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“Specific direction” in *Perišić* and *Taylor*

The requirement of “specific direction” in aiding and abetting liability in international criminal law

Kandidatnummer: 577

Leveringsfrist: 25.11.14

Antall ord: 14569



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ABBREVIATIONS

AFRC	Armed Forces Revolutionary Council
BiH	Bosnia and Herzegovina
ECCC	Extraordinary Chambers in the Courts of Cambodia
ICC	International Criminal Court
ICJ	International Court of Justice
ICT	International Criminal Tribunal
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC Draft Code	International Law Commission - Draft Code of Crimes Against the Peace and Security of Mankind 1996
JCE	Joint Criminal Enterprise
RUF	Revolutionary United Front
SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
VJ	Yugoslav Army (Vojska Jugoslavije)
VRS	Army of the Republika Srpska (Vojska Republike Srpske)

1 Introduction

In 2013, only seven months apart, the Appeals Chambers of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) pronounced their judgments in the cases against Momčilo Perišić¹ and Charles Taylor², respectively. Notably, the two Appeals Chambers applied diverging interpretations of the *actus reus* of aiding and abetting liability in international criminal law.

Momčilo Perišić, former Chief of the General Staff in the Yugoslavian Army (VJ), was charged for his role in providing military and logistical assistance to the Army of the Republika Srpska (VRS)³. The ICTY Appeals Chamber overturned the Trial Chamber's conviction of Perišić and acquitted him on the grounds that "specific direction", as an element of the *actus reus* of aiding and abetting liability, was not proved beyond reasonable doubt.⁴ Charles Taylor, former president of Liberia, was charged on eleven counts and convicted by the SCSL Trial Chamber for aiding and abetting the crimes of the Revolutionary United Front/Armed Forces Revolutionary Council (RUF/AFRC) in Sierra Leone. He had provided financial support, military training, personnel, arms and ammunition to the RUF/AFRC. The Appeals Chamber in *Taylor* confirmed the Trial Chamber Judgment, while explicitly rejecting that "specific direction" is a distinct element of the *actus reus* of aiding and abetting.⁵

The facts of the two cases are similar in two important aspects. Firstly, neither Perišić nor Taylor was a part of, or found to have had command responsibility over, the army/group that carried out the crimes in question. Secondly, neither of the accused was in geographical proximity to the location where the crimes were committed. They were charged with aiding and abetting international crimes on the basis they had provided assistance from afar, to an army/group that later committed international crimes. The two judgments brought controversy and sparked debate⁶ amongst scholars of international criminal law on what the elements of aiding and abetting liability is, and what they normatively should be.

This thesis will explore whether there is a requirement of "specific direction" in the *actus reus* of aiding and abetting liability in international criminal law, by analyzing the *Perišić* and *Tay-*

¹ *Perišić* ICTY Appeals Chamber Judgment, Case No. IT-04-81-A, 28 February 2013.

² *Taylor* SCSL Appeals Chamber Judgment, Case No. SCSL-03-01-A, 26 September 2013.

³ *Perišić* ICTY Appeals Chamber Judgment, paragraph 2.

⁴ *Perišić* Appeals Chamber Judgment, paragraphs 73-74.

⁵ *Taylor* Appeals Chamber Judgment, paragraphs 481 and 539-540.

⁶ E.g. Stewart (2013), Ventura (2014) "Guest Post: *Specific Direction à la Perišić, the Taylor Appeal Judgment and what it could mean for the ICTY Appeals Chamber in Šainović et al. – Part I and II*" and Heller (2014).

lor Judgments. As the *ad hoc* tribunals are in the process of finishing their last cases, the question of what the elements of aiding and abetting liability are will eventually be left to the International Criminal Court (ICC) to decide. The Rome Statute of the ICC (Rome Statute) Article 25(3)(c) on aiding and abetting liability has a slightly different formulation than the Statutes of the ICTY/R and the SCSL. This may result in a somewhat different application of aiding and abetting liability at the ICC. However, the issues raised in the *Taylor* and *Perišić* cases should serve as important indicators that the ICC will have to clarify the range and elements of aiding and abetting liability.

This became apparent in the 2014 *Šainović et al.* Judgment from the ICTY Appeals Chamber, when the “specific direction” requirement presented in the *Perišić* Appeal was repealed by the Chamber, again sparking the debate on the elements of aiding and abetting liability. As such, this thesis will end with an analysis of the issues that have been frequently debated in the period following the *Perišić* and *Taylor* Judgments.

1.1 Structure of the thesis

Chapter two of the thesis will provide a brief presentation of aiding and abetting liability as a mode of individual criminal liability in international criminal law. There will be given a short introduction on the background of aiding and abetting as a mode of accomplice liability, followed by a presentation of the relevant international legal instruments. In the final section of chapter two the elements of aiding and abetting will be presented as they were commonly applied preceding the *Perišić* Appeals Chamber Judgment. Chapter three will present and discuss the *Perišić* and *Taylor* cases with regards to the elements of aiding and abetting liability, especially the requirement of “specific direction”. Chapter four of the thesis will present and analyze some of the frequently debated issues related to the question of “specific direction”. These issues are, the range of aiding and abetting liability, aiding and abetting liability when the accused is “remote” from the crime and finally a perspective on where aiding and abetting liability is heading. In the final chapter of this theses there will be set forth some concluding remarks.

1.2 Sources and Methodology

International criminal law is a branch of public international law, and the sources of law are those of international law.⁷ One may therefore draw upon *primary* sources and *secondary* sources of law. Recognized sources of international law are stated in the Statute of the International Court of Justice (ICJ) Article 38. The Article states that the primary sources of international law are as follows: conventions, customs and general principles. The subsidiary

⁷ Cassese et al. (2013) page 9.

sources are, according to the provision, judicial decisions and scholarly writings.⁸ The Statutes of the ICTY/R and the SCSL does not have a provision on the sources of international criminal law, and are therefore obliged to use the sources as listed by the ICJ Statute.

The Statute of the ICJ lists custom as a source of international law in Article 38 (1) (b).⁹ Customary international law is generally accepted as consisting of *opinio juris* and state practice. There are some inherent difficulties in establishing when an unwritten rule has developed into customary international law, and it has therefore been common at the international tribunals to refer to written documents and available evidence of state practice in order to show the existence of a rule of customary international law.¹⁰ The main indicator of customary international law in international criminal law is the jurisprudence of the international criminal tribunals (ICTs).

⁸ ICJ Statute Article 38.

⁹ The Statute of the International Court of Justice (ICJ) Article 38 (1)(b) states that the Court shall apply “international custom, as evidence of a general practice accepted as law”. The Statute of the ICJ is only binding for the Court itself, but has nevertheless become a point of reference when discussing customary international law, Schlüter (2010) page 2.

¹⁰ Cassese et al. (2011) page 5.

2 Aiding and abetting

2.1 Individual criminal liability in international criminal law

One may in part trace the origins of international criminal law, as we know it today, back to the late nineteenth century, and the international military prosecutions in the aftermath of the Second World War. Although, the reality is that the bulk of what we today think of as the rules of international criminal law has been developed during the past twenty years.¹¹ In the aftermath of the Second World War new groups of crimes evolved and today it is generally accepted that international crimes include; war crimes, crimes against humanity, genocide and the crime of aggression.¹²

The codification of international criminal law started after the Second World War and has been a gradual process. Starting with the Genocide Convention in 1948, followed by the Geneva Conventions with additional protocols adopted in 1949 and 1977. The 1990s saw the establishment of the first international *ad hoc* tribunals and in 2002 the International Criminal Court was established.¹³ The Nurnberg Trials, following the Second World War, were groundbreaking in international criminal law because they recognized the principle of individual criminal responsibility for international crimes. The trials were also groundbreaking in the sense that they placed responsibility with government officials and political leaders, people who up to this point largely had been exempt from international criminal prosecution.¹⁴ The statement from Nuremberg that “crimes against international law are committed by men, not by abstract legal entities”,¹⁵ shows how the perspective on individual criminal liability came to be viewed in the post-Second World War trials, and is at the core of international criminal law today.

The characteristics of international criminal law as a system of law differ a great deal from that of national criminal law systems. Operating without criminal law enforcement and within a system of international law, where the nation state is the dominating entity, creates different challenges than we encounter within a national criminal law system. The system is also large-

¹¹ Hayes et al. (2013) page 1.

¹² Cassese et al. (2013), Chapters 4-7.

It may be disputed whether or not the crime of aggression is generally accepted as an international crime. Cassese states that aggression “has not been adjudicated as [a] stand-alone crime [...]”(Cassese et al. (2013) page 131), but the crime of aggression was included in Article 5 of the Rome Statute when it was adopted in 1998 under the precondition that the court would not be able to exercise jurisdiction over this crime until a provision defining the crime of aggression was adopted. This was done in the 2010 ICC Review Conference in Kampala where Article 8*bis* of the Rome Statute was adopted (Cassese et al. (2013) pages 131-138).

¹³ Sliedregt (2012) page 5.

¹⁴ Sliedregt (2012) page 4.

¹⁵ Judgment of 1 October 1946, *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg 1947* available in *American Journal of International Law* 41, page 221.

ly fragmented because, prior to the adoption of the Rome Statute¹⁶ and the creation of the ICC¹⁷, there was no general authority in international criminal law. The *ad hoc* tribunals are not bound by the decisions of other tribunals, only by their separate Statutes and customary international law. These distinctive characteristics of international criminal law have led to the development of rules in “bits and pieces through different experiences which may or may not be linked to one another”¹⁸.

The distinctiveness of the crimes in international criminal law is described in one of the early cases at the ICTY Appeals Chamber, the *Tadić* case:

“Most of the time these crimes do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality: the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design. Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.”¹⁹

As the quote from the *Tadić* Appeals Chamber Judgment indicates, large-scale wars and conflicts often leave in their aftermath, a large number of possible perpetrators of the crimes committed during these conflicts. The physical perpetrators of international crimes are not necessarily the only ones liable, or the ones who are the most responsible for the crimes. There are often a number of people who can be regarded as responsible for the perpetration of international crimes, without having physically participated in the commission of the crimes. This is due to the nature of the international crimes themselves. They are often manifestations of collective criminality. The crimes prosecuted in international criminal law are seldom perpetrated by one person, but rather by a group of people, often contributing in different ways to the perpetration of the crime. The perpetrators operate within a social structure and this dynamic influences their conduct.²⁰ There may be one intellectual author of the crime, while another is the physical perpetrator. One can also distinguish between principal perpetrators of the crime and accessories to the crime. Modes of collective and accessorial crimes are there-

¹⁶ 17 July 1998.

¹⁷ 1 July 2002.

¹⁸ Bassiouni (2013) page 28.

¹⁹ *Tadić* Appeals Chamber Judgment, paragraph 191.

²⁰ Jain (2014) page 3.

fore not the exception as it often is in national systems, but rather the norm in international criminal law. This has led to the broadening of the understanding of the term “perpetration” in international criminal law to include “intellectual perpetration” (premised on the concept of control over the crime) and non-tangible support to the crime (such as moral support²¹).²² This is shown in practice by the application and development of liability modes such as joint criminal enterprise (JCE)²³ and indirect perpetration²⁴. As will be shown, aiding and abetting liability can have an important function in connecting the assistance of an aider and abettor to the acts of the physical perpetrator of a crime because of the lower *mens rea* requirements for aiding and abetting.

There are different models of applying criminal responsibility in different national criminal systems. The two dominating models are the *unitary model* and the *differentiated model* of criminal responsibility. The unitary model prescribes that all those who are found to have participated in the criminal conduct are regarded as having committed the crime. However, the dominating model for application of individual criminal responsibility in international criminal law, generally accepted by international criminal tribunals (ICTs) and the ICC, is the differentiated model. According to the differentiated model, judges are required to establish the mode of participation applicable in order to hold an individual criminally responsible.²⁵ Formally, having to identify the mode of criminal responsibility does not have any significant consequences. International criminal law treaties and case law does not make any distinction between the different modes of liability when it comes to sentencing. However, there is evidence to suggest that aiding and abetting liability is considered to be a lesser form of culpability by ICTs than other liability modes and that there is a *de facto* mitigation principle that applies at the ICTY.²⁶

Criminal investigations and the gathering of evidence is also a challenge in international criminal law. As the tribunals and courts operate within a system lacking any criminal law enforcement equal to enforcement mechanisms found in most national criminal systems, there are serious challenges, both as to apprehending indictees and in collecting evidence. Furthermore, the evidence connecting the indicted to the crime may be scarce in the first place, if the indicted was not the physical perpetrator of the crime. The evidence required in order to prove

²¹ The ICTY Appeals Chamber has stated that “moral support which has a substantial effect on the perpetration of the crime” may constitute aiding and abetting, *Furundžija* Trial Chamber Judgment, paragraph 235.

²² Sliedregt (2012) page 19.

²³ Primarily established and developed at the ICTY, in the *Tadić* Appeal Judgment.

²⁴ The ICC has interpreted Article 25(3)(a) of the Rome Statute to also include indirect perpetration.

²⁵ Cassese et al. (2011) page 324.

²⁶ Sliedregt (2012) pages 78-79.

intent, which is the most common *mens rea* requirement for criminal liability in international criminal law, can be difficult to produce in some cases. For example in cases where the accused did not take part in the physical perpetration of the crime, and was remote from the crime, either in a temporal or in a geographical sense.

Aiding and abetting liability, which is one of the most limited forms of criminal responsibility in international criminal law, can therefore be an important mode of criminal liability due to the lower requirements when it comes to the *mens rea* and the *actus reus* for aiding and abetting.

2.2 Aiding and abetting in international criminal law

Black's Law Dictionary describes aiding and abetting in the following manner:

"To assist or facilitate the commission of a crime, or to promote its accomplishment".²⁷

Aiding and abetting is a mode of individual criminal liability applied in international criminal law. It is a form of accessory liability, where the accused is held responsible for aiding or abetting a crime committed by a principal perpetrator. Aiding and abetting liability may have different functions as a mode of liability, applicable in different situations, as will be shown.

As discussed, the crimes tried in cases of international criminal law, are often of such a character that the persons accused of being responsible are not necessarily the physical perpetrators of the crimes at hand. There may not always be a common plan behind the perpetration of a crime, a precondition for the application of modes of liability based on a participation in a common purpose or plan.²⁸ Aiding and abetting, not requiring criminal intent, only knowledge that the act or omission assists the principal perpetrator, may therefore be a more apt mode of criminal liability to apply to these cases. As such, aiding and abetting is probably the most commonly applied mode of *accessory liability* in international criminal law today²⁹ and may be applicable in several different types of cases. By applying aiding and abetting liability, prosecutors may be able to target those who have contributed to the crime in smaller, but essential ways, although not acted as the principal perpetrator of the crime; these can be described as intermediary criminals.³⁰ Another important use of aiding and abetting liability is in

²⁷ *Black's Law Dictionary* (2009) page 81.

²⁸ E.g. Joint Criminal Enterprise.

²⁹ ICTY Statute Article 7(1), ICTR Statute 6(1), Law on the ECCC Article 29, SCSL Statute Article 6(1), Rome Statute Article 25(3)(c).

³⁰ Cassese et al. (2011) page 381.

cases where political or military leaders give their approval or encouragement or otherwise aid or abet the crime without being the author of the crime as such. Last, aiding and abetting liability may have the function of filling evidentiary gaps in a case.³¹ Sometimes the evidence at hand cannot support a more comprehensive charge than aiding and abetting.

The different modes of criminal liability in international criminal law are usually more or less the same in different international statutes, and they tend to stem from national criminal legislation.³²

2.2.1 Background

Some modes of criminal liability applied in international criminal law are to a large extent based on municipal law, aiding and abetting being one of these.³³ Anglo-American law has been the main source of inspiration for international treaties of international criminal law that includes aiding and abetting liability.³⁴ Anglo-American felony law used to differentiate between two different types of accessories or accomplices. Principals in the second degree (secondary principal) were present at the scene of the crime, while an accessory before the fact was not.³⁵

Due to this difference there were also different *mens rea* requirements for the two types of liability. Common law required a “purposive attitude” if you were an accessory before the fact, but if you were a secondary principal, “knowledge” was sufficient. The reasoning behind the differentiation of the two modes of secondary perpetration was that the accessory was considered less involved in perpetrating the crime, and thus less to blame than the secondary principal.³⁶ The distinction came about because there was concern that the death penalty should not necessarily be imposed on all accomplices to a felony.³⁷ The temporal and physical proximity to the crime was viewed as to make the secondary principal more blameworthy than the accessory. After legislative reform, these two forms of accomplice liability were joined together under the term “aider and abettor”.³⁸

³¹ Cassese et al. (2011) page 381

³² Sliedregt (2012) page 89

³³ Sliedregt (2012) page 89

³⁴ Sliedregt (2012) page 112

³⁵ Sliedregt (2012) page 112

³⁶ Sliedregt (2012) page 114

³⁷ Sliedregt (2012) page 112

³⁸ Sliedregt (2012) page 113

2.2.2 Aiding and abetting/Accessorial liability in international legal instruments

Antonio Cassese describes aiding and abetting as “giving practical assistance, encouragement, or moral support with knowledge that it assists the perpetrator in the commission of the crime”,³⁹ and furthermore that the assistance given “must have a substantial effect on the perpetration of the crime”.⁴⁰ This is a definition that has crystallized over time through application of an accessory mode of criminal liability in jurisprudence in international criminal law since the Second World War.⁴¹

All the *ad hoc* international criminal tribunals have provisions setting out the modes of individual criminal liability applicable under their statutes. However, none of these provisions codify the objective or mental elements necessary to be held liable according to the different liability modes.⁴² As will be shown, the Rome Statute⁴³ is the only Statute in international criminal law codifying the mental element required, in order to apply individual criminal responsibility.

2.2.2.1 Statutes of *ad hoc* international criminal tribunals and mixed courts

The Statutes of the ICTY, the International Criminal Tribunal for Rwanda (ICTR) and the SCSL are identical when it comes to the provisions setting out the scope of individual criminal liability. Article 7(1) of the ICTY Statute, Article 6(1) of the ICTR Statute and Article 6(1) of the SCSL Statute states that:

“A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5⁴⁴ of the present Statute, shall be individually responsible for the crime.”

The Law on the Extraordinary Chambers in the Courts of Cambodia (ECCC) has a similar formulation of the individual criminal responsibility at the Courts.⁴⁵ The Statute of the Special

³⁹ Cassese et al. (2013) page 193.

⁴⁰ Cassese et al. (2013) page 193.

⁴¹ This exact definition has been broadly accepted and applied at the ICTY and the ICTR.

⁴² ICTY Statute Article 7, ICTR Statute Article 6, SCSL Statute Article 6, Law on the ECCC Article 29, STL Statute Article 3.

⁴³ Rome Statute Article 30.

⁴⁴ In the Statute for the SCSL the Article applies to Articles 2 to 4. The Statute for the SCSL does not include a provision on the crime of genocide and crimes against humanity, while instead including “Other serious violations of international humanitarian law” (SCSL Article 4). In the ICTR the Article also applies to Articles 2 to 4, the Statute does not include an Article on the violations of the laws or customs of war.

⁴⁵ The Law on the ECCC Article 29 states: “Any suspect who planned, instigated, ordered, aided and abetted, or committed the crimes referred to in article 3 new, 4, 5, 6, 7 and 8 of this law shall be individually responsible for the crime.”

Tribunal for Lebanon (STL) states that “[a] person shall be individually responsible for crimes [...] if that person: a. [c]ommitted, participated as accomplice, organized or directed others to commit the crimes”.⁴⁶

As will be shown, one has to look to the jurisprudence of the tribunals in order to determine the elements of aiding and abetting liability in customary international law.

2.2.2.2 *The Rome Statute*

The Rome Statute of the International Criminal Court Article 25(3)(c) states that a person can be held criminally responsible and liable for punishment if that person:

“In accordance with this Statute, a person shall be held criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person [...] (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission”.

It has been suggested by legal scholars⁴⁷ that the language of this provision may be interpreted as introducing an additional requirement for aiding and abetting liability. Namely, that the aider and abettor assists the perpetrator “for the purpose of facilitating [the] crime”. This would narrow the scope of aiding and abetting liability. To date, the ICC has not yet applied aiding and abetting liability in any of its cases, and this issue will therefore not be settled until such time.

2.2.3 The elements of aiding and abetting

Individual criminal responsibility based on an act or omission that aids or abets an international crime was established as customary international law in the post Second World War trials⁴⁸ and in more recent times, first confirmed by the ICTY Trial Chamber and Appeals Chamber in the first case before the tribunal, namely the *Tadić* case.⁴⁹ As none of the *ad hoc*

⁴⁶ Statute of the STL Article 3(1)(a).

⁴⁷ E.g. Cassese et al. (2013) page 195 and Sliedregt (2011) page 237.

⁴⁸ E.g. *The Trial of Bruno Tesch and Two Others, (Zyklon B case)* in which two German industrialists were convicted of being accessories to the murder of interred allied civilians by supplying the lethal gas Zyklon B to concentrations camps run by the SS.

⁴⁹ The ICTY Trial Chamber established in the *Tadić* Judgment that individual criminal liability for aiding and abetting is customary international law, which was necessary in order for the Tribunal to apply this form of individual criminal liability on those indicted to the ICTY. Article 4 (1) of The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article III of the International Convention on the Suppression and Punishment of the crime of Apartheid is used as evidence of the existence of such a custom by the Trial Chamber. The Convention Against Torture makes “an act by any person which

tribunals' Statutes specifies the elements required for aiding and abetting liability, the concept of aiding and abetting liability has been further developed through case law, primarily the case law of the ICTY and the ICTR.

2.2.3.1 *The mental element – Mens rea*

The mental element of a crime, or the *mens rea*, refers to the state of mind the accused is required to hold when committing the criminal act in order for liability to arise.⁵⁰ The challenge in international criminal law is that there are no substantive⁵¹ or customary rules setting out a general definition of the different categories of *mens rea*.⁵² The different categories of *mens rea* requirements have therefore been elaborated on in the post-WWII trials and by the *ad hoc* tribunals starting in the 1990s.

As mentioned, the Statute of the ICTY/R does not have a general provision defining the *mens rea*, and therefore not a provision defining the *mens rea* of aiding and abetting liability. At the ICTY/R the *mens rea* requirements for different modes of liability have been defined in relation to specific cases at the tribunals. As a consequence of this practice, there is no general finding on the *mens rea*, which means that you have to examine the case law relevant for the specific liability, in order to determine the applicable *mens rea* requirements.⁵³

The case law of the tribunals clarifies and defines the subjective element of aiding and abetting as:

“[t]he *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator”⁵⁴

constitutes complicity or participation” punishable under the Convention and the Convention on Apartheid hold those responsible who “participate in, directly incite, or conspire in [,or]...[d]irectly abet, encourage or cooperate in the commission of the crime”. The Tribunal goes on to analyze jurisprudence from the Post-World War II period and looks to the *Trial of Wagner and Six Others* and the *Tadić Trial Chamber Judgment paragraphs 664-669*.

⁵⁰ Cassese et al. (2013) page 39.

⁵¹ An exception to this is the ICC Statute Article 30.

⁵² Cassese et al. (2013) pages 39-40.

⁵³ Sliedregt (2012) page 50.

⁵⁴ *Brima et al.* Trial Chamber Judgment, paragraph 776.

In other words, the aider and abettor needs to have *knowledge* that “his actions assist the perpetrator in the commission of the crime”⁵⁵. While the aider and abettor does not need to share the principal perpetrator’s intent, he needs to have knowledge of the “essential elements of the crime which was ultimately committed by the principal”⁵⁶ and he needs to have knowledge of the principal perpetrators intent and special intent if so required. For example, if a person is aiding and abetting the crime of genocide he needs to know that his actions assist in the perpetration of the genocide, have knowledge of the essential elements of the crime, and be aware of the principal perpetrators genocidal intent. He does not need to possess genocidal intent himself.⁵⁷ The mental element of aiding and abetting liability is especially important because the assistance provided by the accused aider and abettor may not be illegal in itself.⁵⁸

The Rome Statute is an exemption from the lack of general provisions of *mens rea* in international legal instruments. Article 30 of the Rome Statute codifies the mental element required for individual criminal responsibility. The Article states that: “[u]nless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime [...] only if the material elements are committed with intent and knowledge”⁵⁹. The Article defines “intent” as deliberate conduct or acting with the purpose of causing the occurred consequence or awareness that the consequence will occur in the ordinary course of events.⁶⁰ Article 30(3) defines “knowledge” as “awareness that a circumstance exists or a consequence will occur in the ordinary course of events”.⁶¹

2.2.3.2 *The objective element – Actus reus*

The objective element of aiding and abetting international crimes focuses on the consequences of a person’s acts or omissions. The act or omission does not have to be illegal or criminal in itself, it is the fact that it assists the principal perpetrator in the commission of the crime that makes the aider and abettor liable, given that the *mens rea* requirement is also met. The assistance given may be of a physical nature, but can also be solely psychological in character, in the form of moral support or encouragement.⁶²

⁵⁵ Cassese et al. (2013) pages 193-194.

⁵⁶ *Simić* Appeals Chamber Judgment, paragraph 86.

⁵⁷ Cassese et al. (2013) page 194.

⁵⁸ Cassese et al. (2013) page 194.

⁵⁹ Rome Statute Article 30(1).

⁶⁰ Rome Statute Article 30(2).

⁶¹ Rome Statute Article 30(3).

⁶² Cassese et al. (2013) page 193.

In the jurisprudence from the *ad hoc* tribunals established in the 1990s and onwards, the concept of aiding and abetting liability has crystallized. The generally accepted description of the *actus reus* is that the objective element of aiding and abetting liability consists of giving “practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime”.⁶³ As mentioned this was the generally accepted understanding of the *actus reus* requirement of aiding and abetting liability until recently. In the following section we will now move on to analyze the *Perišić* and the *Taylor* Appeals Chamber Judgments from 2013. In an attempt to assess what significance these judgments have for the understanding of the *actus reus* of aiding and abetting liability in international criminal law.

⁶³ *Furundžija* Trial Chamber Judgment, paragraph 249.

3 Aiding and abetting in the cases of Perišić and Taylor

In 2013, within seven months of each other, the ICTY Appeals Chamber and the SCSL Appeals Chamber pronounced their judgments in the cases against Momčilo Perišić⁶⁴ and Charles Taylor⁶⁵, respectively. Perišić was charged for his role in providing military and logistical assistance from the Yugoslavian Army (VJ) to the Army of Republika Srpska. Taylor was charged with eleven counts of war crimes and crimes against humanity⁶⁶. He was found guilty by the SCSL Trial Chamber of aiding and abetting the crimes of the Revolutionary United Front (RUF) in Sierra Leone by providing financial support, military training, personnel, arms and ammunition to the RUF⁶⁷.

The ICTY Appeals Chamber in *Perišić* unexpectedly applied a discrete “specific direction” requirement for the *actus reus* of aiding and abetting liability. The SCSL Appeals Chamber subsequently discussed the requirement in *Taylor*, and concluded that “specific direction” was not an element of the *actus reus* of aiding and abetting liability under the SCSL Statute or customary international law.⁶⁸ The ICTY Appeals Chamber overturned the Trial Chamber’s judgment and acquitted Perišić, while the SCSL Appeals Chamber confirmed the Trial Chamber’s conviction in the *Taylor* Appeals Chamber Judgment.

The *Perišić* Appeal Judgment brought controversy by, in some people’s opinion⁶⁹, setting aside a well established understanding of the *actus reus* of aiding and abetting liability in international criminal law and introducing “a ‘new’ element to the doctrine of aiding and abetting”.⁷⁰ The Appeals Chamber in *Perišić* asserted that there is an explicit requirement of specific direction when applying aiding and abetting liability in cases of remote conduct⁷¹, a position that took many by surprise.

The controversy following the *Perišić* Appeals Chamber Judgment continued when the SCSL Appeals Chamber in *Taylor*, only seven months later rejected the notion of a discrete re-

⁶⁴ *Perišić* ICTY Appeals Chamber Judgment, Case No. IT-04-81-A, 28 February 2013.

⁶⁵ *Taylor* SCSL Appeals Chamber Judgment, Case No. SCSL-03-01-A, 26 September 2013.

⁶⁶ *Taylor* Indictment, SCSL-03-01-I, 7 March 2003.

⁶⁷ *Taylor* Trial Chamber Judgment, paragraph 6953.

⁶⁸ *Taylor* Appeals Chamber Judgment, paragraph 481.

⁶⁹ See for example: Stewart (2013), “*The ICTY loses its way on complicity – Part 1*” <http://opiniojuris.org/2013/04/03/guest-post-the-icty-loses-its-way-on-complicity-part-1/>.

⁷⁰ Knoops (2014) pages 104-105.

⁷¹ The question of when an accused aider and abettor is remote from the crimes in question “will depend on the individual circumstances of each case” according to the ICTY Appeals Chamber in *Perišić*. The Appeals Chamber mentions temporal and geographic distance as examples of such remoteness, but does not elaborate further on this (*Perišić* Appeal Chamber Judgment, paragraph 40).

quirement of “specific direction”. The SCSL Appeals Chamber held that customary international law did not prescribe a discrete requirement of “specific direction”, and that “specific direction” generally is not an element of the *actus reus* of aiding and abetting liability.⁷²

3.1 *Perišić* – Trial Chamber Judgment

Momčilo Perišić was Chief of the Yugoslav Army (VJ) General Staff from 26 August 1993, making him the most senior officer⁷³ in the VJ. Perišić was initially indicted on 22 February 2005⁷⁴ and charged on 13 counts of war crimes and crimes against humanity.⁷⁵ He was found guilty by the Trial Chamber, Judge Moloto dissenting, as an aider and abettor of crimes⁷⁶ that took place in Sarajevo and Srebrenica during the war in Bosnia. Perišić subsequently appealed the judgment, challenging his convictions and sentence, and the case was brought before the ICTY Appeals Chamber.

The Trial Chamber in *Perišić* had defined the *actus reus* of aiding and abetting and held that “[t]he Appeals Chamber expressly stated that “specific direction” is not a requisite element of the *actus reus* of aiding and abetting”⁷⁷, citing both the *Mrkšić and Šljivančanin*⁷⁸ and *Blagojević and Jokić*⁷⁹ Judgments. There is no further mention of “specific direction” in the *Perišić* Trial Judgment by the Chamber. Judge Moloto presents his dissenting opinion with regard to counts one to four and nine to twelve of the indictment.⁸⁰ Judge Moloto disagreed with the majority’s conclusion that specific direction is not a requisite element of the *actus reus* of aiding and abetting, and stressed that “the notion of “specific direction” has been consistently cited by [the] Tribunal”⁸¹ and that “in cases of remoteness, the notion of specific direction must form an integral and explicit component of the objective element of aiding and abetting.”⁸² Judge Moloto also presents the argument that “in cases of remoteness, the notion

⁷² *Taylor* Appeals Chamber Judgment, paragraph 481.

⁷³ *Perišić* Trial Chamber Judgment, paragraph 3.

⁷⁴ *Perišić* Indictment (Initial) IT-04-81-I, paragraph 5667.

⁷⁵ *Perišić* Indictment (Initial) IT-04-81-I, paragraph 5667.

⁷⁶ Perišić was found guilty of aiding and abetting: murder, inhumane acts (injuring and wounding civilians, inflicting serious injuries, wounding, forcible transfer), and persecutions as crimes against humanity; and murder and attacks on civilians as violations of the laws or customs of war, *Perišić* Appeals Chamber Judgment, paragraph 4.

⁷⁷ *Perišić* Trial Chamber Judgment, paragraph 126.

⁷⁸ *Perišić* Trial Chamber Judgment, paragraph 126 citing *Mrkšić and Šljivančanin* Appeal Judgment paragraph 159.

⁷⁹ *Perišić* Trial Chamber Judgment, paragraph 126 citing *Blagojević and Jokić* Appeal Judgment paragraphs 182, 185-189.

⁸⁰ *Perišić* Indictment (Initial) IT-04-81-I, paragraph 5667.

⁸¹ *Perišić* Trial Judgment, XII. Dissenting opinion of Judge Moloto on Counts 1 to 4 and 9 to 12, paragraph 9.

⁸² *Perišić* Trial Judgment, XII. Dissenting opinion of Judge Moloto on Counts 1 to 4 and 9 to 12, paragraph 10.

of specific direction must form an integral and *explicit* component of the objective element of aiding and abetting”. He held that Perišić was physically “remote” from the crime scene and because of this; “specific direction” had to be explicitly proved beyond reasonable doubt.⁸³

3.2 *Perišić* – Appeals Chamber Judgment

The Perišić Defence then seized on Judge Moloto’s dissenting opinion, and directed their second appeal ground to the Trial Chamber’s findings on aiding and abetting liability.⁸⁴ They quoted parts of Judge Moloto’s dissenting opinion in the Trial Judgment and argued that “specific direction” is an integral part of the *actus reus* of aiding and abetting. The Defence also argued that the standard of aiding and abetting liability applied by the Trial Chamber, amounted to that of strict liability when not including the element of “specific direction”. On this background the Appeals Chamber discussed the requirement of “specific direction”.

The Appeals Chamber heard the case and subsequently found in favor of the Defence, and overturned the Trial Chamber’s judgment. Perišić was acquitted of aiding and abetting the crimes of the VRS, with the Appeals Chamber concluding that “specific direction” was a necessary element of the *actus reus* of aiding and abetting, based on the finding that “specific direction” had not been proven beyond reasonable doubt.⁸⁵

3.2.1 Review of the case law on specific direction

The Appeals Chamber in *Perišić* starts the analysis of the issue of “specific direction” by reviewing its own jurisprudence in order to establish whether “specific direction” is an element of aiding and abetting liability or not. They initially quote the *Tadić* Appeals Chamber Judgment,⁸⁶ which was the first ICTY Appeal Judgment to give an account of aiding and abetting liability. The *actus reus* described in *Tadić*:

“The aider and abettor carries out acts *specifically directed* to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime.”⁸⁷

⁸³ *Perišić* Trial Judgment, XII. Dissenting opinion of Judge Moloto on Counts 1 to 4 and 9 to 12, paragraph 10, (emphasis in the original).

⁸⁴ *Perišić* Appeal Brief, Public redacted version of the Appeal Brief of Momčilo Perišić, Case No. IT-04-81-A.

⁸⁵ *Perišić* Appeals Chamber Judgment, paragraph 73.

⁸⁶ *Tadić* ICTY Appeals Chamber Judgment, Case No. IT-94-A, 15 July 1999.

⁸⁷ *Tadić* Appeals Chamber Judgment, paragraph 229 (iii), (emphasis added).

The Appeals Chamber in *Perišić* contends that this definition has not been parted from “to date” and that this exact definition has been repeated in many Appeals Chamber Judgments, both at the ICTY and other *ad hoc* tribunals after *Tadić*.⁸⁸ The Appeals Chamber in *Perišić* holds that the definition of the *actus reus* of aiding and abetting liability set out in *Tadić* includes the element of “specific direction” which, depending on the circumstances, has to be proven either implicitly or explicitly.⁸⁹

In reviewing its own jurisprudence, the Appeals Chamber finds that, while some judgments rendered after *Tadić* explicitly quote the Judgment or use equivalent language, there are some Appeals Chamber Judgments, both from the ICTY and the ICTR Appeals Chamber, that does not include any reference to “specific direction” or a reference to a corresponding requirement in the *actus reus* of aiding and abetting. The Appeals Chamber holds that this finding is not contrary to the notion that “specific direction” is an essential part of the *actus reus* of aiding and abetting. The Chamber justifies this position by arguing that those judgments,⁹⁰ either does not provide a “comprehensive definition” of the elements of aiding and abetting liability, or do not set out “all the elements” of aiding and abetting liability, only focusing on other elements more relevant for those specific cases.⁹¹

The only Appeals Chamber Judgment that supports a definition of the *actus reus* of aiding and abetting that does not refer to, or mention specific direction at all, is the *Delalić et al.* judgment from 2001, according to the Appeals Chamber in *Perišić*.⁹² Without conducting an independent analysis of *Delalić*, the Appeals Chamber interprets the judgment in light of the 2007 *Blagojević and Jokić* judgment.⁹³ In *Blagojević and Jokić* the Chamber address the fact that “specific direction” has not always been included as an element of the *actus reus* of aiding and abetting. It is stated that the *Tadić* definition of aiding and abetting liability has not been departed from, and that “specific direction” often will be implicit in the finding that the accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime, and therefore making it unnecessary to mention it ex-

⁸⁸ *Perišić* Trial Chamber Judgment, paragraph 27.

⁸⁹ *Perišić* Appeals Chamber Judgment, paragraph 36.

⁹⁰ In this regard the Appeals Chamber mentions in particular: *Haradinaj et al.*, *Limaj et al.*, *Furundžija*, *Renzaho*, *Nchamihigo*, *Zigiranyirazo*, *Ndindabahizi*, *Gacumbitsi*, *Semanza* and the *Rutaganda* Appeal Judgments as examples of judgments that does not contain language equivalent to specific direction, *Perišić* Appeals Chamber Judgment, paragraph 30.

⁹¹ *Perišić* Appeals Chamber Judgment, paragraph 30.

⁹² *Delalić* ICTY Appeals Chamber Judgment, Case No. IT-96-21-A, 20 February 2001.

⁹³ *Blagojević and Jokić* ICTY Appeals Chamber Judgment, Case No. IT-02-60-A, 9 May 2007.

plicitly.⁹⁴ The Chamber finds that when *Delalić* is interpreted in this context, one must conclude that the “specific direction” requirement was implicit also in *Delalić*.⁹⁵

The only ICTY Appeals Chamber Judgment that explicitly refutes the existence of a discrete requirement of “specific direction” as a part of the *actus reus* of aiding and abetting liability is, according to the Appeals Chamber in *Perišić*, the *Mrkšić and Šljivančanin* Appeal Judgment from 2009.⁹⁶ In this judgment the Appeals Chamber states that “the Appeals Chamber has confirmed that “specific direction” is not an essential ingredient of the *actus reus* of aiding and abetting”⁹⁷, referring to the same paragraph in *Blagojević and Jokić* as the Chamber uses in *Perišić*. However, as mentioned above, the *Perišić* Appeals Chamber is using this paragraph to argue *for* the existence of a discrete “specific direction” requirement.

This is in and of itself quite confusing, because the Appeals Chamber, in *Mrkšić and Šljivančanin* and in *Perišić* respectively, uses the same paragraph in *Blagojević and Jokić* to argue two diametrically opposed positions on the existence of a “specific direction” requirement. The confusion continues when the Appeals Chamber interprets the statement in *Mrkšić and Šljivančanin*, a statement which at the outset seems to directly contradict the notion of a “specific direction” requirement, in an unexpected manor. The Appeals Chamber, noting that the statement is made in a section regarding the *mens rea*, holds that the statement seems to lack the required “careful consideration” which is the settled practice at the Appeals Chamber when departing from previous decisions.⁹⁸ This leads the *Perišić* Appeals Chamber to conclude that the statement in *Mrkšić and Šljivančanin* was only made as “an attempt to summarise”⁹⁹ *Blagojević and Jokić*, not as a departure from the definition set out in *Tadić*.¹⁰⁰ The Appeals Chamber thus concludes, Judge Liu dissenting, that customary international law stipulates that “no conviction for aiding and abetting may be entered if the element of specific direction is not established beyond reasonable doubt, either explicitly or implicitly”.¹⁰¹

⁹⁴ *Blagojević and Jokić* Appeals Chamber Judgment.

⁹⁵ *Perišić* Appeals Chamber Judgment, paragraph 31.

⁹⁶ *Mrkšić and Šljivančanin* ICTY Appeals Chamber Judgment, Case No. IT-95-13/1-A.

⁹⁷ *Mrkšić and Šljivančanin* Appeals Chamber Judgment, paragraph 159.

⁹⁸ The Appeals Chamber refers to *Aleksovski* (Appeals Chamber Judgment Case No. IT-95-14/1-A, 24 March 2000) where the Appeals Chamber states that “[t]he Appeals Chamber will 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” (*Aleksovski* para. 109).

⁹⁹ *Perišić* Appeals Chamber Judgment, paragraph 34.

¹⁰⁰ *Perišić* Appeals Chamber Judgment, paragraph 34.

¹⁰¹ *Perišić* Appeals Chamber Judgment, paragraph 36.

3.2.2 Specific direction in cases of remoteness

After concluding that “specific direction” is a part of the *actus reus* of aiding and abetting liability, the Appeals Chamber goes on to discuss circumstances in which “specific direction” must be explicitly considered. The Chamber states that in many instances, the proof of other elements of aiding and abetting liability may be sufficient to show “specific direction”, and that this may be the rationale explaining why some previous Appeals Chamber Judgments have not included a discussion of “specific direction”.¹⁰² This kind of self-evident or implicit “specific direction” is, according to the *Perišić* Appeals Chamber, possible in cases where the accused aider and abettor was proximate to the crime, geographically or otherwise.¹⁰³ If the accused instead was remote from the crime, the Appeals Chamber, Judge Liu dissenting, finds that explicit consideration of specific direction is required.¹⁰⁴ The concept of remoteness is, as mentioned previously, first mentioned by Judge Moloto in his dissenting opinion¹⁰⁵, and repeated by the *Perišić* Defence in the Appeal Brief.¹⁰⁶

Whether or not the accused is considered remote from the crimes depends on the “individual circumstances of each case”,¹⁰⁷ according to the Chamber. By referring to a previous finding,¹⁰⁸ that a significant temporal distance between the actions of the accused and the crime will decrease the likelihood of the necessary connection between the actions of the accused and the crime, the Appeals Chamber by analogy concludes that this must also apply to geographical distance.¹⁰⁹

¹⁰² *Perišić* Appeals Chamber Judgment, paragraph 38.

¹⁰³ *Perišić* Appeals Chamber Judgment, paragraph 38.

¹⁰⁴ *Perišić* Appeals Chamber Judgment, paragraph 39.

¹⁰⁵ *Perišić* Trial Judgment, XII. Dissenting opinion of Judge Moloto on Counts 1 to 4 and 9 to 12, paragraph 10, (emphasis in the original).

¹⁰⁶ *Perišić* Appeal Brief, paragraph 22.

¹⁰⁷ *Perišić* Appeals Chamber Judgment, paragraph 40

¹⁰⁸ *Kupreškić et al.* Appeals Chamber Judgment, paragraphs 275-277 (finding that a six-month delay between an appellant being observed unloading weapons and a subsequent attack reduced the likelihood that these weapons were directed towards assisting in this attack).

¹⁰⁹ *Perišić* Appeals Chamber Judgment, paragraph 40.

The Appeals Chamber’s findings on the *actus reus* of aiding and abetting liability may be summarized like this:

The elements of aiding and abetting liability in <i>Perišić</i>	When the aider and abettor is <i>proximate</i> to the crime	When the aider and abettor is <i>remote</i> from the crime
<i>Actus reus</i>	Giving practical assistance, encouragement, or moral support that is specifically directed to the crime perpetrated by the principal perpetrator. The specific direction requirement may be proved either implicitly or explicitly.	Giving practical assistance, encouragement, or moral support that is specifically directed to the crime perpetrated by the principal perpetrator. The specific direction requirement has to be explicitly proved.
<i>Mens rea</i>	Knowledge that the act of the aider and abettor assists the perpetrator in the commission of the crime and awareness of the essential elements of the crime that was committed.	Knowledge that the act of the aider and abettor assists the perpetrator in the commission of the crime and awareness of the essential elements of the crime that was committed.

3.2.3 *De novo* review by the Appeals Chamber

In order to determine whether or not the assistance provided by Perišić was specifically directed towards the crimes of the VRS in Sarajevo and Srebrenica, the Appeals Chamber assess the relevant evidence *de novo*.¹¹⁰ The Chamber conducts two inquiries they consider relevant to the question of specific direction. First they set out to assess whether or not the VRS’s “sole and exclusive purpose was the commission of crimes”¹¹¹, i.e. if the VRS was a “criminal organization”. If this was the case, it would suggest that all assistance to the VRS was specifically directed towards their crimes as well.¹¹² The second inquiry of relevance to the question of specific direction was, whether or not the Supreme Defence Council of the Federal Republic of Yugoslavia (SDC)¹¹³ endorsed a policy of assisting VRS crimes. A policy

¹¹⁰ *Perišić* Appeals Chamber Judgment, paragraph 45.

¹¹¹ *Perišić* Appeal Chamber Judgment, paragraph 52.

¹¹² *Perišić* Appeal Chamber Judgment, paragraph 52.

¹¹³ In the *Perišić* Trial Chamber Judgment the composition of the SDC is described: “According to the Constitution of the FRY, the SDC was formally composed of the President of the FRY and the Presidents of the

of that nature would suggest that the assistance provided by the VJ to the VRS was specifically directed towards *inter alia* the crimes committed in Sarajevo and Srebrenica.¹¹⁴

With regard to the first inquiry, the Appeals Chamber concluded that the activities of the VRS in Sarajevo and Srebrenica were not *all* of a criminal nature, and thus the VRS could not be labeled as a criminal organization. When it came to the question of whether or not the SDC endorsed a policy of assisting VRS crimes the Chamber concluded, Judge Liu dissenting, that the SDC policy of assisting the VRS was not proved to involve specific direction of VJ aid towards VRS crimes.¹¹⁵

In addition to these two requirements the Appeals Chamber considered whether or not Perišić either implemented the SDC policy in a manner that redirected aid towards the VRS, or if he took actions, outside of his efforts to implement the SDC policy which might suggest that the aid he facilitated was specifically directed towards the crimes committed by the VRS in Sarajevo and Srebrenica.¹¹⁶ The Chamber's conclusion was that the manner in which Perišić provided the aid did not demonstrate specific direction, and that the evidence on record did not prove that Perišić took steps outside his directions from the SDC.¹¹⁷ The overall conclusion of the Appeals Chamber, Judge Liu dissenting, was that it was not proved beyond reasonable doubt that the assistance provided by Perišić was specifically directed to the crimes of the VRS, overturning the Trial Chamber conviction.

3.2.4 Separate opinions of Judge Ramaroson and Judges Meron and Agius

Judge Ramaroson gave a separate opinion on the issue of "specific direction". She stated that she agreed with the finding of the Appeal Judgment, but she disagreed with the majority's contention that "specific direction" was an essential element of aiding and abetting liability and that it must be "analysed exclusively in the context of *actus reus*"¹¹⁸. In Judge Ramaroson's opinion "the idea of specific direction is implicitly considered in *mens rea*"¹¹⁹.

Republics of Serbia and Montenegro. In practice, the SDC meetings were also attended by other high-level federal officials, such as the FRY Prime Minister, the FRY Minister of Defence, the Chief of the VJ General Staff and, occasionally, high-ranking military officers."(*Perišić*, Trial Chamber Judgment, paragraph 198).

¹¹⁴ *Perišić* Appeals Chamber Judgment, paragraph 52.

¹¹⁵ *Perišić* Appeals Chamber Judgment, paragraph 58.

¹¹⁶ *Perišić* Appeals Chamber Judgment, paragraph 59.

¹¹⁷ *Perišić* Appeals Chamber Judgment, paragraphs 66-67.

¹¹⁸ *Perišić* Appeals Chamber Judgment, IX. Separate opinion of Judge Ramaroson on the issue of specific direction relevant to aiding and abetting liability, paragraph 1-2.

¹¹⁹ *Perišić* Appeals Chamber Judgment, IX. Separate opinion of Judge Ramaroson on the issue of specific direction relevant to aiding and abetting liability, paragraph 7.

Judges Maron and Agius gave a joint separate opinion.¹²⁰ They stated that while they agreed with the analysis and conclusions of the majority, they wished to address the issue of whether specific direction should be considered as part of the *actus reus* or *mens rea* of aiding and abetting.¹²¹ They held that if the requirement of “specific direction” had not been included in the *actus reus* in the ICTY Appeals Chamber’s past jurisprudence, “we would consider categorising specific direction as an element of *mens rea*.”¹²² However, they accepted the Chamber’s conclusion that “specific direction” is a part of the *actus reus* of aiding and abetting liability, considering the jurisprudence of the Appeals Chamber.¹²³

3.2.5 Partially dissenting opinion of Judge Liu

Judge Liu partially dissented to the conclusions of the Appeals Chamber regarding the convictions for aiding and abetting in *Perišić*.¹²⁴ His main objection to the Chamber’s reasoning was that specific direction, according to him, had not been applied consistently, and therefore cannot be said to amount to an essential element of aiding and abetting liability. Furthermore Judge Liu considered that, insisting on such a requirement would “raise the threshold for aiding and abetting liability” to a level he felt might risk undermining the purpose of aiding and abetting liability.¹²⁵

As said, the *Perišić* Appeal Judgment was controversial when it was released 28 February 2013. At this time the Appeals Chamber at the Special Court for Sierra Leone was working on the Charles Taylor Appeal Judgment. Given that Taylor had been convicted for aiding and abetting, experts now questioned whether or not the SCSL Appeals Chamber would be influenced by the *Perišić* judgment and apply “specific direction” in the *Taylor* case.

3.3 Taylor – Trial Chamber Judgment

Following the acquittal of *Perišić*, and the ICTY Appeals Chamber’s position on “specific direction”, many awaited the *Taylor* Appeals Chamber Judgment in suspense. The fact pattern in *Taylor* was very similar to that in *Perišić* and therefore it was a possibility that Taylor also

¹²⁰ *Perišić* Appeals Chamber Judgment, VII. Joint separate opinion of Judges Theodor Meron and Carmel Agius.

¹²¹ *Perišić* Appeals Chamber Judgment, VII. Joint separate opinion of Judges Theodor Meron and Carmel Agius, paragraph 1.

¹²² *Perišić* Appeals Chamber Judgment, VII. Joint separate opinion of Judges Theodor Meron and Carmel Agius, paragraph 4.

¹²³ *Perišić* Appeals Chamber Judgment, VII. Joint separate opinion of Judges Theodor Meron and Carmel Agius, paragraph 4.

¹²⁴ *Perišić* Appeals Chamber Judgment, VIII. Partially dissenting opinion of Judge Liu.

¹²⁵ *Perišić* Appeals Chamber Judgment, VIII. Partially dissenting opinion of Judge Liu, paragraph 3.

would be acquitted if the SCSL Appeals Chamber applied a discrete “specific direction” requirement.

Charles Taylor was the 22nd President of Liberia from 1997 to 2003. He was indicted on 7 March 2003 by the SCSL, and charged with eleven counts for crimes committed in Sierra Leone by the RUF/AFRC during the civil war. The indictment stated five counts for crimes against humanity, five for violations of Common Article 3 and Additional Protocol II of the Geneva Conventions and one count for other serious violations of international humanitarian law.¹²⁶

On 18 May 2012, the SCSL Trial Chamber convicted Taylor on all eleven counts and held him criminally liable for aiding and abetting the commission of the crimes of the RUF/AFRC.¹²⁷ The Trial Chamber in the *Taylor* Judgment had stated in its judgment that “[t]he *actus reus* of specific direction does not require ‘specific direction’” when establishing the applicable law of aiding and abetting.¹²⁸ The Trial Chamber did not discuss the question of “specific direction” further than this.

3.4 Taylor – Appeals Chamber Judgment

Taylor appealed the SCSL trial judgment and raised 45 grounds¹²⁹ of appeal¹³⁰. The Taylor Defence did not explicitly argue on appeal that the Trial Chamber’s rejection of the “specific direction” requirement was erroneous. However, the Appeals Chamber chose to address the question of “specific direction” on its own initiative.¹³¹

3.4.1 Assistance to the “crime”

The Appeals Chamber in *Taylor* discussed the law of individual criminal liability by addressing four challenges to the law that the Trial Chamber articulated and applied.

The Chamber first set out to address Appeal Grounds number 21 and 34¹³². In these grounds, the Defence argued that the Trial Chamber erred “in law and fact in finding that any alleged

¹²⁶ *Taylor* Indictment, SCSL-03-01-I, 7 March 2003.

¹²⁷ *Taylor* SCSL Trial Chamber Judgment, Case No. SCSL-03-01-T.

¹²⁸ *Taylor* Trial Chamber Judgment, paragraph 484.

¹²⁹ Grounds numbers sixteen to thirty-four were related to Taylor’s liability for aiding and abetting, concerning both the *actus reus* and the *mens rea* of aiding and abetting.

¹³⁰ *Taylor* Defence Appeal Brief.

¹³¹ *Taylor* Appeals Chamber Judgment, paragraph 471.

¹³² Ground 34 was later removed as it is not in SCSL-03-01-1-1331, but the arguments made in this ground of appeal were found to be sufficiently discussed in other grounds of appeal.

military assistance to the RUF or AFRC constituted assistance to crimes”.¹³³ The Defence contended that the correct question was whether or not the assistance was “to the crime, as such”¹³⁴, i.e. the physical perpetrator, not merely to the perpetration of the crime. The Defence’s contention was that without this requirement, aiding and abetting liability would be to wide-ranging and violate principles of personal culpability.¹³⁵ In practice, this requirement would necessitate that the Tribunal proved that Taylor provided assistance with the purpose of providing assistance to the specific crimes the RUF/AFRC committed in Sierra Leone.

The Defence stated in appeal ground number 20 that the “language of ‘specifically aimed’ and ‘specifically directed’ assists in understanding that the ‘substantial contribution’ must be to the criminal conduct itself”¹³⁶ They held that the concept of “specific direction” supported their understanding that proving that the accused provided a “substantial contribution” to the perpetration of the crime is not sufficient to prove the *actus reus* of aiding and abetting.¹³⁷ The Appeals Chamber discussed the elements of the *actus reus* of aiding and abetting to establish whether or not there is such an additional requirement, namely that the assistance provided had to be provided to the physical actor, and was used in the commission of a specific crime by the principal.¹³⁸ This additional requirement suggested by the Defence is not the same as the “specific direction” requirement, but has some important similarities. It effectively raises the threshold for aiding and abetting liability and requires proof of a stronger link between the assistance provided and the perpetrated crime, thus limiting the scope of aiding and abetting liability.

In order to establish the elements of the *actus reus*, the Appeals Chamber looked to the Statute of the SCSL and customary international law. Starting by interpreting Article 6(1) of the Statute in accordance with its plain meaning in context, the Chamber found that the Article establishes individual criminal liability when it comes to the accused’s relationship to the “crime”, not to the physical actor as such.¹³⁹ The Chamber held that Article 6(1) of the Statute makes no mention of individual criminal liability for aiding and abetting *a person*, but rather for aid-

¹³³ *Taylor Appeals Chamber Judgment*, paragraph 354.

¹³⁴ *Taylor Appeal Brief* paragraph 452 (emphasis in original).

¹³⁵ Examples given by the Defence is that a mother would be criminally liable for feeding and housing her son, if her son committed a crime, and thereby sustaining his existence, and having a substantial effect on the crime. The defence also held that a gun salesman would be liable for a crime committed by the buyer of a gun.

¹³⁶ *Taylor Appeal Brief* paragraph 453.

¹³⁷ *Taylor Appeal Brief* paragraph 453.

¹³⁸ *Taylor Appeals Chamber Judgment* paragraph 363.

¹³⁹ *Taylor Appeals Chamber Judgment* paragraph 366.

ing and abetting the perpetration of *a crime*.¹⁴⁰ In their review of customary international law, the Chamber concluded that, contrary to what the Defence claimed, customary international law does not support the contention that the aider and abettor has to provide assistance to the physical actor and that the assistance given has to be used in the commission of the crime.¹⁴¹

The Appeals Chamber proceeded to review relevant case law¹⁴² in order to establish how aiding and abetting liability has been applied in practice and found that “the essential question when determining whether an accused culpably assisted the commission of the crimes is the effect of the accused’s assistance on the commission of the crimes, not the manner in which such assistance was provided”.¹⁴³ Regarding the Defence’s claim that the *actus reus* of aiding and abetting liability need to be limited in order to differentiate aiding and abetting liability and JCE liability, the Chamber pointed out that different forms of individual criminal liability does not apply to different factual circumstances.¹⁴⁴ The Chamber thus concluded that the requisite *actus reus* of aiding and abetting liability is that “an accused’s acts and conduct had a substantial effect on the commission of the crimes”, rejecting the Defence’s claim that it must be directed toward the physical perpetrator.¹⁴⁵

3.4.2 “Specific direction”

The element of “specific direction” is discussed by the SCSL Appeals Chamber in the last part of the section establishing the law of individual criminal liability.¹⁴⁶ The Defence submitted in Appeal Ground 16¹⁴⁷ that the *mens rea* applied by the Trial Chamber, requiring “knowledge” was erroneous, and that “purpose”¹⁴⁸ was the correct *mens rea* standard. They held that the “purpose” standard corresponded with the concept of “specific direction” as it was recognized by the ICTR/ICTY jurisprudence.¹⁴⁹ The Defence proceeded to argue that the resemblance between the terms “specifically directed”, “specifically aimed” and “purpose” was evident¹⁵⁰ and that a concept analogous to “ ‘purpose’ has usually been recognized in the jurisprudence of the ICTY and ICTR”.¹⁵¹

¹⁴⁰ *Taylor Appeals Chamber Judgment* paragraph 366.

¹⁴¹ *Taylor Appeals Chamber Judgment* paragraph 368.

¹⁴² The Appeals Chamber review cases: *Brima et al.*, *Brđanin*, *Blagojević and Jokić*, *Krstić*, *Simić et al*, *Becker*, *Weber et al*, *Ministries case*, *Flick and the Justice case*.

¹⁴³ *Taylor Appeals Chamber Judgment* paragraph 380.

¹⁴⁴ E.g. *Šainović Appeal Judgment* where the Chamber found that four of the defendants were guilty of a JCE and one was found liable for aiding and abetting the crimes committed against Kosovo Albanians in Kosovo.

¹⁴⁵ *Taylor Appeals Chamber Judgment* paragraph 385.

¹⁴⁶ *Taylor Appeals Chamber Judgment*, paragraphs 466-481.

¹⁴⁷ *Taylor Appeal Brief*, paragraphs 319-397.

¹⁴⁸ See The Rome Statute Article 25(3)(c) which also uses “purpose”

¹⁴⁹ *Taylor Appeal Case No. SCSL-03-01-A Document No. 1331* paragraph 355.

¹⁵⁰ *Taylor Appeal Brief* paragraph 355

The Defence suggested two different ways of understanding the “specific direction” requirement. One in which the mental state of the aider and abettor is considered when determining “specific direction”, and a more narrow interpretation in which the accused’s intent and mental state is not to be considered. Their contention was that the latter interpretation would be a “weak concept”.¹⁵² Against this one could argue that taking the mental state of the aider and abettor into consideration when trying to prove the existence of “specific direction” would bring the requirement far into the territory of the *mens rea* of aiding and abetting. The Prosecution on the other hand maintained that the jurisprudence of the ICTY and ICTR establishes that “knowledge” is the *mens rea* standard that is required for aiding and abetting, rejecting the standard presented by the Taylor Defence.¹⁵³

The Defence did not appeal the fact that the Trial Chamber concluded that the *actus reus* of aiding and abetting does not require “specific direction”. After the Perišić Appeal Judgment was pronounced, both the Defence and the Prosecution sought to amend¹⁵⁴ or file additional written submissions¹⁵⁵, but both were denied¹⁵⁶ by the Court. The Court added that it was aware of the Perišić Appeal Judgment and that further amendments or filings therefore would be unnecessary.¹⁵⁷

Even though the Court rejected the motions to amend, the Appeals Chamber nonetheless discussed the “specific direction” requirement. The Chamber established that there is nothing in the SCSL Statute to imply that “specific direction” is an element of the *actus reus* of aiding and abetting. The question was therefore, according to the Chamber, whether or not “specific direction” is an element of aiding and abetting under customary international law during the indictment period of the *Taylor* case.¹⁵⁸ After reviewing the post-Second World War jurisprudence, the ILC Draft Code and state practice, the Chamber was satisfied that none of these

¹⁵¹ Taylor Appeal Brief, paragraph 358.

¹⁵² *Taylor* Appeals Chamber Judgment, paragraph 468.

¹⁵³ *Taylor* Appeals Chamber Judgment, paragraph 469.

¹⁵⁴ Defence request to amend notice of appeal SCSL-03-10-A-1383.

¹⁵⁵ Prosecution motion for leave to file additional written submissions regarding the ICTY Appeal Judgment in Perišić, SCSL-03-01-A-1381.

¹⁵⁶ Decision on prosecution motion for leave to file additional written submissions regarding the ICTY Appeal Judgment in Taylor, SCSL-03-01-A-1382 and Order denying Defence request for leave to amend notice of appeal, SCSL-03-01-A-1385.

¹⁵⁷ Decision on prosecution motion for leave to file additional written submissions regarding the ICTY Appeal Judgment in Taylor, SCSL-03-01-A-1382 and Order denying Defence request for leave to amend notice of appeal, SCSL-03-01-A-1385.

¹⁵⁸ *Taylor* Appeals Chamber Judgment, paragraph 473.

authorities called for the element of “specific direction”.¹⁵⁹ After concluding that the “*actus reus* of aiding and abetting liability under Article 6(1) of the Statute and under customary international law”¹⁶⁰ is that the assistance of the aider and abettor has a “substantial effect” on the commission of the crime, the Chamber explicitly addressed the *Perišić* Appeal Judgment.¹⁶¹

The Appeals Chamber in *Taylor* contended that the Appeals Chamber in *Perišić* did not assert that “specific direction” was an element of the *actus reus* under customary international law. In only analyzing the case law of the ICTY and the ICTR¹⁶² on the subject, the SCSL Appeals Chamber presumed that the objective of the ICTY Appeals Chamber was merely to identify and apply a rule based on internally binding precedent.¹⁶³ The Appeals Chamber in *Taylor* did not find the sheer persuasive value of the arguments made in favor of a “specific direction” requirement in *Perišić* to be particularly convincing. The ICTY jurisprudence is, according to the *Taylor* Appeals Chamber, lacking “a clear, detailed analysis of the authorities supporting the conclusion that “specific direction” is an element of the *actus reus* of aiding and abetting liability under customary international law.”¹⁶⁴

The *Taylor* Appeals Chamber did not find the *Perišić* Appeals Chamber’s analysis of its own jurisprudence to be persuasive either, mentioning especially *Mrkšić and Šljivančanin* and *Lukić and Lukić*.¹⁶⁵ In *Mrkšić and Šljivančanin* the ICTY Appeals Chamber stated, as mentioned above that “the Appeals Chamber has confirmed that ‘specific direction’ is not an essential ingredient of the *actus reus* of aiding and abetting.”¹⁶⁶ Finally, the *Taylor* Appeals Chamber argued that the notion of “specific direction”, having to be proved beyond reasonable doubt, but simultaneously being “implicit” or “self-evident” is counterintuitive and is not consistent with presumption of innocence.¹⁶⁷

¹⁵⁹ *Taylor* Appeals Chamber Judgment, paragraph 474.

¹⁶⁰ *Taylor* Appeals Chamber Judgment, paragraph 475.

¹⁶¹ *Taylor* Appeals Chamber Judgment, paragraph 476.

¹⁶² Since the ICTY and the ICTR Appeals Chamber is constituted by the same judges, the Appeals Chamber in *Taylor* assumes that the holdings of one chamber are also representative for the other.

¹⁶³ *Taylor* Appeals Chamber Judgment, paragraph 476.

¹⁶⁴ *Taylor* Appeals Chamber Judgment, paragraph 477.

¹⁶⁵ *Taylor* Appeals Chamber Judgment, paragraph 478.

¹⁶⁶ *Mrkšić and Šljivančanin* Appeals Chamber Judgment, paragraph 32.

¹⁶⁷ *Taylor* Appeals Chamber Judgment, paragraph 479.

Consequently, the Chamber concluded that it found no cogent reasons to depart from the contention that “specific direction” is *not* an element of the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute or in customary international law.¹⁶⁸

The *Perišić* and *Taylor* Appeals Chamber Judgments sparked a debate regarding the existence of a discrete “specific direction” requirement in the *actus reus* of aiding and abetting liability. The SCSL Appeals Chamber addressed the question of “specific direction” as a direct response to the ICTY Appeals Chamber’s holdings in *Perišić*. This form of dialogue between international tribunals/courts is notable, and indicates that the SCSL Appeals Chamber deemed it necessary to address the question of “specific direction” as a direct response to the *Perišić* Appeals Chamber Judgment. In the following chapter some of the matters of contention brought to light by these two judgments will be analyzed.

¹⁶⁸ *Taylor* Appeals Chamber Judgment, paragraph 481.

4 Changing the scope of aiding and abetting liability?

4.1 Aiding and abetting liability – over- or under-inclusive?

The debate regarding the “specific direction” requirement can be viewed as an expression of a more general sentiment that the threshold for applying aiding and abetting liability is too low, and should somehow be raised. Applying a discrete “specific direction” requirement effectively raises the threshold for aiding and abetting liability, especially when applied to cases where the accused aider and abettor was remote from the perpetration of the crimes. One may argue that the sheer fact that the accused aider and abettor was remote, either temporally or geographically, may reduce the probability of the assistance given by the accused actually having an effect on the crime, and thereby justifying the additional requirement.

This prompts a number of questions with regard to aiding and abetting liability. First of all, is the additional ‘test’ that the specific direction requirement represents necessary, because aiding and abetting liability without this requirement would have a too wide range? The definition of the *actus reus* of aiding and abetting liability widely agreed upon until the *Perišić* Appeal Judgment was, as mentioned above,¹⁶⁹ that the assistance provided by the accused aider and abettor had a “substantial effect on the perpetration of the crime”.¹⁷⁰ This ‘test’, or a similar requirement, was derived from the International Law Commission’s 1996 Draft Code¹⁷¹ (ILC Draft Code).¹⁷² The ILC Draft Code Article 2(3)(d) states that “an individual shall be responsible [...] if that individual: (d) knowingly aids, abets or otherwise assists, *directly and substantially*”.¹⁷³ The *Tadić* Trial Chamber Judgment adopted the same approach as the ILC and stated that the accused would be liable if the assistance “directly and substantially” affected the commission of the crime.¹⁷⁴

However, in the next major case applying aiding and abetting liability at the ICTY, the *Furundžija* case, the Trial Chamber stated that:

“In view of this, the Trial Chamber believes the use of the term "direct" in qualifying the proximity of the assistance and the principal act to be misleading as it may imply that assistance needs to be tangible, or to have a causal effect on the crime. This may

¹⁶⁹ See chapter 2.2.3.2 on the objective element of aiding and abetting liability.

¹⁷⁰ *Furundžija* Trial Chamber Judgment, paragraph 249.

¹⁷¹ International Law Commission, *Draft Code of Crimes Against the Peace and Security of Mankind with Commentaries*, 1996.

¹⁷² Finin (2012) page 127.

¹⁷³ ILC Draft Code Article 2(3)(d) (emphasis added).

¹⁷⁴ *Tadić* Trial Chamber Judgment, paragraph 692.

explain why the word “direct” was not used in the Rome Statute’s provision on aiding and abetting.”¹⁷⁵

A need to limit the scope of aiding and abetting liability has been conveyed by commentators, and defence attorneys following the *Perišić* Appeals Chamber Judgment. The proponents of a discrete “specific direction” requirement argue that aiding and abetting liability without this requirement ranges too wide in cases of remoteness, and consequently placing the threshold for liability unreasonably low. Dissenting Judge Moloto also voiced this concern by placing aiding and abetting liability in a different context during an exchange with Senior Trial Attorney Mark Brian Harmon in closing arguments of the *Perišić* Trial. Judge Moloto used the war in Afghanistan as an example and asked Mr. Harmon if the NATO Commanders in Afghanistan would be guilty of aiding and abetting the alleged crimes committed in Afghanistan, mentioning detentions in Guantanamo, in Bagram and in Kabul as examples.¹⁷⁶ This has been the common form of the argument presented by the proponents of a discrete “specific direction” requirement.¹⁷⁷

The Taylor Defence presented a similar argument in their appeal brief, holding that the Trial Chamber’s reasoning in *Taylor* criminalized conduct that was regarded as lawful by States.¹⁷⁸ The Defence mentions US military support to Yemen in 2009/2010 “to eliminate safe havens for terrorist organizations”¹⁷⁹. This took place at a time when the both the US State Department and Human Rights Watch reported that the Yemeni air force, army and police had probably engaged in broad targeting of civilians, unlawful killings, torture and arbitrary detention. The Defence argued that according to the Chamber’s approach any US governmental official that had knowledge and decision-making capacities would be guilty of aiding and abetting those crimes.¹⁸⁰

Another argument presented by commentators is that by *not* limiting the scope of aiding and abetting liability with a specific direction requirement, it would resemble that of strict liability and discourage individuals and governments from getting involved or provide aid in interna-

¹⁷⁵ *Furundžija* Trial Chamber Judgment, paragraph 232.

¹⁷⁶ The exchange can be viewed at http://www.youtube.com/watch?v=6Cfbt_mQ-rw. The analogy is presented by Judge Moloto at approximately 09:30 min and onwards, page 14657 in the transcripts of 28 March 2011.

¹⁷⁷ Eby (2014) page 280.

¹⁷⁸ *Taylor* Appeal Brief paragraph 314.

¹⁷⁹ *Taylor* Appeal Brief paragraph 314.

¹⁸⁰ *Taylor* Appeal Brief paragraph 314.

tional conflicts. For example in providing weapons and support to groups or organizations that engage in both lawful and unlawful activity.¹⁸¹

On the other side of the spectrum one finds those who argue that the “specific direction” requirement standard is under-inclusive.¹⁸² Those who oppose “specific direction” as a discrete requirement hold that it narrows the scope of aiding and abetting liability too much, and thus raising the threshold for aiding and abetting liability too high. The arguments presented above suggest that an understanding of aiding and abetting liability that excludes “specific direction” would place liability where we as a society do not wish to place liability. If one looks to the premise of this argument one might claim that it is “mandating acceptance of the notion that arms trading, and particularly weapons exchanges with nations openly engaged in committing atrocities, is socially valuable (or at least an activity for which there is a non-criminal, lawful purpose).”¹⁸³

If we look to the example of the war in Afghanistan presented by Judge Moloto, we should ask ourselves if it is the moral and principle standpoint that, in a situation where a Commander of NATO Allied Forces is found to have made a substantial contribution to crimes committed, and it is proved beyond reasonable doubt that this commander had knowledge that the acts would assist in the commission of the crime, that he should not be held liable? It has been suggested that in order to differentiate between the cases of aiding and abetting one wish to include and those where the aiding and abetting liability might seem over-inclusive, one should resort to a heightened *mens rea* requirement rather than a heightened *actus reus* requirement.¹⁸⁴

There is no clear answer to the question of whether aiding and abetting liability as it stands today is over- or under-inclusive. Maybe it is a question of finding the balance between an aiding and abetting liability that has a wide scope and is functional in relation to its purpose, and an aiding and abetting liability that has too wide of a scope as to placing liability where liability should not be placed. Ultimately this might be a discussion of what kind of criminal liability we want to have and who we think should bear the responsibility for international crimes. If we are to limit the scope of aiding and abetting liability, there are several ways to achieve this. In the following this thesis will analyze some of the practical implications of restricting the scope of aiding and abetting liability by applying a requirement of “specific direction.

¹⁸¹ Vij (2013) page 168.

¹⁸² Eby (2014) page 278.

¹⁸³ Eby (2014) page 281.

¹⁸⁴ Eby (2014) page 281.

4.2 Only in cases of remoteness?

The Appeals Chamber in *Perišić* concluded as mentioned that “no conviction for aiding and abetting may be entered if the element of specific direction is not established beyond reasonable doubt, either explicitly or implicitly”¹⁸⁵. The Appeals Chamber viewed the “specific direction” requirement as establishing the requisite culpable link between the assistance provided and the crime.¹⁸⁶ The Chamber went on to state that in cases where the aider and abettor is remote from the relevant crimes, “specific direction” cannot be proven implicitly through the evidence of the other elements of aiding and abetting, and therefore has to be subject to “explicit consideration”¹⁸⁷.

It is not made clear by the ICTY Appeals Chamber what the legal basis for this explicit requirement in cases of remoteness is. The argument that remoteness in cases of aiding and abetting necessitates an explicit consideration of specific direction was introduced by Judge Moloto in his dissenting opinion in the *Perišić* Trial Chamber Judgment. He stated that: “I contend that in cases of remoteness, the notion of specific direction must form an integral and explicit component of the objective element of aiding and abetting.”¹⁸⁸ Judge Moloto did not cite or refer to any sources when presenting this contention. He reasoned that if “specific direction” can be “implicit in the finding that an accused has provided practical assistance to the principal perpetrator which had a substantial effect on the crime” this would imply that there needs to be established a direct link between the assistance of the aider and abettor and the commission of the crime. According to the Judge this link needs to be explicitly considered in cases of remoteness, such as the *Perišić* case.¹⁸⁹ What is interesting is that this reasoning by the dissenting Judge Moloto is seemingly only founded on his own inferences from the case law of the ICTY.

The *Perišić* Appeals Chamber does not define “remoteness” in the judgment. The only guidance given by the Appeals Chamber is that it “will depend on the individual circumstances of each case”¹⁹⁰ It is made clear by the Appeals Chamber in *Perišić* that “remoteness” can be determined by factors such as temporal distance and geographical distance, but is not limited to these factors.¹⁹¹ When it comes to geographic distance as an indication of “remoteness”, the question is; what geographical distance is required to be considered as having been remote

¹⁸⁵ *Perišić* Appeals Chamber Judgment, paragraph 36.

¹⁸⁶ *Perišić* Appeals Chamber Judgment, paragraph 37.

¹⁸⁷ *Perišić* Appeals Chamber Judgment, paragraph 39.

¹⁸⁸ *Perišić* Trial Judgment, XII. Dissenting opinion of Judge Moloto on Counts 1 to 4 and 9 to 12, paragraph 10.

¹⁸⁹ *Perišić* Trial Judgment, XII. Dissenting opinion of Judge Moloto on Counts 1 to 4 and 9 to 12, paragraph 10.

¹⁹⁰ *Perišić* Appeals Chamber Judgment, paragraph 40

¹⁹¹ *Perišić* Appeals Chamber Judgment, paragraph 40

from the perpetration of the crime? Is it necessary to be in a different country than where the crimes are perpetrated, like Perišić and Taylor, or is a distance of 10 kilometers enough? If this is to be determined on a case-by-case basis it may lead to rather arbitrary conclusions on what constitutes “remoteness”.

The prosecution in the 2014 *Šainović* Appeal Judgment argued that the fact that an accused aider and abettor who is remote from the crime may “be able to recognize a wider pattern of crimes or the systematic nature of crimes which he is assisting and may be able to make much more substantial contributions or assistance in crimes.”¹⁹² This especially applies where the accused is a high-ranking official of an army, and goes to show that remoteness does not necessarily go hand in hand with a lesser degree of culpability.¹⁹³ Ventura points out that “in reality, high-ranking military commanders are rarely on the front line with the soldiers when they carry out crimes.”¹⁹⁴ He also points out that there is “always” some degree of geographic distance between military leaders in charge and the soldiers who perpetrate crimes.¹⁹⁵

In a world where geographic distance is becoming less important when it comes to committing international crimes, through improved means of communication and the use of drones, geographic proximity may become a less potent indicator of culpability than it might have been in the past. If “specific direction” is a discrete requirement in aiding and abetting liability in cases of “remoteness”, then “remoteness” should be defined, but this may prove difficult to do, and we might be referred to a case-by-case determination. This might make the application of a discrete “specific direction” requirement unpredictable, which is unfortunate, considering the foreseeability for the accused.

4.3 The future of aiding and abetting liability

The *Perišić* and *Taylor* Judgments were pronounced within the same year. Not only did they take different stands on the existence of the requirement of “specific direction”, but the SCSL Appeals Chamber did so in direct response to the findings of the ICTY Appeals Chamber. The Defence in *Taylor* had not appealed the Trial Chamber’s finding that specific direction was not part of the *actus reus* of aiding and abetting.¹⁹⁶ Even so, as described above, the

¹⁹² *Šainović* Appeals Chamber Transcript, 13 March 2013, page 454, lines 19-24.

¹⁹³ Coco (2014) page 359.

¹⁹⁴ Ventura, *Farewell ‘Specific Direction’: Aiding and Abetting War Crimes and Crimes against Humanity in Perišić, Taylor, Šainović et al. and US Alien Tort Statute Jurisprudence* (2014) page 15.

¹⁹⁵ Ventura, *Farewell ‘Specific Direction’: Aiding and Abetting War Crimes and Crimes against Humanity in Perišić, Taylor, Šainović et al. and US Alien Tort Statute Jurisprudence* (2014) page 15.

¹⁹⁶ Both the Defence and the Prosecution submitted motions to add additional written submissions following the *Perišić* Appeals Chamber Judgment, but were denied:

SCSL Appeals Chamber chose to discuss the subject of “specific direction”. This dialogue between two ICTs is interesting as it shows that the SCSL felt pressure to take a stand with regards to the question of “specific direction”, because one of its peer tribunals released a disputed judgment on the subject. Some commentators have claimed that the SCSL Appeals Chamber did not have to address the question of “specific direction” in *Taylor*.¹⁹⁷ Fielding holds that that it was unnecessary because the RUF/AFRC’s military operations were labeled as a criminal, and therefore all assistance to the organization would constitute assistance to their crimes.¹⁹⁸

The question of “specific direction” also became the subject of the *Šainović et al.* Appeals Chamber Judgment pronounced in January 2014. The case concerned the forcible displacement of the Albanian population in Kosovo in 1999.¹⁹⁹ One of the defendants, Lazarević, had been convicted of aiding and abetting deportation and other inhumane acts as crimes against humanity by the ICTY Trial Chamber.²⁰⁰ The Appeals Chamber in *Šainović et al.* interpreted the *Perišić* Appeal, the *Mrkšić and Šljivančanin* Appeal and the *Lukić and Lukić* Appeal, concluding that they were not compatible when it came to the issue of “specific direction”.²⁰¹ The Appeals Chamber in *Šainović et al.* disagreed with the Appeals Chamber in *Perišić* and held that the *Tadić* Appeal Judgment did not set precedence for “specific direction”. The *Šainović et al.* Appeals Chamber concluded that “specific direction” is not an element of the *actus reus* of aiding and abetting liability.²⁰² The ICTY Trial Chamber’s conviction of Lazarević for aiding and abetting was thus confirmed by the Appeals Chamber in the *Šainović et al.* Appeal Judgment.²⁰³

The question of “specific direction” will most likely also be the subject of the *Stanišić and Simatović* Appeal. On the 30 May 2013 the ICTY Trial Chamber acquitted Jovica Stanišić and Franko Simatović of aiding and abetting crimes in BiH, because “specific direction”

Taylor Prosecution motion for leave to file additional written submissions regarding the ICTY Appeal Judgment in *Perišić*, SCSL-03-01-A-1381 and

Perišić Decision on prosecution motion for leave to file additional written submissions regarding the ICTY Appeal Judgment in *Perišić*, SCSL-03-01-A-1382 and Order denying Defence request for leave to amend notice of appeal, SCSL-03-01-A-1385

¹⁹⁷ E.g. Fielding (2013) *Charles Taylor Appeal: Why its rejection of ‘specific direction’ doesn’t matter*.

¹⁹⁸ According to the reasoning in the *Perišić* Appeals Chamber Judgment, assistance provided to a criminal organization in and of itself suggests that the assistance provided was specifically directed towards the perpetrated crimes (*Perišić* Appeals Chamber Judgment, paragraph 52).

¹⁹⁹ *Šainović* Appeals Chamber Judgment, paragraph 6.

²⁰⁰ *Šainović* Trial Chamber Judgment, paragraph 935.

²⁰¹ *Šainović* Appeals Chamber Judgment, paragraph 1621.

²⁰² *Šainović et al.* Appeals Chamber Judgment, paragraph 1651.

²⁰³ *Šainović et al.* Appeals Chamber Judgment, paragraph 1765.

could not be proven, and it will be up to the Appeals Chamber to either confirm or overturn the Trial Chamber's decision.²⁰⁴

4.3.1 Part of the *mens rea*?

If the requirement of “specific direction” is to be accepted and applied as a necessary and essential element of the *actus reus* of aiding and abetting liability, it has been argued that the requirement would be more appropriately placed in the *mens rea* of aiding and abetting liability. As mentioned above, Judges Meron and Agius presented this view in their joint separate opinion in the *Perišić* Appeals Chamber Judgment. They stated that “were we setting out the elements of aiding and abetting outside the context of the Tribunal’s past jurisprudence, we would consider categorising specific direction as an element of *mens rea*”.²⁰⁵ However, since they view the Tribunal’s precedent to place “specific direction” in the *actus reus* of aiding and abetting liability, they did not see any “cogent reasons” to depart from the precedent of the Tribunal on this point.²⁰⁶ The Judges emphasized that the important thing was that “specific direction” establishes the necessary connection between the assistance of the aider and abettor and the actions of the principal perpetrators.²⁰⁷

The ICTY Appeals Chamber in *Perišić* stated that “the Appeals Chamber acknowledges that “specific direction” may involve considerations that are closely related to questions of *mens rea*”²⁰⁸. They further stated that “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”²⁰⁹. When the Appeals Chamber made these statements, the Chamber recognized the fact that deciding if assistance was “specifically directed” will entail examining the intentions of the accused aider and abettor. Intuitively, this would place the “specific direction” requirement in the *mens rea* of aiding and abetting liability. This would be problematic, considering that “knowledge” is the generally accepted *mens rea* standard for aiding and abetting.²¹⁰ One could also argue that adding a requirement of “specific direction” to the *mens rea* of aiding and abetting would effectively transform aiding and abetting into a form of

²⁰⁴ This was after the *Perišić* Appeals Chamber Judgment, but before the *Taylor* and *Šainović et al.* Appeal Judgments.

²⁰⁵ *Perišić* Appeals Chamber Judgment, VII. *Joint Separate Opinion of Judges Theodor Meron and Carmel Agius*, paragraph 4.

²⁰⁶ *Perišić* Appeals Chamber Judgment, VII. *Joint Separate Opinion of Judges Theodor Meron and Carmel Agius*, paragraph 4.

²⁰⁷ *Perišić* Appeals Chamber Judgment, VII. *Joint Separate Opinion of Judges Theodor Meron and Carmel Agius*, paragraph 4.

²⁰⁸ *Perišić* Appeals Chamber Judgment, paragraph 48.

²⁰⁹ *Perišić* Appeals Chamber Judgment, paragraph 48.

²¹⁰ Cf. 2.2.3.1 *The mental element – mens rea*, above.

principal perpetration. This could even be argued if one accepts that “specific direction” is a part of the *actus reus*, like the Appeals Chamber in *Perišić* did. Dissenting Judge Liu in the *Perišić* Appeal noted this when he stated that “[i]f specific direction is indeed part of the *actus reus* of aiding and abetting liability, it could be argued that there is little difference between aiding and abetting and certain forms of commission”.²¹¹ If aiding and abetting liability is developing into mode of liability similar to a form of commission, it would diminish the applicability of one of the most commonly applied modes of accessory criminal liability in international criminal law.

When it comes to the future of aiding and abetting liability, the *Stanišić and Simatović* Appeal will possibly provide some clarification, especially on how the ICTY Appeals Chamber views the question of “specific direction”. But, as mentioned above,²¹² the future of the “specific direction” requirement and aiding and abetting liability more generally will ultimately be decided by the ICC as the ICTs are in the process of finishing their work.

²¹¹ *Perišić* Appeals Chamber Judgment, VIII. Partially dissenting opinion of Judge Liu, paragraph 3, note 9.

²¹² Cf. 2.2.2.2 *The Rome Statute*.

5 Concluding remarks

As one commentator noted after the *Šainović et al.* Appeal Judgment was published: “the jurisprudence identifying the status of CIL [customary international law] in relation to the requirement of ‘specific direction’ cannot be said to have clarified the issue but rather contributed to the ‘self-fragmentation’ in international criminal law, and especially within the ICTY”.²¹³ This is illustrative for the status of the requirement of “specific direction” in aiding and abetting liability in international criminal law today. There is no clear answer to the question if there is such a requirement under customary international law. The discussion brought about by the *Perišić* and *Taylor* Appeal Judgments clearly showed this and also showed the fragmentation of the international criminal law as a legal discipline. The judgments also sparked an interesting debate regarding the scope of aiding and abetting liability more generally, and brought attention to the fact that some in the legal community of international criminal law are of the opinion that the scope of aiding and abetting liability should be restricted.

As mentioned above, the question of “specific direction” will probably be brought up in the remaining cases applying aiding and abetting at the *ad hoc* tribunals, before it is eventually clarified by the ICC.

²¹³ Arajärvi (2014) page 117.

Bibliography

Books, articles and more

- Arajärvi Arajävi, Noora. *The Changing Nature of Customary International Law: Methods of interpreting the concept of custom in international criminal tribunals*. London, 2014.
- Bassiouni Bassiouni, Mahmoud Cherif. *Introduction to International Criminal Law*. Second Edition, Leiden, 2013.
- Black's Law Dictionary *Black's Law Dictionary*. Garner, Brian A. [et al.]. Ninth Edition, West Group, 2009.
- Cassese *International Criminal Law*. Edited by Antonio [et al.]. Third Edition, Oxford, 2013.
- Cassese *International Criminal Law – Cases & Commentary*. Antonio Cassese [et al.] Oxford, 2011.
- Coco *Losing Direction – The ICTY Appeals Chamber's Controversial Approach to Aiding and Abetting in Perišić*. In: *Journal of International Criminal Justice* . Volume 12, Issue 4 (2014).
- Eby Eby, Christopher P. *Aid "Specifically Directed" to Facilitate War Crimes: The ICTY's Anomalous Actus reus Standard for Aiding and Abetting*. In: *Chicago Journal of International Law*, Vol. 15 (2014) nr. 1 p. 256-286.
- Fielding Fielding, Alex. *Charles Taylor Appeal: Why its rejection of 'specific direction' doesn't matter* (2013). <http://beyondthehague.com/2013/09/30/charles-taylor-appeal-why-its-rejection-of-specific-direction-doesnt-matter/> [accessed 1 November 2014]
- Finnin Finnin, Sarah. *Elements of Accessorial Modes of Liability – Article 25(3)(b) and (c) of the Rome Statute of the International Criminal Court*. Leiden, 2012.
- Hayes Hayes, Niamh, Yvonne McDermott and William A. Schabas. *Introduction*. In: *The Ashgate Research Companion to International Criminal Law*. Ashgate

Publishing Limited, Surrey, 2013.

- Heller Heller, Kevin Jon. *Two Thoughts on Manuel Ventura's Critique of Specific Direction* (2014) <http://opiniojuris.org/2014/01/10/two-thoughts-manuel-venturas-critique-specific-direction/> [accessed 22 September 2014].
- Heller Heller, Kevin Jon. *The SCSL's Incoherent – and Selective – Analysis of Custom* (2013) <http://opiniojuris.org/2013/09/27/scsls-incoherent-selective-analysis-custom/> [accessed 23 October 2014].
- Jain Jain, Neha. *Perpetrators and Accessories in International Criminal Law – Individual Modes of Responsibility for Collective Crimes*. Oxford and Portland, Oregon, 2014.
- Knoops Knoops, Geert-Jan Alexander. *An Introduction to the Law of International Criminal Tribunals*. Leiden, 2014.
- Sclütter Scütter, Birgit. *Developments in Customary International Law: Theory and the Practice of the International Court of Justice and the International ad hoc Criminal Tribunals for Rwanda and Yugoslavia*. Leiden, 2010.
- Sliedregt Sliedregt, Elies van. *Individual Criminal Responsibility in International Law*. Oxford, 2012.
- Sliedregt Sliedregt, Elies van. *Modes of Participation*. In: *Forging a Convention for Crimes Against Humanity*. Edited by Leila Nadya Sadat. Cambridge, 2011.
- Stewart Stewart, James G. *The ICTY loses its way on complicity – Part I* (2013). <http://opiniojuris.org/2013/04/03/guest-post-the-icty-loses-its-way-on-complicity-part-1/> [accessed 1 October 2014].

- Ventura Ventura, Manuel J. *Guest Post: Specific Direction à la Perišić, the Taylor Appeal Judgment and what it could mean for the ICTY Appeals Chamber in Šainović et al. – Part I* (2014) <http://dovjacobs.com/2014/01/08/guest-post-specific-direction-a-la-perisic-the-taylor-appeal-judgment-and-what-it-could-mean-for-the-icty-appeals-chamber-in-sainovic-et-al-part-i/> [accessed 18 September 2014].
- Ventura Ventura, Manuel J. *Guest Post: Specific Direction à la Perišić, the Taylor Appeal Judgment and what it could mean for the ICTY Appeals Chamber in Šainović et al. – Part II* (2014) <http://dovjacobs.com/2014/01/09/guest-post-specific-direction-a-la-perisic-the-taylor-appeal-judgment-and-what-it-could-mean-for-the-icty-appeals-chamber-in-sainovic-et-al-part-ii/> [accessed 8 October 2014].
- Ventura Ventura, Manuel J. *Farwell 'Specific Direction': Aiding and Abetting War Crimes and Crimes Against Humanity in Perišić, Taylor, Šainović et al., and US Alien Tort Statute Jurisprudence*. In: *The War Report 2013* edited by S. Casey-Maslen. Oxford, 2014 (Forthcoming).
- The article is available at:
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2435515
- Vij Vij, Vanshika. *Individual Criminal Responsibility Under Aiding and Abetting after the Specific Direction Requirement in the Taylor and Perišić Cases*. In: *Die Friedens-Warte*. Vol. 88 (2013) No. 3-4, page 157-175.

Legal Instruments

Statutes

Law on the establishment of extraordinary chambers in the courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea

Statute of the International Court of Justice

Statute of the International Criminal Tribunal for Rwanda

Statute of the International Criminal Tribunal for the former Yugoslavia

Statute of the Special Court for Sierra Leone

Statute of the Special Tribunal for Lebanon

The Rome Statute of the International Criminal Court

Conventions

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

International Convention on the Suppression and Punishment of the Crime of Apartheid

Geneva Conventions with Additional Protocol II

Other

International Law Commission – Draft Code of Crimes against the Peace and Security of Mankind

Table of cases

<i>Aleksovski</i>	ICTY Trial Chamber Judgment, IT-95-14/1-A, 24 March 2000
<i>Becker, Weber et al.</i>	Trial of Gustav Becker, Wilhelm Weber and 18 others, Permanent Military Tribunal at Lyon, 17 July 1947
<i>Blagojević and Jokić</i>	ICTY Appeals Chamber Judgment, IT-02-60-A, 9 May 2007 The United States of America vs. Friedrich Flick, et al.
<i>Blaškić</i>	ICTY Appeals Chamber Judgment, IT-95-14-A, 29 July 2004
<i>Blaškić</i>	ICTY Trial Chamber Judgment, IT-95-14-T, 3 March 2000
<i>Brđanin</i>	ICTY Appeals Chamber Judgment, IT-99-36-A, 3 April 2007
<i>Brima et al.</i>	SCSL Trial Chamber Judgment, SCSL-04-16-T, 20 June 2007
<i>Bruno Tesch and Two Others (Zyklon B)</i>	Trial of Bruno Tesch and two others (Zyklon B case), British Military Court, Hamburg, 1-8 March 1946
<i>Flick</i>	The United States of America vs. Friedrich Flick, et al, US Military Tribunal Nuremberg, 22 December 1947
<i>Furundžija</i>	ICTY Trial Chamber Judgment, IT-95-17/1-T, 10 December 1998
<i>Gacumbitsi</i>	ICTR Appeals Chamber Judgment, ICTR-01-64-A, 7 July 2006
<i>Haradinaj</i>	ICTY Appeals Chamber Judgment, IT-04-84-A, 19 July 2010
<i>Justice Trial</i>	The United States of America vs. Josef Altstötter et al, US Military Tribunal Nuremberg, 4 December 1947
<i>Krstić</i>	ICTY Appeals Chamber Judgment, IT-98-33-A, 19 April 2004

<i>Kupreškić</i>	ICTY Appeals Chamber Judgment, IT-95-16-A, 23 October 2001
<i>Limaj</i>	ICTY Appeals Chamber Judgment, IT-03-66-A, 27 September 2007
<i>Ministries Trial</i>	The United States of America vs. Ernst von Weizsäcker et al, US Military Tribunal Nuremberg, 11 April 1949
<i>Mrkšić and Šljivančanin</i>	ICTY Appeals Chamber Judgment, IT-95-13/1-A, 5 May 2009
<i>Nchamihigo</i>	ICTR Appeals Chamber Judgment, ICTR-2001-63-A, 18 March 2010
<i>Ndindabahazi</i>	ICTR Appeals Chamber Judgment, ICTR-01-71-A, 16 January 2007
<i>Nuremberg Judgment</i>	International Military Tribunal, <i>Trial of the Major War Criminals before the International Military Tribunal</i> , Vol. 1, 171-367
<i>Perišić</i>	ICTY Trial Chamber Judgment, IT-04-81-T, 6 September 2011
<i>Perišić</i>	ICTY Appeals Chamber Judgment, IT-04-81-A, 28 February 2013
<i>Perišić</i>	ICTY Appeal Brief, <i>Momčilo Perišić's Notice of re-classification and re-filing of the public redacted version of appeal brief</i> , IT-04-81-A, A1235 - A1101, 10 April 2012
<i>Perišić</i>	ICTY Trial, Case No. IT-04-81. <i>Closing arguments – Momčilo Perišić (Part 3/6) – 28 March 2011</i> . Available at https://www.youtube.com/watch?v=6Cfbt_mQ-rw Page 14657 and onwards in the transcripts of 28 March 2011
<i>Renzaho</i>	ICTR Appeals Chamber Judgment, ICTR-97-31-A, 1 April 2011
<i>Rutaganda</i>	ICTR Appeals Chamber Judgment, ICTR-96-03-A, 26 May 2003

Šainović ICTY Trial Chamber Judgment, IT-05-87-T, 26 February 2009

Šainović ICTY Appeals Chamber Judgment, IT-05-87-A, 23 January 2014

Šainović ICTY Transcript from Appeals Hearing, 13 March 2013

Semanza ICTR Appeals Chamber Judgment, ICTR-97-20-A, 20 May 2005

Simić ICTY Appeals Chamber Judgment, IT-95-9-A, 28 November 2006

Stanišić and Simatović ICTY Trial Chamber Judgment, IT-03-69-T, 30 May 2013

Tadić ICTY Appeals Chamber Judgment, IT-94-1-A, 15 July 1999

Taylor Decision on prosecution motion for leave to file additional written submissions regarding the ICTY Appeal Judgment in Perišić, SCSL-03-01-A-1382

Taylor Order denying Defence request for leave to amend notice of appeal, SCSL-03-01-A-1385

Taylor Defence Appeal Brief, SCSL-03-01-A-1331, (2291-2635), 8 October 2012

Taylor Indictment, SCSL-03-01-I, 7 March 2003

Taylor SCSL Appeals Chamber Judgment, SCSL-03-01-A, 26 September 2013

Taylor SCSL Trial Chamber Judgment, SCSL-03-01-T, 18 May 2012

Taylor Prosecution motion for leave to file additional written submissions regarding the ICTY Appeal Judgment in Perišić, SCSL-03-01-A-

Trial of the Major War Criminals before the International Military Tribunal Trial of the Major War Criminals before the International Military Tribunal, Judgment of 1 October 1946, Nuremberg.

Wagner and Six Others Trial of Robert Wagner, Gauleiter and Head of the Civil Government of Alsace during the Occupation, and six others, Permanent Military Tribunal at Strasbourg, 23 April to 3 May 1946, and Court of Appeal 24 July 1946.