the weapons deliveries (including deliveries by Simatović) he claimed to have personally witnessed,¹³² the Chamber referred to other evidence that corroborated his assertion that the SerbianDB and Stanišić and Simatović were supplying weapons to Croatian Serbs (including the SAO-Krajina police) during the relevant time period.¹³³ For example, Babić testified about a meeting on 20 March 1991 involving Slobodan Milošević, Serbian Minister of Interior Radmilo Bogdanović¹³⁴ and Stanišić, at which Milošević announced he had procured 20,000 weapons for the Serbs in the SAO-Krajina, and Bogdanović confirmed 500 weapons had already been sent to Banija.¹³⁵ The Chamber was satisfied, based on the evidence of witness Stanišić and an Official Note from SerbianDB Assistant Chief Milan Tepavčević, that shortly after that meeting the SerbianDB sent two convoys of weapons to Knin.¹³⁶ Babić confirmed the weapons were delivered to the commander of the Knin police, Milenko Zelenbaba, and stored in a nearby warehouse.¹³⁷

42. Contrary to Simatović’s assertion,¹³⁸ the beyond a reasonable doubt standard does not apply to individual pieces of evidence. Similarly, as a matter of law, the Chamber was not required to determine whether the provision of weapons, alone, constituted a significant

¹²⁹ Judgement, para.501.

¹³⁰ Judgement, para.501.

¹³¹ *Above* paras.36-38.

¹³² Judgement, para.499.

¹³³ Judgement, para.503.

¹³⁴ Judgement, para.344.

¹³⁵ Judgement, para.502, fn.2005 *citing* M.Babić:Exh.P01246, pp. 249, 792 (T.13104, 13654); M.Babić:Exh.P01247, pp.27-28 (T.3350-3351) (confidential); M.Babić:Exh.P01248, pp.202-203 (T.1526-1527). *Also* L.Ristić:T.63-64 (27-Jun-2019).

¹³⁶ Judgement, para.502, fn.2006 *citing* Exh.P02453.

¹³⁷ Judgement, para.502, fn.2008 *citing* M.Babić:Exh.P01246, pp. 249, 251 (T.13104, 13106); M.Babić:Exh.P01247, pp.27-28 (T.3350-3351) (confidential); M.Babić:Exh.P01248, pp.203-204 (T.1527-1528).

¹³⁸ Simatović-AB, para.66.

contribution to the common criminal purpose, nor was the Chamber required to determine if the provision of weapons was—in the abstract—legal or illegal.¹³⁹

¹³⁹ *Contra* Simatović-AB, para.67. *Popović* AJ, paras.1615, 1765; *Krajišnik* AJ, paras.215, 218; *Šainović* AJ, paras.985, 1663.

III. GROUND 2: SIMATOVIĆ IS RESPONSIBLE FOR AIDING AND ABETTING THE CRIMES IN BOSANSKI ŠAMAC

43. The Chamber found that through the training of Unit members and Bosanski Šamac locals and their subsequent deployment to Bosanski Šamac, Simatović substantially contributed to the crimes of persecution, murder and forcible displacement Serb forces committed there.¹⁴⁰ Simatović asserts that the Chamber erred in fact and in law in reaching this conclusion,¹⁴¹ but fails to articulate any legal error, or demonstrate that the conclusion was not one that a reasonable trier of fact could have reached. The Chamber's findings on training and deployment, as well as their substantial effect on the crimes, are based on the evidence and are well-reasoned. Ground 2 should be dismissed.

A. Sub-ground 2(1): The Chamber properly assessed Stevan Todorović's and RFJ-035's evidence

44. Simatović fails to show errors in the Chamber's assessment of the credibility and reliability of Stevan Todorović's and RFJ-035's evidence.

45. A trial chamber is best placed to assess the credibility of a witness and the reliability of the evidence adduced. It therefore has broad discretion in assessing the appropriate weight and credibility to be given to a witness's evidence.¹⁴²

46. Simatović fails to show that the Chamber abused its discretion in its credibility and reliability assessment of these two witnesses.

47. The Chamber was mindful of the credibility challenges raised, in particular by Simatović, at trial.¹⁴³ It addressed challenges raised in relation to both witnesses and viewed the evidence of Todorović and RFJ-035 with caution.¹⁴⁴

¹⁴⁰ Judgement, para.605.

¹⁴¹ Simatović-AB, sub-grounds 2(1)-2(15).

¹⁴² *Popović* AJ, paras.131-132; *Lukić* AJ, para.296; *Kupreškić* AJ, para.32; *Šainović* AJ, para.437; *Muvunyi* AJ, para.144. Moreover, the Chamber was not required to address every argument raised by Simatović in order to render a reasoned opinion. *See Nchamihigo* AJ, paras.121, 165-166; *Musema* AJ, para.277; *Nahimana* AJ, para.554.

¹⁴³ Judgement, paras.219-220. *Also* Judgement, paras.415, 420. *Also* Rule 112 Evidence Decision, paras.10-14 *in particular* para.13.

¹⁴⁴ Judgement para.206. *Also* Judgement, paras.219-220, 227, 229. *Contra* Simatović-AB, para.70.

1. The Chamber properly addressed Todorović's evidence

48. The Chamber found that the evidence of Todorović, while to be viewed with caution, was both internally consistent and consistent with other evidence in terms of how the attack on Bosanski Šamac unfolded.¹⁴⁵ Simatović fails to show that the Chamber abused its discretion in this assessment.

49. The Chamber was mindful of the three specific concerns regarding Todorović's evidence Simatović raises in this sub-ground (repeating arguments from his Final Trial Brief¹⁴⁶) and addressed them in the Judgement: Todorović's role in Bosanski Šamac, his plea agreement and the alleged lack of corroboration.¹⁴⁷

50. The Chamber acknowledged evidence in relation to Todorović's role in Bosanski Šamac,¹⁴⁸ and that he had entered into a plea agreement with the Prosecution and was convicted by the ICTY,¹⁴⁹ but reasonably concluded that neither his own involvement in the crimes nor his plea agreement rendered his testimony wholly unreliable.¹⁵⁰ The Chamber's approach is consistent with Tribunal case law.¹⁵¹

51. It was within the Chamber's discretion to rely on Todorović's evidence given it was "internally consistent as well as consistent with the evidence received from other witnesses and documentary evidence on the record in terms of how the attack [on Bosanski Šamac] unfolded".¹⁵² Simatović fails to show that the Chamber abused its discretion.

52. The Chamber was further mindful of Simatović's trial arguments that Todorović's evidence was not sufficiently corroborated by other evidence.¹⁵³ On appeal Simatović merely repeats this trial argument, but fails to point to any factual findings for which the Chamber solely relied on Todorović's evidence. This argument should therefore be summarily dismissed.¹⁵⁴

¹⁴⁵ Judgement, paras.206, 219.

¹⁴⁶ [REDACTED]. *Also* [REDACTED].

¹⁴⁷ Simatović-AB, paras.71-75.

¹⁴⁸ Judgement para.219. *See* Simatović-AB, paras.71-72.

¹⁴⁹ Judgement para.219. *See* Simatović-AB, paras.73-74.

¹⁵⁰ Judgement, para.219; Rule 112 Evidence Decision, para.12.

¹⁵¹ *Blagojević* AJ, para.117; *Babić* Admission Decision, para.11; *Mladić* *Babić* Admission Decision, para 9; *Karadžić* *Babić* Admission Decision, para.28.

¹⁵² Judgement, para.219.

¹⁵³ Judgement, para.219.

¹⁵⁴ *See Prlić* AJ, paras.2501, 2562, 2594.

53. Similarly, Simatović merely alleges but does not develop the argument that Todorović's evidence was misinterpreted by the Chamber.¹⁵⁵ This argument should be summarily dismissed for the same reason.¹⁵⁶

2. The Chamber properly assessed RFJ-035's evidence

54. The Chamber found that while RFJ-035's evidence should be viewed with caution, it could be relied upon in relation to how the events in Bosanski Šamac unfolded.¹⁵⁷ Simatović fails to show that the Chamber abused its discretion in this assessment.

55. The Chamber was mindful of concerns regarding RFJ-035's evidence, and addressed four out of five of Simatović's arguments, repeated from trial,¹⁵⁸ in the Judgement: (1) RFJ-035's lack of direct knowledge of the events in Bosanski Šamac;¹⁵⁹ (2) his complicity in the crimes that took place in Crkvina;¹⁶⁰ (3) his criminal record;¹⁶¹ and (4) the contradictions in his evidence.¹⁶² The Chamber considered these points and concluded that while RFJ-035's evidence had to be approached with caution, the fundamental features of his evidence could be relied upon in relation to how the events in Bosanski Šamac unfolded.¹⁶³ In light of the Chamber's broad discretion in assessing reliability and credibility, Simatović fails to show that the Chamber abused its discretion.

56. Simatović's remaining argument concerns [REDACTED],¹⁶⁴ [REDACTED].¹⁶⁵

57. [REDACTED].¹⁶⁶ While Simatović refers to five paragraphs of the Judgement to ground this argument¹⁶⁷ only two of those paragraphs contain factual findings based on the evidence of RFJ-035.¹⁶⁸ Even though corroboration is not required for a Chamber to rely

¹⁵⁵ Simatović-AB, para.76.

¹⁵⁶ See *Prlić* AJ, paras.2501, 2562, 2594.

¹⁵⁷ Judgement, paras.206, 220.

¹⁵⁸ [REDACTED]. See Judgement, para.220, fn.977 citing Simatović-FTB, paras.695-703 (confidential).

¹⁵⁹ [REDACTED]. See Judgement, para.220, fn.977 citing Simatović-FTB, paras.695-703 (confidential).

Compare [REDACTED] with [REDACTED].

¹⁶⁰ [REDACTED]. See Judgement, paras.220, 227, 229. Compare [REDACTED] with [REDACTED].

¹⁶¹ [REDACTED]. See Judgement, para.220, fn.977 citing Simatović-FTB, paras.695-703 (confidential).

Compare [REDACTED] with [REDACTED].

¹⁶² [REDACTED]. See Judgement, para.220 fn.977 citing Simatović-FTB, paras.695-703 (confidential).

Compare [REDACTED] with [REDACTED].

¹⁶³ Judgement, paras.206, 220.

¹⁶⁴ [REDACTED] citing [REDACTED].

¹⁶⁵ Judgement, para.220, fn.977 citing Simatović-FTB, paras.695-703 (confidential). Compare [REDACTED] with [REDACTED]. Also Judgement, para. 200, fn.978 citing *inter alia* [REDACTED].

¹⁶⁶ [REDACTED].

¹⁶⁷ Simatović-AB, para.69 referring to Judgement paras.206, 219-220, 227, 229.

¹⁶⁸ Judgement, paras.227, 229.

upon a witness for a material fact,¹⁶⁹ in both relevant paragraphs the Chamber referred to RFJ-035's evidence being corroborated by another witness.¹⁷⁰ This argument should therefore be summarily dismissed.¹⁷¹

58. Simatović therefore fails to show that the Chamber erred in its assessment of Todorović's and RFJ-035's evidence.

B. Sub-ground 2(2): Simatović briefed Unit members and Bosanski Šamac locals at Pajzoš prior to their deployment to Bosanski Šamac

59. Simatović fails to show that no reasonable trier of fact could have concluded that Simatović briefed Unit members and Bosanski Šamac locals at Pajzoš prior to their deployment to Bosanski Šamac.¹⁷²

60. The Chamber found that Simatović briefed a group of around 50 men (referred to in this brief collectively as "the Group"¹⁷³) at Pajzoš before they deployed to Bosanski Šamac on 11 April 1992.¹⁷⁴ The Group consisted of:

- 30 men from Serbia, comprising Unit members, including former SAO-SBWS police who became Unit members prior to their deployment to Bosanski Šamac;¹⁷⁵ and
- around 20 local men from Bosanski Šamac, who were trained by, but not formally incorporated into, the Unit.¹⁷⁶

Contrary to Simatović's suggestion, there was no inconsistency in the Chamber's findings as to who was part of the Group, including to which structure the members belonged.¹⁷⁷

61. The Chamber's use of the term "paramilitaries" in paragraph 209 to collectively describe the Group briefed by Simatović at Pajzoš,¹⁷⁸ does not undermine its consistent

¹⁶⁹ *Haradinaj* AJ, para.219 citing *Kupreškić* AJ, para.33; *Tadić* AJ, para.65; *Aleksovski* AJ, para.62; *Čelebići* AJ, paras.492, 506.

¹⁷⁰ Judgement para.227 reads "RFJ-035 provided a broadly similar account", referring to the account of RFJ-075 and Judgement, para.226. Judgement, para.229 again refers to the similarities between the testimonies of RFJ-075 and RFJ-035, and that his evidence on this is "generally consistent and supported by other evidence on the record".

¹⁷¹ See *Prlić* AJ, paras.2501, 2562, 2594.

¹⁷² *Contra* Simatović-AB, paras.98-99. *Above* para.42.

¹⁷³ *Also* Simatović-AB, para.138.

¹⁷⁴ Judgement, paras.209, 214, 218, 407, 416-417, 419, 590.

¹⁷⁵ Judgement, paras.209, 407, 409, 419, 424, 590, 597, 621. See [REDACTED].

¹⁷⁶ Judgement, paras.209, 407, 409, 416, 418-419, 424, 590, 597, 621.

¹⁷⁷ *Contra* Simatović-AB, paras.91-92.

findings that the Group included Unit members.¹⁷⁹ The Chamber did not use the term “Unit members” to refer collectively to the Group.¹⁸⁰ Rather, in Judgement paragraph 417 the Chamber distinguished between Unit members and the locals from Bosanski Šamac:

Around 10 April 1992, Simatović addressed the Unit members, including Debeli, Lugar, and Witness RFJ-035, *and* the trainees from Bosanski Šamac at Pajzoš and informed them of their deployment to the Bosanski Šamac municipality in Bosnia and Herzegovina. (emphasis added)

62. Further, there is no inconsistency in the Chamber’s findings regarding the date on which Simatović briefed the Group at Pajzoš before its deployment to Bosanski Šamac.¹⁸¹ The Chamber’s finding that Simatović briefed the Group “[a]round 10 April 1992”,¹⁸² is consistent with its finding that the Group flew to Batkuša “[o]n or around 11 April 1992, *after* being briefed by Simatović at Pajzoš.”¹⁸³

63. Contrary to Simatović’s assertion,¹⁸⁴ the evidence of a single witness may be accepted without corroboration, even if it relates to a material fact.¹⁸⁵ For the reasons detailed in the Prosecution’s response to sub-ground 2(1),¹⁸⁶ the Chamber did not err in relying upon the testimony of RFJ-035 in support of its conclusions regarding the briefing conducted by Simatović at Pajzoš.¹⁸⁷ The Chamber viewed RFJ-035’s evidence with caution, but concluded that it could rely on fundamental features of his account in relation to how the events in Bosanski Šamac unfolded, including events prior to the takeover.¹⁸⁸

64. Simatović similarly fails to demonstrate that the Chamber should have drawn an adverse inference from [REDACTED].¹⁸⁹ Lukač, Tihić, and Đukić, were not present at Pajzoš when the briefing occurred, nor were they in any way affiliated with Simatović or the Unit such that they would have been aware of this information:

¹⁷⁸ Judgement, paras.209, 218.

¹⁷⁹ *Contra* Simatović-AB, paras.91-92. *See* Judgement, paras.211, 416-417, 419, 590. *Also* Judgement, paras.209-210, 218.

¹⁸⁰ *Contra* Simatović-AB, para.91.

¹⁸¹ *Contra* Simatović-AB, para.93.

¹⁸² Judgement, para.417.

¹⁸³ Judgement, para.209 (emphasis added).

¹⁸⁴ Simatović-AB, para.97.

¹⁸⁵ *Haradinaj* AJ, para.219 *citing* *Kupreškić* AJ, para.33; *Tadić* AJ, para.65; *Aleksovski* AJ, para.62; *Čelebići* AJ, paras.492, 506.

¹⁸⁶ *Above* paras.44-47, 54-58.

¹⁸⁷ *Contra* Simatović-AB, para.96.

¹⁸⁸ Judgement, paras.206, 220.

¹⁸⁹ *Contra* [REDACTED].

- Lukač is a Croat from Bosanski Šamac, who gave evidence about the takeover and his subsequent detention by Serb forces.¹⁹⁰
- Tihić is a Bosnian Muslim from Bosanski Šamac, who gave evidence about the takeover and his subsequent detention by Serb forces.¹⁹¹
- Đukić worked in the security and intelligence organ of the JNA in 1992¹⁹² and gave evidence that [REDACTED].¹⁹³

Todorović, the chief of police of Bosanski Šamac after the takeover,¹⁹⁴ gave evidence that [REDACTED].¹⁹⁵

C. Sub-ground 2(3): Special training was conducted at Pajzoš

65. Simatović fails to show that no reasonable trier of fact could have found that special training was conducted at Pajzoš.¹⁹⁶

1. The training of the Group was conducted at Pajzoš

66. The Chamber found that around December 1991, the Unit established a camp in SAO-SBWS at Pajzoš.¹⁹⁷ Among the individuals who received training by Unit members at Pajzoš were a group of approximately 20 locals from Bosanski Šamac and a group of former SAO-SBWS police.¹⁹⁸

67. Simatović fails to show that no reasonable trier of fact could have found that Unit members trained the Group at Pajzoš.¹⁹⁹

¹⁹⁰ D.Lukač:Exh.P02731, pp.4-5, 17.

¹⁹¹ S.Tihić:Exh.P01865, pp.1-2.

¹⁹² Judgement, para.212.

¹⁹³ [REDACTED].

¹⁹⁴ Judgement, para.211.

¹⁹⁵ [REDACTED]. See [REDACTED]. Also [REDACTED]; [REDACTED].

¹⁹⁶ *Contra* Simatović-AB, paras.102, 105. See Judgement, para.214. Also Judgement, paras.407, 416, 418-419. Simatović misunderstands paragraph 214 of the Judgement (Simatović-AB, para.101). The Chamber did not find that the Group underwent special training at Pajzoš within the existing local JNA brigade. Rather, the Chamber found that on 15 April 1992, Simić met with Todorović, Dragan Đorđević (Crni) and others to discuss the plan for the takeover of Bosanski Šamac as well as the inclusion of the Group within the existing local JNA brigade. This reading of paragraph 214 is supported by the evidence the Chamber relied upon. See [REDACTED]; [REDACTED]; P00846, p.3 cited at Judgement, para.214.

¹⁹⁷ Judgement, para.407.

¹⁹⁸ [REDACTED].

¹⁹⁹ *Below* sub-ground 2(4), paras.74-78; sub-ground 2(5), paras.79-87. *Contra* Simatović-AB, paras.100-101.

68. Simatović further fails to show error in the Chamber’s conclusion that Pajzoš was used by the Unit as a training camp.²⁰⁰ Contrary to Simatović’s contention, the Chamber’s finding is reasonable on the evidence. Specifically, the Chamber relied upon:

- Todorović’s evidence that 20 locals from Bosanski Šamac were sent to a place in the surroundings of Ilok to receive military training at a camp organised by the SMUP.²⁰¹
- Dragan Đorđević (Crni)’s 1992 statement to the Banja Luka investigating judge that a “group of 18 men from Šamac” trained at “the Training Centre near Ilok in the town of Pajzoš”.²⁰²

Simatović points out that [REDACTED],²⁰³ but fails to mention that Pajzoš is “in the surroundings of Ilok”,²⁰⁴ or the Chamber’s reliance on Unit member²⁰⁵ Crni’s corroborating 1992 statement.²⁰⁶

69. Moreover, [REDACTED].²⁰⁷ Simatović claims that the house, in front of which he exited the car was “the communication centre on Pajzoš”,²⁰⁸ and that [REDACTED].²⁰⁹ [REDACTED],²¹⁰ consistent with other evidence on the record.²¹¹

70. Evidence relied upon elsewhere in the Judgement further supports the Chamber’s conclusion. For instance:

- Borislav Bogunović’s evidence that the “Red Berets” (the Unit) appeared in Ilok in December 1991. Simatović was their commander. The Unit was located on a hill above Ilok, in a winery called Pajzoš. The Unit also had a building in Ilok itself.²¹²

²⁰⁰ *Contra* Simatović-AB, para.105.

²⁰¹ S.Todorović:Exh.P01916, pp.9-11, 136 (T.23431-23433, 23558) (confidential) *cited at* Judgement, para.214.

²⁰² Exh.P00846, p.3 *cited at* Judgement, para.214.

²⁰³ [REDACTED] *citing* [REDACTED]. *Also* [REDACTED].

²⁰⁴ Exh.P00846, p.3.

²⁰⁵ Judgement, paras.417, 419, 604 (referring to Dragan Đorđević (Crni) as a Unit member).

²⁰⁶ Exh.P00846, p.3 *cited at* Judgement, para.214.

²⁰⁷ *Contra* [REDACTED].

²⁰⁸ Simatović-AB, para.243.

²⁰⁹ [REDACTED].

²¹⁰ [REDACTED]. *Also* [REDACTED].

²¹¹ [REDACTED]; [REDACTED]; B.Bogunović:Exh.P02718, para.24; [REDACTED]. *Also* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

²¹² B.Bogunović:Exh.P02718, para.24 *cited at* Judgement, para.407.

- RFJ-035's first-hand account that: (i) his group of former SAO-SBWS police, which included Lugar and Debeli, went to Ležimir and then Pajzoš around mid-March 1992, where they received training by Unit members in preparation for their deployment to Bosanski Šamac;²¹³ (ii) [REDACTED]; (iii) when his unit of former SAO-SBWS police arrived at Pajzoš for training, a group of men from Bosanski Šamac was already present and undergoing training.²¹⁴
- RFJ-137's evidence that Unit members were instructors at the Pajzoš camp, [REDACTED].²¹⁵
- The personnel file of Unit member²¹⁶ Borjan Vučković indicating that he joined the Unit on 15 May 1991, completed training at Golubić, and served as an instructor before being killed in December 1991, in a minefield which had been laid in the sector of the Pajzoš camp for the training of junior members of the Unit.²¹⁷
- The personnel file of Unit member²¹⁸ Milenko Popović containing his biography wherein he stated that he was at Pajzoš until the spring of 1992, "where we trained the groups that arrived from the former BH".²¹⁹

71. Other evidence on the record confirms the Chamber's conclusion. For example:

- [REDACTED].²²⁰
- In his Kostić Centre ceremony speech, Simatović acknowledged the Unit's training camp at Ilok,²²¹ the area where Pajzoš camp was located.²²²

72. The evidence Simatović highlights fails to demonstrate that no reasonable trier of fact could have found that training was conducted at Pajzoš:

²¹³ RFJ-035:T.7-11, 46-47 (17-Apr-2018) (confidential); RFJ-035:Exh.P02026, paras.27, 29-31 (confidential); RFJ-035:Exh.P02028, p.28 (T.7630) (confidential) *cited at* Judgement, para.416.

²¹⁴ [REDACTED] *cited at* Judgement, para.407.

²¹⁵ RFJ-137:Exh.P00245, para.55 (confidential) *cited at* Judgement, fn.1610; RFJ-137:Exh.P00246, para.5 (confidential) *cited at* Judgement, fns.1460, 1643. *Also* [REDACTED].

²¹⁶ *See* Judgement, para.24, fn.47 (referring to Borjan Vučković as a Golubić-trained future Unit members).

²¹⁷ Exh.P00260, pp.5, 24, 31-32 (confidential) *cited at* Judgement, fns.47, 76, 1709.

²¹⁸ Judgement, para.429, fn.1709 (referring to Milenko Popović as an original member of the Unit).

²¹⁹ Exh.P00500, p.16 (confidential) *cited at* Judgement, fns.779, 1089, 1629, 1709.

²²⁰ [REDACTED].

²²¹ Exh.P00256 (00:15:48-00:16:18), p.11.

²²² *E.g.* B.Bogunović:Exh.P02718, para.24; B.Bogunović:Exh.P02720, p.109 (T.6074); [REDACTED]; [REDACTED]; [REDACTED].

- [REDACTED].²²³ [REDACTED].²²⁴ [REDACTED] does not show error in the Chamber’s reliance on RFJ-035’s first-hand account of being trained there by Unit members.²²⁵ In fact, the personnel file of Unit member Borjan Vučković discussed above²²⁶ shows that the defensive minefield at Pajzoš had been laid “for the training of junior members of the unit”.²²⁷
- The testimony of Dejan Plahuta that he had not observed training being conducted at Pajzoš in late 1995—more than three years after the Group’s training—does not show that the Chamber erred in relying on witnesses with first-hand knowledge.²²⁸
- The hearsay testimony of Vojislav Cvetković does not show that the Chamber erred in relying on witnesses with first-hand knowledge.²²⁹ Based on the information provided to him by Rade Vujović, Cvetković testified that he had “never been informed” that there was a training centre at Pajzoš.²³⁰ [REDACTED].²³¹
- That Pajzoš also housed a SerbianDB intelligence centre is compatible with and does not show any error in the Chamber’s finding that training was conducted there.²³²
- Evidence that the JNA had a role in a “Military Administration” in Ilok in 1991-1992 does not “indirectly prove” that there was no training camp at Pajzoš,²³³ much less show that the Chamber erred in relying on positive evidence of the Pajzoš training.²³⁴ Furthermore, Simatović’s argument that “no one outside the JNA could organise or conduct any training”²³⁵ ignores the Chamber’s finding that the JNA was involved in organising the training at Pajzoš.²³⁶

²²³ [REDACTED]. See [REDACTED]. [REDACTED]. Compare [REDACTED] with [REDACTED].

²²⁴ [REDACTED].

²²⁵ See Judgement, para.416, [REDACTED] citing [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

²²⁶ Above para.70.

²²⁷ Exh.P00260, pp.5, 24, 31 (confidential).

²²⁸ Simatović-AB, para.110.

²²⁹ Simatović-AB, paras.111-112.

²³⁰ V.Cvetković:T.21 (3-Sept-2020).

²³¹ [REDACTED].

²³² Contra Simatović-AB, paras.109-112. Below paras.100, 102.

²³³ Contra Simatović-AB, paras.116-122.

²³⁴ See Judgement, paras.214, 407, 416.

²³⁵ Simatović-AB, para.121.

²³⁶ Judgement, para.418.

2. Special training was conducted at Pajzoš

73. Simatović's mere assertion that there is no evidence that any "special" training was conducted is incorrect, and does not show error.²³⁷ In referring to the training as "special", the Chamber relied on (i) Todorović's testimony that military training was conducted at a camp organised by the SMUP;²³⁸ and (ii) Unit member Crni's 1992 statement that the Bosanski Šamac locals received training at the Pajzoš camp where he was one of the instructors.²³⁹ [REDACTED] evidence that [REDACTED] were trained [REDACTED] on weapons handling, military tactics, mop-up operation techniques and house searches and takeovers²⁴⁰ confirms Todorović's testimony. Evidence on the record further shows that Pajzoš trainees received sabotage and terrorism training.²⁴¹ It was therefore not an error for the Chamber to conclude that this training was "special".

D. Sub-ground 2(4): Unit members trained a group of locals from Bosanski Šamac

74. Simatović fails to show that no reasonable trier of fact could have found that Unit members trained around 20 locals from Bosanski Šamac at the Pajzoš camp.²⁴²

75. In reaching its conclusion, the Chamber reasonably relied on the evidence of Todorović and RFJ-035, including:

- Todorović's evidence that (i) Miloš Bogdanović—who was the head of the Bosanski Šamac Secretariat of National Defence—sent 20 men from Bosanski Šamac for military training at the end of March 1992 to a camp located in the surroundings of Ilok, [REDACTED]; (ii) [REDACTED].²⁴³
- RFJ-035's evidence that: (i) [REDACTED]; (ii) when his unit of former SAO-SBWS police arrived at Pajzoš for training, a group of men from Bosanski Šamac was already present and undergoing training.²⁴⁴

²³⁷ *Contra* Simatović-AB, para.101.

²³⁸ Judgement, para.214 *citing* S.Todorović:Exh.P01916, pp.9-11, 136 (T.23431-23433, 23558) (confidential).

²³⁹ Judgement, para.214 *citing* Exh.P00846, p.3.

²⁴⁰ [REDACTED]; [REDACTED].

²⁴¹ Exh.P02844, p.6. *Also* Exh.P02040, p.1.

²⁴² Judgement, para.418. *Also* Judgement, paras.407, 416. *Contra* Simatović-AB, paras.123-127.

²⁴³ [REDACTED] *cited at* Judgement, para.407.

²⁴⁴ [REDACTED] *cited at* Judgement, para.407. *Also* RFJ-137:Exh.P00245, para.5 (confidential) *cited at* Judgement, para.407.

76. Simatović fails to show error in the Chamber’s reliance on the evidence of Todorović and RFJ-035. He incorrectly asserts that Todorović [REDACTED]²⁴⁵—Aleksandar Vuković (Vuk), who the Chamber found to be a Unit member.²⁴⁶ Simatović however overlooks [REDACTED]²⁴⁷ [REDACTED].²⁴⁸

77. Contrary to Simatović’s argument,²⁴⁹ a chamber is entitled to base a finding on uncorroborated evidence, provided it is reliable and credible.²⁵⁰ As set out above, the Chamber considered that RFJ-035’s evidence should be viewed with caution but that it could be relied upon in relation to how the events in Bosanski Šamac unfolded prior to and after the takeover.²⁵¹ In any event, his evidence on the Unit providing training to the group of Bosanski Šamac locals, was corroborated by other evidence.²⁵² Apart from Todorović’s testimony discussed above, such evidence includes:

- Ratko Mladić’s handwritten contemporaneous notes, which reflect that Todorović told him during a meeting on 7 December 1992 about the men sent from Bosanski Šamac to Ilok for training, and their subsequent deployment together with the group of 30 men from Kragujevac, amongst whom were Dragan Đorđević (Crni) and Aleksandar Vuković [...].²⁵³
- Crni’s 1992 statement to the Banja Luka Military Court that the Bosanski Šamac locals were sent to the Pajzoš camp where he was an instructor.²⁵⁴
- The RS-MUP report of November 1992, that “18 volunteers from Šamac who were trained in Ilok” were added to the group under the command of Crni.²⁵⁵ Simatović’s witness Đukić—who worked in the JNA security and intelligence organ at the time²⁵⁶—confirmed the accuracy of that aspect of the RS-MUP report.²⁵⁷

²⁴⁵ [REDACTED].

²⁴⁶ Judgement, para.417.

²⁴⁷ Judgement, paras.419, 590, 604.

²⁴⁸ [REDACTED]; [REDACTED].

²⁴⁹ Simatović-AB, para.127.

²⁵⁰ See *Haradinaj* AJ, para.219 citing *Kupreškić* AJ, para.33; *Tadić* AJ, para.65; *Aleksovski* AJ, para.62; *Čelebići* AJ, paras.492, 506; *Ruzindana* AJ, para.154.

²⁵¹ Above paras.44-47, 54-58. Also Judgement, paras.206, 220.

²⁵² Simatović-AB, paras.126-127.

²⁵³ Exh.P01938, pp.256-257.

²⁵⁴ Exh.P00846, p.3.

²⁵⁵ Exh.P01953, p.2.

²⁵⁶ Judgement, para.212.

²⁵⁷ P.Đukić:T.22 (17-Dec-2019).

78. The Bosanski Šamac locals received training at the Pajzoš camp only.²⁵⁸ While the Chamber in Judgement paragraphs 416 and 418 referred to the Bosanski Šamac locals being trained at the Ležimir and Pajzoš camps, evidence relied upon in the finding earlier in the Judgement at paragraph 214 shows that the Bosanski Šamac locals were trained only at Pajzoš.²⁵⁹

E. Sub-ground 2(5): Unit members trained the group of former SAO-SBWS police

79. Simatović fails to show that no reasonable trier of fact could have found that Unit members trained the group of former SAO-SBWS police, including Srećko Radovanović (Debeli), Slobodan Miljković (Lugar) and RFJ-035 at the Ležimir and Pajzoš camps.²⁶⁰

80. As set out above, Simatović fails to show that no reasonable trier of fact could have found that Unit members trained the 20 locals from Bosanski Šamac at Pajzoš.²⁶¹

81. Contrary to Simatović's claim that "no evidence" supports the Chamber's conclusion that Unit members trained the group of former SAO-SBWS police,²⁶² the Chamber reasonably relied on RFJ-035's first-hand account that his group, which included Lugar and Debeli, went to Ležimir and then Pajzoš around mid-March 1992, where they received training by Unit members in preparation for their deployment to Bosanski Šamac.²⁶³

82. Evidence relied upon by the Chamber elsewhere in the Judgement corroborates RFJ-035's evidence.²⁶⁴ For instance:

- In a letter to the SerbianDB, Lugar stated that he went to Ležimir and Pajzoš in 1992 for special physical training. After having completed the training, he was transferred

²⁵⁸ See Simatović-AB, para.124.

²⁵⁹ See Judgement, para.214 citing S.Todorović:Exh.P01916, pp.9-11, 136 (T.23431-23433, 23558) (confidential); Exh.P00846, p.3.

²⁶⁰ Contra Simatović-AB, paras.128-134. See Judgement, para.416. Also Judgement, paras.407, 419.

²⁶¹ Above sub-ground 2(4), paras.74-78. Contra Simatović-AB, para.129.

²⁶² Simatović-AB, para.129.

²⁶³ Judgement, para.416 citing RFJ-035:T.7-11, 46, 47 (17-Apr-2018) (confidential); RFJ-035:Exh.P02026, paras.27, 29-31 (confidential); RFJ-035:Exh.P02028, p.28 (T.7630) (confidential); [REDACTED]. Also Judgement, para.407 citing RFJ-137:Exh.P00246, para.5 (confidential); RFJ-137:Exh.P00245, para.42 (confidential).

²⁶⁴ Exhs.P02040, p.1; P00846, p.3 cited at Judgement, para.209. Also Exh.P00847, p.1 (confidential) cited at Judgement, para.412.

by helicopter to Batkuša where he had a “task” to attack the town of Bosanski Šamac, after which operations to “cleanse” the surrounding localities followed.²⁶⁵

- When interviewed by the SerbianDB²⁶⁶ in July 1993, Lugar stated that [REDACTED]. While on the battlefield, he received a salary from the SMUP.²⁶⁷
- In his 1992 statement to the Banja Luka investigative judge, Unit member²⁶⁸ Crni stated that at the beginning of April 1992, a group of Radical Party members—a reference to RFJ-035’s group of former SAO-SBWS police²⁶⁹—went to training at the “Training Centre near Ilok in the town Pajzoš” where Crni was an instructor. A group of 18 men from Šamac also went to Pajzoš for training. Upon completion of the training, a group of around 50 men—amongst whom were those Pajzoš trainees, Crni and Vuk—flew to Batkuša by helicopter to participate in the “liberation of Šamac and the clearing of the surrounding villages.”²⁷⁰

83. Simatović’s claim that evidence that a special unit of the RSK-MUP held a forward command post in Pajzoš precludes a finding that the SerbianDB Unit provided training at the Pajzoš camp fails to show error in the Chamber’s finding.²⁷¹ Simatović fails to explain how the RSK-MUP’s presence in the area undermines the Chamber’s conclusion that Unit members trained the group of former SAO-SBWS police led by Debeli.²⁷²

84. In any event, the evidence relied upon by Simatović for the presence of the purported RSK-MUP special unit in the Pajzoš area does not concern late March 1992,²⁷³ when the Chamber found that Unit members were training the group of former SAO-SBWS police at Pajzoš.²⁷⁴ Rather it relates to June 1992, well after Debeli’s group had completed their training at Ležimir and Pajzoš and deployed into the Bosanski Šamac operation.²⁷⁵

²⁶⁵ Exh.P02040, p.1 *cited at* Judgement, para.209.

²⁶⁶ He was interviewed by the [REDACTED], which was part of the SerbianDB. *See* Judgement, para.421. *Also* C.Nielsen:Exh.P00850, pp.4, 76; [REDACTED]; [REDACTED]; P03029, p.6.

²⁶⁷ Exh.P00847, p.1 (confidential) *cited at* Judgement, para.421.

²⁶⁸ Judgement, paras.417, 419 (Dragan Đorđević (Crni) was a Unit member).

²⁶⁹ *See* Judgement, para.419 (The Chamber was mindful that Debeli, Lugar and RFJ-035 among others had close affiliations with the Serbian Radical Party. The Chamber was however not convinced that this called into question their affiliation with the Unit at the time). *Below* para.112.

²⁷⁰ Exh.P00846, p.3 *cited at* Judgement, para.209.

²⁷¹ Simatović-AB, paras.130-132.

²⁷² Simatović-AB, paras.130-132.

²⁷³ Simatović-AB, paras.130-131.

²⁷⁴ Judgement, paras.407, 416.

²⁷⁵ Judgement, para.419. *Also* Judgement, paras.209, 218.

85. Moreover, the evidence Simatović relies on²⁷⁶ does not relate to the presence of the RSK-MUP in the Pajzoš area. Rather, this is evidence of his own SerbianDB Unit, which abruptly changed the headers on its records to conceal its affiliation with the SerbianDB as UNPROFOR began to arrive in late May 1992 in SBWS to implement the Vance Plan.²⁷⁷ Simatović alluded to this strategy years later at the Kostić Centre ceremony.²⁷⁸

86. Krsmanović's report, referred to by Simatović,²⁷⁹ in fact supports the Chamber's finding that the Unit was at Pajzoš in 1992. The report and Krsmanović's related testimony make clear that the Unit that was at Pajzoš in early 1992—when the Chamber found Pajzoš was operating under the authority of Stanišić and Simatović²⁸⁰—remained intact throughout the Posavina Corridor operations in the summer and autumn of 1992.²⁸¹ According to Krsmanović's report, the Unit was only partially disbanded at Pajzoš in November 1992.²⁸² Any further arguments Simatović makes about this report in his Final Trial Brief cannot be incorporated by reference and should be disregarded.²⁸³

87. As set out above, [REDACTED].²⁸⁴

F. Sub-ground 2(6): The Group deployed to Bosanski Šamac by helicopter consisted of Unit members and Bosanski Šamac locals

88. The Chamber's findings on who was part of the Group that deployed to Bosanski Šamac by helicopter are clear and consistent. Simatović misinterprets the Chamber's findings and fails to show that the Chamber erred.²⁸⁵

89. The Chamber found that on 11 April 1992, after Simatović addressed them at Pajzoš, a group of around 50 men was taken by JNA helicopter to Batkuša, a Serbian village near Bosanski Šamac.²⁸⁶ As set out above, the Chamber made detailed findings on the composition and affiliation of the Group of around 50 men. It used the term "paramilitaries"

²⁷⁶ Simatović-AB, paras.130-131.

²⁷⁷ Exh.P00103, p.1.

²⁷⁸ Exh.P00256, pp.9-10 (00:13:06-00:13:38); C.Nielsen:T.16-17 (15-Nov-2017). *Also* [REDACTED].

²⁷⁹ Simatović-AB, para.134.

²⁸⁰ Judgement, paras.388, 405, 409.

²⁸¹ Exh.2D00143, p.2; D.Krsmanović:T.52 (1-Oct-2019). *Also* [REDACTED].

²⁸² Exh.2D00143, p.2. *Also* R.Theunens:T.9-11 (14-Mar-2018).

²⁸³ *See Hadžihasanović* AJ, para.46. *Contra* Simatović-AB, para.134.

²⁸⁴ *Above* [REDACTED]. *Contra* [REDACTED].

²⁸⁵ Simatović-AB, paras.135-137, 140-144.

²⁸⁶ Judgement, para.417. *Also* Judgement, para.209.

to refer collectively to the Unit members and the 20 Bosanski Šamac locals, but acknowledged that those locals were not formally incorporated into the Unit.²⁸⁷

90. The remainder of Simatović's arguments should be disregarded as they are all irrelevant to the findings he challenges.²⁸⁸ In any event, as set out in response to other sub-grounds, Simatović fails to show that the Chamber erred when it found that Simatović was present and briefed the Group at Pajzoš,²⁸⁹ and that the group of former SAO-SBWS police became Unit members.²⁹⁰ [REDACTED].²⁹¹

G. Sub-ground 2(7): Simatović had authority over the Unit and the camps at Ležimir and Pajzoš, and was aware of and consented to the training of the Group deployed to Bosanski Šamac

91. Simatović fails to demonstrate that no reasonable trier of fact could have concluded that Simatović had authority over the Unit and the camps at Ležimir and Pajzoš, and that he was aware of and consented to the training of the Group deployed to Bosanski Šamac.²⁹²

92. Simatović largely repeats arguments raised at trial, which were considered and rejected by the Chamber,²⁹³ without showing how the Chamber erred. These deficient challenges should be dismissed.

1. Simatović had authority over the Unit in March and April 1992

93. As detailed above,²⁹⁴ the Chamber found that Simatović exercised authority over the Unit and determined its use and deployment from at least August/September 1991 until at least mid-April 1992.²⁹⁵

²⁸⁷ Above para.61. *Contra* Simatović-AB, paras.139-143.

²⁸⁸ Simatović-AB, paras.144-147.

²⁸⁹ Above sub-ground 2(2), paras.59-64. *Contra* Simatović-AB, paras.145, 147.

²⁹⁰ Below paras.109-117. *Contra* Simatović-AB, paras.144, 147.

²⁹¹ Above [REDACTED]. *Contra* [REDACTED].

²⁹² While paragraphs 590, 597, 605 and 621 of the Judgement refer to training being conducted at Pajzoš only, the more detailed earlier findings in paragraphs 407, 409, 416 and 418 confirm that training was conducted at both Ležimir and Pajzoš. Unit members, including the group of former SAO-SBWS police, were trained at both Ležimir and Pajzoš, whereas the Bosanski Šamac locals were trained only at Pajzoš. *E.g.* [REDACTED]; Exh.P00846, p.3; [REDACTED]; Exh.P00846, p.3. *Also above* para.78.

²⁹³ *E.g.* Judgement, paras.354, 386, 511; [REDACTED].

²⁹⁴ Above paras.18-20.

²⁹⁵ Judgement, paras.388, 405.

94. That Simatović had authority over the Unit's training camps at Ležimir and Pajzoš, where the training was conducted,²⁹⁶ further supports the Chamber's conclusion that Unit members conducted the training at Simatović's direction and with his authorisation.²⁹⁷

95. Simatović's repeated trial arguments²⁹⁸ that he was at the bottom of the SerbianDB hierarchy, with responsibility for intelligence gathering, and without capacity for independent decision making²⁹⁹—which were expressly considered by the Chamber³⁰⁰—fail to show that no reasonable trier of fact could have reached the Chamber's conclusions. As detailed in the Prosecution's responses above, the Chamber reasonably concluded that Simatović held high level positions within the SerbianDB with significant powers and authority³⁰¹ and that he had control over the Unit including in March and April 1992.³⁰²

2. Simatović had authority over the Unit's camps at Ležimir and Pajzoš in March and April 1992

96. The Chamber found that Simatović had authority over the Unit's camps at Ležimir and Pajzoš until at least March or April 1992.³⁰³ The Group was trained³⁰⁴ at Ležimir and/or Pajzoš³⁰⁵ from the end of March 1992 until its deployment to Bosanski Šamac on 11 April 1992,³⁰⁶ and was briefed by Simatović at Pajzoš on 10 April 1992, prior to its deployment.³⁰⁷ Read as a whole, the Chamber's findings and the evidence on the record support the conclusion that Simatović had authority over the Unit's camps at Ležimir and Pajzoš when Unit members trained the Group in late March and April 1992 until at least 11 April 1992, when the Group deployed to Bosanski Šamac.³⁰⁸

97. Given the Chamber's findings that (i) Ležimir and Pajzoš were Unit camps;³⁰⁹ (ii) the Unit was under the authority of Simatović until at least mid-April 1992;³¹⁰ (iii) Simatović was

²⁹⁶ Below paras.96-97.

²⁹⁷ Judgement, para.409.

²⁹⁸ Simatović-AB, para.149.

²⁹⁹ Simatović-AB, paras.155, 157-158, 163.

³⁰⁰ Judgement, paras.354, 386, 588.

³⁰¹ Judgement, para.354. *Above* paras.11-16.

³⁰² Judgement, paras.388, 405. *Above* paras.18-20.

³⁰³ Judgement, para.409. *Also* Judgement, paras.406-407.

³⁰⁴ Unit members Dragan Đorđević (Crni) and Aleksandar Vuković (Vuk), who deployed with the Group to Bosanski Šamac, were Unit instructors rather than trainees at the relevant time. *See* Judgement, paras.209, 417. *Also* [REDACTED]; [REDACTED]; Exh.P00846, p.3.

³⁰⁵ *Above* para.78, fn.292.

³⁰⁶ Judgement, paras.209, 407, 409, 416, 418-419, 436, 590, 597, 605, 621.

³⁰⁷ Judgement, para.417. *Also* Judgement, para.209.

³⁰⁸ Judgement, para.409.

³⁰⁹ Judgement, paras.406-407.

present at Ležimir in 1991 and 1992,³¹¹ and introduced Stanišić to Unit members;³¹² and (iv) Simatović briefed the Group at Pajzoš on 10 April 1992 prior to its deployment to Bosanski Šamac,³¹³ Simatović fails to show that no reasonable trier of fact could have concluded that Simatović had authority over Ležimir and Pajzoš when Unit members trained the Group there in March and April 1992.³¹⁴ For the reasons detailed above,³¹⁵ Simatović's arguments regarding his purportedly low-level position and intelligence functions do not undermine the Chamber's conclusion that he had authority over Ležimir and Pajzoš at the relevant time.

3. Unit members trained the Group at Ležimir and/or Pajzoš in March and April 1992

98. The Chamber reasonably concluded that Unit members trained the Group at Ležimir and/or Pajzoš³¹⁶ from the end of March 1992 until its deployment to Bosanski Šamac on 11 April 1992.³¹⁷ In reaching this conclusion, the Chamber was mindful of the arguments Simatović now attempts to relitigate.³¹⁸ As set out above, Simatović fails to show that no reasonable trier of fact could have found that Unit members trained the Group at Ležimir and/or Pajzoš from the end of March 1992 until its deployment to Bosanski Šamac.³¹⁹ In addition, Simatović fails to show that the Chamber erred in finding that the Unit operated training camps at Ležimir and Pajzoš.³²⁰

(a) The Unit operated Ležimir as a training camp

99. Simatović does not challenge the Chamber's conclusion that Unit members trained the part of the Group comprising former SAO-SBWS police at Ležimir.³²¹ In reaching this conclusion, the Chamber reasonably relied on the evidence of RFJ-035, who testified that he and some 30 other SAO-SBWS police were taken to Ležimir, where they received [REDACTED] training [REDACTED], following which they were taken to Pajzoš for further

³¹⁰ Judgement, paras.388, 405.

³¹¹ Judgement, paras.209, 406, 417 *citing* RFJ-137:Exh.P00245, paras.22, 32, 34, 36-37, 41 (confidential); RFJ-137:T.25-26 (18-Jul-2017) (confidential). *Also* [REDACTED].

³¹² Judgement, para.406 *citing* RFJ-137:Exh.P00245, para.37 (confidential).

³¹³ Judgement, para.417. *Also* Judgement, para.209.

³¹⁴ Judgement, para.409.

³¹⁵ *Above* paras.93-95.

³¹⁶ *Above* para.78, fn.292.

³¹⁷ Judgement, paras.209, 214, 407, 409, 416, 418-419, 436, 590, 597, 605, 621. *Above* sub-ground 2(3), paras.65-73; sub-ground 2(4), paras.74-78; sub-ground 2(5), paras.79-87.

³¹⁸ *See* Simatović-AB, paras.149-154. Judgement, para.386, fn.1586.

³¹⁹ *Above* sub-ground 2(3), paras.65-73; sub-ground 2(4), paras.74-78; sub-ground 2(5), paras.79-87.

³²⁰ *Above* paras.68-75.

³²¹ Judgement, paras.407, 409, 416, 418.

training.³²² The Chamber's conclusions are further supported by the evidence of RFJ-137, who testified that in September 1991, the Unit established a training camp at Ležimir, at which Unit members received training and were personally introduced to Stanišić by Simatović.³²³ Other evidence, not cited by the Chamber, confirms that Ležimir served as a Unit training facility. For example, in his Kostić Centre ceremony speech, Simatović himself highlighted the "high quality professional training" the Unit organised at its Ležimir camp.³²⁴

(b) The Unit operated Pajzoš as a training camp³²⁵

100. Contrary to Simatović's assertion, the Chamber's conclusion that Unit members trained the Group at Pajzoš is not inconsistent with evidence that Pajzoš was used for observation, monitoring and radio reconnaissance,³²⁶ or that Simatović performed intelligence gathering functions whilst he was there.³²⁷ The evidence of [REDACTED],³²⁸ Plahuta,³²⁹ Krsmanović,³³⁰ and Obrad Stevanović³³¹—who testified about Simatović's presence at Pajzoš for intelligence-related purposes in the period from the end of 1992 to the end of 1995—does not show that the Chamber erred.³³² Whether Simatović was present at Pajzoš for intelligence-related purposes months after the training was conducted is irrelevant to the Chamber's conclusion that training was conducted at Pajzoš in March and April 1992.

101. Similarly, as set out above, evidence that Pajzoš was secured by a minefield does not preclude the Chamber's conclusion that training was conducted there.³³³

102. The few Defence witnesses who expressed doubt about the use of Pajzoš as a training facility³³⁴ do not undermine the Chamber's well-supported findings that Unit members trained the Group there:³³⁵

³²² See Judgement, para.416 *citing inter alia* RFJ-035:Exh.P02026, paras.29-30 (confidential); [REDACTED]. Also [REDACTED]; [REDACTED].

³²³ See Judgement, paras.406-407 *citing inter alia* RFJ-137:Exh.P00245, paras.22, 32-34, 36-37 (confidential); RFJ-137:Exh.P00246, paras.4-5 (confidential).

³²⁴ Exh.P00256, pp.10-11 (00:15:48-00:16:18).

³²⁵ Above paras.68-75.

³²⁶ *Contra* Simatović-AB, paras.150-154, 163.

³²⁷ Simatović-AB, paras.149, 157, 159-162.

³²⁸ [REDACTED]; [REDACTED]. See [REDACTED].

³²⁹ Plahuta visited Pajzoš in the period from August 1995 until the end of 1995: [REDACTED]. See [REDACTED].

³³⁰ [REDACTED]. See Simatović-AB, para.161.

³³¹ [REDACTED]; [REDACTED]; [REDACTED]. See Simatović-AB, para.162.

³³² *Contra* Simatović-AB, paras.163-164.

³³³ Above para.72. *Contra* Simatović-AB, paras.151, 154.

³³⁴ See Simatović-AB, para.154.

- For the reasons detailed above, the evidence of [REDACTED] and Plahuta does not show error in the Chamber's reliance on the first-hand accounts of RFJ-035 and Todorović.³³⁶
- [REDACTED].³³⁷ It is not surprising that [REDACTED],³³⁸ given Stanišić's and Simatović's positions of power and authority,³³⁹ and the fact that the SerbianDB was hierarchically above the SerbianJB.³⁴⁰ Equally, that [REDACTED],³⁴¹ in the midst of a conflict, is not decisive of whether training was conducted at Pajzoš.
- The evidence of [REDACTED], Krsmanović³⁴²—who [REDACTED]³⁴³—that “it was impossible to carry out any larger training” at Pajzoš due to its “limited space”³⁴⁴ does not preclude the Chamber's conclusion that training was conducted there in March and April 1992. Even if the Chamber accepted that Pajzoš had limited space—which is contradicted by evidence that its grounds included a villa, [REDACTED], [REDACTED], and a vineyard³⁴⁵—it was not unreasonable for the Chamber to conclude that around 50 men received specialised training there. Such training—which included sabotage and terrorism, mop-up operation techniques, and house takeovers³⁴⁶—was not inconsistent with the “grid of vineyards” to which Krsmanović refers.³⁴⁷

³³⁵ Judgement, para.407. *Above* sub-ground 2(3), paras.65-73; sub-ground 2(4), paras.74-78; sub-ground 2(5), paras.79-87.

³³⁶ *Above* para.72. *Contra* [REDACTED].

³³⁷ *Contra* [REDACTED].

³³⁸ [REDACTED].

³³⁹ Judgement, paras.350, 354.

³⁴⁰ [REDACTED]; C.Nielsen:T.17-18 (14-Nov-2017); [REDACTED]; [REDACTED].

³⁴¹ [REDACTED].

³⁴² [REDACTED].

³⁴³ [REDACTED].

³⁴⁴ D.Krsmanović:Exh.1D00384, para.55.

³⁴⁵ *E.g.* B.Bogunović:Exh.P02718, para.24; B.Bogunović:Exh.P02720, p.109 (T.6074); [REDACTED]; [REDACTED]; [REDACTED].

³⁴⁶ Exh.P02844, p.6; [REDACTED]; [REDACTED]; [REDACTED].

³⁴⁷ D.Krsmanović:Exh.1D00384, para.55. *See* [REDACTED]. *Also* [REDACTED]; RFJ-150:T.50 (24-May-2018); [REDACTED].

4. Simatović was aware of and consented to the training of the Group at Ležimir and Pajzoš

103. As developed above,³⁴⁸ having established that (i) Simatović had authority over the Unit and determined its use and deployment until at least mid-April 1992;³⁴⁹ (ii) only Stanišić and Simatović could give orders to the Unit, which operated under their command and control;³⁵⁰ (iii) Ležimir and Pajzoš operated as camps under the authority of Simatović at the relevant time;³⁵¹ (iv) Unit members trained the Group at Ležimir and Pajzoš;³⁵² (v) Simatović was present at both Ležimir and Pajzoš;³⁵³ and (vi) Simatović personally briefed the Group at Pajzoš on 10 April 1992 prior to its deployment to Bosanski Šamac,³⁵⁴ the Chamber reasonably concluded that Simatović—at a minimum—was aware of and consented to the training of the Group.³⁵⁵ Simatović fails to point to any evidence suggesting that no reasonable trier of fact could have reached this conclusion.³⁵⁶

104. In arguing that Simatović lacked the knowledge or abilities to train the Group, Simatović does not cite any evidence that would undermine the Chamber's findings, especially since the Chamber did not conclude that he personally conducted the training.³⁵⁷

H. Sub-ground 2(8): Simatović knew his acts would assist the commission of the crimes in Bosanski Šamac

105. The Chamber reasonably found that Simatović knew his acts—the training and deployment of the Group to Bosanski Šamac—would assist the commission of crimes there, and was aware of the essential elements of those crimes.³⁵⁸ In reaching this conclusion, the Chamber considered that the crimes committed in the Bosanski Šamac operation were not isolated incidents; rather they formed part of a pattern of crimes accompanying the takeover of territory by Serb forces in BiH.³⁵⁹ In addition, it considered that Simatović was undoubtedly aware of the ongoing campaign to expel the non-Serb population from Croatia

³⁴⁸ Above sub-grounds 1(4), 1(5), 1(10), paras.18-20; sub-ground 2(2), paras.59-64; sub-ground 2(3), paras.65-73; sub-ground 2(4), paras.74-78; sub-ground 2(5), paras.79-87; sub-ground 2(7), paras.91-104. Also below para.106.

³⁴⁹ Judgement, paras.388, 405.

³⁵⁰ Judgement, para.405. Also Exh.P00260, pp.31-32.

³⁵¹ Judgement, para.409.

³⁵² Judgement, paras.214, 407, 409, 416, 418-419, 436, 590, 597, 605, 621.

³⁵³ Judgement, paras.209, 417.

³⁵⁴ Judgement, para.409.

³⁵⁵ Judgement, para.418. Also Judgement, para.409.

³⁵⁶ Simatović-AB, paras.148, 164.

³⁵⁷ Contra Simatović-AB, para.156.

³⁵⁸ Judgement, para.606.

³⁵⁹ Judgement, para.606.

and large parts of BiH, including Bosanski Šamac, and of the shared intent of the JCE members.³⁶⁰ The only reasonable inference based thereon was that Simatović knew, in training and then deploying the Group to Bosanski Šamac, he would be assisting in the commission of crimes there.³⁶¹

106. Simatović fails to show error—whether in fact or in law—with the Chamber’s finding that he was aware that, in allowing the use of his camps at Pajzoš and Ležimir, and Unit trainers, he would be supporting the commission of crimes.³⁶² The Chamber reasonably found that Simatović had authority over the camps at Pajzoš and Ležimir, and over the Unit.³⁶³ Simatović fails to show that, based on that authority, no reasonable trier of fact could conclude that he would have been aware of and consented to the use of Unit members as trainers, and the use of the camps for trainings.³⁶⁴ This was not speculation, as Simatović claims.³⁶⁵

107. Mladić’s notes from a meeting with Todorović on 7 December 1992 do not contradict that conclusion.³⁶⁶

- First, the Chamber took into account that the JNA took part in the organisation of the training and that men were deployed to Bosanski Šamac in JNA helicopters.³⁶⁷ In any event, the entry does not demonstrate that Todorović agreed to the training of the Bosanski Šamac locals with JNA General Bajić and Colonel Jeremić.³⁶⁸ This entry merely records that Todorović “used to know” Bajić and Jeremić.³⁶⁹
- Second, Simatović argues that since Mladić noted that, according to Todorović, 18 men went to Ilok for training, they did not go to Pajzoš or Ležimir.³⁷⁰ He ignores that Pajzoš is in fact “in the surroundings of Ilok”.³⁷¹

³⁶⁰ Judgement, para.607. *Also* Judgement, para.589.

³⁶¹ Judgement, para.607. Simatović’s argument that “a group of 50 volunteers” could not play a significant role given the Serb forces numbered 6,700 is addressed in sub-ground 2(12), *below* paras.129-130. *See* Simatović-AB, para.178. *Also* Judgement, para.605).

³⁶² *Contra* Simatović-AB, paras.165, 167. Judgement, para.418.

³⁶³ *Above* paras.18-20, 93-97. *Contra* Simatović-AB, paras.166, 174.

³⁶⁴ Judgement, para.418. *Contra* Simatović-AB, paras.176-177. *Also below* sub-ground 2(12), paras.125-139.

³⁶⁵ Simatović-AB, para.175.

³⁶⁶ *Contra* Simatović-AB, paras.168-171, 176. Simatović’s impermissible reference to arguments in his Final Trial Brief should be disregarded. Simatović-AB, para.176. *See Hadžihasanović* AJ, para.46.

³⁶⁷ Judgement, para.418. *See* Simatović-AB, paras.168-169.

³⁶⁸ *Contra* Simatović-AB, para.169.

³⁶⁹ Exh.P01938, pp.256-257.

³⁷⁰ Simatović-AB, para.169.

- Third, that Mladić's notes suggest that Todorović only referred to two Unit members by name—Crni and Vuk—in the context of the Bosanski Šamac deployment does not mean those were the *only* Unit members present, nor does referring to them as SMUP members mean they were not members of the SerbianDB.³⁷² This is particularly so given Todorović [REDACTED].³⁷³
- Finally, that Todorović referred to the 30 men from Serbia as “volunteers” and not SerbianDB members³⁷⁴ is in line with the Chamber's finding that “a group of volunteers” from Serbia received training by Unit members and was deployed to Bosanski Šamac.³⁷⁵ That they later became Unit members³⁷⁶ does not preclude that they were volunteers.³⁷⁷

108. Contrary to Simatović's contention, the lack of footnotes does not mean the Chamber was “engaged in speculation” when it stated that Simatović (and Stanišić) had authority over the Unit and the Pajzoš and Ležimir camps.³⁷⁸ It was simply referring to findings made earlier in the Judgement.³⁷⁹ Likewise, what the Chamber considers the “context of the conflict at the time” is not “completely unclear”,³⁸⁰ but set out elsewhere in the Judgement,³⁸¹ as is the finding that Simatović was aware of this context.³⁸² As a judgement must be read as a whole,³⁸³ Simatović again fails to show error with the Chamber's conclusion.

³⁷¹ Exh.P00846, p.3. *Also above* para.68.

³⁷² *Contra* Simatović-AB, para.171. Affiliation with the SerbianDB was often kept secret. *See* [REDACTED]; [REDACTED].

³⁷³ *Above* [REDACTED].

³⁷⁴ Simatović-AB, para.170.

³⁷⁵ Judgement, paras.407, 416-417.

³⁷⁶ Judgement, para.416.

³⁷⁷ *Below* para.112.

³⁷⁸ *Contra* Simatović-AB, paras.173-174. Judgement, para.418.

³⁷⁹ Judgement, paras.388, 405, 409.

³⁸⁰ *Contra* Simatović-AB, para.179.

³⁸¹ Judgement, paras.285, 379.

³⁸² Judgement, paras.589, 594. *Contra* Simatović-AB, para.180.

³⁸³ *Mladić* AJ, para.258; *Karadžić* AJ, para.563; *Stanišić & Župljanin* AJ, para.138.

I. Sub-grounds 2(9) and 2(10): The group of former SAO-SBWS police was incorporated into the Unit and deployed by Simatović to Bosanski Šamac

1. The group of former SAO-SBWS police was incorporated into the Unit

109. The Chamber found that a group of former SAO-SBWS police, including Debeli, Lugar and RFJ-035, was incorporated into the Unit during³⁸⁴ their training at Ležimir and Pajzoš.³⁸⁵ Simatović fails to show that no reasonable trier of fact could have reached this conclusion.

110. Simatović relitigates trial arguments,³⁸⁶ which were considered and rejected by the Chamber,³⁸⁷ and substitutes his interpretation of the evidence for that of the Chamber without showing how the Chamber erred.

111. In concluding that Debeli, Lugar, RFJ-035 and their contingent of former SAO-SBWS police were incorporated into the Unit during their training at Ležimir and Pajzoš,³⁸⁸ the Chamber reasonably relied upon the corroborative accounts of RFJ-035, Todorović,³⁸⁹ and victims of the Bosanski Šamac operation, supported by documentary evidence.³⁹⁰

- RFJ-035 gave evidence that in around March 1992, Debeli [REDACTED] some 30 SAO-SBWS police, including Lugar, to report to Ležimir for training to prepare for operational duties in BiH.³⁹¹ He stated that during the course of his training, first at Ležimir then at Pajzoš, he and his cohort [REDACTED].³⁹² They also received camouflage uniforms and wolf patches, akin to those worn by [REDACTED] and

³⁸⁴ Although the Chamber finds at paragraph 419 that Debeli, Lugar, RFJ-035 and their contingent of former SAO-SBWS police were incorporated into the Unit “following” their training at Ležimir and Pajzoš, its conclusion that they were incorporated into the Unit “in March 1992” supports that they became Unit members “during” their training (which did not conclude until 10 April 1992). The underlying evidence supports this conclusion. *See* Judgement, para.416 *citing inter alia* [REDACTED]; [REDACTED]; [REDACTED]. *Also* [REDACTED]; [REDACTED].

³⁸⁵ Judgement, paras.416-417, 419, 424. *Also* Judgement, para.605.

³⁸⁶ *See* Simatović-AB, paras.183-185, 187-188, 196, 198-206; [REDACTED].

³⁸⁷ *E.g.* Judgement, paras.205, 413, 419.

³⁸⁸ Judgement, paras.209-211, 216, 218, 223, 227, 416-417, 419, 424 *and evidence cited therein*.

³⁸⁹ *Above* paras.44-58.

³⁹⁰ *Contra* Simatović-AB, paras.198-199, 201.

³⁹¹ *See* Judgement, paras.211, 407, 416 *citing inter alia* RFJ-035:Exh.P02026, paras.21, 25, 28-29 (confidential); RFJ-035:T.49 (17-Apr-2017) (confidential). *Also* [REDACTED]; Exh.P02047.

³⁹² *See* Judgement, para.416 *citing inter alia* RFJ-035:Exh.P02028, pp. 69-70 (T.7671-7672) (confidential); RFJ-035:T.65 (19-Apr-2018) (confidential); RFJ-035:T.10 (17-Apr-2018) (confidential). *Also* [REDACTED]; [REDACTED].

Simatović.³⁹³ RFJ-035 testified that following their deployment to Batkuša, his group of Red Berets was under the immediate command of Debeli, and his superior, Crni, both of whom reported to Simatović.³⁹⁴

- Todorović testified that on 11 April 1992, members of the special Unit of the SerbianDB came to the municipality of Bosanski Šamac by helicopter, [REDACTED].³⁹⁵ He identified Debeli, Lugar, Laki, Tralja, [REDACTED], in addition to Vuk, as members of this group, which was commanded by Crni.³⁹⁶ Todorović specifically confirmed that Crni and Lugar were members of the Special Unit of the SerbianDB.³⁹⁷
- Detainees in Bosanski Šamac described their captors as “Red Berets”, “specials” or “Grey Wolves”, and identified them by nicknames including Crni—the overall commander of the “special units”³⁹⁸—Lugar, Laki, Beli, and Avram.³⁹⁹ One witness testified that these “Red Berets” had landed in Batkuša via JNA helicopter around the beginning of April 1992.⁴⁰⁰

112. The Chamber was mindful that Unit member Crni,⁴⁰¹ Debeli, Lugar and RFJ-035 had close affiliations with the SRS and its War Staff, citing the evidence upon which Simatović

³⁹³ See Judgement, paras.416-417 *citing inter alia* RFJ-035:Exh.P02028, pp.21, 23 (T.7623, 7625) (confidential); RFJ-035:Exh.P02026, para.30 (confidential); RFJ-035:T.11-12, 59-60 (17-Apr-2018) (confidential); RFJ-035:T.60-61 (19-Apr-2018) (confidential). *Also* [REDACTED]; [REDACTED]; Exh.P02942.

³⁹⁴ See Judgement, paras.209, 211 *citing inter alia* RFJ-035:Exh.P02028, pp.10, 25-26, 30 (T.7612, 7627-7628, 7632) (confidential); RFJ-035:Exh.P02027, para.8 (confidential); RFJ-035:Exh.P02026, paras.32, 34 (confidential); RFJ-035:T.21(18-Apr-2018) (confidential); RFJ-035:Exh.P02029, para.11 (confidential). *Also* [REDACTED].

³⁹⁵ See Judgement, paras.209, 211, 417 *citing inter alia* S.Todorović:Exh.P01916, pp.19-20, 44 (T.23441-23442, 23466) (confidential).

³⁹⁶ See Judgement, paras.209, 211 *citing inter alia* S.Todorović:Exh.P01916, pp.3-4, 19-21 (T.23425-23426, 23441-23443) (confidential); Exh.P01922 (confidential). *Also* [REDACTED]. Other evidence shows that Crni and Vuk became Unit members prior to March 1992. *See* Exhs.P00845, pp.14-15, 18 (Dragan Đorđević (Crni) joined the Unit on 5 October 1991); P02850, pp.1,4 (Aleksandar Vuković (Vuk) joined the Unit on 5 February 1992).

³⁹⁷ Judgement, para.211 *citing inter alia* S.Todorović:Exh.P01916, pp.3-4 (T.23425-23426) (confidential). *Also* [REDACTED].

³⁹⁸ See Judgement, para.223 *citing inter alia* S.Tihić:Exh.P01868, p.11 (T.29889) (confidential); S.Tihić:Exh.P01869, pp.27, 29, 42-43 (T.3120, 3122, 3135-3136) (confidential).

³⁹⁹ See Judgement, paras.210, 223 *citing inter alia* RFJ-125:T.8-9 (1-Mar-2018) (confidential); S.Tihić:Exh.P01869, pp.26-29, 106-107 (T.3119-3122, 3199-3200) (confidential); S.Tihić:Exh.P01868, pp.5-6 (T.29883-29884) (confidential). *Also* [REDACTED]; D.Lukač:Exh.P02731, pp.26-27; D.Lukač:Exh.P02732, pp.159-160, 240 (T.1695-1696, 1776).

⁴⁰⁰ See Judgement, para.209 *citing inter alia* [REDACTED]; [REDACTED]. *Also* S.Tihić:Exh.P01865, p.6 (confidential).

⁴⁰¹ See Judgement, paras.211-212.

now relies on appeal.⁴⁰² However, the Chamber reasonably concluded that this did not call into question their affiliation with the Unit at the time of their deployment.⁴⁰³ That Debeli, Lugar and RFJ-035 were [REDACTED] is irrelevant to the Chamber's conclusion that they were Unit members at the time of their deployment to Bosanski Šamac in April 1992.⁴⁰⁴ Further, that Debeli, Lugar and RFJ-035 maintained associations with the political party and/or its leaders, does not preclude their Unit membership.⁴⁰⁵ As Simatović Defence witness Petar Đukić testified, Debeli and his group were not under any sort of moral imperative to receive and follow orders from the SRS.⁴⁰⁶ Further, issuing military promotions was not within the competence of the SRS.⁴⁰⁷ As such, any promotion or appointment issued by the SRS in response to Debeli's letter of recommendation would have had no impact on the status of Debeli's men as Unit members.⁴⁰⁸

113. The Chamber was also mindful of Simatović's argument that Lugar could not have been a member of the Unit because he was "the subject of processing" by the SerbianDB, citing to the paragraph of Simatović's Final Trial Brief in which he made this argument that he now repeats on appeal.⁴⁰⁹ The Chamber's conclusions, and evidence on the record, confirm that the SerbianDB regularly investigated its own agents and collaborators.⁴¹⁰ Simatović fails to show that the SerbianDB's processing of Lugar, [REDACTED], undermines the Chamber's conclusion that Lugar was a Unit member in April 1992.⁴¹¹

114. An interview report by SerbianDB officials, dated 20 July 1993, records Lugar stating that [REDACTED] he received a salary from the SMUP for a period during his deployment. This supports the Chamber's conclusion that Lugar was a Unit member.⁴¹² [REDACTED].⁴¹³

115. Simatović's assertion that Debeli and "members of the SRS volunteer Detachment" were members of a unit known as the "Grey Wolves" further supports the Chamber's

⁴⁰² Judgement, para.419. *Also* Judgement, paras.413-414, fns.951-952, 956. *See* Simatović-AB, paras.183-185, 187-188, 196, 198-205.

⁴⁰³ Judgement, para.419.

⁴⁰⁴ *Contra* [REDACTED].

⁴⁰⁵ *Contra* Simatović-AB, paras.183-185, 188, 200-205. *E.g.* [REDACTED].

⁴⁰⁶ P.Đukić:T.20-21 (17-Dec-2019). *Contra* Simatović-AB, para.185 *citing* Exh.P01709. *Also* [REDACTED].

⁴⁰⁷ P.Đukić:T.19-20 (17-Dec-2019).

⁴⁰⁸ *See* Exh.P01709; P.Đukić:T.19-20 (17-Dec-2019).

⁴⁰⁹ Judgement, fn.933 *citing* Simatović-FTB, para.693 (confidential); Simatović-AB, paras.188, 202.

⁴¹⁰ *See* Judgement, para.400. *E.g.* C.Nielsen:T.40-41 (15-Nov-2017); D.Anastasijević:T.48-49 (14-Jun-2018); L.Ristić:T.13 (26-Jun-2019); M.Milošević:T.20-22 (19-Feb-2020). *Also* [REDACTED].

⁴¹¹ *Contra* [REDACTED]. *See* [REDACTED].

⁴¹² *See* Judgement, para.421 *citing* [REDACTED]. *Also* C.Nielsen:T.50 (15-Nov-2015) (confidential).

⁴¹³ [REDACTED].

conclusion that they were, in fact, Unit members.⁴¹⁴ Unit members in Bosanski Šamac were distinguished by patches bearing wolf insignia, and were known colloquially as the “Grey Wolves”.⁴¹⁵ That Todorović could not specifically recall whether he saw members of the Group wearing wolf patches when he visited Pajzoš is not decisive.⁴¹⁶ The record shows that the Unit and the Grey Wolves were one and the same unit, as illustrated by: (i) the testimony of Todorović⁴¹⁷ and [REDACTED] RFJ-035⁴¹⁸ [REDACTED];⁴¹⁹ (ii) the fact that Simatović and [REDACTED] wore camouflage uniforms bearing wolf insignia that were the same as, or similar to, that worn by Unit members deployed to Bosanski Šamac;⁴²⁰ and (iii) the fact that grey wolf heads were used to mark the locations of Unit camps on a topographical map in the SerbianDB’s Kostić centre.⁴²¹

116. Witness evidence relied upon by Simatović does not undermine the Chamber’s well-supported conclusions that Debeli, Lugar, RFJ-035 and their contingent of SAO-SBWS police were incorporated into the Unit. Simatović fails to show why [REDACTED], who believed that Lugar and Debeli were members of “Šešelj’s unit”, would be in a position to conclusively know the true affiliations of [REDACTED].⁴²² Similarly, Simatović fails to demonstrate that any adverse inference should be drawn from Đukić’s testimony that Debeli did not mention any association with the SerbianDB during the course of their two conversations.⁴²³ Indeed, the evidence shows that the SerbianDB actively sought to conceal its affiliation with the Unit, [REDACTED],⁴²⁴ and [REDACTED].⁴²⁵

117. Finally, the documents to which Simatović points,⁴²⁶ also fail to demonstrate that no reasonable trier of fact could have concluded that Debeli, Lugar, RFJ-035 and their contingent of SAO-SBWS police were integrated into the Unit prior to their deployment to Bosanski Šamac:

⁴¹⁴ Simatović-AB, paras.193-195 *citing* Exh.P02032, p.2. *See* Judgement, para.210 *and evidence cited therein*.

⁴¹⁵ Exhs.P00780; P00254; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; D.Anastasijević:T.18 (21-Jun-2018). *Also* Exh.P02032, p.2; AF1064.

⁴¹⁶ *Contra* Simatović-AB, para.194 *citing* S.Todorović:Exh.P01916, p.17 (T.23439) (confidential).

⁴¹⁷ [REDACTED].

⁴¹⁸ [REDACTED]; [REDACTED]; [REDACTED].

⁴¹⁹ [REDACTED].

⁴²⁰ Exh.P02942; [REDACTED]; [REDACTED]; [REDACTED].

⁴²¹ Exh.P00537, *e.g.* timecode 00:00:31 (marking Ozren and Dobo), 00:01:03 (marking Golubić and Knin). *Also* Exh.P00256 (00:20:43-00:20:49) (Video of Kostić Centre Ceremony, depicting Stanišić showing Milošević locations of training camps, marked with wolf heads).

⁴²² *Contra* Simatović-AB, paras. [REDACTED] 205.

⁴²³ *Contra* Simatović-AB, para.184. *See* [REDACTED].

⁴²⁴ [REDACTED]; [REDACTED]; [REDACTED].

⁴²⁵ [REDACTED].

- First, there is no dispute that Lugar was a volunteer in the SAO-SBWS TO/police, as confirmed in a certificate dated 13 December 1991, *prior* to training at Ležimir and Pajzoš in March and April 1992 and joining the Unit.⁴²⁷
- Second, Dušan Jovičić's Captain Dragan Fund file—which indicates that he joined the Posavina Brigade as a reservist on 5 April 1992 in Bosanski Šamac under Debeli—is not determinative of Debeli's Unit membership.⁴²⁸ Following the withdrawal of the JNA from the area, Crni was appointed commander of the Posavina Brigade and Debeli served as its chief of staff.⁴²⁹ That Debeli was described as commander of the Posavina Brigade at the time Jovičić completed his application on 12 August 1992,⁴³⁰ is not inconsistent with the Chamber's conclusion that Debeli was a Unit member prior to his deployment to Bosanski Šamac on 11 April 1992 (before the Posavina Brigade even came into existence).
- Third, [REDACTED].⁴³¹ In any event, Simatović's conviction rests on the Chamber's conclusion that Lugar, Debeli and RFJ-035 were Unit members under the authority of the Accused *prior to their deployment* on 11 April 1992.⁴³²
- Fourth, an unattributed typewritten annotation on a Belgrade daily newspaper article, dated 25 November 1992, which refers to Crni and Lugar as "Chetnik bandits", does not preclude the Chamber's conclusion that they were Unit members.⁴³³ In fact, the article indicates that Crni claimed that he and his men were "backed" by some "high officials" in the SMUP.⁴³⁴
- Fifth, as set out above, that Mladić's handwritten notes suggest that Todorović only named two Unit members—Crni and Vuk—concerning the Bosanski Šamac deployment, is not determinative.⁴³⁵ Contrary to Simatović's suggestion,⁴³⁶ notes

⁴²⁶ See Simatović-AB, paras.182, 188-191 *citing* Exhs.P01938; P02040; P02761; [REDACTED]; P02047; 2D00164.

⁴²⁷ *Contra* Simatović-AB, para.190 *citing* Exh.P02047. See Judgement, paras.407, 416. Also Exh.P02040, p.1.

⁴²⁸ *Contra* Simatović-AB, paras.191-192 *citing* Exh.2D00164, p.2.

⁴²⁹ Judgement, para.422, fn.972.

⁴³⁰ Exh.2D00164, p.2.

⁴³¹ *Contra* [REDACTED] *citing* [REDACTED].

⁴³² Judgement, para.419.

⁴³³ *Contra* Simatović-AB, para.189 *citing* Exh.P02761, p.3 (BCS, p.1).

⁴³⁴ Exh.P02761, p.2.

⁴³⁵ *Above* para.107. *Contra* Simatović-AB, para.182.

⁴³⁶ *Contra* Simatović-AB, para.182.

taken by a third party, during an informal conversation with Todorović, are not more reliable and probative than Todorović's subsequent testimony when specifically questioned on the subject.⁴³⁷

- Finally, the fact that Lugar did not mention in an undated letter to the SerbianDB that he was a Unit member—just as he did not mention that he was previously an SRS volunteer, or a member of the SAO-SBWS TO or police—is not decisive.⁴³⁸ In fact, that Lugar wrote to the SerbianDB noting that it had “warned” him, and requested the SerbianDB's assistance, supports the Chamber's conclusion that he was a Unit member.⁴³⁹

2. Simatović deployed the Group to Bosanski Šamac

118. Simatović fails to show that no reasonable trier of fact could have concluded that Simatović deployed the Group to Bosanski Šamac.⁴⁴⁰

119. The Chamber's conclusion that Simatović deployed the Group to Bosanski Šamac is well reasoned and based on the Chamber's findings that:⁴⁴¹

- The Group deployed to Bosanski Šamac was a “significant contingent”,⁴⁴² comprised of some 30 Unit members and 20 Bosanski Šamac locals;⁴⁴³
- At the time of the deployment on 11 April 1992, Simatović had authority over the Unit and determined its use and deployment;⁴⁴⁴
- Members of the Unit could not participate in combat operations without the approval of Simatović;⁴⁴⁵
- Immediately prior to its deployment, the Group was trained by Unit members⁴⁴⁶ under Simatović's authority⁴⁴⁷ at Ležimir and Pajzoš, which were camps under Simatović's authority;⁴⁴⁸

⁴³⁷ Above para.110.

⁴³⁸ *Contra* Simatović-AB, para.188 *citing* Exh.P02040.

⁴³⁹ Exh.P02040, p.2.

⁴⁴⁰ Judgement, paras.419, 590, 597, 605, 621. *Below* paras.140-145.

⁴⁴¹ Judgement, paras.419, 590.

⁴⁴² Judgement, para.419.

⁴⁴³ Judgement, paras.209, 214, 218, 407, 416-417, 419, 590. *Above* paras.60-61, 74-89, 109-117.

⁴⁴⁴ Judgement, paras.388, 419. *Above* paras.18-20, 93-96.

⁴⁴⁵ Judgement, para.419.

- Simatović personally briefed the Group at Pajzoš on 10 April 1992 and informed the Group of its deployment;⁴⁴⁹
- The Group deployed to Batkuša from Pajzoš, via an airstrip at Ležimir on 11 April 1992, the day after Simatović had briefed the Group at Pajzoš;⁴⁵⁰ and
- The Group deployed under the direct command of Debeli, and his superior, Crni,⁴⁵¹ both of whom were Unit members.⁴⁵²

120. On the basis of the foregoing factors considered by the Chamber, Simatović fails to show that no reasonable trier of fact could have concluded that Simatović deployed to Bosanski Šamac not only the Unit members, but also the Bosanski Šamac locals. The locals were trained by Unit members at Pajzoš,⁴⁵³ briefed by Simatović,⁴⁵⁴ deployed together with Unit members to Bosanski Šamac,⁴⁵⁵ and they participated together with Unit members under Unit member Crni in the Bosanski Šamac operation.⁴⁵⁶ Simatović's *ad hoc* deployment of trained locals, not formally incorporated into the Unit, commanded by and in partnership with the Unit, is consistent with events in other municipalities in BiH.⁴⁵⁷

⁴⁴⁶ Judgement, paras.214, 407, 409, 416, 418-419, 436, 590, 597, 605, 621.

⁴⁴⁷ Judgement, paras.388, 419. *Above* paras.18-20, 93-96.

⁴⁴⁸ Judgement, paras.409, 419. *Above* sub-ground 2(3), paras.65-73; sub-ground 2(4), paras.74-78; sub-ground 2(5), paras.79-87, 96-104.

⁴⁴⁹ Judgement, paras.209, 417, 419. *Above* paras.59-64.

⁴⁵⁰ Judgement, paras.209, 417, 419.

⁴⁵¹ Judgement, paras.209, 211, 218, 223, 590, 604. *Above* sub-ground 2(9), paras.109-117. While at paragraphs 209 and 218 of the Judgement, the Chamber referred to Crni as being in command of the group of 30 men from Serbia only, the Chamber's findings at paragraphs 590 and 604 and the evidence of Stevan Todorović relied upon by the Chamber at paragraph 209, footnote 943 of the Judgement show that Crni was in command of both the 30 men from Serbia and the approximately 20 locals from Bosanski Šamac. *See* [REDACTED]. *Also* [REDACTED] *cited at* Judgement, para.209.

⁴⁵² Judgement, paras.388, 405, 407, 416. *Above* sub-grounds 1(4), 1(5), 1(10), paras.18-20; paras.93-96.

⁴⁵³ *Above* para.78, fn.292.

⁴⁵⁴ Judgement, paras.209, 417.

⁴⁵⁵ Judgement, paras.209, 417.

⁴⁵⁶ While at paragraphs 209 and 218 of the Judgement the Chamber referred to Crni as being in command of the group of 30 men from Serbia only, the Chamber's findings at paragraphs 590 and 604 and the evidence of Stevan Todorović relied upon by the Chamber at paragraph 209, footnote 243, of the Judgement, show that Crni was in command of both the 30 men from Serbia and the approximately 20 locals from Bosanski Šamac. *See* [REDACTED]. *Also* [REDACTED] *cited at* Judgement, para.209.

⁴⁵⁷ *E.g.*

Brčko: The Božić brothers and other Unit members trained local Serbs and formed a "special unit", which participated along with Arkan's SDG and other paramilitaries in the takeover of the town and targeted the non-Serb population. *See* Judgement, fn.47 (naming Rade Božić as a "future Unit member"); [REDACTED]; [REDACTED]; Exhs.1D00034, pp.2-3; 1D00067, pp.6-7; R.Theunens:Exh.P01980, p.486; Exhs.2D00157, pp.2, 4; P03149, pp.3-5; P03149, p.3; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

121. Contrary to Simatović's assertion, the evidence of RFJ-137⁴⁵⁸ is not the sole basis for the Chamber's conclusion that Simatović deployed the Group to Bosanski Šamac.⁴⁵⁹ Rather, it substantiates the Chamber's related findings in respect of the Group's training,⁴⁶⁰ briefing,⁴⁶¹ deployment,⁴⁶² and field command,⁴⁶³ which are supported by additional witness and documentary evidence.⁴⁶⁴ In particular, RFJ-035 gave evidence of [REDACTED].⁴⁶⁵ According to RFJ-035:

[REDACTED].⁴⁶⁶

122. Further, although RFJ-137 [REDACTED],⁴⁶⁷ the Chamber was entitled to rely on his evidence that members of the Unit could not participate in combat operations without the approval of the Accused at the time of the deployment to Bosanski Šamac, [REDACTED] in April 1992.⁴⁶⁸ Simatović fails to point to any evidence suggesting that this position might have changed in this short period of time.⁴⁶⁹ That RFJ-137 was the sole source cited by the Chamber for this conclusion does not render it unreasonable,⁴⁷⁰ particularly given it was consistent with other evidence and [REDACTED],⁴⁷¹ and [REDACTED].⁴⁷²

Doboj: On 3 May 1992, local Doboj volunteers trained at Mt. Ozren and Vila camps and under Unit member Božović's command, along with other Serb forces, attacked Doboj and took over the town. *See* Judgement, para.428. *Also* [REDACTED]; [REDACTED]; RFJ-165:T.17 (29-May-2018); [REDACTED]; [REDACTED].

Podrinje Operations: On Simatović's instruction, the Unit established training camps in Skelani and Bratunac in eastern BiH, where it trained locals and who then participated in ethnic cleansing operations under Unit members' command. Božović commanded Skelani locals in operations Mijović and Unit members under his command established a training camp in Bratunac, where they trained men from the area, integrated them into a subordinate unit financed by the SerbianDB, and led them in ethnic cleansing operations in the Bratunac area. *See* Exhs.P03243; P01949, p.1; P03543, p.4; R.Theunens:Exh.P01980, p.520, 527-528; M.Deronjić:Exh.P01717, paras.137, 147-149; R.Theunens:T.20 (16-Mar-2018); Exhs.1D00103, p.1; 2D00833, para.2; 1D00070, p.2; P03621, p.2; P01946, p.1-2; P03615, p.2; P01942, p.2.

⁴⁵⁸ Above paras.44-47, 54-58.

⁴⁵⁹ *Contra* Simatović-AB, paras.206-216.

⁴⁶⁰ Judgement, paras.214, 407, 409, 416, 418-419, 436, 590, 597, 605, 621 *citing inter alia* the evidence of Todorović and RFJ-035.

⁴⁶¹ Judgement, paras.209, 417, 419 *citing inter alia* the evidence of RFJ-035.

⁴⁶² Judgement, paras.209, 417, 419 *citing inter alia* the evidence of Todorović and RFJ-035.

⁴⁶³ Judgement, paras.209, 211, 218, 223, 604, 590 *citing inter alia* the evidence of Todorović and RFJ-035.

⁴⁶⁴ *E.g.* Judgement, paras.209, 417, 419 *citing inter alia* the evidence of RFJ-035 and Stevan Todorović.

⁴⁶⁵ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁴⁶⁶ [REDACTED]. *Also* [REDACTED].

⁴⁶⁷ *See* Simatović-AB, paras.210-213 *citing* [REDACTED].

⁴⁶⁸ Judgement, para.419. *Contra* Simatović-AB, paras.207-216.

⁴⁶⁹ *See* Simatović-AB, paras.206-216.

⁴⁷⁰ *See* Haradinaj AJ, para.219 *citing* Kupreškić AJ, para.33; Tadić AJ, para.65; Aleksovski AJ, para.62; Čelebići AJ, paras.492, 506.

⁴⁷¹ [REDACTED].

⁴⁷² [REDACTED].

J. Sub-ground 2(11): The Chamber properly considered the Crni Request and the Lugar Report

123. The Chamber was not convinced that Simatović directed or had command and control over the members of the Unit in the course of the operations or the commission of crimes in Bosanski Šamac.⁴⁷³ In reaching this conclusion, the Chamber was mindful of evidence, including:

- Todorović’s testimony that Simatović requested a written report from Crni following the Bosanski Šamac operation (“Crni Request”);⁴⁷⁴ and
- A SMUP report, dated 20 July 1993, detailing an interview with Lugar in which he stated he had been paid by the SMUP during his deployment (“Lugar Report”).⁴⁷⁵

124. Simatović fails to demonstrate that the Chamber’s consideration of the Crni Request and Lugar Report—which informed its conclusion that he did *not* direct or have command and control over the Unit during the Bosanski Šamac operation—had any impact on his conviction for organising the training of the Group and its subsequent deployment to Bosanski Šamac.⁴⁷⁶ Simatović’s misconceived arguments⁴⁷⁷ should be summarily dismissed.⁴⁷⁸

K. Sub-ground 2(12): The training and deployment of the Group to Bosanski Šamac provided practical assistance which had a substantial effect on the commission of the crimes there

125. The Chamber reasonably found that the training of the Group at Ležimir⁴⁷⁹ and/or Pajzoš and its subsequent deployment to Bosanski Šamac provided practical assistance which had a substantial effect on the commission of the crimes there.⁴⁸⁰ Simatović “strongly opposes” the Chamber’s finding but fails to articulate any error.

⁴⁷³ Judgement, paras.424, 621. *Also* Judgement, paras.421, 423.

⁴⁷⁴ Judgement, para.421 *citing* S.Todorović:Exh.P01916, pp.39-40 (T.23461-23462) (confidential); S.Todorović:Exh.P01922 (confidential). *See* Simatović-AB, paras.217-232, 235. The Chamber viewed this evidence with caution. *See* Judgement, para.423.

⁴⁷⁵ Judgement, para.421 *citing* Exh.P00847, p.1 (confidential). *See* Simatović-AB, paras.233-235.

⁴⁷⁶ Judgement, paras.590, 597, 605, 621. *Contra* Simatović-AB, paras.217-235.

⁴⁷⁷ *See* Simatović-AB, paras.217-235.

⁴⁷⁸ *Dordević* AJ, para.20(i), (iii); *Prlić* AJ, paras.2501, 2562, 2594.

⁴⁷⁹ *Above* fn.292.

⁴⁸⁰ Judgement, paras.424, 605. *Contra* Simatović-AB, paras.236-247.

1. The Chamber reasonably found Simatović responsible for aiding and abetting the crimes committed in Bosanski Šamac

126. Simatović fails to show that the Chamber’s finding that he aided and abetted the crimes in Bosanski Šamac was unreasonable. That the Group “[did] not represent a substantial force” does not preclude a finding that Simatović’s acts provided practical assistance, which had a substantial effect on the commission of the crimes by Serb forces in Bosanski Šamac.⁴⁸¹

127. Whether conduct amounts to substantial contribution to a crime is a fact-based inquiry.⁴⁸² In this fact-based inquiry, the Chamber considered that:

- Simatović exercised authority over the Unit and determined its use and deployment until at least mid-April 1992.⁴⁸³
- Simatović exercised authority over the Ležimir and Pajzoš camps until at least March/April 1992 and thus directed, authorised and financially and logistically supported the training conducted at both camps.⁴⁸⁴
- Simatović trained the Group—through Unit members under his authority—at the Ležimir and/or Pajzoš camps (including “special” training) from the end of March 1992.⁴⁸⁵
- Simatović incorporated the group of former SAO-SBWS police (including Debeli, Lugar and RFJ-035) into the Unit during its training at Ležimir and Pajzoš.⁴⁸⁶
- Simatović deployed the Group to participate in the Bosanski Šamac takeover operation where they played a “significant” role⁴⁸⁷ under the command of Unit member Crni.⁴⁸⁸ According to the evidence, Crni also gave orders to other forces,

⁴⁸¹ See *Blagojević* AJ, para.134. *Contra* Simatović-AB, paras.244-247.

⁴⁸² *Nyiramasuhuko* AJ, para.3332; *Popović* AJ, para.1741; *Blagojević* AJ, para.134. *Contra* Simatović-AB, paras.244-247.

⁴⁸³ Judgement, paras.388, 405.

⁴⁸⁴ Judgement, para.409.

⁴⁸⁵ Judgement, paras.418-419. *Also* Judgement, paras.407, 416. *Above* para.73.

⁴⁸⁶ Judgement, para.419. *Also* Judgement, para.416. *Above* fn.384.

⁴⁸⁷ Judgement, para.216.

⁴⁸⁸ Judgement, para.419. *Also* Judgement, paras.209, 211, 417, 590, 604. *Above* fn.451.

including JNA members,⁴⁸⁹ and Unit member Debeli commanded several JNA squads.⁴⁹⁰

- The 30 members of Crni's Group from Serbia were known in Bosanski Šamac to be elite or special forces, "masters of life and death", of whom even local Serbs and troops were afraid.⁴⁹¹
- Crni's leading role is also evidenced in his regular meetings with Blagoje Simić (President of the Bosanski Šamac Crisis Staff),⁴⁹² and Todorović (Chief of police in Bosanski Šamac after the takeover),⁴⁹³ also attended by Lugar.⁴⁹⁴ Crni further attended the 15 April 1992 meeting during which the takeover of Bosanski Šamac was discussed.⁴⁹⁵
- During the Bosanski Šamac operation, members of the Group and other Serb forces committed murder, persecution and forcible displacement against non-Serbs.⁴⁹⁶
- In detention, non-Serbs were murdered, and abused—beaten and tortured and forced to engage in sexual acts.⁴⁹⁷ The mistreatment was carried out "mostly" by the 30 Group members from Serbia, including Crni and Lugar.⁴⁹⁸ Crni issued orders to his own men and others, including JNA members.⁴⁹⁹ The Crkvina massacre—which the Chamber found "st[ood] out with its brutality"⁵⁰⁰—during which non-Serbs were beaten and killed, was also carried out by Unit members.⁵⁰¹

128. In light of these findings and evidence, Simatović fails to show that no reasonable trier of fact could have reached the conclusion that Simatović's conduct, in its entirety,⁵⁰² had

⁴⁸⁹ Judgement, para.223.

⁴⁹⁰ Judgement, para.216.

⁴⁹¹ Judgement, paras.209-210.

⁴⁹² Judgement, para.214.

⁴⁹³ Judgement, para.211.

⁴⁹⁴ Judgement, para.217.

⁴⁹⁵ Judgement, para.214.

⁴⁹⁶ Judgement, paras.229, 232-233. *Also* Judgement, paras.590, 604.

⁴⁹⁷ Judgement, para.222.

⁴⁹⁸ Judgement, paras.223-224.

⁴⁹⁹ Judgement, para.223.

⁵⁰⁰ Judgement, para.620.

⁵⁰¹ Judgement, para.229.

⁵⁰² *Popović* AJ, para.1804; *Šainović* AJ, para.1692; *Furundžija* AJ, para.126; *Blagojević* AJ, para.196; *Rukundo* AJ, paras.51-52.

a substantial effect on the commission of the crimes committed by Serb forces in Bosanski Šamac.⁵⁰³

129. The substantial effect of the training and deployment of the Group on the crimes committed does not hinge on the number of forces present in Bosanski Šamac during the operation.⁵⁰⁴ The Chamber considered and rejected this argument, made at trial, finding the role played by the Group in the takeover to be not “insignifican[t]”.⁵⁰⁵ As demonstrated above members of the Group not only committed crimes themselves, members of the Group also committed crimes together with other Serb forces, took on command roles and—through their brutality and notoriety—encouraged other Serb forces to commit, brutal crimes that forced the non-Serb population to flee. In doing so, the training and deployment of the Group had a substantial effect on the crimes committed by Serb forces in Bosanski Šamac, regardless of how many troops were present.

130. In any event, the Mladić diary entry to which Simatović refers does not prove that 6,700 JNA members were present in Bosanski Šamac during the takeover.⁵⁰⁶ The December 1992 entry⁵⁰⁷—“Everyon [*sic*] has been mobilised here”⁵⁰⁸—does not show they had been mobilised at the time of the Bosanski Šamac operation. If the subsequent reference to a “brigade” which left with 6,700 soldiers was to the Second Posavina Brigade, that brigade only came into existence after the takeover.⁵⁰⁹ Moreover, when the JNA 17th Tactical Group joined the Second Posavina Brigade in May 1992, Crni was appointed its commander.⁵¹⁰

2. Simatovic trained and deployed the Group to participate in the Bosanski Šamac operation

131. As set out above,⁵¹¹ Simatović fails to show that no reasonable trier of fact could have found that he trained and deployed the Group.

132. In arguing that he had no responsibility for training and deploying the Group, Simatović merely repeats trial arguments,⁵¹² which were considered by the Chamber,⁵¹³ and

⁵⁰³ Judgement, paras.424, 605.

⁵⁰⁴ *Contra* Simatović-AB, paras.244-247. *See* Blagojević AJ, para.134.

⁵⁰⁵ Judgement, fn.972 *citing* Simatović-FTB, paras.667, 669 (confidential).

⁵⁰⁶ *Contra* Simatović-AB, para.244.

⁵⁰⁷ Exh.P01938, p.253.

⁵⁰⁸ Exh.P01938, p.254.

⁵⁰⁹ Judgement, fn.972.

⁵¹⁰ Judgement, fn.972.

⁵¹¹ *Above* sub-ground 2(2), paras.59-64; sub-ground 2(4), paras.74-78; sub-ground 2(5), paras.79-87; sub-ground 2(7), paras.91-104; sub-ground 2(9)-2(10), paras.109-122.

⁵¹² Simatović-AB, paras.239-243; [REDACTED].

attempts to substitute his interpretation of the evidence for that of the Chamber, without showing how the Chamber erred.

133. In reaching its conclusion that Simatović trained and deployed the Group, the Chamber was mindful that the JNA and “officials in Belgrade” were involved in organising the training of the Bosanski Šamac locals at Pajzoš.⁵¹⁴ The “officials in Belgrade” to whom Simatović refers,⁵¹⁵ included Stanišić’s subordinate Milan Prodanić who was chief of the SerbianDB 8th Administration.⁵¹⁶ The Chamber however reasonably concluded that, in view of Stanišić’s and Simatović’s authority over the Unit and the Pajzoš training camp, they were aware of and consented to the training of the Bosanski Šamac locals by Unit members at Pajzoš.⁵¹⁷

134. The Chamber was further mindful that the JNA was involved in transporting the Group to Bosanski Šamac.⁵¹⁸ The Chamber however reasonably concluded that Stanišić and Simatović authorised the Group’s deployment in light of the evidence that the Unit could not participate in combat operations without their approval and given that the Group was a significant contingent, that they were briefed by Simatović personally prior to their departure, and that they departed from Pajzoš, a camp under Simatović’s authority.⁵¹⁹

135. In any event, the evidence Simatović highlights, does not show that no reasonable trial chamber could have found that Simatović trained and deployed the Group to assist in the Bosanski Šamac operation. As set out above:

- The Mladić diary entry to which Simatović refers does not contradict the Chamber’s conclusion.⁵²⁰
- Todorović’s evidence that [REDACTED] does not support Simatović’s argument.⁵²¹

136. Simatović’s argument that “there is not a single piece of evidence that he has any connection to that camp” is inaccurate.⁵²² RFJ-035 testified that he saw Simatović at the

⁵¹³ See Judgement, paras.413, 415, 418-419.

⁵¹⁴ Judgement, para.418. *Contra* Simatović-AB, paras.239-240.

⁵¹⁵ Simatović-AB, paras.239-241.

⁵¹⁶ See Judgement, para.561. *Also* [REDACTED]; Exhs.P02983, p.2; P02566, pp.5-7.

⁵¹⁷ Judgement, para.418. *Above* para.78.

⁵¹⁸ Judgement, paras.418-419. *Also* Judgement, para.209. *Contra* Simatović-AB, paras.239-240.

⁵¹⁹ Judgement, para.419. *Also* Judgement, para.409.

⁵²⁰ *Above* para.107. *Contra* Simatović-AB, para.239.

camp, including when Simatović briefed the Group prior to its deployment to Bosanski Šamac.⁵²³ Moreover, in his speech at the video-recorded Kostić Centre ceremony, Simatović himself acknowledged the Unit's training camp at Ilok,⁵²⁴ the area where Pajzoš camp was located.⁵²⁵

137. Simatović's contention that Todorović did not testify about Simatović's role in training the Bosanski Šamac locals at Pajzoš misrepresents Todorović's evidence.⁵²⁶ [REDACTED].⁵²⁷

138. Moreover, that Todorović did not testify that Simatović deployed the Group to Bosanski Šamac does not undermine the Chamber's finding.⁵²⁸ As set out above, while [REDACTED].⁵²⁹

139. As articulated above,⁵³⁰ the Chamber viewed Todorović's evidence with caution, but concluded that it could rely on the fundamental features of his account in relation to how events in Bosanski Šamac unfolded, including events prior to the takeover.⁵³¹

L. Sub-ground 2(13): Simatović deployed the Group to Bosanski Šamac

140. As set out above, Simatović fails to show that no reasonable trier of fact could have concluded that Simatović deployed the Group to Bosanski Šamac.⁵³²

141. There is no dispute that the Group was transported to Batkuša in JNA helicopters,⁵³³ or that it was resubordinated to the JNA's 17th Tactical Group during the attack on Bosanski Šamac.⁵³⁴ While the Chamber found that Simatović trained and deployed the Group, it was

⁵²¹ Above [REDACTED]. *Contra* Simatović-AB, paras.241-243.

⁵²² *Contra* Simatović-AB, para.243. *Also above* [REDACTED].

⁵²³ [REDACTED]; [REDACTED]; [REDACTED].

⁵²⁴ Exh.P00256 (00:15:48-00:16:18), p.11.

⁵²⁵ *E.g.* B.Bogunović:Exh.P02718, para.24; B.Bogunović:Exh.P02720, p.109 (T.6074); [REDACTED]; [REDACTED]; [REDACTED].

⁵²⁶ Simatović-AB, para.241.

⁵²⁷ [REDACTED]; [REDACTED].

⁵²⁸ *Contra* Simatović-AB, para.241.

⁵²⁹ Above [REDACTED].

⁵³⁰ Above paras.44-53.

⁵³¹ Judgement, paras.206, 220.

⁵³² Judgement, paras.419, 590, 597, 605, 621. *Above* paras.118-122.

⁵³³ Judgement, paras.209, 417-418. *See* Simatović-AB, paras.251, 256.

⁵³⁴ Judgement, paras.211, 216. *See* Simatović-AB, paras.250, 256.

not convinced he directed and had command and control over the Group during the Bosanski Šamac operation.⁵³⁵

142. Simatović misinterprets the evidence. Contrary to Simatović's suggestion,⁵³⁶ the witness interviews of [REDACTED]⁵³⁷ and Mile Beronja,⁵³⁸ provided in the context of proceedings in Banja Luka in 1992, do not demonstrate that General Bajić and Colonel Jemerić played any role in the engagement and sending of the Group to Bosanski Šamac in April 1992. The interview reports relate to the period commencing some four months *after* the Group was deployed to Bosanski Šamac: [REDACTED],⁵³⁹ while Beronja refers to a meeting with Crni and Debeli around 9 August 1992.⁵⁴⁰ Neither individual provides any information pertaining to the Bosanski Šamac deployment or operations. Moreover, evidence that General Bajić, Colonel Jemerić and a representative of the SMUP were in contact with Crni and Debeli in relation to their subsequent deployment to the Šamac municipality in autumn of 1992, as [REDACTED] and Beronja suggest, is immaterial to the Chamber's conclusion that Simatović deployed the Group to Bosanski Šamac in April 1992.⁵⁴¹

143. [REDACTED].⁵⁴²

144. Equally, the unspecified Mladić diary entry to which Simatović refers⁵⁴³ does not demonstrate that Bajić participated in bringing Crni to Bosanski Šamac, but merely records that Todorović "used to know" Bajić and Jeremić.⁵⁴⁴ In any event, even if Bajić was involved in bringing Crni and the Group to Bosanski Šamac in April 1992, this would not preclude the Chamber's conclusion that Simatović deployed the Group.⁵⁴⁵

145. As set out above, the Chamber reasonably relied on RFJ-035 in concluding that Simatović deployed the Group to Bosanski Šamac.⁵⁴⁶ Similarly, for the reasons detailed above, Simatović was in a position to deploy the Group to Bosanski Šamac.⁵⁴⁷

⁵³⁵ Judgement, para.424.

⁵³⁶ *Contra* Simatović-AB, paras.252-253, 255.

⁵³⁷ [REDACTED].

⁵³⁸ Exh.P01919.

⁵³⁹ [REDACTED].

⁵⁴⁰ Exh.P01919, p.1.

⁵⁴¹ *Contra* Simatović-AB, paras.252-253, 255. *See* [REDACTED]; P01919, pp.1-2.

⁵⁴² [REDACTED].

⁵⁴³ *Presumably* Exh.P01938, p.256. *See* Simatović-AB, para.255.

⁵⁴⁴ *Above* para.107.

⁵⁴⁵ *Contra* Simatović-AB, para.255.

⁵⁴⁶ *Above* paras.44-47, 54-58. *Contra* Simatović-AB, paras.257-258.

⁵⁴⁷ *Contra* Simatović-AB, para.256. *Above* paras.11-16.

M. Sub-ground 2(14): The Chamber correctly assessed Simatović's liability for aiding and abetting

146. The Chamber applied the correct law and properly assessed the *actus reus* and *mens rea* before concluding that Simatović aided and abetted the crimes of Serb forces in Bosanski Šamac.

147. The Appeals Chamber should dismiss Simatović's argument that the requirements for the *mens rea* of aiding and abetting set out in the ICC Statute should apply to this case as it "reflects the consensus of the International Community regarding the applicable *mens rea* for aiding and abetting".⁵⁴⁸ As a multilateral treaty, the 1998 ICC Statute was "not intended to codify existing customary rules".⁵⁴⁹ As noted by the Šainović Appeals Chamber in rejecting a similar argument:

[W]hile the ICC Statute may be in many areas regarded as indicative of customary rules, in some areas it creates new law or modifies existing law. The adoption of an international treaty, by itself, does not necessarily prove that states consider the content of that treaty to express customary international law.⁵⁵⁰

148. Simatović fails to show why the *mens rea* for aiding and abetting set out in the ICC Statute should be applied instead of the *mens rea* for aiding and abetting under customary international law.⁵⁵¹

149. Simatović's further argument that two like cases should be treated alike⁵⁵² does not support the application of specific direction. As set out below, Simatović cannot rely on the fact that the wrong law was applied in the *Perišić* case.⁵⁵³

150. The remainder of this sub-ground contains mere summaries of factual arguments developed in other sub-grounds.⁵⁵⁴ Those are addressed in the sub-grounds where they are developed.⁵⁵⁵

⁵⁴⁸ See Simatović-AB, para.262.

⁵⁴⁹ Orić AJ, Judge Schomburg Opinion, para.20.

⁵⁵⁰ Šainović AJ, para.1648 (internal references removed).

⁵⁵¹ E.g. Šainović AJ, para.1772; Haradinaj AJ, para.58; Aleksovski AJ, para.163; Orić AJ, para.43; Simić AJ, para.86.

⁵⁵² Simatović-AB, para.261.

⁵⁵³ Below para.191.

⁵⁵⁴ See Simatović-AB, paras.259, 263-266. Simatović's impermissible reference to argumentation in his Final Trial Brief should be disregarded. Simatović-AB, para.259. See Hadžihasanović AJ, para.46.

N. Sub-ground 2(15): Simatović is responsible for aiding and abetting persecution, murder, deportation and forcible transfer

151. Simatović fails to show that no reasonable trial chamber could have found him responsible for aiding and abetting the crimes of persecution, murder, deportation and forcible transfer committed by Serb forces in Bosanski Šamac.⁵⁵⁶

152. Simatović challenges “the evidence presented” by the Chamber in reaching its conclusion⁵⁵⁷ but fails to develop and substantiate his argument.⁵⁵⁸ Merely referring to the evidence in his Final Trial Brief is insufficient,⁵⁵⁹ as is his broad and unsupported reference to the evidence “highlighted and analysed in this Appeal”.⁵⁶⁰ Simatović’s sub-ground 2(15) should be summarily dismissed.

⁵⁵⁵ Above sub-ground 2(7), paras.91-104; sub-ground 2(8), paras.105-108; paras.109-117; sub-ground 2(12), paras.125-139. Below sub-ground 4(1), paras.180-188; sub-ground 4(2), paras.189-191.

⁵⁵⁶ *Contra* Simatović-AB, paras.267-268. See Judgement, paras.605, 608.

⁵⁵⁷ Simatović-AB, para.268.

⁵⁵⁸ See *Prlić* AJ, paras.2501, 2562, 2594.

⁵⁵⁹ See *Hadžihasanović* AJ, para.46.

⁵⁶⁰ Simatović-AB, para.268.

IV. GROUND 3: SIMATOVIĆ'S SENTENCE IS APPROPRIATE

153. Simatović was convicted of aiding and abetting persecution, murder, deportation and forcible transfer of non-Serbs from Bosanski Šamac.⁵⁶¹ He exercised authority over the Unit and the Unit's camps at Ležimir and Pajzoš, where Unit members trained the Group.⁵⁶² He briefed and deployed the Group to the Bosanski Šamac operation.⁵⁶³ Simatović undertook these acts with the knowledge that Serb forces had been engaged in a widespread and systematic campaign of forcible displacement targeting non-Serbs in Croatia and BiH during similar ethnic cleaning operations.⁵⁶⁴ Following their deployment, Group members together with other Serb forces engaged in persecution, murder, deportation, and forcible transfer, including by killing 16 non-Serb detainees at the Crkvina detention facility and severely mistreating non-Serb detainees in various detention facilities throughout Bosanski Šamac.⁵⁶⁵ “[C]loaked with the authority of Stanišić,” he abused his authority as a senior member in the SerbianDB.⁵⁶⁶

154. Simatović appeals his 12-year sentence. Nothing less than a 12-year sentence reflects the gravity of his crimes and his participation in them. Ground 3 should be dismissed.

A. Sub-ground 3(1): The Chamber properly assessed Simatović's sentence

155. Sub-ground 3(1) merely summarises the sentencing arguments that are further developed in other sub-grounds.⁵⁶⁷

B. Sub-ground 3(2): The Chamber properly assessed the gravity of the crimes

156. The Chamber did not focus solely on the consequences of Simatović's actions in assessing the gravity of his offences.⁵⁶⁸ It considered all relevant circumstances, including not only the psychological, physical and emotional suffering of the victims⁵⁶⁹ but also “the cruelty, nature, and circumstances of the offences, the vulnerability of the victims,”⁵⁷⁰ the

⁵⁶¹ See Judgement, paras.388, 405, 435.

⁵⁶² See Judgement, paras.388, 405-407, 409, 416-419, 435-436, 590, 597, 605.

⁵⁶³ See Judgement, paras.417, 419. *Also* Judgement, paras.209, 211, 590, 604.

⁵⁶⁴ See Judgement, paras.606-607. *Also* Judgement, paras.379, 589.

⁵⁶⁵ See Judgement, paras.619-620. *Also* Judgement, paras.222-225, 229, 232-234.

⁵⁶⁶ See Judgement, para.628.

⁵⁶⁷ See *Prlić* AJ, paras.2501, 2562, 2594. *Contra* Simatović-AB, para.269.

⁵⁶⁸ *Contra* Simatović-AB, paras.271-272.

⁵⁶⁹ Judgement, para.618.

⁵⁷⁰ Judgement, para.618.

“form and degree” of Simatović’s participation in the crimes;⁵⁷¹ the scope of the offences;⁵⁷² and Simatović’s abuse of his position of authority.⁵⁷³

157. Contrary to Simatović’s assertion,⁵⁷⁴ the reasons demonstrate the Chamber fully appreciated Simatović’s role in the commission of the offences—namely that of an aider and abettor.⁵⁷⁵ The Chamber found that Simatović’s responsibility arose from his role in organising the training of Unit members and local Serb forces and their subsequent deployment to Bosanski Šamac—as detailed in the Chamber’s earlier findings.⁵⁷⁶ Simatović did not deploy the Group to “the battlefield”.⁵⁷⁷ The Chamber was satisfied he deployed the Group to take part in an ethnic cleansing operation with full knowledge that crimes would be committed.⁵⁷⁸

158. Finally, contrary to Simatović’s argument, aiding and abetting does not necessarily have to result in a lower sentence; rather the sentence depends on the individual circumstances of the case.⁵⁷⁹ As the Chamber recognized, the gravity of the underlying crimes is an important consideration in the determination of an appropriate sentence for aiding and abetting.⁵⁸⁰ The Chamber found that the crimes which Simatović aided and abetted were particularly grave.⁵⁸¹

C. Sub-ground 3(3): Simatović abused his position of authority

159. Contrary to Simatović’s submissions,⁵⁸² the Chamber did not treat Simatović’s position within the SerbianDB at the time of the offences as an aggravating factor. It was his *abuse* of the *de facto* power he wielded within the SerbianDB that the Chamber considered aggravating: “cloaked with the authority of Stanišić and the Serbian State Security Service”, Simatović abused his authority in utilizing the resources at his disposal to facilitate the

⁵⁷¹ Judgement, para.617.

⁵⁷² Judgement, paras.619-620.

⁵⁷³ Judgement, para.618.

⁵⁷⁴ Simatović-AB, para.275.

⁵⁷⁵ *Contra* Simatović-AB, paras.274-275.

⁵⁷⁶ Judgement, paras.403, 405-406, 409, 417-419, 621.

⁵⁷⁷ Simatović-AB, para.273.

⁵⁷⁸ Judgement, paras.594, 606-607.

⁵⁷⁹ *Taylor* AJ, paras.666-669.

⁵⁸⁰ Judgement, para.617 *citing* *Mrkšić* AJ, para.407.

⁵⁸¹ Judgement, paras.619-620.

⁵⁸² Simatović-AB, para.276.

commission of the crimes.”⁵⁸³ Whether the Chamber made an error in its description of Simatović’s formal title⁵⁸⁴ is irrelevant.

D. Sub-ground 3(4): The Chamber properly assessed mitigating factors

160. As addressed in sub-grounds 1(1), 1(2) and 3(3) above,⁵⁸⁵ the Chamber did not err in finding that Simatović was a high-ranking official in the SerbianDB. Simatović fails to show error in the Chamber’s refusal to treat his rank as a mitigating factor.

161. Simatović asserts, without developing the argument, that the Chamber erred in concluding that his actions in the “organization of training and deployment of a military unit is punishable under the SFRY Criminal Code.”⁵⁸⁶ The Chamber did not find that the organisation of training and deployment of a military unit constituted a criminal act, *per se*, under the SFRY Criminal Code, but rather that this was conduct that constituted aiding and abetting crimes against humanity and war crimes in the circumstances of this case. For the limited purpose of taking the sentencing practices of the former Yugoslavia into account, the Chamber properly considered the sentencing provisions set out in Articles 38(1) and (2) and Chapter XVI of the SFRY Criminal Code.⁵⁸⁷ Simatović shows no error in the Chamber’s reliance on these provisions. In any event, the “conduct for which he was found guilty”⁵⁸⁸—aiding and abetting war crimes and crimes against humanity by organising the training of a combat unit and deploying it while possessing the requisite *mens rea*—was punishable pursuant to Article 24 and Chapter XVI of the SFRY Criminal Code⁵⁸⁹ which specifies that individuals could be convicted for aiding and abetting the commission of war crimes or crimes against humanity.⁵⁹⁰

⁵⁸³ Judgement, para.628.

⁵⁸⁴ Above sub-ground 1(1) and 1(2), paras.11-16.

⁵⁸⁵ Above sub-ground 1(1) and 1(2), paras.11-16; sub-ground 3(3), para.159.

⁵⁸⁶ Simatović-AB, para.281.

⁵⁸⁷ Judgement, paras.615-616, 629.

⁵⁸⁸ Simatović-AB, para.274.

⁵⁸⁹ Article 24 of the SFRY Criminal Code provides:

(1) Anybody who intentionally aids another in the commission of a criminal act shall be punished as if he himself had committed it, but his punishment may also be reduced.

(2) The following, in particular, shall be considered as aiding: the giving of instructions or counselling about how to commit a criminal act, the supply of tools and resources for the crime, the removal of obstacles to the commission of a crime, as well as the promise, prior to the commission of the act, to conceal the existence of the criminal act, to hide the offender, the means to commit the crime, its traces, or goods gained through the commission of a criminal act.

⁵⁹⁰ All three accused in *Simić*, for example, were convicted of aiding and abetting in the offence of persecution. See *Simić* TJ, paras.1071-1074. Also *Mladić* AJ, paras.293, 492. Also Article 142 of the Criminal Code of the SFRY; *Mrkšić* AJ, para.363; *Jokić* SAJ, para.36.

E. Sub-ground 3(5): The Chamber properly accorded limited weight to certain factors

162. The Chamber considered each of the mitigating factors Simatović identified at trial.⁵⁹¹ In deciding how much weight to accord each factor, it enjoyed considerable discretion.⁵⁹² Simatović fails to demonstrate the Chamber abused its discretion by either not considering relevant mitigating factors or giving them insufficient weight.

163. Simatović does not demonstrate that the Chamber erred in concluding that his age and health, good conduct while in custody and during trial proceedings, and his previous good character did not warrant much mitigation. These are all factors that, absent exceptional circumstances, are typically accorded limited weight.⁵⁹³

164. Similarly, the Chamber did not err in according limited weight in mitigation to Simatović's good behaviour while on provisional release. Mere compliance with the law, including the terms of provisional release, is not ordinarily treated as a mitigating factor.⁵⁹⁴

F. Sub-ground 3(6): The overall length of the proceedings does not merit mitigation

165. The Chamber did not err in failing to treat the overall length of the proceedings as a mitigating factor.⁵⁹⁵ While a violation of an accused's fair trial rights may lead to a reduction in sentence, the length of proceedings is not in itself a mitigating factor.⁵⁹⁶ The Chamber made no finding that his fair trial rights had been infringed. It did not accept, as Simatović alleges, that the trial took "too long".⁵⁹⁷ The Chamber merely acknowledged that the criminal proceedings were "indeed lengthy".⁵⁹⁸

166. The ICTY Appeals Chamber determined the only remedy that was capable of rectifying the errors committed by the ICTY Trial Chamber was a full retrial. As the

⁵⁹¹ Judgement, paras.629-632.

⁵⁹² See *Prlić* AJ, para.3308; *Popović* AJ, para.2053; *D.Milošević* AJ, para.316; *Đorđević* AJ, para.944.

⁵⁹³ For age and health as exceptional mitigating circumstances, see *Prlić* AJ, para.3315 citing *Šainović* AJ, para.1827; *Galić* AJ, para.436; *Blaškić* AJ, para.696. For the little weight accorded for lack of previous criminal record, see *Mladić* TJ, para.5194 citing *Kupreškić* AJ, para.459; *Blaškić* AJ, para.696; *Kordić* AJ, para.1090; *Babić* SAJ, para.43; *Hadžihasanović* AJ, para.325; *Krajišnik* AJ, para.816; *Ntabakuze* AJ, para.284; *Ntagerura* AJ, para.439. For good comportment in detention receiving little weight in mitigation, see *Krajišnik* AJ, paras.816-817; *Blaškić* AJ, paras.696, 728; *Kordić* AJ, para.1091; *Babić* SAJ, para.43. For good conduct during trial proceedings—as alleged evidence of remorse—carrying little weight, see *Čelibići* AJ, para.788; *Ntabakuze* AJ, para.296; *Blaškić* AJ, para.686.

⁵⁹⁴ *Blagojević* AJ, para.342; *Jokić* SAJ, para.82; *Plavšić* SJ, para.109.

⁵⁹⁵ Judgement, para.631.

⁵⁹⁶ *Setako* AJ, para.297; *Nahimana* AJ, para.1073.

⁵⁹⁷ Simatović-AB, para.286.

⁵⁹⁸ Judgement, para.631.

Chamber acknowledged, it had no jurisdiction to consider the appropriateness of a remedy granted by the ICTY Appeals Chamber.⁵⁹⁹ The Chamber did not, and could not, find that the decision to order a retrial violated Simatović's fair trial rights or caused undue delay.

167. Finally, the Prosecution disagrees with the contention that Simatović did not contribute, in any way, to the overall delay. He sought, for example, a significantly reduced sitting schedule for the retrial;⁶⁰⁰ a schedule the Prosecution opposed.⁶⁰¹

G. Sub-ground 3(7): Simatović was not entitled to credit for time spent on provisional release

168. Similarly, the Chamber did not err in failing to give Simatović credit under Rule 101(C) for time spent on provisional release. Time spent on provisional release under conditions that fall short of being tantamount to detention in custody—including house arrest—is not counted under Rule 125 (ICTY Rule 101(C)).⁶⁰² The Chamber correctly concluded that the conditions of Simatović's provisional release were not tantamount to detention.⁶⁰³

H. Sub-ground 3(8): Simatović's sentence is proportionate to the sentences imposed in other cases

169. Simatović fails to demonstrate that the sentence imposed on him is excessive compared to similar cases.

170. The Chamber recognized that "previous sentencing decisions in other cases before the ICTY may provide guidance if they relate to the same offences committed in substantially similar circumstances."⁶⁰⁴ However, similar cases do not provide a legally binding tariff⁶⁰⁵ as the comparison between sentences is often limited due to differences in the number, type and gravity of the crimes committed, the personal circumstances of the convicted person and the presence of mitigating and aggravating circumstances.⁶⁰⁶ Nevertheless, the Chamber

⁵⁹⁹ Judgement, para.631.

⁶⁰⁰ [REDACTED]. *Also* [REDACTED].

⁶⁰¹ *See* [REDACTED]; [REDACTED]; [REDACTED].

⁶⁰² *Prlić* AJ, paras.3329-3336.

⁶⁰³ Judgement, para.632.

⁶⁰⁴ Judgement, para.633.

⁶⁰⁵ *D.Milošević* AJ, para.326 *citing* *Strugar* AJ, para.348 *and references therein*.

⁶⁰⁶ *Strugar* AJ, para.348. *Also* Judgement, para.633.

understood it had an obligation to ensure it was not imposing a sentence that was “out of reasonable proportion” to the sentences passed in similar cases.⁶⁰⁷

171. The Chamber considered the sentences imposed in other cases involving persons convicted of “crimes committed in Bosanski Šamac during the period covered in the Indictment;” identifying the *Simić* and *Stanišić and Župljanin* cases as comparable.⁶⁰⁸ While the Chamber considered the 22-year sentence imposed on Mićo Stanišić, it ultimately imposed a much lower sentence on Simatović, demonstrating that it understood there were significant differences between the cases that warranted the imposition of a more lenient sentence on Simatović.⁶⁰⁹

172. Simatović’s submission⁶¹⁰ that the Chamber considered Stojan Župljanin’s sentence, decontextualizes the Chamber’s reasoning. The Chamber expressly stated it was only considering the decisions in *Simić* and *Stanišić and Župljanin* “to the extent that these cases held the accused responsible for crimes committed in Bosanski Šamac.”⁶¹¹ Župljanin was not convicted of any offences in that municipality. The inclusion of a single reference in a footnote to a paragraph concerning Župljanin does not demonstrate error; particularly when the same footnote also explicitly refers to paragraphs and a footnote clarifying that Župljanin was not convicted of any crimes in Bosanski Šamac.⁶¹²

173. Similarly, the Chamber did not err in considering the decision in *Blagojević and Jokić* on the basis that Blagojević was also convicted of aiding and abetting murder, persecution, and forcible transfer.⁶¹³ His 15-year sentence was not disproportionate to Simatović’s sentence.

174. On appeal, Simatović relies on the sentences imposed on Miroslav Tadić and Simo Zarić, although he did not identify them as comparable cases in his Final Trial Brief.⁶¹⁴ Both Tadić and Zarić were convicted of aiding and abetting a single count of persecution in relation to the forcible takeover of Bosanski Šamac. Tadić was a member of the Exchange Commission. Zarić participated in the interrogation of non-Serbian detainees following the

⁶⁰⁷ Judgement, para.633.

⁶⁰⁸ Judgement, para.634.

⁶⁰⁹ Judgement, para.621. *Contra* Stanišić-AB, para.215.

⁶¹⁰ Simatović-AB, para.292.

⁶¹¹ Judgement, para.634. *Contra* Simatović-AB, para.292. *See* Stanišić & Župljanin AJ, paras.1191-1192.

⁶¹² Judgement, para.634.

⁶¹³ Judgement, para.634 citing *Blagojević* AJ, para.142.

⁶¹⁴ Simatović-AB, para.294; [REDACTED].

takeover. Unlike Simatović, neither Tadić nor Zarić was convicted of aiding and abetting murder, let alone the mass murder of unarmed civilians. Indeed, Zarić reported the Crkvina massacre to higher authorities in the Municipality and Serbia when he learned of it. Further, unlike Simatović, both Tadić and Zarić were found to be genuinely remorseful. Genuine remorse is a significant mitigating circumstance.⁶¹⁵ The cases are not comparable.

175. Contrary to Simatović's submission,⁶¹⁶ Simić's 15-year sentence *supports* the 12-year sentence imposed in this case. Simić was convicted of aiding and abetting the persecution of the non-Serb population in Bosanski Šamac through unlawful arrest and detention, confinement in inhumane conditions, forced labour and forcible transfer.⁶¹⁷ Like Simatović, he did not participate directly in the commission of any offences. Unlike Simatović, Simić was *not* found to have provided substantial assistance in relation to allegations of beatings or torture and he was not convicted of murder—let alone anything comparable to the Crkvina massacre. The Chamber did not err in sentencing Simatović to a sentence of slightly shorter duration than the sentence it imposed on Simić.

I. Sub-ground 3(9): The Chamber was mindful of the differences between Stanišić and Simatović

176. The Chamber clearly understood that Stanišić and Simatović played different, but equally important roles, in the events leading up to the takeover of Bosanski Šamac and the abuses and crimes committed by Unit members there.⁶¹⁸ As Chief of the SerbianDB, Stanišić had the ultimate authority over personnel decisions and the expenditure of SerbianDB resources.⁶¹⁹ It was only with his approval and support that the camps at Ležimir and Pajzoš could have been established and a combat unit of the SerbianDB created and deployed. Simatović, on the other hand, played a more “hands on” role in the Unit's creation and deployment.⁶²⁰ The Chamber found, for example, that it was Simatović who selected the original Unit members from amongst the most promising of the graduates of the Golubić

⁶¹⁵ See *Strugar* AJ, para.365; *Ntabakuze* AJ, para.292; *Nchamihigo* AJ, para.396.

⁶¹⁶ *Simatović-AB*, para.293.

⁶¹⁷ *Simić* AJ, paras.2-4, 232-233, 265, 300 *cited at* Judgement, fn.2423.

⁶¹⁸ See Judgement, paras.209, 605-606, 626, 628.

⁶¹⁹ Judgement, paras.348, 432.

⁶²⁰ Judgement, paras.391-393.

training camp.⁶²¹ It was Simatović who addressed the men on 10 April 1992, immediately prior to their deployment to Bosanski Šamac.⁶²²

⁶²¹ Judgement, para.405.

⁶²² Judgement, para.417.

V. GROUND 4: THE CHAMBER APPLIED THE CORRECT LAW

177. Simatović fails to show that the Chamber erred in law. The law on aiding and abetting is settled. Specific direction is not a requirement of aiding and abetting.

178. Similarly, Simatović fails to show any discernible error in the Chamber's interlocutory decisions concerning evidence and procedure.

179. Ground 4 should be dismissed.

A. Sub-ground 4(1): Specific direction is not an element of aiding and abetting

180. The Chamber properly assessed Simatović's conduct and found that he aided and abetted by making a substantial contribution to crimes in Bosanski Šamac.⁶²³

181. The *actus reus* of aiding and abetting consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime.⁶²⁴ The Chamber correctly held that "[s]pecific direction is not an element of aiding and abetting liability under customary international law."⁶²⁵ The case-law is settled in this regard.⁶²⁶ While ICTY and ICTR case-law at times referred to "specific direction" to describe the *actus reus* of aiding and abetting, it has no meaning independent of the substantial effect requirement. If relevant at all, specific direction is already implicit in the requirement that the accused's conduct have a substantial effect on the crime.⁶²⁷

182. The elements for the *actus reus* are no different where an accused's acts are remote from the crime in time or space.⁶²⁸ An aider and abettor's proximity to the crimes is just one of the factors a chamber may consider during its fact-based inquiry⁶²⁹ to determine whether the conduct of the accused had a substantial effect on the commission of the crime. The *Čelebići* Appeals Chamber accepted that an act of assistance may be removed in time and place from the actual commission of the offence, "[s]ubject to the observation that the acts of

⁶²³ *Contra* Simatović-AB, para.310. Judgement, para.605.

⁶²⁴ *Stanišić & Simatović* AJ, para.104; *Popović* AJ, para.1758; *Šainović* AJ, para.1649.

⁶²⁵ Judgement, para.601.

⁶²⁶ See *Šainović* AJ, para.1650; *Popović* AJ, para.1758; *Šešelj* AJ, fn.594; *Stanišić & Simatović* AJ, paras.104-106; *Nyiramasuhuko* AJ, paras.1955, 3332. *Contra* Simatović-AB, para.315.

⁶²⁷ See *Lukić* AJ, para.424; *Blagojević* AJ, para.189.

⁶²⁸ *Contra* Simatović-AB, para.308.

⁶²⁹ *Nyiramasuhuko* AJ, para.3332; *Blagojević* AJ, para.134.

assistance, encouragement or support must have a substantial effect on the perpetration of the crime”.⁶³⁰

1. Simatović fails to show cogent reasons to depart from settled jurisprudence

183. Simatović fails to show cogent reasons to depart from this settled jurisprudence.⁶³¹ Each judgement he refers to was considered by the *Šainović* Appeals Chamber in its discussion, and subsequent rejection, of specific direction as a separate requirement for aiding and abetting.⁶³² That the *Perišić* Appeals Judgement emphasised the importance of temporal or geographic distance does not show cogent reasons to depart.⁶³³ The *Perišić* Appeals Chamber did so in the context of the specific direction requirement,⁶³⁴ which—as explained above—was found not to form part of customary international law. The ICTY Appeals Chamber in *Stanišić & Simatović* therefore correctly instructed the Chamber not to apply specific direction.⁶³⁵

184. Finally, that training and deployment can be lawful activities in the abstract does not mean they cannot also be acts that assist in the commission of crimes.⁶³⁶ Since Simatović’s contribution consisted of training and deployment of the Group, and not of directing them during the operation, the Chamber reasonably found⁶³⁷ the Group’s later resubordination to the JNA to be irrelevant.⁶³⁸

2. ICTY and ICTR Appeals Chamber jurisprudence is binding on the Mechanism Appeals Chamber

185. Simatović’s argument that ICTY and ICTR Appeals Chamber jurisprudence is not binding on his case⁶³⁹ should be dismissed.

186. Contrary to Simatović’s argument, the *Šainović* Appeals Chamber did not overturn 15 years of settled jurisprudence.⁶⁴⁰ Rather, it was the *Perišić* Appeals Chamber that deviated

⁶³⁰ *Čelebići* AJ, para.352. Also *Mrškić* AJ, para.81; *Blaškić* AJ, para.48.

⁶³¹ *Contra* Simatović-AB, paras.299, 311.

⁶³² *Compare* Simatović-AB, paras.300-306 with *Šainović* AJ, paras.1618, 1623, fns.5325-5326.

⁶³³ *See* Simatović-AB, paras.308-310.

⁶³⁴ *Perišić* AJ, para.40.

⁶³⁵ *Stanišić & Simatović* AJ, para.128.

⁶³⁶ *Contra* Simatović-AB, para.310. *See* *Popović* AJ, para.1765; *Šainović* AJ, para.1663; *Blagojević* AJ, para.189.

⁶³⁷ Judgement, para.605.

⁶³⁸ *Contra* Simatović-AB, para.310.

⁶³⁹ *See* Simatović-AB, paras.312-313, 316.

⁶⁴⁰ *Contra* Simatović-AB, para.314.

from settled law. Finding cogent reasons to depart from the *Perišić* precedent, the *Šainović* Appeals Chamber confirmed what previous Appeals Chambers had concluded—that specific direction is not an element of aiding and abetting liability under customary international law.⁶⁴¹

187. The *Aleksovski* Appeals Chamber discussed the rule of precedent and decided that Appeals Chambers should follow their previous decisions for reasons of certainty and predictability.⁶⁴² The Appeals Chamber took into account that the Statute gives parties the right to appeal,⁶⁴³ and that the right of appeal is a component of the fair trial requirement, which in turn is a requirement of customary international law.⁶⁴⁴ For reasons of legal certainty,⁶⁴⁵ this conclusion has been followed ever since.⁶⁴⁶ Only in case of cogent reasons can the Appeals Chamber depart from previous rulings.⁶⁴⁷

188. As successor of the ICTY and the ICTR Appeals Chambers, the Mechanism Appeals Chamber held that “it should follow previous decisions of the ICTY or the ICTR Appeals Chambers and depart from them only for cogent reasons in the interests of justice”.⁶⁴⁸ This holding is based on the interests of legal certainty and predictability. It takes into account that, as the successor to the ICTY and ICTR, it is bound to interpret its Statute and Rules—which reflect normative continuity with its predecessors’ Statutes and Rules—in a manner consistent with the ICTY’s and ICTR’s jurisprudence.⁶⁴⁹ The Mechanism Appeals Chamber in this case is therefore bound to follow the settled ICTY and the ICTR law—as it has done in *Šešelj*⁶⁵⁰—that specific direction does not form part of the elements of aiding and abetting.

⁶⁴¹ *Šainović* AJ, para.1649.

⁶⁴² *Aleksovski* AJ, para.107.

⁶⁴³ *Aleksovski* AJ, para.99 citing ICTY Statute, Art.25.

⁶⁴⁴ *Aleksovski* AJ, para.104.

⁶⁴⁵ *Aleksovski* AJ, para.105.

⁶⁴⁶ See *Stanišić & Župljanin* AJ, para. 968; *Bizimungu* AJ, para.370; *Đorđević* AJ, para.24; *Galić* AJ, para.117; *Rutaganda* AJ, para. 26.

⁶⁴⁷ See *Mladić* AJ, para.284; *Karadžić* AJ, paras.13, 119.

⁶⁴⁸ *Šešelj* AJ, para.11 citing *Ngirabatware* AJ, para.6. Also *Mladić* AJ, para.13; *Karadžić* AJ, para.12.

⁶⁴⁹ *Šešelj* AJ, para.11 citing *Ngirabatware* AJ, para.6.

⁶⁵⁰ *Šešelj* AJ, fn.594.

B. Sub-ground 4(2): The *lex mitior* principle is not applicable

189. The Chamber correctly found that the principle of *lex mitior* does not apply in the case of specific direction.⁶⁵¹ Simatović's argument to the contrary⁶⁵² should be dismissed as it repeats his argument made at trial⁶⁵³ without showing how the Chamber erred.

190. The *lex mitior* principle only applies if the law changes between the commission of the crime and the conviction or sentencing.⁶⁵⁴ As the ICTY Appeals Chamber found in *Stanišić & Simatović*, specific direction was never part of the elements of aiding and abetting liability under customary international law. Therefore, the argument that aiding and abetting including specific direction was the more lenient law, as compared to aiding and abetting without specific direction, does not apply.⁶⁵⁵

191. Simatović's further argument that he was treated unequally, since specific direction was applied in the *Perišić* case⁶⁵⁶ should be dismissed. Following the principle that a right does not arise from a wrong application of the law in another case,⁶⁵⁷ that the wrong law was applied in *Perišić* does not mean Simatović has the right to have that wrong law applied in his case.

C. Sub-ground 4(3): Simatović shows no discernible error in the Chamber's interlocutory decisions

192. Simatović fails to show any discernible error in the Chamber's interlocutory decisions concerning evidence and procedure.

1. Sub-ground 4(3)(a): The Chamber properly admitted Jovan Krstić's expert report without hearing the expert witness

193. The Chamber acted within its discretion in denying Simatović's request for video-conference link testimony of his handwriting expert witness Jovan Krstić⁶⁵⁸ and in denying

⁶⁵¹ Judgement, fn.2352.

⁶⁵² Simatović-AB, paras.320-325.

⁶⁵³ See [REDACTED].

⁶⁵⁴ *Stanišić & Simatović* AJ, para.128.

⁶⁵⁵ *Štanišić & Simatović* AJ, para.128.

⁶⁵⁶ Simatović-AB, paras.323-324.

⁶⁵⁷ See *Wall* Advisory Opinion, Separate Opinion of Judge Elaraby, p.254. Also *Gabčíkovo-Nagymaros* Judgement, para.133.

⁶⁵⁸ Impugned Video Decision.

his request for certification of that decision.⁶⁵⁹ Simatović demonstrates no error in the Chamber's treatment of this evidence and sub-ground 4(3)(a) should be dismissed.

194. Rule 116(C) expressly permits the Chamber to admit an expert's report without calling the witness to testify in person. Noting in the Impugned Video Decision that the Prosecution waived its right to cross-examine Krstić, the Chamber admitted his expert report and determined that it was not necessary to call him to testify.⁶⁶⁰ In exercising its broad discretion concerning the admission of evidence,⁶⁶¹ the Chamber considered, *inter alia*, the need to maximize court time in order to accommodate new witnesses that Simatović was permitted to add in the latter stages of the trial.⁶⁶²

195. Nor did the Chamber err in denying Simatović's request for certification.⁶⁶³ Simatović fails to show any error in the Chamber's conclusion that the decision not to call Krstić to testify in support of his expert report—after having admitted the entirety of Krstić's expert report and having invited Simatović to supplement Krstić's report if needed prior to the conclusion of his case⁶⁶⁴—affected the fair and expeditious conduct of the proceedings or the outcome of the trial.

196. Simatović does not articulate any discernible error in either decision concerning the Chamber's treatment of Krstić's evidence.⁶⁶⁵ Moreover, Simatović cannot show that any purported error would have any impact on the Judgement. The Chamber only refers to Exhibit P00217 and Krstić's expert report once in the Judgement,⁶⁶⁶ in relation to the first Lovinac attack on 5 August 1991. The Chamber did not expressly find that P00217 bears Simatović's signature. While the Chamber did find that Simatović participated in planning and carrying out this attack,⁶⁶⁷ it did so on the basis of the entirety of the evidence, not exclusively on P00217. In any event, Simatović's conviction is not based on the 5 August 1991 Lovinac attack.

⁶⁵⁹ Impugned Certification Decision (Video).

⁶⁶⁰ Impugned Video Decision.

⁶⁶¹ *Popović* AJ, para.74.

⁶⁶² Impugned Video Decision, fn.11.

⁶⁶³ Impugned Certification Decision (Video), p.2. *Contra* Simatović-AB, paras.326-330.

⁶⁶⁴ Impugned Video Decision, p.2.

⁶⁶⁵ Simatović-AB, para.330.

⁶⁶⁶ Judgement, para.27.

⁶⁶⁷ Judgement, para.29.

2. Sub-ground 4(3)(b): The Chamber properly relied on unavailable Rule 112 witnesses who testified in the ICTY Trial

197. The Chamber acted within its discretion in determining that it could rely on the evidence of RFJ-011 and RFJ-055 in the unique circumstances of the retrial and in denying the request for certification.⁶⁶⁸

198. The Chamber admitted the ICTY Trial evidence of Prosecution witnesses RFJ-011 and RFJ-055 pursuant to Rule 112, as both were unavailable at the time of the retrial. [REDACTED].⁶⁶⁹

199. Simatović does not challenge the Chamber's decision to admit the ICTY Trial evidence of RFJ-011 and RFJ-055 pursuant to Rule 112. RFJ-055 was deceased at the time of the retrial. RFJ-011, [REDACTED], was unavailable to testify within the meaning of Rule 112.⁶⁷⁰ [REDACTED].⁶⁷¹

200. [REDACTED].⁶⁷² This was consistent with the Chamber's treatment of other ICTY Trial evidence in other decisions that Simatović has not appealed,⁶⁷³ including the ICTY testimony of several of Simatović's witnesses who were unavailable to testify at the retrial.⁶⁷⁴ Ultimately, the Chamber considered the evidence of RFJ-011 and RFJ-055 in light of the totality of the evidence on the record including Adjudicated Facts.⁶⁷⁵

201. Simatović provides no support for his assertion that "extensive legal practice" requires corroboration for admission of evidence under Rule 112.⁶⁷⁶ To the contrary, ICTY Rule 92 *quater* practice confirms that corroboration is *not* a requirement for admissibility.⁶⁷⁷ [REDACTED].⁶⁷⁸

⁶⁶⁸ Impugned Certification Decision (Rule 112). *Contra* Simatović-AB, paras.331-334.

⁶⁶⁹ [REDACTED].

⁶⁷⁰ [REDACTED]. [REDACTED]. *E.g.* [REDACTED]; [REDACTED].

⁶⁷¹ [REDACTED].

⁶⁷² [REDACTED].

⁶⁷³ *See* [REDACTED] *citing* [REDACTED]. *Also* RFJ-070 Evidence Decision, p.2 *citing* RFJ-037 Evidence Decision, para.8 (confidential). *Also* [REDACTED]; RFJ-142 Rule 112 Decision, p.3, fn.25.

⁶⁷⁴ Agreed Simatović Evidence Decision (re: Witnesses OFS-09, OFS-11, OFS-20), p. 1; [REDACTED].

⁶⁷⁵ *E.g.* RFJ-011: Judgement, fns.1824 1826; RFJ-055: Judgement, paras.263, 265, 267, 269, 271, 273, fns.1192, 1201, 1211-1212.

⁶⁷⁶ *Contra* Simatović-AB, para.333.

⁶⁷⁷ *E.g.* Popović 92 *quater* Decision, para.52; Karadžić Babić Admission Decision, para.30.

⁶⁷⁸ [REDACTED].

202. The limitation that a conviction cannot rest “solely, or in a decisive manner”⁶⁷⁹ on untested evidence does not apply in this case. Simatović had the opportunity to cross-examine both of these witnesses in the ICTY Trial. In any event, Simatović cannot identify any impact of the error he alleges. His conviction does not rest solely or decisively on the evidence of RFJ-011 and RFJ-055. Where the Chamber relied on these witnesses in the Judgement, it considered their evidence together with other evidence.⁶⁸⁰ In these circumstances, the Chamber did not err in according weight to this evidence.

203. Simatović fails to identify any independent error in the Impugned Certification Decision (Rule 112). This aspect of his appeal should be summarily dismissed.

3. Sub-grounds 4(3)(c) and 4(3)(d): The Chamber did not err in permitting new witnesses in the retrial

204. Simatović fails to show any discernible error in the Chamber’s exercise of its discretion in admitting the evidence of Four Witnesses who had not testified in the ICTY Trial.⁶⁸¹ To the extent that he seeks to improperly incorporate by reference arguments made elsewhere, these arguments should be summarily dismissed.⁶⁸²

205. Simatović claims only that the Chamber misapplied its own Exclusionary Rule. The Prosecution’s position is that the Exclusionary Rule improperly limited the Prosecution’s ability to call witnesses who had not testified in the ICTY Trial.⁶⁸³ However, to the extent that the Chamber had any discretion to exclude relevant and probative evidence on the basis that it was “new”, it must *also* have had the discretion to allow relevant and probative evidence.

206. The Chamber was best placed to interpret the meaning of “unavailable” in the context of its own unprecedented Exclusionary Rule.⁶⁸⁴ Simatović fails to identify any “current practice and understanding of the term ‘unavailable’ before the ICTY and IRMCT”.⁶⁸⁵ His

⁶⁷⁹ See *Popović* AJ, para.96; *Prlić* Transcript Admission Decision, paras.57-59.

⁶⁸⁰ E.g. RFJ-011: Judgement, fns.1824, 1826; RFJ-055: Judgement, paras.263, 265, 267, 269, 273, fns.1192, 1201, 1211-1212.

⁶⁸¹ Simatović-AB, Ground 4(3)(c) (Witnesses RFJ-084) and Ground 4(3)(d) (Witnesses RFJ-083, RFJ-174 and RFJ-017) (the “Four Witnesses”).

⁶⁸² See *Hadžihasanović* AJ, para.46 (“The Appeals Chamber recalls that appellants have to substantiate their arguments in support of each ground of appeal in their appeal briefs and not by reference to submissions made elsewhere”) *citing* Practice Direction on Appeals Requirements, paras. II.(4)(b) and (c).

⁶⁸³ See 2 February Decision. *Also* Prosecution-AB, Ground 1(C) (confidential).

⁶⁸⁴ Simatović-AB, paras.336, 339-341.

⁶⁸⁵ Simatović-AB, para.336.

suggestion that the Rule 112 definition of “unavailable” should equally apply to the Exclusionary Rule is undeveloped and unpersuasive.⁶⁸⁶

207. Simatović’s claim, [REDACTED],⁶⁸⁷ is contradicted by [REDACTED].⁶⁸⁸ [REDACTED].⁶⁸⁹ [REDACTED].⁶⁹⁰ [REDACTED].⁶⁹¹ The Chamber, applying an explicit exception to the Exclusionary Rule, permitted “new” witnesses to testify as replacements for the ICTY Trial witnesses deemed unavailable for the retrial.

208. Simatović makes no attempt to demonstrate that he was unfairly prejudiced by the admission of the evidence of the Four Witnesses. Having found the Four Witnesses evidence was relevant and probative,⁶⁹² the Chamber assessed that the admission of their evidence was not unfair or unduly prejudicial:

- a) The Chamber found that the admission of RFJ-084’s evidence would cause minimal prejudice [REDACTED].⁶⁹³
- b) The Chamber found that the admission of RFJ-017’s evidence was not prejudicial in that [REDACTED].⁶⁹⁴
- c) The Chamber admitted the evidence of RFJ-174 and RFJ-083, finding that their evidence related closely to the issues and incidents covered by Prosecution witnesses [REDACTED] in the ICTY Trial concerning [REDACTED].⁶⁹⁵ The Chamber observed that evidence regarding [REDACTED] had been presented in the ICTY Trial, such that the Defence had defended allegations related to this in the ICTY Trial.⁶⁹⁶

209. Since the Chamber was within its discretion in granting the Prosecution’s Rule 111 motions for the Four Witnesses, the Chamber appropriately denied Simatović’s motions for certification to appeal.⁶⁹⁷

⁶⁸⁶ Simatović-AB, para.341.

⁶⁸⁷ [REDACTED].

⁶⁸⁸ [REDACTED]. *Also* 2 February Decision, para.23.

⁶⁸⁹ *See* [REDACTED].

⁶⁹⁰ [REDACTED].

⁶⁹¹ [REDACTED]. *See* [REDACTED].

⁶⁹² [REDACTED]; [REDACTED]; [REDACTED]. *Also* IRMCT Rules 105(C) and (D).

⁶⁹³ [REDACTED]. *See* [REDACTED]. [REDACTED]. *See* [REDACTED].

⁶⁹⁴ [REDACTED]. [REDACTED]. *See* [REDACTED].

⁶⁹⁵ [REDACTED]. [REDACTED]. [REDACTED].

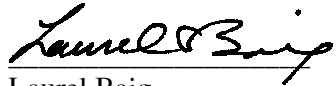
⁶⁹⁶ [REDACTED].

⁶⁹⁷ Simatović-AB, paras.335, 338.

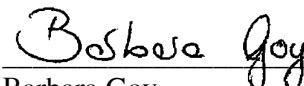
VI. CONCLUSION

210. Based on the above, Simatović's appeal should be denied in its entirety.

Word Count: 25,564 (confidential version)



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Dated this 31st day of January 2022
At The Hague, The Netherlands

List of Abbreviations and Authorities

Abbreviation used	Full text
BiH	Bosnia and Herzegovina
DB	State Security Department
Exh.	exhibit
Exhs.	exhibits
fn.	footnote
fns.	footnotes
ICC	International Criminal Court
ICC Statute	Rome Statute of the International Criminal Court
ICTY Trial	<i>Prosecutor v. Stanišić and Simatović</i> , Case No.IT-03-69-T
JATD	Unit for Anti-Terrorist Activities (SMUP-DB)
JCE	joint criminal enterprise
JNA	Yugoslav People's Army (ceased to exist in May 1992 when it was divided into the VJ and VRS)
MUP	Ministry of Internal Affairs
para.	paragraph
paras.	paragraphs
RSK	Republic of Serbian Krajina
RSK-MUP	Republic of Serbian Krajina Ministry of Internal Affairs
RS-MUP	Republika Srpska Ministry of Internal Affairs
SAO	Serbian Autonomous Region
SAO-Krajina	Serbian Autonomous Region of Krajina
SAO-SBWS	Serbian Autonomous Region of Eastern Slavonia, Baranja and Western Srem
SAO-SBWS TO	Territorial Defence of SAO-SBWS
SerbianDB	State Security Service or Department of the SMUP. Note that this encompasses the State Security Service (SDB) and the State Security Department (RDB), names for the same organisation during different time periods.
SerbianJB	Public Security Department (or Service) of the SMUP
SFRY	Socialist Federal Republic of Yugoslavia

Abbreviation used	Full text
SFRY Criminal Code	Criminal Code of the Socialist Federal Republic of Yugoslavia, 1 July 1997
SMUP	Ministry/Secretariat of Internal Affairs of the Republic of Serbia
SRS	Serbian Radical Party
T.	Trial transcript
TO	Territorial Defence
UNPROFOR	United Nations Protection Forces
VRS	Army of Republika Srpska (came into existence after May 1992 when the JNA ceased to exist)

Statutes and Rules of Procedure and Evidence

Abbreviation used	Full citation
IRMCT Statute	Statute of the International Residual Mechanism for Criminal Tribunals established by the United Nations Security Council Resolution 1966, 22 December 2010
Rule(s)	Rules of Procedure and Evidence, MICT/1/Rev.7, 4 December 2020
ICTY Rules	ICTY Rules of Procedure and Evidence
ICTY Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the United Nations Security Council Resolution 827, 25 May 1993

MICT-15-96 authorities

Abbreviation used	Full citation
Babić Admission Decision	Decision on Prosecution Motion for Admission of Evidence of Milan Babić Pursuant to Rule 112, 17 January 2018
Impugned Certification Decision (Rule 112)	Decision on Simatović Defence Request for Certification to Appeal Decision on Prosecution Motion for Admission of Evidence of Witnesses RFJ-011 and RFJ-055 Pursuant to Rule 112, 12 November 2018
Impugned Certification Decision (Video)	Decision on Simatović's Request for Certification to Appeal Decision in Relation to Witness Jovan Krstić (OFS-30), 15 September 2020
[REDACTED]	[REDACTED]
Impugned Video Decision	Decision on Simatović's Request for Video-Conference Link for Witness Jovan Krstić (OFS-30), 20 August 2020

Abbreviation used	Full citation
Judgement	Judgement, 30 June 2021 (written Judgement filed on 6 August 2021)
Prosecution-AB	Prosecution Appeal Brief, 22 November 2021 (confidential) Notice of Filing of Public Redacted Version of Prosecution Appeal Brief, 19 May 2022
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
RFJ-070 Evidence Decision	Decision on Prosecution Motion for the Admission of Evidence of RFJ-070 Pursuant to Rule 111, 31 January 2018
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
RFJ-088 and RFJ-002 Rule 111 Decision	Decision on Prosecution Notice of Filing of Evidence of RFJ-088 and RFJ-002 Pursuant to Rule 111, 16 May 2018
Rule 112 Evidence Decision	Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 112, 22 February 2018
RFJ-142 Rule 112 Decision	Decision on Prosecution Motion for Admission of Evidence of Witness RFJ-142 Pursuant to Rule 112, 9 October 2018
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Simatović-AB	Simatović Defence Appeal Brief, 22 November 2021 (confidential) Notice of Filing of Public Redacted Version of Simatović Appeal Brief, 21 November 2022
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
2 February Decision	Decision on Stanišić's Request for Stay of Proceedings, 2 February 2017
Agreed Simatović Evidence Decision	Decision on Joint Motion of All parties for Admission of Evidence of Agreed Simatović Defence Witnesses and Associated Exhibits, 21 August 2020
[REDACTED]	[REDACTED]

IRMCT authorities

Abbreviation used	Full citation
<i>Karadžić</i> AJ	<i>Prosecutor v. Radovan Karadžić</i> , Case No. MICT-13-55-A, App.Ch., Judgement, 20 March 2019
<i>Mladić</i> AJ	<i>Prosecutor v. Ratko Mladić</i> , Case No. MICT-13-56-A, App.Ch., Judgement, 8 June 2021
<i>Ngirabatware</i> AJ	<i>Augustin Ngirabatware v. the Prosecutor</i> , Case No. MICT-12-29-A, App.Ch., Judgement, 18 December 2014
<i>Šešelj</i> AJ	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. MICT-16-99-A, App.Ch., Judgement, 11 April 2018

ICTY authorities

Abbreviation used	Full citation
<i>Aleksovski</i> AJ	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, App.Ch., Judgement, 24 March 2000
<i>Babić</i> SAJ	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, App.Ch., Judgement on Sentencing Appeal, 18 July 2005
<i>Blagojević</i> AJ	<i>Prosecutor v. Vidoje Blagojević & Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Boškoski</i> AJ	<i>Prosecutor v. Ljube Boškoski & Johan Tarčulovski</i> , Case No. IT-04-82-A, App.Ch., Judgement, 19 May 2010
<i>Čelebići</i> AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić & Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
<i>Đorđević</i> AJ	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-A, App.Ch., Judgement, 27 January 2014
<i>Erdemović</i> AJ	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-A, App.Ch., Judgement, 7 October 1997
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Hadžihasanović</i> AJ	<i>Prosecutor v. Enver Hadžihasanović & Amir Kubura</i> , Case No. IT-01-47-A, App.Ch., Judgement, 22 April 2008
<i>Haradinaj</i> AJ	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj</i> , Case No. IT-04-84-A, App.Ch., Judgement, 19 July 2010
<i>Jokić</i> SAJ	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-A, App.Ch., Judgement on Sentencing Appeal, 30 August 2005

Abbreviation used	Full citation
<i>Karadžić Babić Admission Decision</i>	<i>Prosecutor v. Radovan Karadžić</i> , Case No.IT-95-5/18-T, T.Ch., Decision on Prosecution's Motion for Admission of the Evidence of KDZ172 (Milan Babić) Pursuant to Rule 92 <i>Quater</i> , 13 April 2010
<i>Karadžić Krstić Admission Decision</i>	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Decision on Accused's Motion for Admission of Evidence of Radislav Krstić Pursuant to Rule 92 <i>Quater</i> , 26 November 2013
<i>Kordić AJ</i>	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-A, App.Ch., Judgement, 17 December 2004
<i>Krajišnik AJ</i>	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, App.Ch., Judgement, 17 March 2009
<i>Kupreškić AJ</i>	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović & Vladimir Šantić</i> , Case No. IT-95-16-A, App.Ch., Judgement, 23 October 2001
<i>Lukić AJ</i>	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-A, App.Ch., Judgement, 4 December 2012
<i>D.Milošević AJ</i>	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, App.Ch., Judgement, 12 November 2009
<i>Milutinović TJ</i>	<i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević & Sreten Lukić</i> , Case No. IT-05-87-T, T.Ch., Judgement, 26 February 2009
<i>Mladić Babić Admission Decision</i>	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Prosecution's Motion for Admission of the Evidence of RM-518 (Milan Babić) Pursuant to Rule 92 <i>Quater</i> , 13 February 2014
<i>Mladić RM-132 Admission Decision</i>	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Decision on Prosecution 92 <i>Quater</i> Motion (Witness RM-132), 28 June 2013
<i>Mladić TJ</i>	<i>Prosecutor v. Ratko Mladić</i> , Case No. IT-09-92-T, T.Ch., Judgement, 22 November 2017
<i>Mrkšić AJ</i>	<i>Prosecutor v. Mile Mrkšić & Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009
<i>Orić AJ</i>	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-A, App.Ch., Judgement, 3 July 2008
<i>Perišić AJ</i>	<i>Prosecutor v. Momčilo Perišić</i> , Case No. IT-04-81-A, App.Ch., Judgement, 28 February 2013

Abbreviation used	Full citation
<i>Popović</i> 92 quater Decision	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero & Vinko Pandurević</i> , Case No. IT-05-88-T, T.Ch., Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 <i>Quater</i> , 21 April 2008
<i>Popović</i> AJ	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero & Vinko Pandurević</i> , Case No. IT-05-88-A, App.Ch., Judgement, 30 January 2015
<i>Plavšić</i> SJ	<i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, T.Ch., Sentencing Judgement, 27 February 2003
<i>Prlić</i> Transcript Admission Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić & Berislav Pušić</i> , Case No. IT-04-74-AR73.6, App.Ch., Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007
<i>Prlić</i> AJ	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić & Berislav Pušić</i> , Case No. IT-04-74-A, App.Ch., Judgement, 29 November 2017
<i>Šainović</i> AJ	<i>Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević & Sreten Lukić</i> , Case No. IT-05-87-A, App.Ch., Judgement, 23 January 2014
<i>Simić</i> AJ	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006
<i>Stakić</i> AJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch., Judgement, 22 March 2006
<i>Simić</i> TJ	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić & Simo Zarić</i> , Case No. IT-95-9-T, T.Ch., Judgement, 17 October 2003
<i>Stanišić & Simatović</i> AJ	<i>Prosecutor v. Jovica Stanišić & Franko Simatović</i> , Case No. IT-03-69-A, App.Ch., Judgement, 9 December 2015
<i>Stanišić & Župljanin</i> AJ	<i>Prosecutor v. Mićo Stanišić & Stojan Župljanin</i> , Case No. IT-08-91-A, App.Ch., Judgement, 30 June 2016
<i>Strugar</i> AJ	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, App.Ch., Judgement, 17 July 2008
<i>Tadić</i> AJ	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, App.Ch., Judgement, 15 July 1999
<i>Tolimir</i> AJ	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-A, App.Ch., Judgement, 8 April 2015

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Abbreviation used	Full citation
<i>Bizimungu</i> AJ	<i>Augustin Bizimungu v. Prosecutor</i> , Case No. ICTR-00-56B-A, Judgement, 30 June 2014
<i>Kambanda</i> AJ	<i>Jean Kambanda v. Prosecutor</i> , Case No. ICTR 97-23-A, App.Ch., Judgement, 19 October 2000
<i>Musema</i> AJ	<i>Alfred Musema v. Prosecutor</i> , Case No. ICTR-96-13-A, App.Ch., Judgement, 16 November 2001
<i>Muvunyi</i> AJ	<i>Prosecutor v. Tharcisse Muvunyi</i> , Case No. ICTR-2000-55A-A, App.Ch., Judgement, 29 August 2008
<i>Nahimana</i> AJ	<i>Ferdinand Nahimana, Jean-Bosco Barayagwiza & Hassan Ngeze v. Prosecutor</i> , Case No. ICTR-99-52-A, App.Ch., Judgement, 28 November 2007
<i>Nchamihigo</i> AJ	<i>Siméon Nchamihigo v. Prosecutor</i> , Case No. ICTR-2001-63-A, App.Ch., Judgement, 18 March 2010
<i>Ntabakuze</i> AJ	<i>Aloys Ntabakuze v. Prosecutor</i> , Case No. ICTR-98-41A-A, App.Ch., Judgement, 8 May 2012
<i>Ntagerura</i> AJ	<i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki & Samuel Imanishimwe</i> , Case No. ICTR-99-46-A, App.Ch., Judgement, 7 July 2006
<i>Nyiramasuhuko</i> AJ	<i>Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi & Élie Ndayambaje</i> , Case No. ICTR-98-42-A, App.Ch., Judgement, 14 December 2015
<i>Rutaganda</i> AJ	<i>Georges Anderson Nderubumwe Rutaganda v. Prosecutor</i> , Case No. ICTR-96-3-A, App.Ch., Judgement, 26 May 2003
<i>Setako</i> AJ	<i>Ephrem Setako v. Prosecutor</i> , Case No. ICTR-04-81-A, App.Ch., Judgement, 28 September 2011

SCSL authorities

Abbreviation used	Full citation
<i>Taylor</i> AJ	<i>Prosecutor v. Charles Ghankay Taylor</i> , Case No. SCSL-03-01-A, App.Ch., Judgment, 26 September 2013

ICJ authorities

Abbreviation used	Full citation
<i>Wall</i> Advisory Opinion	Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, I.C.J. Reports 2004, p.136
<i>Gabčíkovo-Nagymaros</i> Judgement	Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p.7



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