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UNITED NATIONS

Mechanism for International Criminal Tribunals

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JUDGEMENT SUMMARY

APPEALS CHAMBER

(Exclusively for the use of the media. Not an official document)

The Hague, 11 April 2018

Appeal Judgement Summary for Vojislav Šešelj

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

A. Introduction

1. Today, I will summarize the essential issues in the present appeal and the Appeals Chamber’s most important findings. At the conclusion, I will read out the full text of the disposition of the judgement. This summary does not constitute any part of the authoritative written judgement, which will be distributed in writing at the conclusion of today’s pronouncement. A B/C/S version of the judgement will also be served on Mr. Šešelj when it is available.
2. This case concerns the Prosecution’s appeal of the acquittal of Mr. Šešelj, who, in February 1991, was appointed President of the Serbian Radical Party, and in June 1991, was elected as a member of the Assembly of the Republic of Serbia.
3. The Prosecution charged Mr. Šešelj with crimes against humanity and violations of the laws or customs of war. The Prosecution alleged that Mr. Šešelj planned, ordered, instigated, committed, or otherwise aided and abetted these crimes. It further alleged that he participated in these crimes, between August 1991 and September 1993, by way of a joint criminal enterprise. According to the indictment, the common purpose of the joint criminal enterprise was the permanent and forcible removal, through the commission of crimes, of a majority of the Croatian, Bosnian Muslim, and other non-Serbian populations from

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approximately one-third of the territory of Croatia and large parts of Bosnia and Herzegovina, in order to make these areas part of a new Serbian-dominated state.

4. On 31 March 2016, Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia rendered its Judgement. The Trial Chamber, by a majority, Judge Lattanzi dissenting, acquitted Mr. Šešelj of all charges. The Prosecution filed an appeal before the Mechanism challenging Mr. Šešelj's acquittal. Mr. Šešelj responded to the Prosecution's appeal.
5. In his response brief, Mr. Šešelj also stated his intention not to be present at the appeal hearing. The Appeals Chamber warned Mr. Šešelj that, if he maintained this position, it would be necessary to assign a standby counsel for the hearing and gave him an opportunity to reconsider.
6. The Appeals Chamber heard the oral submissions in this case on 13 December 2017. Mr. Šešelj did not attend, and a standby counsel was present at the appeal hearing to represent his procedural interests. Following the hearing, Mr. Šešelj was provided with the B/C/S version of the transcript of the hearing and given an opportunity to respond to the Prosecution's oral arguments in writing. Mr. Šešelj did not file a written response to the Prosecution's oral arguments.

B. Šešelj's Challenges to the Prosecution Appeal

7. I turn first to a number of threshold arguments raised by Mr. Šešelj in his response brief. Specifically, Mr. Šešelj challenged the compliance of the Prosecution's appeal brief with the Practice Direction on Requirements and Procedures for Appeals and argued that the appeal brief should be rejected. A review of the appeal brief shows general adherence to the practice direction. Mr. Šešelj's challenges to the form of the Prosecution's appeal brief are, therefore, dismissed.
8. Mr. Šešelj also raised several challenges pertaining to his fair trial rights, including allegations of political bias against him, as well as alleged violations of his right to adequate time and facilities to prepare his defence and his right to be tried without undue delay. Mr. Šešelj's arguments pertaining to his fair trial rights are repetitive of those that were rejected at trial

or in prior interlocutory appeal proceedings before the ICTY and demonstrate no error warranting appellate intervention. The Appeals Chamber accordingly dismisses them.

C. Violations of the Laws or Customs of War

9. The Trial Chamber found that a number of alleged violations of the laws or customs of war in Croatia and Bosnia and Herzegovina were proven, while others were not. In making these findings, the Trial Chamber cited the evidence upon which it relied, but did not discuss the reasons why it accepted this evidence. The Prosecution argues that the Trial Chamber failed to provide a reasoned opinion in relation to all of its findings in this respect, and effectively requests the Appeals Chamber to supply the reasoning. The Prosecution does not, however, seek any revision of the Trial Chamber's ultimate conclusions on the existence of these crimes, and therefore demonstrates no impact on the verdict. The Appeals Chamber, accordingly, dismisses the Prosecution's request.

D. Crimes Against Humanity

10. The Trial Chamber acquitted Mr. Šešelj of crimes against humanity after determining that there was insufficient proof that a widespread or systematic attack existed against the non-Serbian civilian population in Croatia, Bosnia and Herzegovina, and Vojvodina, in Serbia.

11. On appeal, the Prosecution argues that the Trial Chamber erred either in law or in fact and requests the Appeals Chamber to reverse the Trial Chamber's conclusion and enter findings on the underlying crimes against humanity charged in the Indictment.

12. The Appeals Chamber notes that the Trial Chamber considered extensive evidence showing that, between November 1991 and October 1992, Serbian forces, including paramilitary groups and volunteers committed murder, torture, and cruel treatment against non-Serbian civilians, as well as plunder of private property in various locations throughout the municipalities of Vukovar, Zvornik, Greater Sarajevo, Mostar, and Nevesinje.

13. In relation to these incidents, the Trial Chamber referred either to large numbers of civilian victims, or to specific numbers ranging from at least six to 130. In addition, the Trial Chamber took judicial notice of adjudicated facts depicting prevalent instances of displacements,

detentions, killings, torture, and cruel treatment of non-Serbian civilians by Serbian forces in the area of Vukovar and on the territory of Bosnia and Herzegovina.

14. In light of the record in this case, the Appeals Chamber can only conclude that the Trial Chamber either ignored a substantial portion of highly relevant evidence and its own findings, or erred in fact in concluding that the Prosecution failed to prove the existence of a widespread or systematic attack against the non-Serbian civilian population in Croatia and Bosnia and Herzegovina. The Appeals Chamber finds that no reasonable trier of fact could have concluded that there was no widespread or systematic attack against the non-Serbian civilian population in Croatia and in Bosnia and Herzegovina.

15. As to Vojvodina, in Serbia, the Trial Chamber found that the jurisdictional prerequisite of crimes against humanity was not proven. In particular, the Trial Chamber observed that Vojvodina was not an area of armed conflict and that no nexus existed between the events there and the conflict in Croatia and Bosnia and Herzegovina. It further found that the crimes committed in Hrtkovci, even if proven, did not, in themselves, amount to a widespread or systematic attack against a civilian population.

16. The Appeals Chamber finds that the Trial Chamber erred in its conclusions. In accordance with well-established jurisprudence, including on appeal in the present case, the Trial Chamber's own finding that an armed conflict was in progress in Croatia and in Bosnia and Herzegovina establishes that the crimes in Hrtkovci had a link to the conflict. Furthermore, the Indictment alleges a single attack against the civilian population in Croatia, Bosnia and Herzegovina, and Vojvodina. Accordingly, it is immaterial whether there was a widespread or systematic attack specifically in Vojvodina itself.

E. Joint Criminal Enterprise and Aiding and Abetting

17. The Trial Chamber found that the Prosecution failed to prove the existence of a joint criminal enterprise. On appeal, the Prosecution argues that the Trial Chamber erred by, among other things, failing to address evidence on the pattern of crimes committed by cooperating Serbian forces under the control of the alleged members of the joint criminal enterprise.

18. The Appeals Chamber notes that there are clear indications in the evidence, relied upon by the Prosecution on appeal, that numerous non-Serbian civilians in Vukovar, Zvornik, Nevesinje and Greater Sarajevo, were forcibly displaced by Serbian forces and that these and other acts of violence also constituted acts of persecution. The Appeals Chamber is of the view that, on its face, there is a discernable pattern of crimes committed by cooperating Serbian forces, which could have led a reasonable trier of fact to infer that the crimes were committed in furtherance of a common criminal purpose to permanently forcibly remove a majority of the Croatian, Bosnian Muslim, and other non-Serbian populations.

19. The Appeals Chamber recalls, however, that a trial chamber may infer the existence of a particular fact upon which the guilt of the accused depends from circumstantial evidence if it is the only reasonable conclusion that could be drawn from the evidence. If there is another conclusion which is also reasonably open from the evidence, and which is consistent with the non-existence of that fact, the conclusion of guilt beyond reasonable doubt cannot be drawn.

20. In this case, the Trial Chamber considered various factors and evidence, including on the disagreements between Mr. Šešelj and the alleged members of the joint criminal enterprise, and had doubt as to the purpose behind Mr. Šešelj's recruitment and deployment of volunteers. The Prosecution does not show on appeal that the Trial Chamber erred in its consideration of these factors and evidence.

21. It is important to recall that the question before the Appeals Chamber is not whether it agrees with the Trial Chamber's conclusion. The Appeals Chamber must give deference to the Trial Chamber which received the evidence at trial, and can only substitute its own finding for that of the Trial Chamber where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Bearing this in mind and in the particular circumstances of this case, the Prosecution has not demonstrated that the Trial Chamber erred in not finding the existence of a joint criminal enterprise involving Mr. Šešelj.

22. In addition, for the reasons explained in the Judgement, the Appeals Chamber dismisses the Prosecution's arguments on Mr. Šešelj's acquittal for aiding and abetting the crimes charged in the Indictment.

F. Physical Perpetration and Instigation through Speeches

23. The Trial Chamber examined a number of statements and speeches delivered during the conflict by Mr. Šešelj in Vukovar, Mali Zvornik, Hrtkovci, and before the Serbian Parliament and concluded that they did not amount to the commission or instigation of the crimes charged in the Indictment.
24. On appeal, the Prosecution argues that the Trial Chamber erred in not holding Mr. Šešelj responsible for crimes on the basis of his speeches.
25. The Appeals Chamber notes that, in relation to Mr. Šešelj's speeches in November 1991 en route to Vukovar and in the city, the Trial Chamber was not persuaded that the evidence established beyond reasonable doubt the content of what Mr. Šešelj said. The Appeals Chamber finds that the Prosecution does not show on appeal that the Trial Chamber's conclusion in this regard was unreasonable.
26. The Appeals Chamber turns next to the Prosecution's arguments concerning Mr. Šešelj's other statements, as well as his speeches in Mali Zvornik and before the Serbian Parliament. In relation to Mr. Šešelj's repeated threats that "rivers of blood" would follow a Bosnian declaration of independence, the Appeals Chamber finds that such statements are undoubtedly capable of creating fear and emboldening perpetrators of crimes against the non-Serbian civilian population.
27. Mr. Šešelj's statements using derogatory epithets, his call to defend Republika Srpska from "Ustasha and pan-Islamist hordes", and his appeal to Serbian Radical Party supporters "to clean the left bank of the river Drina" are clearly inflammatory.
28. In addition, in relation to Mr. Šešelj's speech in Mali Zvornik in March 1992, the Appeals Chamber finds that the Trial Chamber erred in concluding that the speech did not call for ethnic cleansing but was instead "contributing to the war effort". Indeed, the inflammatory language of Mr. Šešelj's speech and statements could have prompted other persons to commit crimes against non-Serbian civilians.

29. However, the Appeals Chamber is mindful of the significant lapse of time between some of Mr. Šešelj’s statements and the commission of the offences, and the highly circumstantial nature of the evidence related to the specific impact, if any, that Mr. Šešelj’s statements had on the conduct of the perpetrators. In these circumstances, it was reasonable for the Trial Chamber to find that the evidence presented by the Prosecution at trial was insufficient to discern the impact that Mr. Šešelj’s statements had on the commission of the crimes charged in the Indictment.

30. The same, however, cannot be said about the Trial Chamber’s conclusion regarding Mr. Šešelj’s speech on 6 May 1992 in Hrtkovci, Vojvodina. With respect to that speech, the Trial Chamber found that it constituted a clear appeal for the expulsion of the Croatian population of Hrtkovci. The Trial Chamber nonetheless concluded that Mr. Šešelj could not be held responsible for having physically committed or instigated crimes in Hrtkovci. In reaching this conclusion, the Trial Chamber determined that Mr. Šešelj’s calls to cleanse the area of Croatians were neither accepted nor executed, and that the Prosecution failed to prove that his speech was the reason for the departure of Croatians from Hrtkovci or for the campaign of persecution which allegedly followed the speech.

31. The Appeals Chamber notes that, according to a transcript of the “Promotion Rally of the Serbian Radical Party” held on 6 May 1992 in Hrtkovci, Mr. Šešelj addressed his “Serbian brothers and sisters”, declaring, among other things, that “there was no room for Croats in Hrtkovci”, and that “we will drive them to the border of Serbian territory and they can walk on from there, if they do not leave before of their own accord”. He directly addressed Croatians by telling them “you have nowhere to return to” and ended his speech by stating: “I firmly believe that you, Serbs from Hrtkovci and other villages around here, will also know how to preserve your harmony and unity, that you will promptly get rid of the remaining Croats in your village and the surrounding villages”. Following Mr. Šešelj’s speech, the crowd chanted slogans such as “Croatas, go to Croatia”, and “[t]his is Serbia”. The Trial Chamber also noted in the judgement that Mr. Šešelj had influence over the members of his party, that he was an ideological leader, even seen by some “as if he were a god”, and that his speeches had a significant impact on the audience.

32. The Trial Chamber's own findings reflect that, soon after Mr. Šešelj's speech, many Croatians and other non-Serbs left Hrtkovci in the context of coercion, harassment, and intimidation. In light of this, as well as evidence of regular threats and violence against non-Serbs, the inaction of the local authorities, and the pressured or fraudulent housing exchanges or forced abandonment of homes, the Appeals Chamber considers that no reasonable trier of fact could have found that the non-Serbian civilians genuinely consented to leave Hrtkovci.

33. The Appeals Chamber considers that, in light of Mr. Šešelj's influence over the crowd and the striking parallels between his inflammatory words and the acts subsequently perpetrated by, among others, members of his audience, Mr. Šešelj substantially contributed to the conduct of the perpetrators, thereby instigating the crimes of persecution, deportation, and other inhumane acts (forcible transfer), as crimes against humanity.

34. In addition, Mr. Šešelj's speech incited violence that denigrated and violated the right to security of members of the Croatian population of Hrtkovci, thereby committing the crime of persecution, based on a violation of the right to security, as a crime against humanity.

35. Accordingly, the Appeals Chamber finds Mr. Šešelj criminally responsible, on the basis of his 6 May 1992 speech in Hrtkovci, Vojvodina, for instigating deportation, persecution, through forcible displacement, and other inhumane acts (forcible transfer), as crimes against humanity, as well as for committing persecution, based on a violation of the right to security, as a crime against humanity.

G. Disposition

36. For the foregoing reasons, THE APPEALS CHAMBER

PURSUANT to Article 23 of the Statute and Rule 144 of the Rules;

NOTING the written submissions of the parties and the Prosecution's oral arguments presented at the appeal hearing on 13 December 2017;

SITTING in open session;

GRANTS the Prosecution's First and Second Grounds of Appeal, in part, and REVERSES Šešelj's acquittals for instigating persecution (forcible displacement), deportation, and other inhumane

acts (forcible transfer) as crimes against humanity and for committing persecution (violation of the right to security) as a crime against humanity;

FINDS Šešelj GUILTY pursuant to Article 1 of the Mechanism's Statute and Articles 5(d), 5 (h), 5 (i) and 7(1) of the ICTY Statute and ENTERS convictions under Counts 1, 10, and 11 of the Indictment for instigating persecution (forcible displacement), deportation, and other inhumane acts (forcible transfer) as crimes against humanity and for committing persecution (violation of the right to security) as a crime against humanity in Hrtkovci, Vojvodina;

SENTENCES Šešelj to a term of 10 years of imprisonment;

DECLARES, in accordance with Rule 125(C) of the Rules, that Šešelj's sentence has been served in view of the credit which shall be given for his detention in the custody of the ICTY pending trial from 14 February 2003 to 6 November 2014; and

DISMISSES the Prosecution's appeal in all other respects.
