UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No.	IT-00-39&40/1-S
		Date:	27 February 2003
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IN THE TRIAL CHAMBER

Before: **Judge Richard May, Presiding**
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: **Mr. Hans Holthuis**

Judgement of: **27 February 2003**

PROSECUTOR

v.

BILJANA PLAVŠIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Mark Harmon
Mr. Alan Tieger

Counsel for the Accused:

Mr. Robert J. Pavich
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I. INTRODUCTION

1. The accused, Biljana Plavšić, surrendered voluntarily to the International Criminal Tribunal for the former Yugoslavia ("International Tribunal") on 10 January 2001. The Indictment against the accused was originally confirmed by Judge Wald on 7 April 2000, but remained sealed until the surrender of the accused.

2. A consolidated indictment against the accused and Momčilo Krajišnik was confirmed on 23 February 2001 by Judge May[1] and an amended consolidated indictment against the two accused was confirmed by the same judge on 4 March 2002 ("Indictment").[2] This Indictment contained counts against the accused alleging genocide, complicity in genocide, and the following crimes against humanity: persecutions, extermination and killing, deportation and inhumane acts.

3. At her initial appearance before Trial Chamber III on the 11 January 2001 the accused pleaded not guilty to all counts and was remanded to the United Nations Detention Unit ("UNDU").[3]

4. On the 29 August 2001 the Trial Chamber ordered that the accused be provisionally released to live in the Republic of Serbia and she has remained on provisional release since, apart from her appearance at the sentencing hearing.

5. At a hearing on the 2 October 2002 the accused pleaded guilty to Count 3, persecutions, a crime against humanity. The Trial Chamber, being satisfied that the plea was voluntary, informed and unequivocal, and that there was a sufficient factual basis for the crime and the accused's participation in it, then entered a finding of guilt.[4] The accused's plea was entered pursuant to a Plea Agreement made between the parties dated 30 September 2002. In the Agreement, paragraphs 3 and 9(a), the Prosecutor agreed to move to dismiss the remaining counts of the Indictment following the accused's plea of guilty and they were dismissed by a Decision by the Trial Chamber on 20 December 2002.[5]

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[1] Consolidated Indictment, 23 February 2001, *Prosecutor v. Krajišnik & Plavšić*, Case No. IT-00-39&40-PT.
[2] Decision on Prosecution's Motion for Leave to Amend the Consolidated Indictment, 4 March 2002, *Prosecutor v. Krajišnik & Plavšić*, Case No. IT-00-39&40-PT. Pursuant to this Decision, the Prosecution filed the Amended Consolidated Indictment on 7 March 2002 ("Indictment").
[3] Initial Appearance, *Prosecutor v. Plavšić*, Case No. IT-00-40-I, Transcript pages ("T.") 3-4; Order for Detention on Remand, 11 January 2001.
[4] Under Rule 62 *bis* of the Rules of Procedure and Evidence of the International Tribunal ("Rules"); T, 339.
[5] Decision Granting Prosecution's Motion to Dismiss Counts 1, 2, 4, 5, 6, 7 and 8 of the Amended Consolidated Indictment, 20 December 2002.

6. A Sentencing Hearing was held between 16 – 18 December 2002 at which the parties called evidence and made submissions. At the end of the hearing the Trial Chamber adjourned the case to consider sentence.

7. On 9 January 2003, Trial Chamber II issued an order that the accused should give evidence before it in the *Stakić* case.[6] Accordingly, this Trial Chamber invited the parties to make written submissions as to what effect, if any, this order had on the sentence.[7] On 12 February 2003 both parties responded that the order has no effect on their previous submissions as to appropriate sentence for the accused.[8] Thus, the Trial Chamber will not take the order into consideration when determining sentence for Mrs. Plavšić.

II. THE FACTS

8. Count 3, to which the accused has pleaded guilty, alleges that between 1 July 1991 and 30 December 1992 the accused, acting individually and in concert with others in a joint criminal enterprise, planned, instigated, ordered and aided and abetted persecutions of the Bosnian Muslim, Bosnian Croat and other non-Serb populations of 37 municipalities in Bosnia and Herzegovina ("BH"). The Count, together with accompanying Schedules, sets out the persecutions, and is annexed to this Judgement (Annex A).

9. A written Factual Basis for the crime described above and for the participation of the accused was filed with the Plea Agreement. The Factual Basis was agreed by the accused and forms the basis upon which the Trial Chamber now passes sentence. It is summarised in the following paragraphs.

10. The Factual Basis first deals with the career of the accused. Mrs. Plavšić is now aged 72 years, having been born on 7 July 1930 in Tuzla, Bosnia and Herzegovina. She had a distinguished academic career as a Professor of Natural Sciences and Dean of Faculty in the University of Sarajevo. She was not involved in politics until she joined the Serbian Democratic Party ("SDS") in July 1990. However, she very soon rose to become a prominent member of the party and to occupy a position of leadership with the Serb Republic of BH. She was elected as a Serbian Representative to the Presidency of the Socialist Republic of Bosnia and Herzegovina on 11 November 1990 until December 1992. The accused was active in the Presidency of the Republic of

[6] Order Summoning Dr. Biljana Plavšić *Proprio Motu* to Appear as a Witness of the Trial Chamber Pursuant to Rule 98, 9 January 2003, *Prosecutor v. Stakić*, Case No. IT-97-24-T.
[7] Order for Further Submissions, 10 January 2003; varied by an Order Granting Extension of Time for filing Submissions, 21 January 2003.
[8] Response by Biljana Plavšić to the Order for Further Submissions of 10 January 2003, filed on 12 February 2003 (dated 11 February 2003); Prosecution's Response to Order for Further Submissions, 12 February 2003.

BH, and in that of the Serbian Republic of BH: from 28 February to 12 May 1992 she was acting co-President, and from May until December 1992 she was a member of the collective and expanded Presidencies of Republika Srpska.[9]

11. The Factual Basis then deals with the background. It sets out that in October 1991, after the BH Assembly voted for the creation of a sovereign Bosnia and Herzegovina, the SDS Political Council, which included the accused, voted to create a Bosnian Serb Assembly.

> The SDS and the Bosnian Serb leadership were committed to a primary goal that all Serbs in the former Yugoslavia would remain in a common state […]. By October 1991, the Bosnian Serb leadership, including Mrs. Plavšić, knew and intended that the separation of the ethnic communities would include the permanent removal of ethnic populations, either by agreement or by force and further knew that any forcible removal of non-Serbs […] would involve a discriminatory campaign of persecution.[10]

12. In October 1991, and in the following months, the SDS intensified efforts to ensure that the objective of ethnic separation by force would be achieved if a negotiated solution did not occur. These efforts included the arming of parts of the Bosnian Serb population in collaboration with the Yugoslav National Army ("JNA"), the Ministry of Internal Affairs ("MUP") of Serbia and Serbian paramilitaries. The SDS instructed local leaders to form crisis staffs, to prepare municipal governmental bodies, to mobilise the Territorial Defence ("TO") and police forces and subordinate them to JNA command. The crisis staffs carried out these orders.[11]

13. In commenting on the individual roles of the participants, the Factual Basis states that numerous individuals participated in devising and executing the above objective. There were differences both as to their knowledge of the details and their participation in the execution of the objective. For her part, Mrs. Plavšić

> embraced and supported the objective […] and contributed to achieving it. She did not participate with Milošević, Karadžić, Krajišnik and others in its conception and planning and had a lesser role in its execution than Karadžić, Krajišnik and others.[12]

14. The Factual Basis then continues with the events of 1992 and expands on the roles of the leaders. In March 1992 the Bosnian Serbs signed the Cutileiro Plan which provided for a sovereign BH, based upon principles of cantonisation and ethnic identity, but the Bosnian Muslims rejected the plan. A Bosnian Serb police force was then established. On 8 April 1992 Mrs. Plavšić (and Nikola Koljević) resigned from the Presidency of the Republic of BH in protest at a declaration of general mobilisation at a meeting of the Presidency to which they were not invited. Mrs. Plavšić and Koljević (as co-Presidents of the Serbian Republic of BH) ordered the mobilisation of the TO.

[9] Factual Basis for Plea of Guilty, 30 Sept. 2002 ("Factual Basis"), paras 1-8.
[10] *Ibid*., para. 10.
[11] *Ibid*., paras 11-12.

On 12 May 1992 the Army of the Serbian Republic of BH was formed ("VRS"). The Main Staff of the VRS was responsible to the Presidency, which in May-June 1992 was composed of Radovan Karadžić, Nikola Koljević and Mrs. Plavšić. Thereafter, the collective Presidency was expanded to include Momčilo Krajišnik and Branko Đerić. The Presidency also had authority over the Bosnian Serb police, TO and civilian authorities.[13] Karadžić and Krajišnik,

> the two pre-eminent and controlling figures in the SDS and the Bosnian Serb government, exercised primary power and control over the Bosnian Serb structures […]. [I]t was primarily they who met with and provided direction to municipal and regional leaders who were responsible for carrying out the objective of ethnic separation by force.[14]

On the other hand, the accused supported the same objective in various different ways, by:

(a) serving as co-President, thereby supporting and maintaining the government and military at local and national levels through which the objective was implemented;

(b) encouraging participation by making public pronouncements that force was justified because certain territories within BH were Serbian by right and Serbs should fear genocide being committed against them by Bosnian Muslims and Bosnian Croats; and

(c) inviting and encouraging paramilitaries from Serbia to assist Bosnian Serb forces in effecting ethnic separation by force.[15]

15. The Bosnian Serb leadership knew that the Serb forces fighting on the side of the Bosnian Serbs were far more powerful militarily than those of the non-Serbs; and Radovan Karadžić warned Muslims that if they sought a sovereign and independent BH, they would be destroyed.[16] The Bosnian Serb forces, collaborating with the JNA, the MUP of Serbia and paramilitary units "to implement the objective of ethnic separation by force", committed the persecutions in a campaign "that included the acts, events and locations contained in Count 3 and Schedules A, B, C and D of the Amended Consolidated Indictment" which are acknowledged by the accused to have occurred. The persecutory acts included:

- killings during attacks on towns and villages;
- cruel and inhumane treatment during and after the attacks;

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[12] *Ibid*., para. 13.
[13] *Ibid*., paras 15-16.
[14] *Ibid*., para. 16.
[15] *Ibid*., para. 17.
[16] *Ibid*., para. 18.

- forced transfer and deportation;
- unlawful detention and killing, forced labour and use of human shields;
- cruel and inhumane treatment and inhumane conditions in detention facilities;
- destruction of cultural and sacred objects; and
- plunder and wanton destruction.[17]

16. These acts and events are expanded in Count 3 and the Schedules to the Indictment that set out the results of the persecutory campaign in the 37 municipalities.

- Schedule A lists 59 incidents that involved killings of men, women and children in 18 municipalities. In many cases, the numbers killed in each incident are not specified beyond a reference to a 'number' or 'dozens'. However, a total of about 650 men, women and children are listed as having been killed in 28 of the incidents. The killings occurred between 1 April and 3 December 1992.
- Schedule B lists further killings in 38 detention facilities in 21 municipalities. Most were killed while in detention and others were killed while performing forced labour and being used as human shields during combat operations. Over 1,600 detainees are listed as having been killed in 19 detention facilities and the number killed in the remainder is not specified. The killings occurred between May and December 1992.
- Schedule C lists about 400 detention facilities in 34 municipalities. These facilities included prisons, police stations, schools, barracks, factories and community centres. In them, according to Count 3, detainees were unlawfully detained and were subject to cruel and inhumane treatment in inhumane living conditions.
- Schedule D lists the destruction of cultural monuments and sacred sites in 29 municipalities. A total of over 100 mosques, 2 mektebs and 7 Catholic churches were destroyed.

17. The Factual Basis also deals with the reaction of the Bosnian Serb leadership, including the accused, to these crimes. It sets out that

[17] *Ibid*., para. 19.

> Mrs. Plavšić participated in the cover up of these crimes by making public statements of denial for which she had no support. When she subsequently had reason to know that these denials were in fact untrue, she did not recant or correct them.[18]

18. The Bosnian Serb leadership, including Mrs. Plavšić, ignored the allegations of crimes committed by their forces: Mrs. Plavšić disregarded reports of widespread ethnic cleansing and publicly rationalised and justified it. She was aware that the key leaders of the Serbian Republic of BH ignored these crimes despite the power to prevent and punish them.[19]

> As the objective of ethnic separation by force continued to be achieved through the crimes mentioned above, Mrs. Plavšić continued to support the regime through her presence within the leadership structure, through her public praise and defence of Bosnian Serb forces and through the denial of Bosnian Serb crimes.[20]

19. Reference should also be made to a document filed at the same time as the Factual Basis, namely a Statement by the accused in support of her motion for change of plea, dated 30 September 2002. In this Statement, Mrs. Plavšić states that by "accepting responsibility and expressing her remorse fully and unconditionally, [she] hopes to offer some consolation to the innocent victims – Muslim, Croat and Serb – of the war in Bosnia and Herzegovina". She "invites others, especially leaders […] to examine themselves and their own conduct". And, as a leader and later an accused, she learned a great deal about the gravity and nature of the crimes committed by the forces which she led and inspired during the war; and she recognises her obligation to accept responsibility for acts committed by others.[21]

III. THE LAW

1. The Statute and the Rules

20. The relevant provisions of the Statute of the International Tribunal ("Statute") and the Rules of Procedure and Evidence of the International Tribunal ("Rules") which relate to sentencing are set forth below:

Article 24

Penalties

> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

[18] *Ibid*., para. 20.
[19] *Ibid*., para. 21.
[20] *Ibid*., para. 22.
[21] Statement by Biljana Plavšić in Support of her Motion for Change of Plea pursuant to Rule 62 *bis*, 30 September 2002 ("Plavšić Written Statement").

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

[…]

Rule 101

Penalties

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

[…]

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

21. Thus in determining sentence the Trial Chamber must take account of the following factors:

- the gravity of the crime
- any aggravating circumstances;
- any mitigating circumstances;
- the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. General Considerations

22. The Appeals Chamber of the International Tribunal has held that retribution and deterrence are the main principles in sentencing for international crimes.[22] These purposive considerations should form the context within which an individual accused's sentence must be determined.[23]

23. As set out in detail in the *Todorović* Sentencing Judgement, the principle of retribution must be understood as reflecting a fair and balanced approach to the exaction of punishment for wrongdoing. This means that the penalty must be proportionate to the wrongdoing; in other words, the punishment must fit the crime. This principle is reflected in the requirement in the Statute that the Trial Chambers, in imposing sentences, must take into account the gravity of the offence.[24]

24. The Appeals Chamber has held that deterrence "is a consideration that may legitimately be considered in sentencing"[25] and has further recognised the "general importance of deterrence as a consideration in sentencing for international crimes".[26] Again, as noted in the *Todorović* Sentencing Judgement, the Trial Chamber understands this to mean that deterrence is one of the principles underlying the determination of sentences, in that the penalties imposed by the International Tribunal must, in general, have sufficient deterrent value to ensure that those who would consider committing similar crimes will be dissuaded from doing so.[27]

25. The cardinal feature in sentencing is the gravity of the crime. The Appeals Chamber has described this as the "primary consideration" and stated that the "sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused."[28]

IV. SENTENCING FACTORS

26. The Trial Chamber will, therefore, begin its consideration of the various factors by first considering the gravity of the offence, bearing in mind, as the Appeals Chamber said, that this

[22] *Prosecutor v. Aleksovski,* Case No. IT-95-14/1-A, Judgement, 24 Mar. 2000 ("*Aleksovski* Appeal Judgement"), para. 185; *Prosecutor v. Delalić et al,* Case No. IT-96-21-A, Judgement, 20 Feb. 2001 ("*Čelebići* Appeal Judgement"), para. 806.
[23] *Prosecutor v. Todorović,* Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 ("*Todorović* Sentencing Judgement"), para. 28.
[24] *Todorović* Sentencing Judgement, para. 29.
[25] *Prosecutor v. Tadić,* Case No. IT-94-1-A and IT-94-1-A*bis*, Judgement in Sentencing Appeals, 26 Jan. 2000 ("*Tadić* Judgement in Sentencing Appeals"), para. 48.
[26] *Aleksovski* Appeal Judgement, para. 185; *see also Čelebići* Appeal Judgement, para. 803.
[27] *Todorović* Sentencing Judgement, para. 30.
[28] *Čelebići* Appeal Judgement, para. 731, citing *Prosecutor v. Kupreškić et al*, Case No. IT-95-16-T, Trial Judgement, 14 January 2000 ("*Kupreškić* Trial Judgement"), para. 852; and *Aleksovski* Appeal Judgement, para. 182.

requires a consideration of the particular circumstances of the case, as well as the form and the degree of the participation of the accused in the crime.[29]

A. Gravity of the Crime

1. Arguments of the Parties

27. The Prosecution submits that the distinctive feature of the crime of persecution, namely a discriminatory intent and the incorporation of other crimes, means that a more severe penalty is justified. The Prosecution further submits that the scale of the campaign, in which the accused participated, was massive and over a vast area, with hundreds and thousands expelled and many killed: the campaign was conducted with particular brutality and cruelty including torture and sexual violence.[30]

28. The Defence acknowledges that Bosnian Serb forces conducted a campaign of persecution which was organised, systematic and widespread. The Defence accepts that the gravity of the offence and the form and participation of Mrs. Plavšić in it are detailed in Count 3 of the Indictment and in the Factual Basis.[31]

29. The Prosecution also attached, in Annex II to its Brief, extracts from the testimony of witnesses in other cases before the International Tribunal to demonstrate the impact of the crimes upon them.[32] These extracts, which relate to incidents in various municipalities, may be summarised as follows:

- Brčko: killings, beatings and rapes at the Luka camp of the Muslim inmates who "were guilty for the simple fact of being alive".[33]

- Višegrad: approximately 70 Muslims, including women and children, were crowded into a small house with only two windows which was then soaked with a flammable substance and set on fire. Only six people escaped.[34] There was also the execution of five men and the attempted murder of two other men on the Drina River on 7 June 1992.[35]

[29] *Čelebići* Appeal Judgement, para. 731, citing *Kupreškić* Trial Judgement para. 852.
[30] Prosecution Sentencing Brief, paras 12-15.
[31] Defence Sentencing Brief, paras 2, 33.
[32] Prosecution Sentencing Brief, para. 20 and Annex II to the Prosecution Sentencing Brief. The events described in Annex II are within the temporal, territorial and substantive limits of Count 3 of the Indictment.
[33] Annex II to the Prosecution Sentencing Brief, p. 2-12. This quotation is taken from p. 11.
[34] *Ibid*., p. 12-16.
[35] *Ibid*., p. 17-19.

- Foča: killings and beatings of men including the elderly inside the KP Dom detention facility, described in graphic detail by victims who were "not respected as human beings".[36]

- Prijedor: killings, beatings and cruel and inhumane conditions in the Omarska detention camp where victims describe that since their incarceration their lives have changed "unimaginably".[37] In addition to this, there was also a massacre of "a column of men", some from the same family, on Mount Vlasić: very few survived.[38]

- Zvornik: killings and sexual violence at the Ekonomija farm and the Čelopek camp. This sexual violence, including forced assaults by family members against each other, resulted in death in some cases.[39]

- Banja Luka: killings in the Manjaca camp, described as people being "liquidated".[40]

In relying on the Trial Chamber judgements of the *Čelebići* and *Aleksovski* cases, the Prosecution argues that such events that occurred repeatedly and in many locations would be more than sufficient to aggravate the crime of the accused.[41]

2. Evidence at the Sentencing Hearing

30. Evidence was presented at the sentencing hearing in relation to the gravity of the offence. This evidence related to the operation and effect of the persecutory campaign conducted by the Bosnian Serb leadership in 1992. The evidence may be most conveniently summarised according to the various facets of the campaign:

(a) forced expulsion and transfer;

(b) widespread killings;

(c) destruction of property and religious buildings; and

(d) cruel or inhumane treatment in detention facilities.

[36] *Ibid*., p. 20-31. This quotation is taken from p. 26.
[37] *Ibid*., p. 32-43. This quotation is taken from p. 33.
[38] *Ibid*., p. 44-46. This quotation is taken from p. 44.
[39] *Ibid*., p. 48-51. This testimony was obtained through statements of witnesses interviewed by investigators from the Office of the Prosecutor (rather than through live testimony before the International Tribunal).
[40] *Ibid*., p. 51-53. This quotation is taken from p. 53.
[41] Prosecution Sentencing Brief, para 20, referring to Prosecutor v. *Delalić et al*, Case No. IT-96-21-T, Judgement, 16 November 1998 ("*Čelebići* Trial Judgement"), paras. 1262, 1264 and 1268; and *Prosecutor v. Aleksovski*, Case no. IT-95-14/1-T, Judgement, 25 June 1999 ("*Aleksovski* Trial Judgement"), para 227.

(a) Forced expulsion and transfer

31. Dealing with the ethnic composition in Bosnia and Herzegovina before the conflict, one witness, Mr. Mirsad Tokača, a representative of the BH State Commission on war crimes documentation, testified that in 1992 it was not possible to find a single municipality that could be described as being clearly dominated by one ethnicity, even though there were some municipalities that had a relative majority of one ethnicity. For example, in the eastern part of BH, with the exception of Bijeljina municipality where Serbs were in relative majority, the municipalities had a Bosniac majority or the population was more or less evenly balanced between various ethnic groups.[42] There was a firm social structure within which no ethnicity was isolated.[43] The Muslim and Croat population of villages in the municipalities had been residing alongside Serb inhabitants for centuries and had developed their traditions, customs, culture, monuments and cemeteries in these locations.[44]

32. According to Mirsad Tokača, the year 1992, and more particularly the period April to August 1992, was a "key year for everything that would follow"[45] as it was in this year that approximately 70 per cent of the expulsions occurred.[46] By way of example, in the municipality of Foča in 1991 the percentage of Bosniacs was 51 per cent. At the end of 1992, there were virtually no Bosniacs left in the municipality. The situation was similar in Bratunac, Ključ, Prijedor and Sanski Most.[47] In total, approximately 850 Muslim and Croat-occupied villages were physically destroyed and no longer exist. Entire families have disappeared as a result of this persecutory campaign.[48]

33. Further, Mirsad Tokača stated that the method embraced by the Bosnian Serb and other forces implementing the forced expulsions consistently comprised of lightning attacks and shelling, followed by mechanised units entering the villages and towns and "the beginning of violence and everything else that followed". The women were separated from the men and taken to detention facilities or were expelled to other areas.[49]

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[42] Mirsad Tokača, T. 386. The witness is a representative of the BH State Commission on war crimes documentation. This commission was established in 1992 and has interviewed over 5,000 witnesses and collected 20,000 photographs, videotapes and a large number of documents and other reports relating to crimes against humanity and grave violations of human rights in Bosnia and Herzegovina.
[43] *Ibid*., T. 388.
[44] *Ibid*., T. 393.
[45] *Ibid*., T. 390.
[46] *Ibid*.
[47] *Ibid*., T. 391.
[48] *Ibid*., T. 392-93. Villages or areas in which entire families have disappeared include: Biljani, Foča, Hrnici, Jelicka, Ključ, Krasulje, Krustovo, Nevesinje, Ogruc, Pehovo, Sanski Most, Srnja, Srnjani, Stedin, Velagic, and Višegrad.
[49] *Ibid*., T. 389-90, 394.

34. The forcible expulsions in the 37 municipalities were characterised and accompanied by brutality and violence as "only by brute force was it possible to separate people".[50] This was particularly the case in Zvornik, Bratunac, Vlasenica, Višegrad, Prijedor, Sanski Most, Ključ and municipalities along the Sana River Valley.[51] This brutality included numerous killings, sexual assaults and rapes.[52]

35. Very few exceptions exist to this pattern of aggression; the main exemptions include Janja which is a locality close to Bijeljina, and partly in Banja Luka where not all of the persecuted populations were expelled.[53] However, those Bosnian Muslims, Bosnian Croats and other non-Serbs left in these areas lived in constant fear that they would be expelled and they were treated as second-class citizens and were not afforded any legal protection.[54] There are also some incidences in Prijedor and Sanski Most where Bosnian Muslims and Bosnian Croats remaining after the persecutions were branded with ribbons and bands to signify their ethnicity.[55] Many people were suffering from shock and believed that the brutality and violence would cease and so remained in their houses, loath to leave. Unfortunately, this decision meant that many of these people "paid with their lives".[56] Many of those who were not initially expelled from Bratunac and Vlasenica were terrified and fled to Srebrenica, Tuzla and Zvornik.[57]

36. The enduring effect of these forcible expulsions and transfers is also illustrated in a recent Report on Ethnic Composition and Displaced Persons and Refugees (produced by the Prosecution).[58] It states that in the 37 municipalities in the Indictment the share of non-Serbs fell from 726,960 (53.97 per cent) in 1991 to 235,015 (36.39 per cent) in 1997.[59] Over the same period of time, the share of non-Serbs in the areas that now form the entity referred to as the 'Federation' in Bosnia and Herzegovina, had increased by 41.18 per cent, whereas the share of non-Serbs in the areas that now form the other entity, the Republika Srpska, had fallen by 81.74 per cent.[60]

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[50] *Ibid*., T. 389.
[51] *Ibid*.
[52] *Ibid*., T. 395. The scale of the killings will be outlined below. According to Mirsad Tokača, the incidences of sexual assault and rape were at their highest in Foča, Bratunac, Vlasenica, Zvornik, Prijedor and Brčko.
[53] *Ibid*., T. 389. In Janja, the relevant populations were not expelled until 1995.
[54] *Ibid*., T. 397-98.
[55] *Ibid*., T. 398.
[56] *Ibid*., T. 394-95.
[57] *Ibid*., T. 394.
[58] Exhibit ("Ex.") 15, Ewa Tabeau and Marcin Zóltkowski, 'Ethnic Composition and Displaced Persons and Refugees in 37 Municipalities of Bosnia and Herzegovina 1991 and 1997', 28 July 2002 ("Tabeau and Zóltkowski Report").
[59] *Ibid*., p. 3-4, Table 1NS. According to the Report, the 'non-Serbs' include Bosnian Muslims, Bosnian Croats, and other ethnic groups.
[60] *Ibid*., p. 4. The entity called the Federation of Bosnia and Herzegovina consists of Bosniac and Bosnian Croat cantons.

37. Further, in terms of displaced persons, of the entire post-war population originating from the 37 municipalities, the Report states that 41.75 per cent of all identified survivors remained displaced or were still refugees in 1997. Of this figure, 73.35 per cent were non-Serbs.[61]

38. In this context, the Prosecution gave examples. It noted that in the Foča municipality, the Muslim and Croat population numbered only 434 persons or 3.8 per cent of the total population of the municipality in 1997. This is in contrast to the figure of 15,000 Bosniacs and Croats or approximately 51 per cent of the total population in 1991. The situation was similar in other municipalities such as Zvornik where there were 31,000 Bosnian Muslims and Croats in 1991 and fewer than 1,000 in 1997. In Bratunac the non-Serb community of 16,000 persons in 1991 was reduced to only hundreds by 1997.[62]

39. In addition to this, the Prosecution submitted a table outlining the populations in various settlements in Prijedor in 1991.[63] For the municipality as a whole, there were approximately 53,000 non-Serbs living in the municipality and by 1997 there remained less than 4,000 Muslims and Croats.[64] In these settlements of Prijedor, the difference between the numbers of non-Serbs living in the various areas in 1991 and in 1993 is great. According to the Prosecution, this demonstrates the extent of the persecutory campaign.[65] For example, in the Kozarac settlement the total non-Serb population in 1991 was 7,643 persons of a total population of 8,028. But by 1993 there were only 19 non-Serbs living in the Kozarac settlement where the total population at the same time was 884 persons. A similar situation existed in the Kamičani settlement where in 1991 there were 3,997 non-Serbs living amongst a total population of 4,468 persons, and by 1993 there were just 3 non-Serbs living among a total population of 438 persons. Of the nearly 3,000 Bosnian Muslims in the Hambarine settlement in 1991, only five Muslims remained in 1993. In Čarakovo a community of 2,400 non-Serbs existed in 1991 and by 1997 this community consisted of only 2 non-Serbs. The situation in the Bišćani settlement is significant: in 1991 there was a non-Serb population of 1,436 persons out of a total population of 1,443, but in 1993 the settlement was no longer inhabited.[66]

40. According to Mr. Tokača, a similar situation exists in the Podrinje area in the Drina River Valley where, even today, only 6 per cent of the expelled population has returned to the locality.[67]

[61] *Ibid*., p. 4.
[62] Sentencing Hearing, T. 622-23.
[63] Ex. 17, Prijedor Settlement Populations, 1991-1993.
[64] Sentencing Hearing, T. 622; Ex. 17, Prijedor Settlement Populations, 1991-1993.
[65] *Ibid*., T. 623.
[66] Ex. 17, Prijedor Settlement Populations, 1991-1993.
[67] Mirsad Tokača, T. 390.

(b) Widespread killings

41. The brutality associated with the forcible expulsions and transfer of the Bosnian Muslims, Bosnian Croats and other non-Serbs often included mass killings.[68] Mirsad Tokača testified that the year 1992 was "a key year [for] these kinds of events"[69] as in this crucial period at least 50,000 persons were killed.[70] These persecutions were concentrated in the months of May, June, July and August 1992 when 80 per cent of the killings occurred and scores of others were reported missing.[71] These criminal and persecutory acts usually took place either soon after the units stormed the relevant municipalities, or following the division of the people who were collected into different groups, sometimes with the women and children separated.[72]

42. The scale of the killings reached numerous municipalities listed in the indictment. For example, in Foča at least 1,000 individuals were killed in 1992. In Sanski Most, no fewer than 1,500 persons were murdered during the same period. There was a similar situation in Prijedor and Bratunac where at least 2,000 and 1,000 persons respectively were killed[73] and in the Biljani village where 250 persons were killed, all of them in 1992.[74] In some instances it has only been through the discovery and exhumation of mass graves in the period following these incidences of brutality and aggression that the true scale of the killings has been established. In fact, there have been 1,100 recorded cases of mass killings and 320 potential sites where the bodies of individuals can be found.[75] For instance, the exhumation of a mass grave in 1996 confirmed the fate of the 188 persons who had been held in a military compound near Ključ.[76]

(c) Destruction of property and religious buildings

43. Mr. Tokača testified that the looting, ransacking and destruction of both personal and public property of the Bosnian Muslims and Bosnian Croats shortly after the forcible expulsions was commonplace. As previously stated, the witness testified that approximately 850 villages were completely devastated to the extent that they are no longer habitable.[77]

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[68] *Ibid*., T. 402. Mirsad Tokača testified that the criteria for 'mass killing' used in this context is the killing of three or more persons at one given point in time.
[69] *Ibid*., T. 400.
[70] *Ibid*., T. 406. This figure is the total number of persons believed to have been killed, irrespective of ethnicity. However, practically all of those killed were Bosniacs, Muslims and Croats. Some were Serbs who helped their neighbours T. 407.
[71] *Ibid*., T. 400. For example, of the 208 persons listed as missing in Dragosicka, all went missing in 1992.
[72] *Ibid*., T. 394, 400-01.
[73] *Ibid*., T. 406.
[74] *Ibid*., T. 401.
[75] *Ibid*., T. 402.
[76] *Ibid*., T. 401.
[77] *Ibid*., T. 392.

44. Some 29 of the 37 municipalities listed in the Indictment possessed cultural monuments and sacred sites that were destroyed. This includes the destruction of over 100 mosques, 2 mektebs and 7 Catholic churches.[78] Some of these monuments were located in the Foča, Višegrad and Zvornik municipalities, and dated from the Middle Ages. They were, quite obviously, culturally, historically and regionally significant sites.[79] As one example, the Prosecution referred to the wanton destruction of the Alidža mosque in Foča, which had been in existence since the year 1550.[80] According to the witness, this mosque was a "pearl amongst the cultural heritage in this part of Europe".[81] In addition to such destruction, the names of towns, were changed. Indeed, "[e]verything that in any way was reminiscent of the past, […] was destroyed".[82]

(d) Cruel or inhumane treatment in detention facilities

45. Mr. Adil Draganović, a judge and, himself, a former detainee and representative of an association of former camp inmates, testified that in the 37 municipalities listed in the Indictment there was a total of 408 detention facilities where people were detained by force and exposed to serious physical and mental abuse.[83] From dialogue with various surviving camp inmates, the witness believes that conditions in each of the detention facilities were often similar to what he experienced in the Manjača detention facility in Prijedor municipality.[84]

46. Before he was transported to Manjača, the witness and other prominent citizens were detained in a public security station in Sanski Most for a period of three and a half weeks where "there were no conditions for life". He and eight others were detained in a cell measuring two metres by two and a half metres without light or enough air where they were in an environment of fear and "waited for death to come at any moment". Each inmate's body was completely wet with perspiration and within a few days the walls that were once painted white or yellow became black with mould and the stench was unbearable. The door to the cell was opened for five to ten minutes per day for the inmates to eat or go to the toilet in the corridor which soon became full of excrement. There was very little water and there were no sanitary facilities. On one occasion the inmates were taken to dig a hole and were told that they were to be buried there after they were

[78] These are listed in Schedule D of the Indictment.
[79] Mirsad Tokača T. 399.
[80] Ex. 2; a photograph showing the Alidža mosque before it was destroyed, and another which shows the empty site where the mosque once stood.
[81] Mirsad Tokača T. 400.
[82] *Ibid*., T. 399.
[83] Adil Draganović, T. 417. The witness is a representative of the Bosnian National Alliance of Associations of Former Camp Inmates and was himself a detainee at the Manjača camp. At present he is President of the Municipal Court in Sanski Most in Bosnia and Herzegovina. *See also* Ex. 3; a map showing the location of the 408 camp facilities in 37 municipalities.
[84] *Ibid*., T. 429.

killed. The inmates were also subjected to propaganda and misinformation that left them confused and fearing imminent death.[85]

47. The people held in the Manjača camp were predominantly Bosniacs. There were fewer Croats but there were also some Serbs who had deserted from the JNA in order not to fight in the war in Croatia and BH. Upon arrival at the detention facility the inmates were forced into the camp with their heads down and their hands tied behind their back. They were beaten with various objects including wooden poles and batons. Such beatings could last a number of days.[86] These beatings continued throughout the course of an inmate's detention and some beatings resulted in the death of people both inside and outside the camp.[87] Adil Draganović stated that during his time in the Manjača detention facility between 17 June 1992 and 14 December 1992 the beatings of the 5,434 inmates were more customary and concentrated in the months of June, July and August 1992, and generally abated once the International Committee of the Red Cross ("ICRC") and other international representatives and journalists arrived at the facility.[88] The area where the inmates were detained measured 16 metres by 50 metres and contained between 500 and 800 persons.[89]

48. In short, the sanitary conditions in Manjača were "disastrous […] inhuman and really brutal": the concept of sanitation did not exist. The temperature inside was low, the inmates slept on the concrete floor and they relieved themselves in the compound or in a bucket placed by the door at night. There was not enough water, and any water that became available was contaminated.[90] In the first three months of Adil Draganović's detention, Manjača was a "camp of hunger" and when there was food available, it was of a very poor quality. The inmates were given two small meals per day, which usually consisted of half a cup of warm tea, which was more like warm water, and a small piece of thin, "transparent" bread. Between two and a half thousand men there were only 90 loaves of bread, with each loaf divided into 20 or 40 pieces. Most inmates lost between 20 and 30 kilograms of body weight while they were detained at Manjača. The witness believes that had the ICRC and UNHCR not arrived, the inmates would have died of starvation.[91] Like many other inmates, this cruel and inhumane treatment in this detention facility has left the witness with serious physical and mental health problems for which he has been undergoing treatment since his release from Manjača.[92]

[85] *Ibid*., T. 419-20, Ex. 4; a photograph of the police station in Sanski Most.
[86] *Ibid*., T. 422.
[87] *Ibid*., T. 425.
[88] *Ibid*.
[89] *Ibid*., T. 424.
[90] *Ibid*., T. 424-25.
[91] *Ibid*., T. 427.
[92] *Ibid*., T. 428.

(e) Other evidence

49. Many of those persons who were forcibly transferred or expelled remain traumatised by their experiences, ten years after the events. Ms. Teufika Ibrahimefendić, a psychotherapist, testified that approximately 160 non-governmental and internationally funded organisations operate throughout Bosnia and Herzegovina to provide help for those affected. These organisations include Vive Zene, Amica, and Medica Zenica.[93] The proportion of those persons who are being treated are, however, a very small portion of the entire victim community.[94] Some child victims of these persecutions of 1992 remain easily frightened and excessively attached and dedicated to their mothers. Many of these young victims also suffer from depression or incontinence and many have problems concentrating and studying: they tend to isolate themselves from others.[95]

50. Professor Elie Wiesel, recipient of the 1986 Nobel Peace Prize and a survivor of a death camp during the Second World War, offered himself as a joint witness for the parties as somebody uniquely concerned with the fate of the victims.[96] He explained that atrocities and persecutions endured throughout the war in the Balkans continue to have a lasting effect on the victims whose "dreams have become nightmares [where the] past lives on in the present".[97] Professor Wiesel visited Bosnia and Herzegovina in late 1992 and listened to a number of survivors speak of the torment and suffering inflicted on them by the various Serbian leaders. This anguish was resolutely clear when survivors who attempted to recount their experiences "often broke off, unable to finish their stories". Professor Wiesel stated that it is the "tears [of the survivors that] also form part of the indictment".[98]

51. Mrs. Plavšić also made a statement to the Trial Chamber where she admitted her role in the victimisation and persecution of countless innocent people. Mrs. Plavšić stated that

> [a]lthough I was repeatedly informed of allegations of cruel and inhuman conduct against non-Serbs, I refused to accept them or even to investigate. In fact, I immersed myself in addressing the suffering of the war's innocent Serb victims. This daily work confirmed in my mind that we were in a struggle for our very survival and that in this struggle, the international community was our enemy, and so I simply denied these charges, making no effort to investigate. I remained secure in my belief that Serbs were not capable of such acts. In this obsession of ours to never again become victims, we had allowed ourselves to become victimisers.[99]

[93] Teufika Ibrahimefendić, T. 443-44. The witness is the co-ordinator of multidisciplinary teams at Vive Zena, a non-governmental organisation that provides support to war trauma victims. She has treated war trauma victims throughout the war.
[94] *Ibid*., T. 448-49.
[95] *Ibid*., T. 447-48.
[96] Elie Wiesel, T. 456. The witness is viewed by many as a spokesman for survivors of those who have suffered persecution because of their race, religion or national origin.
[97] *Ibid*., T. 456.
[98] *Ibid*., T. 457.
[99] Sentencing Hearing, T. 610.

3. Conclusion

52. The Trial Chamber accepts that this is a crime of utmost gravity, involving as it does a campaign of ethnic separation which resulted in the death of thousands and the expulsion of thousands more in circumstances of great brutality. The gravity is illustrated by:

- the massive scope and extent of the persecutions;
- the numbers killed, deported and forcibly expelled;
- the grossly inhumane treatment of detainees; and
- the scope of the wanton destruction of property and religious buildings.

B. Aggravating circumstances

53. The Prosecution identifies three aggravating factors:

(i) the leadership position of the accused;

(ii) the vulnerability of the victims; and

(iii) the depravity of the crimes to which the victims were subjected.[100]

54. In relation to the first factor, the Prosecution notes that the International Tribunal has consistently viewed the leadership position of an accused as an aggravating factor. The Prosecution cites the trial judgement in *Krstić* in contending that the consequences are necessarily more serious if individuals who occupy top military or political positions use those positions to commit crimes.[101] The Prosecution also draws the attention of the Trial Chamber to cases where leadership positions lower than that occupied by Mrs. Plavšić have been found to be aggravating circumstances.[102] The Prosecution moreover observes that in the *Kambanda* case at the International Criminal Tribunal for Rwanda ("ICTR") the Chamber emphasised the aggravating impact of Kambanda's leadership position when assessing the weight of aggravating factors. Jean

[100] Prosecution Sentencing Brief, para. 17.
[101] *Ibid*., para. 18, citing *Prosecutor v Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 ("*Krstić* Trial Judgement"), para. 709.
[102] *Ibid*., para. 18, referring to, *inter alia*, *Prosecutor v. Kordić et al*, Case No. IT-95-14/2, Trial Judgement, 26 February 2001 ("*Kordić* Trial Judgement"), para. 853.

Kambanda was the Prime Minister of Rwanda at the time of the commission of the crimes in question.[103]

55. Further, when dealing with the participation of the accused in the offences the Prosecution points out that Mrs. Plavšić supported and maintained the bodies through which the ethnic separation by force was maintained; she encouraged participation in that objective. "While her role was not as influential or powerful as some others, […] she was a member of the small national leadership cadre which spearheaded the effort […]."[104] The Prosecution notes that Mrs. Plavšić accepts responsibility for her role as a member of the collective and expanded Presidencies of the Serbian Republic of BH and Republika Srpska, but points out that, as set out in the Factual Basis, there are distinctions to be made between herself and other leaders.[105]

56. The Defence accepts that the scope of the crimes outlined in Count 3 of the Indictment and the manner in which they were committed may be taken into account as an aggravating factor.[106] The Defence also accepts that such aggravating factors may include the scale and planning of the offence, the number of victims, the length of time over which the crimes were committed, the violence associated with the crimes and the repeated and systematic nature of the crimes.[107] However, the Defence submits that a high rank in the political field should not, in itself, result in a harsher sentence for an accused, but accepts that an individual who wrongly exercises or abuses power deserves a harsher sentence than a person acting on his or her own. Further, it notes that while the direct participation of a high level superior in a crime under Article 7 (1) of the Statute is an aggravating circumstance, the extent of such aggravation depends on the level of authority and the form of participation of the accused.[108]

57. The Trial Chamber accepts that the superior position of the accused is an aggravating factor in the case. The accused was not in the very first rank of the leadership: others occupied that position. She did not conceive the plan which led to this crime and had a lesser role in its execution than others. Nonetheless, Mrs. Plavšić was in the Presidency, the highest civilian body, during the campaign and encouraged and supported it by her participation in the Presidency and her pronouncements.

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[103] *Ibid*., para. 19, referring to *Prosecutor v. Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence, 4 September 1998 ("*Kambanda* Trial Judgement"), paras 61-62.
[104] Prosecution Sentencing Brief, para. 16.
[105] Defence Sentencing Brief, para. 16; Factual Basis paras 13-14, 16.
[106] Defence Sentencing Brief, para. 36.
[107] *Ibid*., para. 36, citing *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement"), paras 783-84.
[108] *Ibid*., para. 37, citing *Krstić* Trial Judgement, paras 708-09.

58. While the Trial Chamber further accepts that the other factors identified by the Prosecutor, *i.e.* the vulnerability of the victims and the depravity of the crimes, are capable of amounting to aggravating factors, it considers that in the circumstances of this case, these factors are essentially subsumed in the overall gravity of the offence. Accordingly, the Trial Chamber will not treat them as aggravating factors separately.

59. In the conclusion to the Prosecution Brief, the Prosecution submitted that the leadership role in a cruel and bloody persecutory campaign, involving the forcible expulsion of hundreds and thousands of men, women and children, is clearly the sort of crime where a sentence of life imprisonment is "envisioned".[109] On being questioned by the Trial Chamber at the Sentencing Hearing, the Prosecutor stated that in the absence of a guilty plea a sentence of imprisonment for the remainder of the life of the accused would have been appropriate.[110]

60. The Trial Chamber, therefore, has to determine an appropriate sentence for an accused who was in the high leadership position described and was involved in crimes of the utmost gravity. The Trial Chamber is unable to accept the submission of the Prosecution that the severest sentence, *i.e.* imprisonment for the rest of her life, which this International Tribunal is capable of passing would be appropriate in the absence of a plea of guilty. On the other hand, the Trial Chamber does accept that misplaced leniency would not be fitting and that a substantial sentence of imprisonment is called for.

C. Mitigating Circumstances

61. There is in this case substantial mitigation, covering a number of relevant factors which may conveniently be set out from the Prosecution's Brief. Indeed, the Prosecution acknowledges that Mrs. Plavšić has undertaken unprecedented steps to mitigate the crime against humanity for which she is responsible.[111] The Prosecution submits that the relevant mitigating circumstances include:

- entry of a guilty plea and acceptance of responsibility;
- remorse;
- voluntary surrender;
- post-conflict conduct;

[109] Prosecution Sentencing Brief, para. 42.
[110] Sentencing Hearing, T. 638.
[111] Prosecution Sentencing Brief, para. 43.

- previous good character; and
- age.[112]

62. It has not been disputed that the above together with reconciliation are the relevant mitigating circumstances for the Trial Chamber to consider. Before considering them, it is necessary to consider the law as it applies to mitigating circumstances.

63. An accused's "substantial" co-operation with the Prosecutor is the only mitigating circumstance that is expressly mentioned in the Rules. As noted in the *Todorović* and *Sikirica* sentencing judgements, this Trial Chamber holds that the determination as to whether an accused's co-operation has been substantial depends on the extent and quality of the information he or she provides.[113] However, in the present case the Prosecution asserts that there has been no such co-operation.[114] On the other hand, the Defence submits that the accused has provided substantial co-operation by her plea of guilty.[115]

64. As noted, co-operation with the Prosecutor is a mitigating circumstance, but it does not follow that failure to do so is an aggravating circumstance. Therefore, the accused's unwillingness to give evidence is not a factor to be taken into account in determining sentence.

65. A Trial Chamber has the discretion to consider any other factors which it considers to be of a mitigating nature.[116] These factors will vary with the circumstances of each case. In addition to substantial co-operation with the Prosecutor, Chambers of the International Tribunal have found the following factors relevant to this case to be mitigating: voluntary surrender; a guilty plea; expression of remorse; good character with no prior criminal conviction; and the post-conflict conduct of the accused.[117] These matters will now be discussed.

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[112] These and other factors are set out in the Prosecution Sentencing Brief, para. 22.
[113] *Todorović* Sentencing Judgement, para. 86; *Prosecutor v. Sikirica et al,* Case No. IT-95-8-S, Sentencing Judgement, 13 November 2001 ("*Sikirica* Sentencing Judgement"), para. 111.
[114] Sentencing Hearing, T. 613, 637, 639. During the closing arguments the Prosecution commented that "if the accused is on the right path, she still has not gone the full length of her journey". This observation was a reference to the fact that the accused is not willing to appear as a witness in other trials, thus providing the Prosecution with substantial co-operation.
[115] *Ibid*., T. 649-51. During the closing arguments at the Sentencing Hearing, the Defence also contended that in Mrs. Plavšić's case it is difficult to envisage co-operation more substantial than that which she has already given to the Prosecution and to the individual victims of the horrendous crimes. According to the Defence, Mrs. Plavšić's actions, including her call for other leaders to come forth and accept their responsibility for crimes committed, have been substantially co-operative in serving the purposes and goals of the International Tribunal, namely reconciliation, peace and stability in the Balkans.
[116] *Krstić* Trial Judgement, para. 713.
[117] Voluntary surrender: *Kupreškić* Trial Judgement, paras 853, 860, 863; *Prosecutor v. Kupreškić et al,* Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("*Kupreškić* Appeal Judgement"), para. 430; *Prosecutor v. Kunarac et al*, Case No. IT-96-23&IT-96-23/1-T, Judgement, 22 February 2001 ("*Kunarac* Trial Judgement"), para. 868. Admission of guilt: *Kupreškić* Appeal Judgement, para. 464; *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Judgement, 5

(i) Guilty plea including remorse and reconciliation

66. The Prosecution points out that the accused entered a guilty plea before the commencement of trial, and that this is to be regarded as a circumstance in mitigation of sentence for the following two reasons. First, a guilty plea before the beginning of the trial obviates the need for victims and witnesses to give evidence and may save considerable time, effort and resources.[118] Second, the Prosecution cites *dicta* from the *Todorović* Sentencing Judgement that a guilty plea "is always important for the purpose of establishing the truth in relation to that crime" and from the *Erdemović* Sentencing Judgement that the discovery of truth is "a fundamental step on the way to reconciliation."[119]

67. The Prosecution states that "it accepts that Mrs. Plavšić's plea of guilty and acceptance of responsibility represents an unprecedented contribution to the establishment of truth and a significant effort toward the advancement of reconciliation." The Prosecution further accepts that "this step was undertaken under circumstances requiring considerable courage" and submits that "these are important factors that should be considered by the court in determining the sentence to be imposed."[120]

68. The Defence submits that in the jurisprudence of the International Tribunal a guilty plea has given rise to a reduction in the sentence which the accused would otherwise have received for the following reasons: a) it demonstrates honesty; b) it contributes to the fundamental mission of the International Tribunal to establish the truth in relation to crimes within its jurisdiction; c) it provides a unique and unquestionable fact-finding tool that greatly contributes to peace-building and reconciliation among the affected communities: individual accountability leads to the return of the rule of law, reconciliation and the restoration of peace across the territory of the former Yugoslavia; d) it contributes to public advantage and the work of the International Tribunal by saving considerable resources for investigation, counsel fees and trial costs; and e) it may relieve some victim witnesses from the stress of giving evidence.[121] Further, the Defence submits that an

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July 2001 ("*Jelisić* Appeal Judgement"), para. 122; *Sikirica* Sentencing Judgement, paras 148-151, 192-93, 228; *Todorović* Sentencing Judgement, paras 75-82; *Prosecutor v. Erdemović*, Case No. IT-96-22-T*bis*, Sentencing Judgement, 5 March 1998 ("*Erdemović* Sentencing Judgement II"), para. 16(ii). Remorse: *Sikirica* Sentencing Judgement, paras 152, 194, 230; *Todorović* Sentencing Judgement, paras. 89-92; *Erdemović* Sentencing Judgement II, para. 16(iii). Character: *Prosecutor v. Krnojelac*, Case No. IT-97-25, Judgement, 15 March 2002 ("*Krnojelac* Trial Judgement"), para. 519; *Kupreškić* Trial Judgement, para. 478; *Kupreškić* Appeal Judgement, para. 459; *Aleksovski* Trial Judgement, para. 236; *Erdemović* Sentencing Judgement II, para. 16(i). Post-conflict conduct: *Krstić* Trial Judgement, para. 713.

[118] Prosecution Sentencing Brief, para. 23.

[119] *Ibid*., para. 24, citing *Todorović* Sentencing Judgement, para. 81 and *Erdemović* Sentencing Judgement I*I*, para. 21.

[120] *Ibid*., para. 25.

[121] Defence Sentencing Brief, para. 41.

accused who pleads guilty prior to the commencement of trial will usually receive "full credit" for that plea.[122] The Defence concludes by stating that Mrs. Plavšić's plea demonstrates her honesty in light of her legal responsibilities as a high-ranking wartime leader of the Bosnian Serbs for crimes committed across large areas of BH. Her acknowledgement of the crimes and her personal accountability will contribute to rendering justice to victims, to deterring others, to providing a basis for reconciliation and to preclude revisionism. It is also stressed that by entering her guilty plea "months before" the commencement of the trial the accused makes a considerable contribution to the public advantage and the work of the International Tribunal.[123]

69. The significance of the plea of guilty in this case was highlighted in the evidence of Professor Elie Wiesel. He said that whereas others similarly accused deny the truth about their crimes and thereby assist those who want to falsify history, Mrs. Plavšić, who once moved in the highest circles of power, has made an example by freely and wholly admitting her role in the crime.[124]

70. Two matters related to a plea of guilt concern expression of remorse and steps toward reconciliation. In this regard, the Prosecution notes that the accused has expressed her remorse "fully and unconditionally" and the hope that her guilty plea will assist her people to reconcile with their neighbours. The Prosecution states that this expression of remorse is noteworthy since it is offered from a person who formerly held a leadership position, and that it "merits judicial consideration."[125]

71. As already noted, in her Statement in support of her motion for change of plea it is stated: "By accepting responsibility and expressing her remorse fully and unconditionally, Mrs. Plavišić hopes to offer some consolation to the innocent victims […] of the war in Bosnia and Herzegovina."[126]

72. In her statement at the Sentencing Hearing Mrs. Plavšić said that she had "now come to the belief and accept the fact that many thousands of innocent people were the victims of an organised, systematic effort to remove Muslims and Croats from the territory claimed by Serbs".[127] She added that at the time she convinced herself that it was a matter of survival and self-defence. However, the fact was that the Bosnian Serb leadership, of which she was "a necessary part, led an effort

[122] *Ibid*., para. 42.
[123] *Ibid*., para. 43.
[124] Elie Wiesel, T. 458-59.
[125] Prosecution Sentencing Brief, para. 27.
[126] Plavšić Written Statement.
[127] Sentencing Hearing, T. 609.

which victimised countless innocent people".[128] She continued by saying that in their fear, especially those for whom the Second World War was more than a memory, the leadership violated the basic duty to restrain itself and to respect the human dignity of others: "[t]he knowledge that I am responsible for such human suffering and for soiling the character of my people will always be with me".[129]

73. The Trial Chamber accepts this, together with expressions in her earlier statement in support of the motion to change her plea, as an expression of remorse to be considered as part of the mitigating circumstances connected with a guilty plea. Indeed, it may be argued that by her guilty plea, Mrs. Plavšić had already demonstrated remorse. This, together with the substantial saving of international time and resources as a result of a plea of guilty before trial, entitle the accused to a discount in the sentence which would otherwise have been appropriate. However, there is a further and significant circumstance to be considered, namely the role of the guilty plea of the accused in establishing the truth in relation to the crimes and furthering reconciliation in the former Yugoslavia.

74. This theme was first sounded in Mrs. Plavšić's statement in support of her change of plea in which she referred to the need for acknowledgement of the crimes committed during the war in BH as a necessary step towards peace and reconciliation and her hope that her acceptance of responsibility would enable her people to reconcile with their neighbours. She concluded the statement:

> To achieve any reconciliation or lasting peace in BH, serious violations of humanitarian law during the war must be acknowledged by those who bear responsibility – regardless of their ethnic group. This acknowledgement is an essential first step.[130]

75. The Trial Chamber also heard testimony from Dr. Alex Boraine, an expert on reconciliation and accountability issues, based on his experience as the former Deputy Chairperson of the Truth and Reconciliation Commission in South Africa and as the founding President of the International Center for Transitional Justice.[131] Dr. Boraine spoke about the acknowledgement and acceptance of responsibility for grave crimes, and the impact this can have on the process of reconciliation. He explained that if accountability for such crimes is not present, then the concept of reconciliation would be a contradiction in terms.[132]

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[128] *Ibid*., T. 609.
[129] *Ibid*., T. 609-10.
[130] Plavšić Written Statement.
[131] Alex Boraine, T. 586-89. The International Center for Transitional Justice is based in New York and assists societies pursuing accountability for human rights abuses in the aftermath of armed conflict or atrocities on a mass scale.
[132] *Ibid*., T. 591.

76. When asked what significance Mrs. Plavšić's plea of guilty (and the accompanying statement) could have for the reconciliation process in the region, Dr. Boraine mentioned four matters: firstly, as the plea of guilty was offered by a Serb nationalist and former political leader, Mrs. Plavšić's confession sends out a crucial message about the true criminal nature of the enterprise in which she was involved; secondly, by surrendering and pleading guilty, Mrs. Plavšić is also sending a powerful message about the legitimacy of the International Tribunal and its functions; thirdly, Mrs. Plavšić's apology for her actions and her call on other leaders to examine their own conduct is of particular importance; and fourthly, the confession of guilt and acceptance of responsibility by Mrs. Plavšić may demonstrate to the victims of the persecutory campaign that someone has acknowledged their personal suffering.[133]

77. Further, Dr. Boraine stressed that full disclosure in confessions is vital for the reconciliatory process. He also stated that genuine and voluntary expressions of remorse often provide a degree of closure for victims.[134] With regard to the victims' role in the process of dispensing justice, Dr. Boraine said that the victims ought to be at the very centre. He stressed that reconciliation can all too easily be undermined if the victims feel that their pain and suffering has not been given sufficient recognition in both judicial and non-judicial processes established to respond to gross violations of human rights.[135]

78. Mr. Mirsad Tokača gave his view about the concept of reconciliation in the former Yugoslavia and the impact of Mrs. Plavšić's conduct on that process. He noted generally that the failure to speak openly about crimes (such as those to which the accused has pleaded guilty) impedes the establishment of the truth and the reconciliatory process. He stated that Mrs. Plavšić's admission of guilt was

> an extremely courageous, brave and important gesture and that it represents support to what is the ultimate aim of all of us […]; that at one point normal conditions of life should be resumed in Bosnia-Herzegovina [… and] in the entire region as well.[136]

79. With regard to reconciliation generally, the Trial Chamber reiterates the words of Security Council Resolution 827 in which the establishment of the International Tribunal and the bringing to justice of persons responsible for serious violations of international humanitarian law was said to "contribute to the restoration and maintenance of peace" in the former Yugoslavia.[137] Further, in a 1999 General Assembly Resolution concerning the situation in BH, the General Assembly stressed

[133] *Ibid*., T. 592-93.
[134] *Ibid*., T. 599-600.
[135] *Ibid*., T. 594-95.
[136] Mirsad Tokača, T. 408-09.

"the importance and urgency of the work of the International Tribunal as an element of the process of reconciliation and as a factor contributing to the maintenance of international peace and security" in BH and in the region as a whole.[138] The Trial Chamber must attach importance to these statements.

80. The Trial Chamber accepts that acknowledgement and full disclosure of serious crimes are very important when establishing the truth in relation to such crimes. This, together with acceptance of responsibility for the committed wrongs, will promote reconciliation. In this respect, the Trial Chamber concludes that the guilty plea of Mrs. Plavšić and her acknowledgement of responsibility, particularly in the light of her former position as President of Republika Srpska, should promote reconciliation in Bosnia and Herzegovina and the region as a whole.

81. The Trial Chamber will accordingly give significant weight to the plea of guilty by the accused, as well as her accompanying expressed remorse and positive impact on the reconciliatory process, as a mitigating factor.

(ii) Voluntary surrender

82. The Prosecution accepts that the accused's surrender to the custody of the International Tribunal on 10 January 2001 constitutes a mitigating circumstance which should be taken into consideration.[139]

83. The Defence also submits that a voluntary surrender to the International Tribunal is a mitigating factor. It notes that such surrender may inspire other indictees to do the same, and that this will enhance the effectiveness of the work of the International Tribunal. The Defence adds that Mrs. Plavšić learned of the Indictment against her on 22 December 2000, and that she requested, and was granted, permission to celebrate Orthodox Christmas on 7 January 2001 before surrendering to the International Tribunal.[140]

84. The Trial Chamber accepts that the voluntary surrender of the accused is a mitigating circumstance for the purpose of sentence.

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[137] Security Council Resolution 827 of 25 May 1993. When establishing the International Criminal Tribunal for Rwanda, the Security Council's Resolution explicitly referred to "the process of national reconciliation". Security Council Resolution 955 of 8 November 1994.
[138] General Assembly Resolution A/RES/54/119 of 22 December 1999.
[139] Prosecution Sentencing Brief, para. 26.
[140] Defence Sentencing Brief, paras 45-46.

(iii) Post-conflict conduct

85. The Prosecution accepts that Mrs. Biljana Plavsić, as President of Republika Srpska, demonstrated considerable support for the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina ("Dayton Agreement") after the cessation of hostilities in Bosnia and Herzegovina. It also accepts that in that position, the accused also attempted to remove obstructive officials from office, and contributed significantly to the advancement of the Dayton peace process under difficult circumstances in which she manifested courage.[141]

86. The Defence also submits that the accused's post-conflict conduct should be considered in mitigation of sentence. It states that the accused made extraordinary contributions to the post war process in Bosnia and Herzegovina: beginning in 1996, as President of Republika Srpska, the accused broke with the leadership of the SDS of BH and became instrumental in the implementation of the Dayton Agreement. In June 1997, she was in a power struggle with the Pale-based leadership of the SDS, and over the next months, she removed obstructive officials from office, dissolved the hard-line dominated National Assembly and transferred government offices from Pale to Banja Luka. The accused left the SDS and created the Serbian People's Alliance, which formed part of the government after the elections in November 1997. She presided over the creation of a multi-ethnic coalition that effectively took control of political life in Republika Srpska, which in turn significantly advanced the implementation of the Dayton Agreement. In August 1998 the accused remained committed to the Dayton Agreement, which resulted in her loss of the Presidency of the Republika Srpska to a hard-line, nationalist candidate. However, the accused remained a voice in favour of it as a member of the National Assembly.[142]

87. These assertions were supported by the evidence called at the Sentencing Hearing. Thus, Dr. Madeleine Albright, Permanent Representative of the USA to the United Nations 1993-1996 and Secretary of State 1997-2000, emphasised the importance of the Dayton Agreement as the final effort to set up a multi-ethnic State in Bosnia and Herzegovina, to reconcile the various differences and to create a new structure in which it was possible for there to be political reconciliation.[143] Mr. Carl Bildt, Prime Minister of Sweden 1991-1994, Co-Chairman of the Dayton Peace Conference and subsequently the first High Representative in BH, explained that the Dayton Agreement was a compromised peace which nobody loved and the task was to get all sides to accept it. It was in fulfilling this task that Mrs. Plavšić was to play an important part.[144]

[141] Prosecution Sentencing Brief, para. 29.
[142] Defence Sentencing Brief, paras 60-65.
[143] Madeleine Albright, T. 509.
[144] Carl Bildt, T. 536, 558-61.

88. Mr. Robert Frowick was Head of Mission of the Organization for Security and Co-operation in Europe ("OSCE") in BH at the relevant time: part of the OSCE Mission was to oversee the elections to be held under the Dayton Agreement.[145] Mrs. Plavšić became acting President of Republika Srpska in July 1996 and was confirmed as President in the elections in September of the same year.[146] In her inaugural speech Mrs. Plavšić argued that the Dayton Agreement was a compromise which should be honoured, in part because it had legitimised the creation of Republika Srpska and gave the Bosnian Serbs the chance of peace and stability.[147] She was then much concerned with the pressing issue of refugee return and in getting police assistance to evict those living in the refugees' apartments.[148] Mr. Milorad Dodik, the leader of a multi-ethnic political party called the Alliance of Independent Social Democrats, and Prime Minister of Republika Srpska between 1998 and 2001, echoed this sentiment by testifying that the accused believed that the value of the Dayton Agreement was the peace that it brought, and that she encouraged others to "take the road to peace."[149]

89. In the spring of 1997 there was further confrontation between Mrs. Plavšić, as President of Republika Srpska, who was based in Banja Luka, and the Bosnian Serb powers in Pale, and she came increasingly under threat.[150] According to Carl Bildt there were three or four cases which were judged as "serious, direct, also physical threats against her as part of attempts by Pale to get rid of her, because […] they judged that […] full Dayton implementation was a threat to them".[151]

90. A crucial issue in the reform process was reform of the police which caused a major confrontation. As Carl Bildt explained, the existing police forces in BH had been built up to support the respective leaderships and contained "local thugs […] brought in to do the nasty work on all sides" in the war.[152] Reform was necessary in order to re-establish the rule of law and to facilitate the return of refugees without violence.[153] Mrs. Plavšić supported the reform and this led to a confrontation between Mr. Kijac, the Minister for Police Affairs and herself: she dismissed Kijac and was, for a time, apprehended at Belgrade Airport on her return from an official visit abroad.[154] She then had to be protected in Banja Luka by the "international community".[155] She also dismissed General Mladić as Commander of the Army of Republika Srpska which led again to

[145] Robert Frowick, T. 568.
[146] *Ibid*., T. 546.
[147] *Ibid*., T. 575.
[148] *Ibid*., T. 551-53.
[149] Milorad Dodik, T. 482, 488-90. Following the elections in November 1997, Mrs. Plavšić nominated Mr. Dodik as Prime Minister in January 1998.
[150] Carl Bildt, T. 554. Milorad Dodik also gave evidence to this effect. T. 486-88.
[151] *Ibid*., T. 555.
[152] *Ibid*., T. 548-49.
[153] *Ibid*., T. 548-51.
[154] *Ibid*., T. 556-57.

a tense situation.[156] But, as Carl Bildt said, "at the end of the day, constitutional rule in Republika Srpska prevailed".[157]

91. Meanwhile, Mrs. Plavšić came into closer contact with the OSCE and to see Robert Frowick increasingly. She expressed her concern to him about the fact that those people who remained in Pale around Radovan Karadžić were engaged in illicit trade and refusing to pay customs or taxes and thus denying her funds which she needed to help her people.[158] According to Mr. Frowick, in the summer of 1997 Mrs. Plavšić began to make changes. She started by dissolving the Republika Srpska National Assembly, thus enraging the hard-line powers in Pale and leading to her having to stay in her office, guarded by SFOR troops.[159] She then created a new party, conducted a vigorous campaign, emphasising resistance to corruption and illicit trade, won a victory in the elections which followed in November 1997 and put together a multi-ethnic coalition which was able to transfer all the agencies of government from Pale to Banja Luka.[160] According to Mr. Frowick, this represented a very significant breakthrough and advance from the Dayton peace process, opening the way to a closer working relationship between the Bosnian Serb leadership and the international community and allowing substantial funds to be made available to help the Bosnian Serb people.[161]

92. In Mr. Frowick's view, Mrs. Plavšić was singular, on the Bosnian Serb side, in supporting the Dayton Agreement. She showed political courage in the confrontation with Pale which she won: and, because of this, he thought of her as "attacking corruption, injustice and becoming the champion within Republika Srpska of a struggle against criminality".[162]

93. Dr. Madeleine Albright said that her first impression of Mrs. Plavšić was as spokesperson for policies which came out of Banja Luka and which the witness considered repugnant: however, when she met Mrs. Plavšić in 1997 it became evident that the latter felt that the Dayton Agreement was worth supporting and might bring about, in a peaceful way, some of the things she wanted, including dignity for the Serbs.[163] Dr. Albright described the accused as the vehicle in Republika Srpska for making sure that the Dayton Agreement was carried out: "she stood up for that at times when it was very difficult, when there were those who wanted to destroy the Dayton Accords".[164]

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[155] *Ibid*., T. 558.
[156] *Ibid*., T. 559.
[157] *Ibid*., T. 558.
[158] Robert Frowick, T. 578.
[159] *Ibid*., T. 579-80.
[160] *Ibid*., T. 581-83.
[161] *Ibid*., T. 584.
[162] *Ibid*., T. 585.
[163] Madeleine Albright, T. 514-15.
[164] *Ibid*., T. 517.

Likewise, Carl Bildt described the accused as courageous in supporting peace implementation, a firm supporter of constitutional rule, who "took great personal risk with that".[165]

94. The evidence given by these witnesses was not challenged. The fact that these witnesses, all of high international reputation, came forward and gave such evidence adds much weight to the plea in mitigation put forward in this regard. The Trial Chamber is satisfied that Mrs. Plavšić was instrumental in ensuring that the Dayton Agreement was accepted and implemented in Republika Srpska. As such, she made a considerable contribution to peace in the region and is entitled to pray it in aid in mitigation of sentence. The Trial Chamber gives it significant weight.

(iv) Age

95. The Defence submits that age is a mitigating factor in sentencing and refers to the *Krnojelac* trial judgement, where the Trial Chamber took age into consideration when determining sentence.[166] The Defence states that in both international and domestic jurisprudence, age may be considered a mitigating factor in sentencing, and refers to the *Papon v. France* case from the European Court on Human Rights ("ECHR"). In that case the then 90-year-old appellant (who had been found guilty of aiding and abetting crimes against humanity by a French court) submitted that the combination of his age and state of health made his imprisonment incompatible with Article 3 of the European Convention on Human Rights, which provides that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment".[167] The Court observed that

> advanced age is not a bar to pre-trial detention or a prison sentence in any of the Council of Europe's member States. However, age in conjunction with other factors, such as state of health, may be taken into account either when sentence is passed or while the sentence is being served (for instance when a sentence is suspended or imprisonment is replaced by house arrest).
>
> While none of the provisions of the Convention expressly prohibits imprisonment beyond a certain age, the Court has already had occasion to note that, under certain circumstances, the detention of an elderly person over a lengthy period might raise an issue under Article 3. Nonetheless, regard is to be had to the particular circumstances of each specific case […].[168]

However, having assessed the facts as a whole, the Court declared Papon's application inadmissible, finding that his situation did not attain sufficient level of severity to come within the scope of Article 3 of the European Convention on Human Rights.[169]

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[165] Carl Bildt, T. 564.
[166] Defence Sentencing Brief, para. 47, referring to the *Krnojelac* Trial Judgement, para. 533.
[167] The full name of the European Convention is 'Convention for the Protection of Human Rights and Fundamental Freedoms'. It was signed in 1950 and entered into force in 1953.
[168] *Papon v. France*, European Court of Human Rights ("ECHR"), Application No. 64666/01, 7 June 2001 ("*Papon v. France*").
[169] Defence Sentencing Brief, para. 48; *Papon v. France*.

96. The Defence also refers to the national criminal law systems of the United Kingdom, Australia and Canada, in which a sentencing court may consider advanced age a mitigating factor for sentencing.[170] Further, the Defence has submitted a report concerning the health of Mrs. Plavšić, which concludes that it may be expected that the condition of the accused "will worsen with time, especially in conditions of stress caused by the criminal-legal situation and living conditions in prison. The current condition of the patient requires further regular doctor's control and treatment."[171]

97. The Defence notes that the accused is 72 years old and submits that any prison term imposed on her must take into account her age, life expectancy and general health. Concerning the life expectancy, the Defence refers to, *inter alia*, the 2001 Edition of the Demographic Year Book published by the Council of Europe and the World Health Organization's Report of 2001, and concludes that the life expectancy of Mrs. Plavšić is 8.2 years.[172] The Defence stresses that her age and life expectancy are crucial factors in determining the sentence which may be imposed on her and maintains that there is persuasive authority in both regional and international legal instruments for the proposition that a person should not face the prospect of spending the remainder of her life in prison, without the hope of release. Reference is made to a number of sources, including the following. The 'General Report on the Treatment of Long-Term Prisoners' prepared by the Sub-Committee No. XXV of the European Committee on Crime Problems in 1975, in which is stated that "it is inhuman to imprison a person for life without any hope of release" and "nobody should be deprived of the chance of possible release."[173] In addition, the Defence points out that Norway, Spain and Portugal have abolished life imprisonment and replaced it with maximum prison sentences and that a life imprisonment sentence cannot be imposed on a person above the age of 60 in Romania or above 65 in Ukraine.[174]

98. The Defence also refers to the first Trial Chamber's sentencing judgement in *Erdemović*, in which it is stated, *inter alia*, that the penalty imposed as well as the enforcement of such penalty must always conform to the minimum principles of humanity and dignity, as enshrined in various international human rights instruments.[175] In this connection, the Defence submits that proportionality and individualisation are central to the issue of any sentence which may be imposed

[170] *Ibid*., paras 48-49.
[171] Biljana Plavšić's Medical Records, filed under seal and confidentially, 14 December 2002, p. 3.
[172] Defence Sentencing Brief, paras 51-53, 76.
[173] *Ibid*., paras 54-55. Reference is also made to the 'Resolution (76) 2 on the Treatment of Long-Term Prisoners', adopted by the Minister' Deputies of the Council of Europe on 17 February 1976.
[174] *Ibid*., para. 55. Further, the Defence notes that in Germany the Constitutional Court has considered life imprisonment to be constitutional, but held that it must be scrutinised for possible violations of the principle of dignity of mankind and that an individual must not be deprived of the possibility of release.
[175] *Ibid*., para. 58.

on the accused. It concludes that sentencing of the accused "to a term of incarceration which is tantamount to life imprisonment for a 72-year-old woman directly impacts upon the prohibition against cruel and unusual, or inhumane or degrading, forms of punishment."[176]

99. The Prosecution also addresses the issue of advanced age as a potential mitigating circumstance. The Prosecution submits this is an appropriate factor for the Trial Chamber to consider, but states that it disagrees with the Defence on what weight it should be given.[177] The Prosecution notes that while one Trial Chamber of the International Tribunal has considered the advanced age of the accused in its determination of an appropriate sentence, no case before the International Tribunal has discussed the extent to which the advanced age of an accused should be considered a mitigating factor, and it therefore turns to jurisprudence outside the International Tribunal for guidance.[178]

100. Having considered the case law of the ECHR (including *Papon*), the Prosecution submits that while the age of an accused may be considered as a factor in determining a sentence, there is no jurisprudence that either requires a court to consider age or that precludes the imposition of any sentence, even a life sentence for an older offender.[179] The Prosecution concludes that there are two additional factors that emerge from the jurisprudence regarding sentencing. First, there are no cases which require a court to consider the age of the accused in determining sentencing. Second, those courts which have considered this circumstance have balanced that factor against the gravity of the offence.[180] It points out that in the English case *R. v. C.*, a 79-year-old man appealed his sentence of 8 years' imprisonment. The Court of Appeal upheld the sentence, commenting that the trial judge had been very conscious of the age and illness of the appellant. The Court noted that the appellant's argument that he might not live again in society could apply to virtually any sentence imposed on him, no matter how short. The Court concluded that the trial judge had made as great a reduction as the appalling circumstances of the crime could permit.[181]

101. With regard to life expectancy, the Prosecution submits that while advanced age can be taken into account in determining sentence, this does not mean that any sentence imposed must be less than the accused's projected life expectancy. Thus, "the age of the accused does not trump the significance of the crime or the aggravating circumstances surrounding the crime for which the

[176] *Ibid*., para. 59.
[177] Sentencing Hearing, T. 633-34.
[178] Prosecution Sentencing Brief, para 30.
[179] *Ibid*., paras 30-31.
[180] *Ibid*., para. 32.
[181] *Ibid*., para. 33. *R. v. C.* (1993) 14 Cr.App.R.(S.) 562, at 564e. The appellant was convicted of a number of serious sexual offences against his five grandchildren.

accused is to be sentenced."[182] The Prosecution refers to the case of *R. v. S.* in which an English Court of Appeal expressly set aside the trial judge's actuarial calculations in determining the sentence for an 82-year-old man convicted of rape and indecent assault of his granddaughter. In doing so, the Court held that "the only permissible approach to sentencing in a case of this nature is to arrive at an appropriate sentence commensurate with the seriousness of the offences having regard to the age, infirmities and the circumstances of the appellant."[183]

102. Finally, the Prosecution contends that some cases reflect a merging of the issue of age with that of infirmity or illness. The Prosecution states that these factors should not be conflated and stresses that release of an accused on compassionate grounds should be addressed if and when the accused becomes ill or infirm, and not at this stage.[184]

103. In considering these submissions, the Trial Chamber notes that there is no authority of the International Tribunal as to the effect of advanced age on determining sentence, although the Trial Chamber in *Krnojelac* made reference to it.[185] The Trial Chamber will now consider the decisions of regional and domestic courts which may be relevant. The Trial Chamber deals with two submissions of the Defence.

104. First, the Trial Chamber rejects the Defence's contention that any sentence in excess of 8.2 years is tantamount to life imprisonment and would constitute inhumane or degrading punishment. Neither in the Statute nor in international human rights law is there any prohibition against the imposition of a sentence (including a life sentence) on an offender of advanced age. The ECHR has held that in certain circumstances the detention of an elderly person over a lengthy period may raise the issue of the prohibition against inhumane and degrading treatment. Any such treatment must attain a minimum level of severity to fall within the scope of Article 3 of the European Convention on Human Rights. However, regard is to be had to the particular circumstances of each specific case.[186] In the instant case, the Trial Chamber can find no such relevant circumstances: the medical report submitted by the accused does not indicate that she is suffering from any condition which would prevent the imposition of a prison sentence.[187]

105. Second, the Trial Chamber is not persuaded by the Defence submission that a calculation of the accused's life expectancy is a crucial factor in determining sentence. However, the Trial

[182] Sentencing Hearing, T. 634.
[183] Prosecution Sentencing Brief, para. 32. *R. v. S.* (1998) 1 Cr.App.R.(S.) 261, at 264e.
[184] *Ibid*., para. 34.
[185] *Krnojelac* Trial Judgement, para. 533.
[186] *Priebke v. Italy*, ECHR, Application No. 48799/99, 5 April 2001; *Sawoniuk v. the United Kingdom*, ECHR, Application No. 63716/00, 29 May 2001; *Papon v. France*; *see also Kudla v. Poland*, ECHR, Judgement, 26 October 2000, reported at (2002) 35 EHRR 11.
[187] Biljana Plavšić's Medical Records, filed under seal and confidentially, 14 December 2002.

Chamber considers that it should take account of the age of the accused and does so for two reasons: First, physical deterioration associated with advanced years makes serving the same sentence harder for an older than a younger accused. Second, as the New South Wales Court of Appeal observed in *Holyoak*, an offender of advanced years may have little worthwhile life left upon release.[188]

106. Thus, the Trial Chamber prefers the approach of the English Court of Appeal in *R. v. S.* above, *i.e.* to determine an appropriate sentence corresponding to the gravity of the offence, taking into account the age and the circumstances of the accused. For the above reasons, the Trial Chamber considers as a mitigating factor the advanced age of the accused and in doing so, it takes into account the medical report filed on her behalf.

(v) Other matters

107. One other piece of evidence about the conduct of the accused should be mentioned, although it relates to events during the conflict. This is the Statement of Larry Hollingworth, dated 15 December 2002.[189] Mr. Hollingworth served with the United Nations High Commissioner for Refugees ("UNHCR") during 1992-1994, mostly in Bosnia and Herzegovina. In August 1992, he met with the accused and discussed the plight of the people of Goražde. Mrs. Plavšić informed him of two other Bosnian Muslim villages, which also required aid. She offered her full support and approval in getting the aid convoys to the villages. According to Mr. Hollingworth, without Mrs. Plavšić's assistance, his UNHCR convoy to Goražde would not have reached its goal.[190] Further, in 1993 in Banja Luka, the accused met several times with Mr. Hollingworth, thus facilitating contact between the UNHCR and the highest authorities in the region.[191]

108. The Defence raise the accused's personal and family circumstances. It submits that until the time of the offence, Mrs. Plavšić led an honest, honourable and private family, professional and social life. She had a distinguished career as an academic with a PhD in biology, and was a full Professor in the Faculty of Natural Sciences at Sarajevo University, where she was also Dean.[192] The Prosecution does not dispute these matters.[193]

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[188] *R. v. Holyoak* (1995) 82 A Crim R 502 at 507-508. *See also e.g. R. v. Jeffrey William Spencer Rose* (2002) NSWSC 26, 22 February 2002, paras 23-27.
[189] Ex. 20. Statement of Mr. Larry Hollingworth filed on behalf of Biljana Plavšić, filed on 16 December 2002 ("Hollingworth Statement").
[190] *Ibid*. During their first meeting Mrs. Plavšić reminded Mr. Hollingworth that there were also Bosnian Serb villages which required aid, but she did not condition her support for the aid to Bosnian Muslim villages on the aid reaching the Bosnian Serb villages.
[191] *Ibid*.
[192] Defence Sentencing Brief, para. 66.
[193] Prosecution Sentencing Brief, para. 28.

109. In this connection the Defence states that the comportment of the accused while in detention and the general co-operation with the Trial Chamber and the Prosecutor during the proceedings is a mitigating factor. It submits that from the moment that the accused voluntarily surrendered to the International Tribunal, the accused has always shown respect for the Trial Chamber and the Prosecution, and that she has always fully complied with the terms and conditions imposed on her at the UNDU and during her provisional release.[194] The Trial Chamber accepts that these are mitigating factors but attaches less significance to them than the other factors already raised.

(vi) Conclusion

110. In the light of the above, the Trial Chamber finds that the following are the relevant, substantial, mitigating circumstances in this case:

- Guilty plea (together with remorse and reconciliation);
- Voluntary surrender;
- Post-conflict conduct; and
- Age

To each of these circumstances the Trial Chamber attaches weight. In particular, the Trial Chamber attaches great weight to Mrs. Plavšić's guilty plea and post-conflict conduct. Together, these circumstances make a formidable body of mitigation.

D. The General Practice regarding Prison Sentences in the Courts of the former Yugoslavia

111. Article 24 (1) of the Statute and Rule 101 (B) (iii) of the Rules require the Trial Chamber, in determining sentence, to take into account the general practice regarding prison sentences in the courts of the former Yugoslavia.

(a) Arguments of the Parties

112. With regard to the determination of sentence, both the Prosecution and Defence refer to Article 41 (1) of the Criminal Code of the Socialist Federal Republic of Yugoslavia ("SFRY Criminal Code"),[195] which requires that consideration be given to:

[194] Defence Sentencing Brief, para. 67.
[195] Adopted by the SFRY Assembly at the Session of the Federal Council held on 28 September 1976; declared by decree of the President of the Republic on 28 September 1976; published in the Official Gazette SFRY No. 44 of 8 October 1976; took effect on 1 July 1977.

> […] the circumstances bearing on the magnitude of the punishment (extenuating and aggravating circumstances), and in particular, the degree of criminal responsibility, the motives from which the act was committed, the past conduct of the offender, his personal situation and his conduct after the commission of the criminal act, as well as other circumstances relating to the personality of the offender.[196]

Furthermore, the Defence highlights the existence of Article 42 (2) of the SFRY Criminal Code, in which a judge may determine whether "there are any mitigating circumstances which are such that they indicate that the objective of the sentence may be achieved equally well by a reduced sentence".[197]

113. With regard to the punishment which could have been imposed by the courts of the former Yugoslavia on the accused, both parties refer to Article 142 of the SFRY Criminal Code, which is entitled "Criminal Offences Against Humanity and International Law. Article 142 (1) reads:[198]

> Whoever, in violation of the international law in time of war, armed conflict or occupation, orders an attack against the civilian population […] or […] tortures, or inhumane treatment of the civilian population […] compulsion to prostitution or rape […] shall be punished by no less than five years in prison or by the death penalty.

The Defence notes that this provision gives effect to the provisions of Geneva Convention IV and the two Additional Protocols which are incorporated into Article 2 of the Statute of the International Tribunal and observes that there is no provision in the SFRY Criminal Code that gives specific effect to the crimes against humanity outlined in Article 5 of the Statute.[199] According to the Prosecution, Article 142 (1) encompasses acts which constitute a crime comparable to that referred to in Count 3 of the Indictment; a crime for which Mrs. Plavšić has admitted responsibility.[200]

114. As set out above, Article 142 of the SFRY Criminal Code envisages severe punishment in that a person may be sentenced to a minimum of five years imprisonment and to a maximum sentence of the death penalty.[201] In this regard, the Defence notes that this is the punishment that could have been imposed in the former Yugoslavia at the relevant time of commission of the persecution set out in Count 3 of the Indictment.[202] The Defence also notes that following the 1977 abolition of capital punishment in some of the republics of the SFRY, other than Bosnia and Herzegovina, the new maximum sentence for the most serious offences was 20 years

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[196] Defence Sentencing Brief, para. 24; Prosecution Sentencing Brief, para. 36. Both parties note that this practice is similar to the Trial Chamber's assessment of any relevant aggravating or mitigating circumstances required to be taken into account under Article 24 of the Statute and Rule 101 (B).
[197] Defence Sentencing Brief, para. 25.
[198] Prosecution Sentencing Brief, para. 37, referring to *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 ("*Furundžija* Trial Judgement"), para. 285 (in which Article 142 of the SFRY Criminal Code is cited).
[199] Defence Sentencing Brief, para. 28.
[200] Prosecution Sentencing Brief, para. 37.
[201] *Ibid*., para. 37; Defence Sentencing Brief, para. 27.
[202] Defence Sentencing Brief, para. 27.

imprisonment.[203] In addition to this, the Prosecution observes that although Article 24 of the Statute of the International Tribunal limits the maximum penalty to life imprisonment, both the *Čelebići* Trial Chamber and the *Tadić* Sentencing Trial Chamber saw the penalty of life imprisonment as a comparable sentencing practice that former Yugoslav courts would have imposed upon crimes that "could have attracted the death penalty" under the SFRY Criminal Code.[204] The Prosecution also notes that in 1998 Bosnia and Herzegovina replaced the maximum sentence of the death penalty with long-term imprisonment of 20 - 40 years "for the gravest forms of criminal offences […] committed with intention".[205]

115. Both the Prosecution and Defence agree that the Trial Chamber may use the sentencing practices of the courts of the former Yugoslavia as a guide to determining the appropriate penalty for an accused, although the Trial Chamber is not bound to follow such practice.[206]

(b) Discussion

116. Whether or not a Trial Chamber has the discretion to impose a sentence of imprisonment greater than that of 20 years has been decisively resolved by the Appeals Chamber, which has interpreted the relevant provisions of the Statute and Rules to mean that, while a Trial Chamber must consider the practice of courts in the former Yugoslavia, its discretion is not curtailed by such practice.[207] However, although it is not bound to follow such practice, recourse must be made to it as an aid in determining the sentencing to be imposed: an exercise which must go beyond merely reciting the relevant code provisions.[208]

117. The Trial Chamber considers that although there is no provision in the SFRY Criminal Code relating to persecution, a crime against humanity, as such, Article 142 prohibits criminal conduct which corresponds to the offence to which Mrs. Plavšić has pleaded guilty, and the Article therefore offers useful guidance in determining sentence.

118. Pursuant to Article 24 of the Statute, "the penalty imposed by the Chamber shall be limited to imprisonment". In this regard, the Trial Chamber notes that the laws in effect in the former Yugoslavia at the time Mrs. Plavšić committed the crime, allow for a maximum of 20 years' imprisonment, in lieu of the death penalty.

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[203] *Ibid*., para. 28.
[204] Prosecution Sentencing Brief, para. 38, referring to the *Čelebići* Trial Judgement, para. 1208 and *Prosecutor v. Tadić*, Case No. IT-94-1-T, Sentencing Judgement, 14 July 1997 ("*Tadić* Sentencing Judgement I"), para. 8.
[205] *Ibid*., para. 39, referring to *Prosecutor v. Tadić*, Case no. IT-94-1-T*bis*-R117, Sentencing Judgement, 11 November 1999 ("*Tadić* Sentencing Judgement II"), para. 12.
[206] Prosecution Sentencing Brief, para. 35; Defence Sentencing Brief, para. 23.
[207] *Tadić* Judgement in Sentencing Appeals, para. 20.

119. Further, the Trial Chamber is also assisted by Article 41 (1) of the SFRY Criminal Code, which sets out the factors to which consideration should be given while determining sentence. This Article is generally similar to the sentencing provisions of Article 24 (2) of the Statute and Rule 101 (B) of the Rules of the International Tribunal.[209] In particular, the Trial Chamber notes that when determining sentence Article 41 (1) of the SFRY Criminal Code requires that consideration be given to the "personal situation" and the "conduct after the commission of the criminal act, as well as other circumstances relating to the personality of the offender."

V. DETERMINATION OF SENTENCE

A. Closing Arguments of the Parties

120. In the closing submissions at the Sentencing Hearing, the Prosecution referred to the approximately 400 camps and detention facilities in Bosnia and Herzegovina, and noted that although they varied in size and conditions, they existed in all of the 37 municipalities identified in the Indictment.[210] The Prosecution stressed that these camps and detention facilities were characterised by the mistreatment of the inmates and referred to the horrifying conditions, sexual assaults and torture which took place in the camps.[211] The Prosecution also recalled the victims of mass killings at hundreds of sites and other killings in many municipalities. It underlined that although these events took place in 1992, their destructive impact continues to this day, reflected in the debilitated and shortened lives of camp survivors and in the blighted lives of widows and orphans or stigmatised victims.[212] Concerning the vulnerability of the victims more generally, the Prosecution repeated the words of Mr. Tokača, who observed that the Bosnian Muslims and Croats were targeted for humiliation so that any self-respect would be stifled in the victims.[213]

121. With regard to Mrs. Plavšić's role in the persecutory campaign, the Prosecution stressed that she was not one who beat a detainee or pulled a trigger, nor was she a mid-level bureaucrat who willingly implemented a strategic objective passed down from above: instead she was one of the beacons of those who did, and she imbued them a mission to use criminal means to achieve her vision of a ethnically separated Bosnia. From her leadership position (as co-president and later as a member of the collective and expanded Presidencies), Mrs. Plavšić supported and maintained the

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[208] *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgement, 28 November 2002 ("*Vasiljević* Trial Judgement"), para. 270, referring to *Kupreškić* Appeal Judgement, para. 418.
[209] *Ibid*., para. 271.
[210] Sentencing Hearing, T. 624. The Trial Chamber notes that the Indictment, Schedule C, refers to detention facilities in 34 of the 37 municipalities, and will consequently only consider those mentioned in the Indictment.
[211] *Ibid*., T. 624-26.
[212] *Ibid*., T. 626-27.

governmental and military bodies at the local, municipal, regional and national levels through which the objectives of forcible ethnic separation through a persecutory campaign were implemented. The Prosecution noted that among the leaders at the top level of the joint criminal enterprise, there were others whose influence and control was greater than Mrs. Plavšić's, that she did not participate in the conception and planning of the forcible ethnic separation and that she had a lesser role in its execution. However, the Prosecution stressed that this distinction does not alter Mrs. Plavšić's responsibility as a leader or excuse her role in the systematic and successful effort to expel people through the persecutory campaign.[214]

122. The Prosecution said that the Trial Chamber's task was to determine a sentence which addresses the conduct of the accused, not only towards the immediate victims but also towards the whole of mankind, in a campaign of persecution which destroyed countless lives and communities: the extent and gravity of such inhumane acts led humanity itself to come under attack and be negated.[215]

123. The Defence in its closing arguments to the Trial Chamber re-iterated that as Mrs. Plavšić had pleaded guilty to Count 3 of the Indictment and had agreed to the contents of the Factual Basis, the Defence had no disagreement with the Prosecution as to the nature of the horrific acts that occurred in 1991 and 1992.[216] The Defence underlined the lesser role played by Mrs. Plavšić in achieving the persecutory plan, and emphasised the work undertaken by her in 1992 to allow Mr. Hollingworth, as a representative of the UNHCR, to provide humanitarian aid to Bosnian Muslim villages.[217] The Defence also quoted Mr. Hollingworth's Statement that of the Republika Srpska leadership "Mrs. Plavšić was the least guilty."[218]

124. The Defence portrayed Mrs. Plavšić as an individual who, by her plea of guilty, has not attempted to avoid her responsibility for the crimes committed and who "is making every effort to see that the truth will come before this Tribunal and before the world."[219] In this respect the Defence referred to the testimonies of Mr. Bildt and Dr. Boraine who described Mrs. Plavšić's admissions as contributing to establishing the truth about the persecutory campaign and thus aiding the reconciliatory process for individual victims and the region as a whole.[220] The Defence restated

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[213] *Ibid*., T. 632-33.
[214] *Ibid*., T. 630-31.
[215] *Ibid*., T. 620.
[216] *Ibid*., T. 640.
[217] *Ibid*.
[218] *Ibid*., T. 640-41; Ex. 20; Hollingworth Statement.
[219] *Ibid*., T. 641.
[220] *Ibid*., T. 648-49.

the words of Mr. Tokača with regard to Mrs. Plavšić's admission of guilt as being "an extremely courageous, brave, and important gesture".[221]

125. The Defence also quoted from the testimony given by Dr. Boraine:

> […] looking at Mrs. Plavšić's record, both in terms of the seriousness of her crime, and also in her change of behaviour and her acknowledgement and confession, that in some way, she seems to have a second chance, and is to be commended for that, but much more importantly, I think the people of former Yugoslavia deserve a second chance and to move away from the prejudices and the hatreds of the past […] and if her behaviour and her actions and her words can assist the people of that part of the world […] then I hope that with time and courage, the cause of narrow nationalisms will wane and pluralistic societies grounded in human rights and the rule of law will emerge. The reality is there is no other choice that can guarantee a sustainable peace in the region.[222]

B. Conclusions

126. While accepting that the breadth of these crimes justifies the submission as made by the Prosecution in paragraph 122 above, the Trial Chamber also has in mind that these crimes did not happen to a nameless group but to individual men, women and children who were mistreated, raped, tortured and killed.[223] This consideration and the fact that this appalling conduct was repeated so frequently, calls for a substantial sentence of imprisonment. The Trial Chamber has already found this to be a crime of the utmost gravity. That is the starting point for determination of sentence.

127. Furthermore, the seriousness of the offence is aggravated, as the Trial Chamber finds, by the senior leadership position of the accused. Instead of generally preventing or mitigating the crimes, she encouraged and supported those responsible. Any sentence must reflect this factor.

128. In its Sentencing Brief the Prosecution, having acknowledged the mitigating factors, in particular the acknowledgement of crimes, acceptance of responsibility and expression of remorse from a former leader, points out, correctly, that these factors must be appropriately balanced against the gravity of the crime and the factors in aggravation: the Prosecution submits that an appropriate sentence in this case is a term of imprisonment of not less than 15 years and not more than 25 years.[224] This submission was reiterated by the Prosecution at the Sentencing Hearing.[225]

129. The Trial Chamber has given consideration to all the factors concerning the gravity of the offence, the aggravating circumstances and the mitigating circumstances. It has also considered the

[221] *Ibid*., T. 648, quoting Mirsad Tokača (at T. 408).
[222] *Ibid*., T. 649-50, quoting Alex Boraine (at T. 608).
[223] *Ibid*., T. 622. As the Prosecution said later in its submission: it is necessary to see the victims as individuals, not a massive and indistinct group and to remember individual moments of pain and terror.
[224] Prosecution Sentencing Brief, para. 43.
[225] Sentencing Hearing, T. 638.

need for retribution and deterrence and the general practice regarding prison sentences in the courts of the former Yugoslavia.

130. The Trial Chamber considers that the Prosecution in its submissions as to sentence has given insufficient weight to the age of the accused and the significant mitigating factors connected with her plea of guilty and post-conflict conduct.

131. The Defence, on the other hand, has made no recommendation as to an appropriate sentence, submitting that since the life expectancy of the accused is eight years any sentence beyond that would amount to life imprisonment and would be inappropriate.[226] The Trial Chamber has already held that the reference to life expectancy is irrelevant. It also considers that a sentence of eight years imprisonment would fail to meet the gravity of this offence.

132. The Trial Chamber has to pass sentence on a 72-year-old former President for her participation in a crime of the utmost gravity. On the other hand, as the Trial Chamber has found, there are very significant mitigating circumstances, in particular the guilty plea and the post-conflict conduct. Nonetheless, undue leniency would be misplaced. No sentence which the Trial Chamber passes can fully reflect the horror of what occurred or the terrible impact on thousands of victims. Giving due weight to the various factors set out above, the Trial Chamber has come to the conclusion that a sentence of eleven years' imprisonment is appropriate in this case.

C. Credit for Time Served

133. The accused was detained for in the UNDU between 10 January 2001 and 6 September 2001, between 14 and 19 December 2002, and on 26 February 2002. Pursuant to Rule 101 (C) of the Rules the accused is entitled to credit for the time spent in detention, namely 245 days in total.

[226] Defence Sentencing Brief, para. 76; Sentencing Hearing, T. 651.

VI. DISPOSITION

134. For the foregoing reasons, having considered the arguments of the parties, the evidence presented at the Sentencing Hearing, and the Statute and the Rules, the **TRIAL CHAMBER SENTENCES** Biljana Plavšić to eleven years' imprisonment and **STATES** that she is entitled to credit for 245 days in relation to the sentence imposed by the Trial Chamber, as of the date of this Sentencing Judgement, together with such additional time as she may serve pending the determination of any appeal. Pursuant to Rule 103 (C) of the Rules, Biljana Plavšić shall remain in custody of the International Tribunal pending the finalisation of arrangements for her transfer to the State where she shall serve her sentence.

Done in English and French, the English text being authoritative.

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Richard May, Presiding

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Patrick Robinson O-Gon Kwon

Dated this twenty-seventh day of February 2003
At The Hague
The Netherlands

[Seal of the Tribunal]