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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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

APPEALS CHAMBER

The Hague, 28 February 2013

Appeal Judgement Summary for Momčilo Perišić

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

I. INTRODUCTION

A. Background of the Case

This case concerns events that occurred between at least August 1993 and November 1995, in the territory of Bosnia-Herzegovina, or “Bosnia”, and the Republic of Croatia, or “Croatia”. Starting on 26 August 1993 and through the rest of this period, Mr. Perišić was the Chief of the General Staff of the Yugoslav Army, or “VJ”, a position that made him the VJ’s most senior officer. During this period, the VJ facilitated the provision of military and logistical aid to the Army of Republika Srpska, or “VRS”, in Bosnia and Herzegovina, and to the Army of the Serbian Krajina, or “SVK”, in Croatia.

The Trial Chamber, Judge Moloto dissenting, found Mr. Perišić guilty as an aider and abettor of the following crimes committed by the VRS in the Bosnian towns of Sarajevo and Srebrenica: murder, inhumane acts, and persecutions as crimes against humanity; and murder and attacks on civilians as violations of the laws or customs of war. The Trial Chamber, Judge Moloto dissenting, also found Mr. Perišić guilty as a superior for failing to punish the following crimes related to SVK shelling of Zagreb on 2 and 3 May 1995: murder and inhumane acts as crimes against humanity; and murder and attacks on civilians as violations of the laws or customs of war. Mr. Perišić was sentenced to 27 years of imprisonment.

II. GROUNDS OF APPEAL

Mr. Perišić submitted seventeen grounds of appeal challenging his convictions and his sentence. He requests that the Appeals Chamber reverse all of his convictions, or, in the alternative, that his sentence be reduced. The Appeals Chamber now turns to Mr. Perišić’s contentions, addressing first his grounds of appeal regarding his convictions for aiding and abetting crimes in Sarajevo and Srebrenica.

A. Aiding and Abetting

Mr. Perišić, in his First through Twelfth Grounds of Appeal, submits that the Trial Chamber erred in convicting him of aiding and abetting crimes committed by the VRS in Sarajevo and Srebrenica. In particular, Mr. Perišić asserts that the Trial Chamber erred in holding that acts of an aider and abettor need not be specifically directed towards assisting the commission of charged crimes. He further contends that the Trial Chamber committed a number of additional errors with respect to his conviction for aiding and abetting.

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The Prosecution responds that the Trial Chamber did not err in convicting Mr. Perišić of aiding and abetting the VRS crimes in Sarajevo and Srebrenica.

1. Specific Direction

(a) Specific Direction as a Component of Aiding and Abetting Liability

The Appeals Chamber recalls that the Trial Chamber concluded that specific direction is not an element of the *actus reus* of aiding and abetting. The Trial Chamber, accordingly, declined to consider whether Mr. Perišić specifically directed aid towards charged VRS crimes. The Trial Chamber found that Mr. Perišić made a substantial contribution to these crimes, knew that his aid assisted the crimes in Sarajevo and Srebrenica, and was aware of the general nature of the crimes. Based on these findings, the Trial Chamber found Mr. Perišić guilty of aiding and abetting VRS crimes in Sarajevo and Srebrenica.

The Appeals Chamber recalls that “specific direction” was first described as a requisite element of the *actus reus* of aiding and abetting liability in the 1999 *Tadić* Appeal Judgement. To date, no judgement of the Appeals Chamber has found cogent reasons to depart from the definition of aiding and abetting liability adopted in the *Tadić* Appeal Judgement. Moreover, many subsequent appeal judgements have explicitly referred to “specific direction” in enumerating the elements of aiding and abetting, often repeating verbatim the *Tadić* Appeal Judgement’s relevant holding.

The Trial Chamber relied upon the 2009 *Mrkšić and Šljivančanin* Appeal Judgement in holding that specific direction was not a required element of the *actus reus* of aiding and abetting. The Appeals Chamber notes that the *Mrkšić and Šljivančanin* Appeal Judgement stated, in passing, that “‘specific direction’ is not an essential ingredient of the *actus reus* of aiding and abetting”.

The Appeals Chamber recalls its settled practice to only “depart from a previous decision after the most careful consideration has been given to it, both as to the law, including the authorities cited, and the facts.” The *Mrkšić and Šljivančanin* Appeal Judgement’s passing reference to specific direction does not amount to such “careful consideration”. Had the Appeals Chamber found cogent reasons to depart from its relevant precedent, and intended to do so, it would have performed a clear, detailed analysis of the issue, discussing both past jurisprudence and the authorities supporting an alternative approach. Instead, the relevant reference to specific direction: was made in a section and paragraph dealing with *mens rea* rather than *actus reus*; was limited to a single sentence not relevant to the Appeals Chamber’s holding; did not explicitly acknowledge a departure from prior precedent; and, most tellingly, cited to only one previous appeal judgement, which in fact confirmed that specific direction does constitute an element of aiding and abetting liability. These indicia suggest that the formula “not an essential ingredient” was not meant to depart from previous jurisprudence establishing that specific direction is an element of aiding and abetting liability.

Accordingly, the Appeals Chamber, Judge Liu dissenting, considers that specific direction remains an element of aiding and abetting liability, and reaffirms that no conviction for aiding and abetting a crime may be entered if specific direction has not been proved beyond reasonable doubt.

(b) Circumstances in which Specific Direction Must be Explicitly Considered

The Appeals Chamber, Judge Liu dissenting, recalls that the element of specific direction establishes a culpable link between assistance provided by an accused individual and the crimes of principal perpetrators. In many cases, evidence relating to other elements of aiding and abetting liability *may* be sufficient to demonstrate specific direction and thus the requisite culpable link.

In this respect, the Appeals Chamber notes that previous appeal judgements of the Tribunal have not conducted extensive analyses of specific direction. The lack of such discussion may be explained by the fact that prior convictions for aiding and abetting entered or affirmed by the Appeals Chamber involved relevant acts geographically or otherwise proximate to, and thus not remote from, the crimes of principal perpetrators. Where such proximity is present, specific direction may be demonstrated implicitly through discussion of other elements of aiding and abetting liability, such as substantial contribution.

However, not all cases of aiding and abetting will involve proximity of an accused individual's relevant acts to crimes committed by principal perpetrators. Where an accused aider and abettor is remote from relevant crimes, evidence proving other elements of aiding and abetting may not be sufficient to prove specific direction. In such circumstances, the Appeals Chamber, Judge Liu dissenting, holds that explicit consideration of specific direction is required.

(c) The Trial Chamber's Analysis of Aiding and Abetting in this Case

The Appeals Chamber observes that Mr. Perišić's assistance to the VRS was remote from the relevant crimes of principal perpetrators. In particular, the Trial Chamber found that the VRS was independent from the VJ, and that the two armies were based in separate geographic regions. In addition, the Trial Chamber did not refer to any evidence that Mr. Perišić was physically present when relevant criminal acts were planned or committed. In these circumstances, the Appeals Chamber, Judge Liu dissenting, considers that an explicit analysis of specific direction would have been required in order to establish the necessary link between the aid Mr. Perišić provided and the crimes committed by principal perpetrators.

Accordingly, the Appeals Chamber, Judge Liu dissenting, considers that the Trial Chamber committed an error of law by not considering whether specific direction was proved in this case. The Appeals Chamber will thus proceed to assess the evidence relating to Mr. Perišić's convictions for aiding and abetting *de novo* under the correct legal standard, considering whether Mr. Perišić's actions were specifically directed to aid and abet the VRS Crimes in Sarajevo and Srebrenica.

The Appeals Chamber notes that previous judgements have not provided extensive analysis of what evidence may prove specific direction. However, the Appeals Chamber recalls that specific direction involves finding a link between an accused aider and abettor and crimes committed by principal perpetrators. The Appeals Chamber considers that the types of evidence required to establish such a link will depend on the facts of a case. However, in most situations, the provision of general assistance which could be used for both lawful and unlawful activities will not be sufficient, alone, to prove that this aid was specifically directed to crimes of principal perpetrators.

(d) The Extent to Which Mr. Perišić Specifically Directed Assistance to Crimes Committed by the VRS

In order to determine whether the VJ assistance facilitated by Mr. Perišić was specifically directed to the commission of the VRS crimes in Sarajevo and Srebrenica, the Appeals Chamber considers relevant evidence on the record *de novo*, taking into account, where appropriate, the Trial Chamber's findings.

As a preliminary matter, the Appeals Chamber recalls that the VRS was neither *de jure* nor *de facto* subordinated to the VJ. The Appeals Chamber will now consider whether VJ assistance to the VRS, that Mr. Perišić acknowledges having facilitated, was specifically directed towards VRS crimes. In this regard, the Appeals Chamber will assess: Mr. Perišić's role in shaping and implementing the Federal Republic of Yugoslavia's policy of supporting the VRS; whether this policy of supporting the VRS was specifically directed towards the commission of certain crimes by the VRS; and whether Mr. Perišić either implemented the

Federal Republic of Yugoslavia Supreme Defence Council, or “SDC”, policy of assisting the VRS in a way that specifically directed aid to the VRS crimes in Sarajevo and Srebrenica, or took action to provide such aid outside the context of SDC-approved assistance.

The Appeals Chamber underscores that the parameters of its inquiry are limited and focus solely on factors related to Mr. Perišić’s individual criminal liability for the VRS Crimes in Sarajevo and Srebrenica, not the potential liability of States or other entities over which the Tribunal has no pertinent jurisdiction. The Appeals Chamber also underscores that its analysis of specific direction will exclusively address *actus reus*. In this regard, the Appeals Chamber acknowledges that specific direction may involve considerations that are closely related to questions of *mens rea*. Indeed, as discussed below, evidence regarding an individual’s state of mind may serve as circumstantial evidence that assistance he or she facilitated was specifically directed towards charged crimes. However, the Appeals Chamber recalls again that the *mens rea* required to support a conviction for aiding and abetting is knowledge that assistance aids the commission of criminal acts, along with awareness of the essential elements of these crimes. By contrast, as set out above, the long-standing jurisprudence of the Tribunal affirms that specific direction is an analytically distinct element of *actus reus*.

(i) Mr. Perišić’s Role in Shaping and Implementing the Policy of Supporting the VRS

The Appeals Chamber recalls that Mr. Perišić served as the most senior officer of the VJ during the relevant period, and was responsible for ensuring combat readiness and organising VJ operations. Mr. Perišić was subordinated to the President of the Federal Republic of Yugoslavia, and ultimate authority on defence policy and operational priorities for the VJ rested with the SDC. While SDC meetings were attended by many individuals, including Mr. Perišić, final SDC decisions were taken by political leaders: the President of the Federal Republic of Yugoslavia and the Presidents of the Republics of Serbia and Montenegro.

The decision to provide VJ assistance to the VRS was adopted by the SDC before Mr. Perišić was appointed Chief of the VJ General Staff, and the SDC continued to support this policy during Mr. Perišić’s tenure in this position. Mr. Perišić regularly attended and actively participated in meetings of the SDC, and he was delegated the legal authority by the SDC to administer assistance to the VRS. However, the SDC retained the power to review both particular requests for assistance and the general policy of providing aid to the VRS.

The Appeals Chamber recalls that the SDC’s ultimate authority over the policy of aiding the VRS does not, in and of itself, exempt Mr. Perišić from criminal liability. In assessing whether Mr. Perišić is liable for aiding and abetting the VRS crimes in Sarajevo and Srebrenica, the Appeals Chamber will first consider whether the SDC policy of aiding the VRS was itself directed to facilitate criminal activities. This could be shown either by a finding that the VRS was an entirely criminal organisation, or by a finding that the SDC targeted its aid towards the VRS’s crimes.

(ii) The SDC Policy of Providing Support to the VRS

The Appeals Chamber recalls that the Trial Chamber did not characterise the VRS as a criminal organisation. Having reviewed the evidence on the record, the Appeals Chamber agrees with the Trial Chamber that the VRS was not an organisation whose actions were criminal *per se*; instead, it was an army fighting a war. The Appeals Chamber notes the Trial Chamber’s finding that the VRS’s strategy was “inextricably linked to” crimes against civilians. However, the Trial Chamber did not find that all VRS activities in Sarajevo or Srebrenica were criminal in nature. The Trial Chamber limited its findings to characterising as criminal certain *actions* of the VRS in the context of the operations in Sarajevo and Srebrenica. In these circumstances, the Appeals Chamber considers that a policy of providing assistance to the VRS’s general war effort does not, in itself, demonstrate that aid

facilitated by Mr. Perišić was specifically directed aid to the VRS Crimes in Sarajevo and Srebrenica.

Further, neither the Trial Chamber's conclusions, nor the Appeals Chamber's *de novo* review of the evidentiary record, reveals any basis for concluding that SDC policy specifically directed aid towards VRS crimes. Instead, the SDC focused on monitoring and modulating aid to the general VRS war effort. For example, SDC discussions addressed difficulties in providing particular levels of assistance requested by the VRS, salaries of VJ personnel seconded to the VRS, and how to react when members of the VJ provided supplies to the VRS without official approval. The Appeals Chamber observes that, although the Trial Chamber considered the magnitude of aid provided to the VRS in concluding that VJ assistance substantially contributed to VRS crimes in Sarajevo and Srebrenica, evidence regarding volume of assistance does not necessarily establish specific direction. In the circumstances of this case, indicia demonstrating the magnitude of VJ aid to the VRS serve as circumstantial evidence of specific direction; however, a finding of specific direction must be the sole reasonable inference after a review of the evidentiary record as a whole. In this context, the Appeals Chamber, Judge Liu dissenting, considers that a reasonable interpretation of the evidence on the record is that the SDC directed large-scale military assistance to the general VRS war effort, not to the commission of VRS crimes. Accordingly, specific direction of VJ aid towards VRS crimes is not the sole reasonable inference that can be drawn from the totality of the evidence on the record, even considering the magnitude of the VJ's assistance.

In view of the foregoing, the Appeals Chamber, Judge Liu dissenting, concludes that the SDC policy of assisting the VRS was not proved to be specifically directed towards VRS crimes as opposed to the general VRS war effort. Because the assistance provided to the VRS was not in furtherance of specific crimes, the Appeals Chamber considers that, insofar as Mr. Perišić faithfully executed the SDC policy of supporting the VRS, the aid Mr. Perišić facilitated was not specifically directed towards the latter's criminal activities, inclusive of the VRS crimes in Sarajevo and Srebrenica.

(iii) Mr. Perišić's Implementation of the SDC Policy and Other Actions

The Appeals Chamber now considers whether Mr. Perišić implemented the SDC policy of assisting the VRS war effort in a manner that redirected aid towards VRS crimes, or whether Mr. Perišić took separate actions to the same effect. In this regard, the Appeals Chamber will consider Mr. Perišić's role in SDC deliberations, as well as the nature of the assistance he provided to the VRS and the manner in which this aid was distributed. Finally, the Appeals Chamber will consider whether Mr. Perišić took actions independent of his efforts to implement the SDC policy indicating that aid he facilitated was specifically directed towards the VRS crimes in Sarajevo and Srebrenica.

The Appeals Chamber first notes that evidence relating to Mr. Perišić's discussions at meetings of the SDC does not suggest that he advocated specifically directing aid to support VRS crimes. The Trial Chamber found that Mr. Perišić supported continuation of the SDC policy of assisting the VRS. During meetings of the SDC, he argued both for sustaining aid to the VRS and for adopting related legal and financial measures that facilitated such aid. However, based on the Trial Chamber's analysis and a *de novo* review of the evidence, the Appeals Chamber, Judge Liu dissenting, finds that there is no proof that Mr. Perišić supported the provision of assistance specifically directed towards the VRS's criminal activities. Instead, evidence on the record suggests that Mr. Perišić's relevant actions were intended to aid the VRS's overall war effort.

The Appeals Chamber observes that Mr. Perišić had considerable discretion in providing assistance to the VRS, including the power to deny requests for aid not submitted through official channels. While it is possible that Mr. Perišić could have used this power to divert SDC-approved aid specifically towards VRS criminal activities, the Trial Chamber did not make any findings to that effect, and the Appeals Chamber's review of relevant evidence

also suggests that Mr. Perišić simply directed assistance towards the general VRS war effort within the parameters set by the SDC.

The Appeals Chamber recalls that indicia demonstrating the nature and distribution of VJ aid could also serve as circumstantial evidence of specific direction. With respect to the specific types of assistance facilitated by the VJ through Mr. Perišić, the Appeals Chamber, Judge Liu dissenting, finds that neither the secondment of VJ soldiers to the VRS, nor the provision of logistical aid, appear incompatible with lawful military operations. The Appeals Chamber also finds that evidence on the record does not prove that Mr. Perišić took steps, in contexts outside the scope of SDC policy, to assist VRS crimes.

The Appeals Chamber recalls again that the VRS undertook, *inter alia*, lawful combat activities and was not a purely criminal organisation. In this context, the Appeals Chamber, Judge Liu dissenting, considers that a reasonable interpretation of relevant circumstantial evidence is that, while Mr. Perišić may have known of VRS crimes, the VJ aid he facilitated was directed towards the VRS's general war effort rather than VRS crimes. Accordingly, the Appeals Chamber, Judge Liu dissenting, holds that Mr. Perišić was not proved beyond reasonable doubt to have facilitated assistance specifically directed towards the VRS Crimes in Sarajevo and Srebrenica.

(e) Conclusion from *De Novo* Review of Evidence on the Record

The Appeals Chamber, Judge Liu dissenting, has clarified that, in view of the remoteness of Mr. Perišić's actions and the crimes of the VRS, an explicit analysis of specific direction was required. As detailed above, the Appeals Chamber has reviewed the Trial Chamber's general evidentiary findings and conducted a *de novo* assessment of evidence on the record. In sum, the Appeals Chamber, Judge Liu dissenting, is not convinced that the only reasonable interpretation of the totality of this circumstantial evidence is that Mr. Perišić specifically directed aid towards VRS crimes. Instead, a reasonable interpretation of the record is that VJ aid facilitated by Mr. Perišić was directed towards the VRS's general war effort rather than VRS crimes. Accordingly, the Appeals Chamber, Judge Liu dissenting, is not convinced that the VJ aid which Mr. Perišić facilitated was proved to be specifically directed towards the VRS Crimes in Sarajevo and Srebrenica.

As demonstrated above, the Appeals Chamber considers that assistance from one army to another army's war efforts is insufficient, in itself, to trigger individual criminal liability for individual aid providers absent proof that the relevant assistance was specifically directed towards criminal activities. The Appeals Chamber underscores, however, that this conclusion should in no way be interpreted as enabling military leaders to deflect criminal liability by subcontracting the commission of criminal acts. If an ostensibly independent military group is proved to be under the control of officers in another military group, the latter can still be held responsible for crimes committed by their puppet forces. Similarly, aid from one military force specifically directed towards crimes committed by another force can also trigger aiding and abetting liability. However, as explained above, a sufficient link between the acts of an individual accused of aiding and abetting a crime and the crime he or she is charged with assisting must be established for the accused individual to incur criminal liability. Neither the findings of the Trial Chamber nor the evidence on the record in this case prove such a link with respect to Mr. Perišić's actions.

2. Conclusion

After carefully reviewing the evidence on the record, the Appeals Chamber, Judge Liu dissenting, concludes that it has not been established beyond reasonable doubt that Mr. Perišić carried out "acts specifically directed to assist, encourage or lend moral support to the perpetration of [the] certain specific crime[s]" committed by the VRS. Accordingly, Mr. Perišić's convictions for aiding and abetting must be reversed on the ground that not all the elements of aiding and abetting liability have been proved beyond reasonable doubt.

For the foregoing reasons, the Appeals Chamber, Judge Liu dissenting, grants Mr. Perišić's Second and Third Grounds of Appeal in part, insofar as they relate to his convictions for aiding and abetting, and reverses his convictions under Counts 1, 2, 3, 4, 9, 10, 11, and 12 of the Indictment. In view of this finding, Mr. Perišić's remaining arguments in his First through Twelfth Grounds of Appeal are dismissed as moot.

B. Superior Responsibility

Mr. Perišić, in his Thirteenth Ground of Appeal, submits that the Trial Chamber erred in law and in fact in determining that he was in a superior-subordinate relationship with the members of the VJ seconded to the SVK at the time of the shelling of Zagreb on 2 and 3 May 1995.

The Prosecution responds that the Trial Chamber did not err in its conviction of Mr. Perišić for failing to punish the crimes of the VJ soldiers serving in the SVK who committed crimes in Zagreb.

The Trial Chamber's finding of superior responsibility was based in part on Mr. Perišić's position as a senior officer of the VJ. More specifically, the Trial Chamber found that some members of the VJ, including the perpetrators of charged crimes in Zagreb, were seconded from the VJ to assist war efforts of the Republic of Serbian Krajina. These VJ soldiers seconded to the SVK were administratively assigned to a unit of the VJ named the "40th PC", which provided, *inter alia*, their salaries, housing, and educational and medical benefits during secondment.

1. Analysis

The Appeals Chamber recalls that a superior cannot be held criminally liable for the acts of his subordinates unless, among other factors, he exercised effective control over those subordinates. The Appeals Chamber further recalls that an accused may not be held liable under Article 7(3) of the Statute for failure to punish crimes that were committed by a subordinate before the accused assumed command over the subordinate.

As an initial matter, the Appeals Chamber notes that the Trial Chamber did not sufficiently discuss and analyse the evidence of relevant witnesses. In context, this constituted a failure to provide a reasoned opinion and thus an error of law. In view of the Trial Chamber's legal error, the Appeals Chamber will proceed to assess the evidence relevant to Mr. Perišić's exercise of effective control *de novo*. The evidence relating to Mr. Perišić's effective control is circumstantial and thus can support a finding of effective control only if this is the only reasonable interpretation of the record.

(a) Mr. Perišić's Ability to Exercise of Effective Control over the 40th PC

In order to determine whether Mr. Perišić exercised effective control over the perpetrators of crimes in Zagreb, the Appeals Chamber will consider relevant evidence, taking into account, as appropriate, the Trial Chamber's relevant findings.

(i) Mr. Perišić's Instruction that Zagreb not be Shelled

The Appeals Chamber first recalls that SVK forces shelled Zagreb on 2 and 3 May 1995, resulting in the deaths and injuries of civilians. The Trial Chamber found that this shelling was ordered by Milan Čeleketić, a VJ soldier seconded to the SVK through the 40th PC, on the basis of instructions from Republic of Serbian Krajina President Milan Martić. The Trial Chamber also found that during the SVK attacks in Croatia, Mr. Perišić instructed Čeleketić not to shell Zagreb. However, these instructions were not obeyed.

(ii) Evidence Regarding Mr. Perišić's Ability to Issue Command Orders to Soldiers Seconded Through the 40th PC

The Appeals Chamber considers evidence regarding Mr. Perišić's ability to issue binding command orders to VJ personnel seconded through the 40th PC. However, having carefully considered relevant circumstantial evidence, the Appeals Chamber is not convinced that the only reasonable conclusion is that Mr. Perišić could issue command orders to seconded VJ soldiers at the time of the shelling of Zagreb.

(iii) Evidence Regarding Mr. Perišić's Ability to Discipline VJ Members Seconded to the SVK

The Appeals Chamber also considers evidence concerning Mr. Perišić's ability to discipline VJ soldiers seconded through the 40th PC. The Trial Chamber noted that Mr. Perišić was involved in disciplinary proceedings against VJ soldiers seconded through the 40th PC following the fall of the Republic of Serbian Krajina, several months after the crimes in Zagreb took place. However, the Appeals Chamber notes evidence that SVK forces came under direct VJ control after the fall of the Republic of Serbian Krajina. In these circumstances, a reasonable interpretation of this evidence is that Mr. Perišić only acquired disciplinary powers over VJ members seconded to the SVK after the shelling of Zagreb.

(iv) Other Evidence

Finally, the Appeals Chamber notes the existence of evidence that Mr. Perišić had some control over promotions and resignations within the 40th PC. The Appeals Chamber also notes that Mr. Perišić was heavily involved in SVK operations through his management of VJ aid, and possessed the power to approve or deny particular requests for assistance and secondments. This evidence suggests that Mr. Perišić had some influence over VJ members seconded to the SVK.

(b) The Totality of the Evidence

Having assessed different types of evidence relevant to Mr. Perišić's effective control, the Appeals Chamber will now consider whether this evidence, assessed in its totality, proves that at relevant times Mr. Perišić possessed effective control over SVK members implicated in committing crimes during the shelling of Zagreb. The Appeals Chamber again notes the circumstantial nature of the relevant evidence; in these circumstances, a finding of effective control is possible only if that is the sole reasonable inference from this evidence.

The Appeals Chamber concludes that, while some evidence on the record is consistent with Mr. Perišić possessing effective control over soldiers seconded through the 40th PC, other evidence on the record suggests that during the shelling of Zagreb, Mr. Perišić did not possess effective control over members of the perpetrators of charged crimes in Zagreb.

In these circumstances, a finding that Mr. Perišić exercised effective control over those who committed crimes in Zagreb during the shelling of that time is not the sole reasonable inference from the totality of the circumstantial evidence in this case. Thus, Mr. Perišić's effective control has not been proved beyond reasonable doubt.

2. Conclusion

Absent a finding of effective control over subordinates, superior responsibility cannot be established. Thus, the Appeals Chamber reverses the Trial Chamber's finding that Mr. Perišić was liable for failing to punish relevant VJ soldiers serving in the SVK for their actions during the shelling of Zagreb. Mr. Perišić's remaining submissions regarding superior responsibility are therefore rendered moot and need not be addressed.

For the foregoing reasons, the Appeals Chamber finds that the Trial Chamber erred in convicting Mr. Perišić for failing to punish VJ soldiers seconded through the 40th PC for crimes that took place during the shelling of Zagreb on 2 and 3 May 1995. Accordingly, Mr. Perišić's Thirteenth Ground of Appeal is granted.

III. DISPOSITION

I shall now read out the full operative text of the Appeals Chamber's disposition. Mr. Perišić, will you please stand.

For the foregoing reasons, THE APPEALS CHAMBER,

PURSUANT TO Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the parties and the arguments they presented at the hearing of 30 October 2012;

SITTING in open session;

GRANTS, Judge Liu dissenting, Momčilo Perišić's Second and Third Grounds of Appeal, in part; REVERSES, Judge Liu dissenting, Momčilo Perišić's convictions for murder, inhumane acts, and persecutions as crimes against humanity, and for murder and attacks on civilians as violations of the laws or customs of war; and ENTERS, Judge Liu dissenting, a verdict of acquittal under Counts 1, 2, 3, 4, 9, 10, 11, and 12 of the Indictment;

GRANTS Momčilo Perišić's Thirteenth Ground of Appeal; REVERSES Momčilo Perišić's convictions for murder and inhumane acts as crimes against humanity, and for murder and attacks on civilians as violations of the laws or customs of war; and ENTERS a verdict of acquittal under Counts 5, 6, 7, and 8 of the Indictment;

DISMISSES, Judge Liu dissenting, as moot Momčilo Perišić's remaining grounds of appeal; and ORDERS, in accordance with Rules 99(A) and 107 of the Rules, the immediate release of Momčilo Perišić, and DIRECTS the Registrar to make the necessary arrangements.

Judges Theodor Meron and Carmel Agius append a joint separate opinion.

Judge Liu Daqun appends a partially dissenting opinion.

Judge Arlette Ramaroson appends a separate opinion.

Mr. Perišić, you may be seated.

This hearing of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia stands adjourned.
