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International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

**Office of the  
Prosecutor**

**Bureau du  
Procureur**

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The Hague, 24 June 2013

### STATEMENT OF THE ICTY PROSECUTOR SERGE BRAMMERTZ

In the weeks following publication of a letter written by Judge Harhoff, the Office of the Prosecutor has received many requests for comment. Like all those who support international criminal justice, I am concerned about destructive elements in the debate that has followed the letter's publication. However, it is not appropriate or helpful for this Office to enter into the debate. Our key objective is to see the ICTY, through its remaining work, convincingly demonstrate the legitimacy of its processes, the high quality of its verdicts and its capacity to secure justice for victims of the conflicts in the former Yugoslavia.

At the same time, I understand the disappointment felt by many, especially survivor communities, following the series of recent acquittals mentioned in Judge Harhoff's letter. My Office shares that disappointment. While acquittals can be a just and appropriate outcome in any judicial process, they must be based on sound evidentiary analysis and coherent legal reasoning. They must also be persuasively explained to the communities they affect. To those communities, my Office reiterates its commitment to using all remaining legal mechanisms to press for just outcomes that properly reflect the culpability of accused persons brought before the Tribunal.

In this regard, by Friday we will file a notice of appeal concerning Trial Chamber I's Judgement acquitting Jovica Stanišić and Franko Simatović of all responsibility for the crimes charged against them. We consider that the Majority's Judgement contains several serious errors, leading to an unjust outcome that should be corrected.

We also believe there are cogent reasons to depart from the legal principles enunciated in the *Perišić* Appeal Judgement. My Office has made detailed argument, first before the *Šainović et al.* Appeals Chamber and then before the *Đorđević* Appeals Chamber, explaining our reasons. Among other things, we have pointed out that the *Perišić* Appeals Chamber's test for aiding and abetting has no foundation in customary international law, is contrary to prior Appeals Chamber jurisprudence, lacks coherence as a legal doctrine and undermines respect for international humanitarian law. The Appeals Chambers in the *Šainović et al.* and *Đorđević* cases are expected to rule on our argument by the end of this year.

Regarding the *Gotovina et al.* case, my Office is considering whether the specialized threshold required for review of the Appeal Judgement is met. If so, we will initiate proceedings within the prescribed one-year time frame. We will also provide all possible assistance to national authorities in the former Yugoslavia to prosecute crimes committed during Operation Storm and its aftermath.

Over the past 20 years, the ICTY has overcome many obstacles and laid a solid foundation for modern-day international criminal justice. To preserve its positive reputation moving forward the Tribunal must make allowance for valid criticism. It must use the constructive aspects of the debate generated as a springboard for strengthening its processes.