



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-02-60/2-S
Date: 10 December 2003
Original: English

IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Volodymyr Vassylenko
Judge Carmen Maria Argibay

Registrar: Mr. Hans Holthuis

Judgement of: 10 December 2003

PROSECUTOR

v.

DRAGAN OBRENOVIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Mr. Peter McCloskey
Mr. Stefan Waespi
Ms. Antoinette Issa
Ms. Anne Davis

Counsel for the Accused:

Mr. David Wilson
Mr. Dušan Slijepčević

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I. INTRODUCTION

A. The Accused: Dragan Obrenović

1. Dragan Obrenović was born on 12 April 1963 in the town of Rogatica, Bosnia Herzegovina, then part of the Socialist Federal Republic of Yugoslavia. He is a Serb by ethnicity. He is married and has a six year old son. At the time of his arrest, Dragan Obrenović was living in Zvornik in the Republika Srpska, Bosnia and Herzegovina.¹

2. Dragan Obrenović attended the military academy for training officers in the JNA. After graduating in 1986, he was commissioned as an officer and served in the republics of Bosnia and Herzegovina, Croatia and Serbia in the former Yugoslavia, in posts with increasing levels of responsibility.² On 1 December 1992, Dragan Obrenović was transferred to the Army of the Republika Srpska. His first assignment in the VRS was Chief of Staff and Deputy Commander at the Zvornik Brigade, headquartered in the city of Zvornik in eastern Bosnia and Herzegovina, a position he held in July 1995.³ In July 1995, Dragan Obrenović held the rank of Major in the VRS. From 8 August 1995 until 15 September 1995, Dragan Obrenović was appointed acting commander of the Zvornik Brigade.⁴ He remained Chief of Staff of the Zvornik Brigade until 30 April 1996, when he became the Acting Commander of the Brigade, which had been renamed as the 303rd Motorized Brigade. In August 1998 Dragan Obrenović became Commander of the Brigade, which had again been re-named the 505th Motorized Brigade.⁵ In April 2001, when he was arrested, Dragan Obrenović was a Lieutenant Colonel in the VRS.⁶ Shortly after his arrest, the VRS discharged him on medical grounds for injuries received during the war.⁷

B. Procedural History

3. The Office of the Prosecutor brought an indictment against Dragan Obrenović on 16 March 2001, which Judge Liu Daqun confirmed on 9 April 2001. Judge Liu ordered the Initial Indictment be kept under seal until the arrest warrant was served.⁸ The Initial Indictment charged Dragan Obrenović with five counts: complicity in genocide, punishable under Article 4(3)(e) of the Statute; extermination, a crime against humanity, punishable under Article 5(b) of the Statute; murder, a

¹ *Blagojević* Trial, Trial Proceedings, 1 October 2003, BT. 2417.

² *Blagojević* Trial, Trial Proceedings, 1 October 2003, BT. 2418-2420.

³ *Blagojević* Trial, Trial Proceedings, 1 October 2003, BT. 2420-2421.

⁴ *Blagojević* Trial, Trial Proceedings, 1 October 2003, BT. 2421.

⁵ *Blagojević* Trial, Trial Proceedings, 1 October 2003, BT. 2421.

⁶ *Blagojević* Trial, Trial Proceedings, 1 October 2003, BT. 2421.

⁷ Defence Ex. DS10-a, Sentencing Statement of Dragan Obrenović, 30 July 2003, page 3.

⁸ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-I, Order on Review of Indictment Pursuant to Article 19 of the Statute and Order for Non-Disclosure, 9 April 2001; *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-I, Warrant of Arrest Order for Surrender, 9 April 2001.

crime against humanity, punishable under Article 5(a) of the Statute; murder, as a violation of the laws or customs of war, punishable under Article 3 of the Statute; and persecutions on political, racial and religious grounds, a crime against humanity, punishable under Article 5(h) of the Statute. For each count, Dragan Obrenović was charged not only in his individual capacity under Article 7(1) of the Statute, but also under the theory of command responsibility pursuant to Article 7(3) of the Statute of the Tribunal.

4. SFOR arrested and detained Dragan Obrenović on 15 April 2001, and transferred him to the custody of the Tribunal the same day. On 18 April 2001, the President of the Tribunal assigned his case to Trial Chamber II.⁹ At his initial appearance before Judge David Hunt on 18 April 2001, Dragan Obrenović waived his right to have the indictment read out in full, and entered pleas of not guilty to all counts in the Initial Indictment.¹⁰ Judge Hunt ordered that Dragan Obrenović be detained at the United Nations Detention Unit until further order.¹¹

5. Mr. David Eugene Wilson was assigned as lead counsel for Mr. Obrenović as of 6 June 2001 by the Registrar,¹² and Mr. Dušan Slijepčević was assigned as co-counsel as of 13 July 2001.¹³ These appointments were subsequently made permanent by the Registrar.¹⁴

6. On 11 September 2001, the Prosecution filed a motion seeking that Dragan Obrenović, Vidoje Blagojević (IT-98-33/1) and Dragan Jokić (IT-01-44) be jointly tried under one unified case number.¹⁵ At a joint status conference, the motion was granted,¹⁶ and on 22 January 2002, the Prosecution filed a joint indictment, under case number IT-02-53. Under the Joint Indictment, the three accused were charged as members of a joint criminal enterprise, the common purpose of which was “to forcibly transfer the women and children from the Srebrenica enclave to Kladanj, on 12 July and 13 July 1995; and to capture, detain, summarily execute by firing squad and bury

⁹ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-I, Order of the President Assigning a Case to a Trial Chamber, 18 April 2001.

¹⁰ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-I, Initial Appearance, 18 April 2001, T. 2-3.

¹¹ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-I, Orders for Detention on Remand, 18 April 2001. Dragan Obrenović’s motion for provisional release was denied by Trial Chamber II, as was his subsequent appeal. Accordingly, he has remained in detention at the UNDU since his transfer to the Tribunal. See, *Prosecutor v. Blagojević et. al.*, Decision on Dragan Obrenović’s Application for Provisional Release, 23 July 2002; *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić & Momir Nikolić*, Case No. IT-02-60-AR65.2, Decision on Provisional Release of Blagojević and Obrenović, 03 October 2002; *Prosecutor v. Blagojević et. al.*, Decision on Dragan Obrenović’s Application for Provisional Release, 19 November 2002; *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić & Momir Nikolić*, Case No. IT-02-60-AR65.3 & IT-02-60-AR65.4, Decision on Applications by Blagojević and Obrenović for Leave to Appeal, 16 January 2003.

¹² *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-PT, Decision by the Registrar, 8 June 2001.

¹³ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-PT, Decision by the Registrar, 17 July 2001.

¹⁴ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-PT, Decision by the Registrar, 11 October 2001.

¹⁵ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-PT, *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1-PT, and *Prosecutor v. Dragan Jokić*, Case No. IT-01-44-PT, Prosecution’s Motion for Joinder, 11 September 2001.

¹⁶ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-PT, *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1-PT, and *Prosecutor v. Dragan Jokić*, Case No. IT-01-44-PT, Status Conference, 15 January 2002, T. 59.

thousands of Bosnian Muslim men and boys aged 16 to 60 from Srebrenica enclave from 12 July 1995 until and about 19 July 1995.”¹⁷ Under the Joint Indictment, Dragan Obrenović was charged with the same charges as in the Initial Indictment, under both Articles 7(1) and 7(3) of the Statute.

7. On 17 May 2002, Trial Chamber II granted the Prosecution’s Motion to join the indictment against Momir Nikolić (IT-02-56) with the Joint Indictment. The Trial Chamber ordered that the four accused be jointly charged and tried, and that the Prosecution file a joint amended indictment within five working days.¹⁸ The Prosecution filed the joint amended indictment under case number IT-02-60 on 27 May 2002. Under the Indictment, the charges and the modes of responsibility alleged against Dragan Obrenović were identical to those set forth in the previous Joint Indictment.¹⁹

8. On 1 April 2003, pursuant to an order by the President of the Tribunal, the case was transferred from Trial Chamber II to Trial Chamber I, composed of: Judge Liu Daqun, Presiding (China), Judge Volodymyr Vassylenko (Ukraine), and Judge Carmen Maria Argibay (Argentina).²⁰

9. The trial for the four accused was scheduled to commence on 6 May 2003.²¹ Following the guilty plea of former co-accused Momir Nikolić, the start of trial was delayed until 14 May 2003.

10. On 20 May 2003, upon completion of the examination-in-chief of the Prosecution’s first witness, the Prosecution and Dragan Obrenović filed a “Joint Motion for Consideration of a Plea Agreement between Dragan Obrenović and the Office of the Prosecutor”, pursuant to Rule 62 *ter*. During a public hearing on the Joint Motion on 21 May 2003, the Trial Chamber accepted the plea agreement and guilty plea, and entered a finding of “guilt” against Dragan Obrenović for Count 5 of the Indictment, namely persecutions, a crime against humanity.²²

11. On 22 May 2003, pursuant to the terms of the Plea Agreement and in accordance with its undertaking to the Trial Chamber at the Plea Hearing,²³ the Prosecution moved for the Trial Chamber to dismiss all remaining counts of the Indictment. On 23 May 2003, the Trial Chamber

¹⁷ *Prosecutor v. Vidoje Blagojević, Dragan Obrenović and Dragan Jokić*, Case No. IT-02-53-I, Joinder Indictment, 22 January 2002.

¹⁸ *Prosecutor v. Momir Nikolić*, Case No. IT-02-56-I, Decision on Prosecution’s Motion for Joinder, 17 May 2002.

¹⁹ *Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić*, Case No. IT-02-60-PT, (“*Prosecutor v. Blagojević et al.*”), Amended Joinder Indictment, 27 May 2002.

²⁰ *Prosecutor v. Blagojević, et. al.*, Case No. IT-02-60-PT, Order Assigning Judges to a Case before a Trial Chamber, 1 April 2003. The two *ad litem* judges, Judge Volodymyr Vassylenko and Judge Carmen Maria Argibay, were appointed to this case by letter from the Secretary-General of the United Nations dated 21 January 2003, in accordance with Article 13 *ter* of the Statute.

²¹ *Prosecutor v. Blagojević, et. al.*, Case No. IT-02-60-PT, Scheduling Order, 6 December 2002.

²² *Prosecutor v. Vidoje Blagojević, Dragan Obrenović and Dragan Jokić*, Case No. IT-02-60-T, 21 May 2003, Plea Hearing, T. 560.

²³ Plea Hearing, T. 552.

granted the motion and further ordered that the proceedings against Dragan Obrenović be separated from those against Blagojević and Jokić.²⁴ The same day the Registrar assigned the case number IT-02-60/2 to the proceedings against Dragan Obrenović.²⁵

C. The Plea Agreement, Guilty Plea and Conviction

12. The terms of the agreement between Dragan Obrenović and the Prosecution are set forward in Annex A to the Joint Motion filed on 20 May 2003, and accepted by the Trial Chamber during the Plea Hearing, as stated above. The detailed factual basis of the allegations and the defendant's participation in those events are set forward in the Statement of Facts, attached hereto as Annex B.

13. In the Plea Agreement, Dragan Obrenović agrees to plead guilty to Count 5 of the Indictment, which alleges persecutions on political, racial and religious grounds. Dragan Obrenović agrees that he is pleading guilty to Count 5 because “he is in fact guilty and acknowledges full responsibility for his actions that are the subject of the Indictment.”²⁶ Dragan Obrenović confirms his understanding that if a trial were to be held, the Prosecution would be required to prove the elements of Article 5 (h) beyond a reasonable doubt, specifically, (a) an armed conflict during the time frame of the Indictment;²⁷ (b) a widespread or systematic attack directed against a civilian population and, in a manner related to that attack, Dragan Obrenović committed acts against the civilian population that violated their human rights;²⁸ (c) Dragan Obrenović's conduct was committed on political, racial or religious grounds and was committed with discriminatory intent;²⁹ and (d) Dragan Obrenović was aware of the wider context in which his conduct occurred.³⁰

14. Additionally, Dragan Obrenović agrees to “co-operate with and provide truthful and complete information to the Office of the Prosecutor whenever requested,” including meeting whenever necessary with the Prosecutor, testifying truthfully in the trial of his former co-accused, and “in any other trials, hearings or other proceedings before this Tribunal for accused charged with

²⁴ *Prosecutor v. Vidoje Blagojević, Dragan Obrenović and Dragan Jokić*, Case No. IT-02-60-T, Separation of Proceedings and Scheduling Order.

²⁵ *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2, Decision, 23 May 2003.

²⁶ Plea Agreement, paras 2-3.

²⁷ Plea Agreement, para. 6(a). Dragan Obrenović understood and agreed that the armed conflict alleged in paragraph 15 of the Indictment is the armed conflict that began on 6 April 1992 and ended with the Dayton Peace Agreement, signed on 14 December 1995.

²⁸ Plea Agreement, para. 6(b). Dragan Obrenović understood and agreed that the widespread or systematic attack directed against the civilian population of Srebrenica as alleged in paragraph 17 of the Indictment and described in paragraphs 18 through 26 of the Indictment, includes the means listed in paragraph 59 of the Indictment under a) – d) as Dragan Obrenović was not charged with forcible transfer.

²⁹ Plea Agreement, para. 6(c). Dragan Obrenović understood and agreed that one of the reasons he committed the conduct described in the Indictment and the Plea Agreement was because the victims were Bosnian Muslims.

³⁰ Plea Agreement, para. 6(d). Dragan Obrenović understood and agreed that he was aware of the widespread or systematic abuses described in the Indictment and in the Plea Agreement and of their effect on the entire population of Bosnian Muslims from the Srebrenica enclave.

offences relating to the fall of Srebrenica in July 1995 and its aftermath, as requested by the OTP.”³¹ Dragan Obrenović further agrees that he will not appeal the sentence imposed by the Trial Chamber unless the sentence is above the range recommended by the Prosecutor.³²

15. Dragan Obrenović acknowledges that by entering a plea of guilt he voluntarily waived certain procedural rights, including: the right to plead not guilty and require the Prosecution to prove the charges in the Indictment beyond a reasonable doubt at a fair and public trial; the right to prepare and put forward a defence to the charges at such a public trial; the right to examine at his trial, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf at a trial under the same conditions as the witnesses against him; the right not to be compelled to testify against himself or to confess guilt; the right to remain silent; and the right to appeal any finding of guilt or to appeal any pre-trial rulings.³³

16. In exchange for Dragan Obrenović’s plea of guilty to Count 5 and the fulfilment of all his obligations under the Plea Agreement, the Prosecution agrees that it will recommend *inter alia* that the Trial Chamber impose a sentence within the range of 15 to 20 years. Furthermore, the Prosecution agrees that at the time of the acceptance of the plea by the Trial Chamber, the Prosecutor will move to dismiss without prejudice to either party the remaining charges against Dragan Obrenović set forth in the Indictment.³⁴

17. In the Plea Agreement and at the Plea Hearing, Dragan Obrenović acknowledged that he understood the details of the Plea Agreement and that the plea was made entirely of his own free will, without threats or coercion.³⁵ Furthermore, he affirmed his understanding that the Trial Chamber was not bound to accept the range of sentence suggested by the Parties.³⁶ The Trial Chamber questioned Dragan Obrenović at the Plea Hearing on all aspects of his guilty plea.³⁷ Dragan Obrenović was then asked to enter a plea to Count 5; he pled guilty.³⁸

18. At the conclusion of the Plea Hearing, the Trial Chamber found that there was sufficient factual basis provided in the facts of the Plea Agreement for a finding of guilt with respect to Count 5 of the Indictment. The Trial Chamber further found that the other requirements of Rules 62 *bis*

³¹ Plea Agreement, para. 9.

³² Plea Agreement, para. 14.

³³ Plea Agreement, para. 17.

³⁴ Plea Agreement, para. 4.

³⁵ Plea Agreement, paras 19-21; Plea Hearing, T. 558-59.

³⁶ Plea Agreement, para. 13; Plea Hearing, T. 558.

³⁷ Plea Hearing, T. 558-559. The Trial Chamber inquired specifically whether Dragan Obrenović understood the *consequences* of pleading guilty to persecutions as part of ensuring that the guilty plea was informed. Additionally, the Trial Chamber further questioned whether Mr. Obrenović understood that the Trial Chamber was not bound by the sentence recommended by the Prosecution, pursuant to Article 62 *ter*(B), to which he responded that he was quite clear about this.

had been met,³⁹ and therefore, found Dragan Obrenović guilty of Count 5 of the Indictment, and entered a conviction for the same.⁴⁰

19. As this Trial Chamber has previously held, the acceptance of a guilty plea pursuant to a plea agreement must follow careful consideration by a trial chamber of numerous factors including *inter alia* whether the remaining charges reflect the totality of an accused's criminal conduct, whether an accurate historical record will be created, whether the terms of the agreement fully respect the rights of the accused, and whether due regard is accorded to the interests of victims.⁴¹

20. Upon being seised of the Joint Motion, the Trial Chamber carefully considered the various factors implicated in its acceptance or rejection of the plea agreement and guilty plea. The Trial Chamber determined that the guilty plea of Dragan Obrenović pursuant to the Plea Agreement was in the interests of justice and therefore accepted his guilty plea on 21 May 2003. The Trial Chamber's determination was based on the following factors, *inter alia*: (a) the acceptance of responsibility of Dragan Obrenović for his criminal conduct; (b) the establishment of an undisputed record about the crimes committed following the fall of Srebrenica which may contribute to reconciliation; (c) Dragan Obrenović's agreement to co-operate with the Prosecution and provide testimony in the cases against other accused indicted for crimes related to Srebrenica, particularly in light of his position as an officer in the VRS; (d) the fact that certain witnesses would not need to come to testify at the Tribunal; and (e) the fact that the Prosecution did not withdraw any factual allegations related to the criminal conduct for which Dragan Obrenović accepted individual criminal responsibility. The Trial Chamber further considered that an accused has the right to decide what plea to enter to the charges against him.

21. On 30 July 2003, in accordance with an order by the Trial Chamber, the Parties filed their sentencing briefs.⁴² The Trial Chamber permitted the Prosecution and the Defence to file additional

³⁸ Plea Hearing, T. 560.

³⁹ Rule 62 *bis* ("Guilty Pleas") provides: If an accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty and the Trial Chamber is satisfied that: (i) the guilty plea has been made voluntarily; (ii) the guilty plea is informed; (iii) the guilty plea is not equivocal; and (iv) there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case, the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.

⁴⁰ Plea Hearing, T. 560.

⁴¹ *Nikolić* Sentencing Judgement, paras 52, 65-66.

⁴² The Defence filed its sentencing brief on a confidential basis. During a Status Conference on 10 September 2003, the Defence explained to the Trial Chamber that this was mainly to protect the witnesses who would appear for the sentencing hearing and whose statements were attached to the sentencing brief. The Defence requested the confidentiality not be lifted until shortly before the Sentencing Hearing to guarantee that the witnesses would not be subject to any problems before their testimony. T. 1463-65. The Trial Chamber, in its Scheduling Order for the Sentencing Hearing, issued on 10 October 2003, ordered the confidentiality of the Defence sentencing brief to be lifted on 23 October 2003.

submissions on the issue of Dragan Obrenović's co-operation with the Prosecution following his testimony in the *Blagojević* Trial.⁴³ These submissions were filed on 23 October 2003.⁴⁴

D. The Sentencing Hearing

22. The Sentencing Hearing for Dragan Obrenović took place on 30 October 2003. The Prosecution did not call any witness to testify. However, the Trial Chamber had admitted the transcript testimony of five witnesses in the case *Prosecutor v. Radislav Krstić* (Case No. IT-98-33-T) as Prosecution evidence pursuant to Rule 92 *bis* (D) during the Status Conference of 10 September 2003.⁴⁵ Additionally, during the Sentencing Hearing, the Prosecution requested that the testimony of Dragan Obrenović in the *Blagojević* Trial be admitted into evidence in order for the Trial Chamber to assess the extent of co-operation of Dragan Obrenović with the Prosecution, recalling that the additional submissions of both Parties were based on his testimony. The Trial Chamber granted the request.⁴⁶

23. The Trial Chamber heard four *viva voce* witnesses on behalf of the Defence, two of whom testified in closed session. The Defence moved for nine witness statements to be admitted into evidence pursuant to Rule 92 *bis* (B) during the Sentencing Hearing.⁴⁷ The Trial Chamber granted the Motion.⁴⁸ All testimonies, including the Rule 92 *bis* (B) statements, relate to the character of Dragan Obrenović and will be addressed below.

24. The Defence requested that Dragan Obrenović be permitted to address the Trial Chamber at the conclusion of the sentencing proceedings.⁴⁹ The Trial Chamber granted the request and Dragan Obrenović made a final statement.

II. FACTUAL BASIS UNDERLYING THE CONVICTION

25. In the Plea Agreement, the Parties specified those paragraphs of the Indictment upon which the guilty plea is based. In addition, Dragan Obrenović specified *inter alia* his acts and omissions

⁴³ Dragan Obrenović testified in the *Blagojević* Trial, as a Prosecution witness from 1 October to 10 October 2003. The Trial Chamber notes for the record that the judges assigned to this case are the same judges assigned to the *Blagojević* Trial.

⁴⁴ The Defence filed its additional submissions on a confidential basis.

⁴⁵ Status Conference, T. 1470. Of these five witnesses, three are survivors of mass executions; one witness provided a record on the impact of the crimes committed following the fall of Srebrenica on the victims; and one witness testified about her life after being separated from her husband and two sons. The witnesses are witness L, witness O, witness I, witness DD and Teufika Ibrahimfendić.

⁴⁶ Sentencing Hearing, T. 1488.

⁴⁷ The witness statements DS1-DS8 were attached to the sentencing brief. DS9 was attached to Dragan Obrenović's Exhibit List for the Sentencing Hearing, filed on 28 October 2003 ("Exhibit List").

⁴⁸ Sentencing Hearing, T. 1488. In addition, all further documents listed in the Exhibit List were admitted into evidence during the Sentencing Hearing, T. 1489.

⁴⁹ Sentencing Hearing, T. 1487.

in relation to the charge of persecutions, as part of the Plea Agreement. The Trial Chamber found that a sufficient factual basis for the crime of persecutions existed to accept the guilty plea based upon the factual allegations in the Indictment, which Dragan Obrenović acknowledged as true and correct, and the Statement of Facts. A detailed account of the facts upon which the conviction is based can be found in these two documents; below is a summary of the factual basis.

26. In April 1993, the United Nations Security Council adopted Resolution 819 in which it expressed its alarm at the information “on the rapid deterioration of the situation in Srebrenica and its surrounding areas, as a result of the continued deliberate armed attacks and shelling of the innocent civilian population by Bosnian Serb paramilitary units,” and its awareness “that a tragic humanitarian emergency has already developed in Srebrenica and its surrounding areas as a direct consequence of the brutal actions of Bosnian Serb paramilitary units, forcing the large-scale displacement of civilians, in particular women, children and the elderly.”⁵⁰ The Security Council demanded, *inter alia*, that “all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act” and “the immediate cessation of armed attacks by Bosnian Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica.” The Security Council further requested that “the Secretary-General, with a view to monitoring the humanitarian situation in the safe area, [...] take immediate steps to increase the presence of UNPROFOR in Srebrenica and its surroundings;” and demanded that all parties “cooperate fully and promptly with UNPROFOR towards that end.”⁵¹

27. In July 1994, the commander of the Bratunac Brigade, Lieutenant Colonel Slavko Ognjenović, issued a report which stated, in part:

We must continue to arm, train, discipline, and prepare the RS Army for the execution of this crucial task – the expulsion of Muslims from the Srebrenica enclave. There will be no retreat when it comes to the Srebrenica enclave, we must advance. The enemy’s life has to be made unbearable and their temporary stay in the enclave impossible so that they leave the enclave *en masse* as soon as possible, realising that they cannot survive there.⁵²

In March 1995, political and military leaders in the Republika Srpska issued orders calling for, *inter alia*, the creation of “an unbearable situation of total insecurity, with no hope of further survival or life” for the inhabitants of Srebrenica.⁵³

⁵⁰ Resolution 819 (1993) adopted by the Security Council at its 3199th meeting, on 16 April 1993, S/RES/819 (1993) (“Security Council Resolution 819 (1993)”).

⁵¹ Finally, the Security Council demanded the “unimpeded delivery of humanitarian assistance to all parts of the Republic of Bosnia and Herzegovina, in particular to the civilian population of Srebrenica and its surrounding areas,” recalling that any impediment to the delivery of humanitarian assistance “constitute a serious violation of international humanitarian law.” Security Council Resolution 819 (1993).

⁵² Indictment, para. 22.

⁵³ Indictment, para. 23, citing Radovan Karadžić’s instructions in “Operation Directive 07” issued by the Supreme Command of the Armed Forces of the Republika Srpska, on 8 March 1995.

28. Between 6-11 July 1995, the enclave of Srebrenica was shelled and attacked by units of the Drina Corps.⁵⁴ According to the Indictment, “[i]n the several days following this attack on Srebrenica, VRS forces captured, detained, summarily executed, and buried over 7000 Bosnian Muslim men and boys from the Srebrenica enclave, and forcibly transferred the Bosnian Muslim women and children of Srebrenica out of the enclave.”⁵⁵

29. The crime of persecutions for which Dragan Obrenović was charged in Count 5 of the Indictment was carried out through the following means: (a) the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons; (b) the cruel and inhuman treatment of Bosnian Muslim civilians, including beatings of civilians in schools and other detention centres in the Zvornik area on 13 through to 16 July 1995;⁵⁶ (c) the terrorisation of Bosnian Muslim civilians from Srebrenica and Potočari from 13 to 16 July 1995;⁵⁷ and (d) the destruction of personal property and effects of Bosnian Muslim civilians from Srebrenica who were detained and murdered in the Zvornik area.⁵⁸

A. Murder of Thousands of Bosnian Muslim Civilians

30. Within approximately one week in mid-July 1995, approximately 6,000 Bosnian men who had escaped in “the column” from Srebrenica were captured, detained and executed in various locations in the Bratunac and Zvornik municipalities. Along the route between Bratunac and Zvornik, the names previously used to mark settlements and communities or places of learning, culture and work or for geographic features are now used to identify mass execution sites: Jadar River, Cerska Valley, Petkovci School, Pilica Cultural Centre, and the villages of Tišća and Orahovac.⁵⁹ At one location, Branjevo Military Farm, approximately 1,200 Bosnian Muslim men

⁵⁴ Indictment, para. 25.

⁵⁵ Indictment, para. 26.

⁵⁶ The acts specified here are taken from the Plea Agreement, para. 6(b)(2). This language varies slightly from that contained in paragraph 59 of the Indictment; the Trial Chamber finds the acts agreed to by the Parties as a more accurate reflection of the acts upon which the criminal liability of Dragan Obrenović is based and to be the criminal conduct upon which Dragan Obrenović pled guilty. Accordingly, the Trial Chamber considers that paragraph 59(b) of the Indictment is amended so as to read: “the cruel and inhuman treatment of Bosnian Muslim civilians, including beatings of civilians in schools and other detention centres in the Zvornik area on 13 through to 16 July 1995.”

⁵⁷ The acts specified here are taken from the Plea Agreement, para. 6(b)(3). This language varies slightly from that contained in paragraph 59 of the Indictment; the Trial Chamber finds the acts agreed to by the Parties as a more accurate reflection of the acts upon which the criminal liability of Dragan Obrenović is based and to be the criminal conduct upon which Dragan Obrenović pled guilty. Accordingly, the Trial Chamber considers that paragraph 59(c) of the Indictment is amended so as to include read: “the terrorisation of Bosnian Muslim civilians from Srebrenica and Potočari from 13 to 16 July 1995.”

⁵⁸ The acts specified here are taken from the Plea Agreement, para. 6(b)(4). This language varies slightly from that contained in paragraph 59 of the Indictment; the Trial Chamber finds the acts agreed to by the Parties as a more accurate reflection of the acts upon which the criminal liability of Dragan Obrenović is based and to be the criminal conduct upon which Dragan Obrenović pled guilty. Accordingly, the Trial Chamber considers that paragraph 59(d) of the Indictment is amended so as to include read: “the destruction of personal property and effects of Bosnian Muslim civilians from Srebrenica who were detained and murdered in the Zvornik area.”

⁵⁹ See, Indictment, para. 46.

who had been captured from the column were executed by automatic weapon fire.⁶⁰ Over 1,000 prisoners were executed at the Kravica warehouse on 13 July 1995;⁶¹ Dragan Obrenović learned about the killing of the prisoners detained in the Kravica warehouse on 15 July 1995.⁶²

31. Members of the Zvornik Brigade, including members of the Military Police, participated in mass executions of Bosnian Muslim men either directly as executioners⁶³ or by providing assistance by guarding the prisoners and transporting the captured men to execution sites.⁶⁴ Members of the Zvornik Brigade further assisted in transporting the bodies of executed Bosnian Muslim men to mass grave sites.⁶⁵

32. Dragan Obrenović confirms that, in the evening of 13 July 1995, he was informed by Drago Nikolić, Chief of Security of the Zvornik Brigade, of the plan to bring a “huge number of Muslim prisoners” from Bratunac to Zvornik to be executed there. Dragan Obrenović further states that he understood ‘huge number of Muslim prisoners’ “to mean thousands of Muslim prisoners as ... [he] had already known from intelligence and other information received earlier in the day that thousands had been captured down in the Konjević Polje area.”⁶⁶ According to Drago Nikolić, everyone, including Dragan Obrenović’s commander, knew about the plan to kill the prisoners.⁶⁷

33. Dragan Obrenović states that he “was aware that the killing operation was occurring” when he was back in the Zvornik Brigade Headquarters on the morning of 15 July 1995; Dragan Jokić had told him about problems with the burials of prisoners executed and the guarding of prisoners still to be executed.⁶⁸

34. On 16 July 1995, Dragan Obrenović was told by Ostoja Stanišić, Commander of the 6th Battalion of the Zvornik Brigade, that Muslim prisoners brought by Colonel Ljubiša Beara, Chief of Security of the VRS Main Staff, to the Petkovci School had been taken to the “Dam” near Petkovci to be executed; the last group of prisoners was executed at the school and members of the 6th Battalion of the Zvornik Brigade had to remove them to a mass grave at the “Dam”.⁶⁹

⁶⁰ Indictment, para. 46.10.

⁶¹ Indictment, para. 46.4.

⁶² Statement of Facts, page 4.

⁶³ Specifically, Dragan Obrenović heard that Drago Nikolić, the Chief of Security of the Zvornik Brigade, participated in the execution at a school in Orahovac. *See*, Statement of Facts, page 6.

⁶⁴ *See*, Statement of Facts, page 5.

⁶⁵ Statement of Facts, pages 2 and 6; Indictment, paras 46.9 and 46.10.

⁶⁶ Statement of Facts, page 1.

⁶⁷ Statement of Facts, page 1.

⁶⁸ Statement of Facts, page 3.

⁶⁹ Indictment, para. 46.8; Statement of Facts, page 6.

B. Cruel and Inhuman Treatment of Bosnian Muslim Civilians

35. The Bosnian Muslim civilians were subjected to acts of violence, including beatings at schools and other detention centres in the Zvornik area. In Luke, near Tišća, some of the women who had been separated from their male relatives in Potočari were “selected” by VRS soldiers to go to a school, on 13 July 1995 where they were abused and assaulted; men and boys were also selected and abused before being taken for execution.⁷⁰

C. Terrorising of Bosnian Muslim Civilians from Srebrenica and Potočari

36. The Bosnian Muslim civilians who had been transferred from Srebrenica and Potočari to Zvornik during the dates of 13 to 16 July 1995 were subjected to terrorisation. At detention centres and execution sites, the civilians were mistreated and abused.

D. Destruction of Personal Property

37. Beginning around 12 July 1995 and continuing throughout the period of the executions, the personal property of the Bosnian Muslim prisoners, including their identification documents, was confiscated and destroyed by members of the VRS and the MUP in the Zvornik area.⁷¹

III. INDIVIDUAL CRIMINAL RESPONSIBILITY

38. Dragan Obrenović is held criminally responsible for the crime of persecutions pursuant to Article 7(1) and 7 (3) of the Statute. Dragan Obrenović is charged and has accepted responsibility under Article 7(1) for committing, planning, instigating, ordering, and otherwise aiding and abetting in the planning, preparation, and execution of persecutions. The Indictment specifies that the use of the word “commit[ing]” does not intend to suggest that Dragan Obrenović necessarily physically and personally perpetrated the crimes with which he was charged.⁷²

39. Additionally, the Indictment specified that “committing” can be accomplished by participating in a joint criminal enterprise. Dragan Obrenović is charged and has accepted responsibility for being a member of a joint criminal enterprise.⁷³

40. Additionally, Dragan Obrenović is charged with and has accepted responsibility under the principle of command responsibility pursuant to Article 7(3) of the Statute; thus, by virtue of his position as the Acting Commander or Deputy Commander/ Chief of Staff, he is criminally

⁷⁰ Indictment, para. 46.5.

⁷¹ Indictment, para. 42.

⁷² Indictment, para. 27.

responsible for the acts of his subordinates when he knew or had reason to know that his subordinates were about to commit criminal acts or had done so and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.⁷⁴

41. The Trial Chamber will address its findings in relation to the individual criminal responsibility of Dragan Obrenović below as part of its consideration of the gravity of the offence.

IV. PENALTIES AND SENTENCING

A. Applicable Law of the Tribunal

42. Article 24 of the Statute prescribes the possible penalties upon conviction before the Tribunal and the factors to be taken into account in determining the sentence of an accused.

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.
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.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

43. Rules 100 and 101 of the Rules are the provisions applicable to the penalty of imprisonment.⁷⁵

Rule 100

Sentencing Procedure on a Guilty Plea

- (A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.
- (B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102 (B).

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.

⁷³ Indictment, paras 30-32.

⁷⁴ Indictment, para. 29.

⁷⁵ Rules 105 and 106 are the implementing provisions for Article 24(3) of the Statute.

- (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;
 - (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.
- (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.

44. Article 27 of the Statute is the applicable provision for the enforcement of sentences. It provides:

Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

Furthermore, the competence and procedure for pardon or commutation of sentences is defined in Article 28 of the Statute.⁷⁶

B. Principles and Purposes of Punishment

45. In order to assess the purposes of punishment in the context of the Tribunal, the Trial Chamber finds that its assessment must begin by examining the purpose of the Tribunal, which is the prosecution of persons for crimes committed in the former Yugoslavia during a conflict situation, based on the principles of international humanitarian law. It was anticipated that through criminal proceedings, the Tribunal would contribute to peace and reconciliation in the former Yugoslavia, and beyond, through the establishment of the truth and the promotion of the rule of law. Punishment must, therefore, reflect both the calls for justice from the persons who have been victims or suffered because of the crimes, as well as respond to the call from the international community to end impunity for human rights violations and crimes committed during armed conflicts.

⁷⁶ Article 28 (“Pardon or commutation of sentences”) provides, “If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law.”

46. In this case, as in all cases before the Tribunal, the Trial Chamber is called upon to determine a sentence for an individual, based on his particular conduct and circumstances. No individual should be punished for the criminal liability of others and no case should be viewed as representing the final accounting for a particular crime – especially crimes such as those committed following the fall of Srebrenica for which numerous people may be held criminally liable; each person must only be called to answer, and be punished, for his particular share of the criminal activity. Individual accountability for the crimes committed and commensurate punishment is the aim of criminal proceedings involving such grave crimes. Each case is part of a *process*, of which the Tribunal itself is only one part. This process, on one level promotes the re-establishment of the rule of law and crime prevention, and on another, reconciliation and peace through justice.

47. As the Tribunal is applying international law, it must have due regard for the impact of its application of internationally recognised norms and principles on the global level. Thus, a trial chamber must consider its obligations to the individual accused in light of its responsibility to ensure that it is upholding the purposes and principles of international criminal law. This task becomes particularly difficult in relation to punishment. A review of the history of punishment reveals that the forms of punishment reflect norms and values of a particular society at a given time. The Trial Chamber must therefore discern and apply the underlying principles and rationale for punishment that respond to both the needs of the society of the former Yugoslavia and the international community.

48. The Trial Chamber has considered the purposes of punishment as contained in the SFRY Criminal Code. Under the SFRY Criminal Code, the purposes of punishment are:

(1) preventing the offender from committing criminal acts and his rehabilitation; (2) rehabilitative influence on others not to commit criminal acts; (3) strengthening the moral fibre of a socialist self-managing society and influence on the development of citizens' social responsibility and discipline.⁷⁷

Thus, deterrence, both specific and general, and rehabilitation were primary purposes of punishment in the former Yugoslavia. The Trial Chamber interprets the third purpose to include promotion of the rule of law as well as safeguarding society.

49. The Trial Chamber finds that the purposes of punishment recognised under the jurisprudence of the Tribunal are retribution, deterrence and rehabilitation.

⁷⁷ SFRY Criminal Code (1976), Article 33. *See also*, the Criminal Code of the Federation of Bosnia and Herzegovina, published by "Official Gazette of Federation of Bosnia and Herzegovina", No. 43-98 (1998), Article 38, which lists two purposes of punishment: "(1) prevention of perpetrator committing criminal offenses and his/her rehabilitation; (2) preventive influence on others not to commit criminal offenses."

50. The Trial Chamber observes that by the very wording of Article 24(2) of the Statute and the subsequent jurisprudence of the Tribunal, which has focused on the gravity of the offence as the primary consideration in determining a sentence, retribution or “just deserts” as a purpose of punishment has enjoyed prominence.⁷⁸ In light of the purposes of the Tribunal, retribution is understood as the expression of condemnation and outrage of the international community at such grave violations of, and disregard for, fundamental human rights at a time when people may be at their most vulnerable, namely during armed conflict.⁷⁹ Recourse to the gravity of the offence, with considerations for the role of the accused in the commission of the offence and the impact of the offence on victims, should help guide a trial chamber in its determination of a sentence that reflects the censure and indignation of the international community.

51. It is hoped that the Tribunal and other international courts are bringing about the development of a culture of *respect* for the rule of law and thereby deterring the commission of crimes.

52. One may ask whether the individuals who are called before this Tribunal as accused are simply an instrument through which to achieve the goal of the establishment of the rule of law. The answer is no. Indeed, the Appeals Chamber has held that deterrence should not be given undue prominence in the overall assessment of a sentence.⁸⁰ The principles of international humanitarian law are well established. Professional soldiers in the former Yugoslavia, including Dragan Obrenović, were educated about the requirements of international humanitarian law and the responsibility that fell particularly upon officers to ensure that all persons involved in armed conflict abided by the rules of war. The fact that accused did not consider it *likely* that they would be called to account for their actions during the armed conflict in the former Yugoslavia and held responsible for violations of international humanitarian law is no argument that they should not be punished.

53. The Trial Chamber finds that punishment must strive to attain a further goal: rehabilitation. The Trial Chamber observes that the concept of rehabilitation can be thought of broadly and can encompass all stages of the criminal proceedings, and not simply the post-conviction stage. Particularly in cases where the crime was committed on a discriminatory basis, like this case, the process of coming face-to-face with the statements of victims, if not the victims themselves, can inspire – if not reawaken – tolerance and understanding of “the other”, thereby making it less likely that if given an opportunity to act in a discriminatory manner again, an accused would do so.

⁷⁸ See, e.g., *Čelebići* Appeal Judgement, para. 806, *Aleksovski* Appeal Judgement, para. 185.

⁷⁹ See, *Aleksovski* Appeal Judgement, para. 185, *Kupreškić* Trial Judgement, para. 848.

⁸⁰ *Tadić* Sentencing Appeal Judgement, para. 48, endorsed by the *Aleksovski* Appeal Judgement, para. 185.

Criminal proceedings are only the starting point; the process continues upon the return of a convicted person to society and makes an active contribution towards reconciliation. The Trial Chamber finds that rehabilitation may be particularly relevant in this case, given the particular circumstances of the accused, as will be addressed below.

54. In conclusion, the Trial Chamber endorses these principles of punishment that readily lend themselves to promoting the rule of law and the realisation that violations thereof will not be tolerated.

C. Sentencing Factors

55. Article 24 of the Statute and Rule 101 of the Rules provide the framework within which the Trial Chamber shall determine the sentence to be imposed. These factors are not exhaustive, but provide guidance in the effort to ensure that the punishment imposed is just and equitable.⁸¹ Among the factors included are the gravity of the offence and the individual circumstances of the convicted person, as well as the sentencing practice in the former Yugoslavia. The individual circumstances of the convicted person include consideration of aggravating and mitigating factors.

1. Penalties Imposed in the former Yugoslavia

56. It is well recognised within the jurisprudence of the Tribunal that although it must consider sentencing practices in the former Yugoslavia, the Tribunal is not bound by such practice. Rather, the Tribunal should refer to this practice as an aid in determining an appropriate sentence.⁸² Rule 101(A) of the Rules, which grants the power to imprison for the remainder of the convicted person's life, is indicative of the fact that the Trial Chamber is not bound by a maximum sentence possible under a particular national legal system.⁸³

57. In examining the sentencing practices of the former Yugoslavia, the Trial Chamber takes into consideration the historical and political circumstances particular to the region and the legal implications thereof: the Criminal Code of the Socialist Federative Republic of Yugoslavia was adopted in 1976, and served as the applicable law in the entire territory of the former Yugoslavia until 1991. Following the break-up of SFRY, most of the newly formed countries adopted their own criminal codes between 1994 and 1998, drawing heavily on the provisions of the SFRY

⁸¹ See, Article 21(1) of the Statute.

⁸² *Tadić* Sentencing Appeal Judgement, para. 20, *Kupreškić* Appeal Judgement, para. 418, *Jelisić* Appeal Judgement, para. 117 and *Čelebići* Appeal Judgement, para. 813. The Prosecution submits that such sentencing practice is to be used as a tool to guide, but not delimit, the determination of an appropriate sentence. Prosecution Sentencing Brief, para. 31.

⁸³ *Tadić* Sentencing Appeal Judgement, para. 21.

Criminal Code. At the time relevant to this Indictment, the law that was applicable in Bosnia and Herzegovina was the SFRY Criminal Code.

58. The Trial Chamber takes into consideration the offences and the punishments that could have been imposed under the criminal law of the former Yugoslavia. Article 34 of the SFRY Criminal Code establishes the types of punishment to be imposed, including capital punishment and imprisonment. Further, Article 38 of the SFRY Criminal Code sets out the terms of imprisonment: although imprisonment could not usually exceed 15 years, this was extended to a maximum of 20 years for those crimes eligible for the death penalty.⁸⁴ In 1977, the death penalty was abolished in some republics of the SFRY by constitutional amendment, but Bosnia and Herzegovina was not among them.⁸⁵ The Trial Chamber finds that when Bosnia and Herzegovina abolished the death penalty in 1998, it was replaced by imprisonment of 20-40 years for the gravest criminal offences in the Federation of Bosnia and Herzegovina and with life imprisonment in the Republika Srpska in October 2000.⁸⁶

59. Chapter XVI of the SFRY Criminal Code relates to “Criminal Acts Against Humanity and International Law”, and covers crimes committed during armed conflict. Both the Prosecution and Defence direct the Trial Chamber’s attention towards Article 142 of the SFRY Criminal Code.⁸⁷ Article 142 permits a range of sentence from five years as a minimum to the maximum penalty of death for violations of international law in times of war or armed conflict.⁸⁸ Subsequent provisions elaborate upon specific crimes and provide for different punishments.⁸⁹

⁸⁴ Article 38 of the SFRY Criminal Code states, “Imprisonment: (1) The punishment of imprisonment may not be shorter than 15 days nor longer than 15 years. (2) The court may impose a punishment of imprisonment for a term of 20 years for criminal acts eligible for the death penalty. (3) For criminal acts committed with intent for which the punishment of fifteen years imprisonment may be imposed under statute, and which were perpetrated under particularly aggravating circumstances or caused especially grave consequences, a punishment of imprisonment for a term of 20 years may be imposed when so provided by statute.”

⁸⁵ In light of the Statute of the Tribunal, the Prosecution submits that life imprisonment has been interpreted by the Tribunal as commensurate to the highest penalty that could be imposed in the former Yugoslavia. The Prosecution submits that when Bosnia and Herzegovina abolished the death penalty in 1998, this sentence was replaced by imprisonment of 20-40 years for gravest criminal offence. Prosecution Sentencing Brief, paras 35-36. The Defence submits that the maximum penalty for the most serious offences is 20 years imprisonment, recalling that when capital punishment was abolished in some republics of the SFRY, other than Bosnia and Herzegovina, a 20-year sentence was provided. Therefore, the Obrenović Defence submits that the punishment applicable to Dragan Obrenović is a maximum of 20 years imprisonment. Obrenović Sentencing Brief, para. 26.

⁸⁶ Article 38 of the Criminal Code of the Federation of Bosnia and Herzegovina provides for long term imprisonment ranging from 20 to 40 years for “the gravest forms of criminal offences [...] committed with intention.” Article 32 of the Criminal Code of the Republika Srpska, which entered into force on 1 October 2000, provides for life imprisonment as a method of punishment. Further, Article 451 provides that “The final and binding death punishment pronounced before the entry into force of this Code is turned into the sentence of life imprisonment.”

⁸⁷ Prosecution Sentencing Brief, para. 34. The Obrenović Defence submits that Article 142(1) of the SFRY Criminal Code gives effect to Geneva Convention IV and Additional Protocol I and II, which are under the jurisdiction of the Tribunal by incorporation into Article 2 of the Statute. However, the SFRY Criminal Code does not give effect to crimes against humanity, which are incorporated in Article 5 of the Statute, Obrenović Sentencing Brief, paras 25-26.

⁸⁸ Article 142 of the SFRY Criminal Code (“War crime against the civilian population”) states, in part, “Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, order that civilian

60. The Trial Chamber finds that of the provisions within the SFRY Criminal Code, Article 142 is most analogous to Article 5(h) of the Statute of the Tribunal and most closely reflects the criminal conduct for which Dragan Obrenović has been convicted. In the former Yugoslavia, such criminal conduct would have been eligible for the death penalty, or twenty years in lieu of the death penalty, based on the discretion of the judge. Subsequent to the abolition of the death penalty, the Trial Chamber finds that long-term imprisonment is foreseen. The Trial Chamber takes these factors relating to sentencing in the former Yugoslavia into consideration in making its determination in this case.

2. Gravity of the Offence

61. Article 24(2) of the Statute dictates that the Trial Chamber must consider the gravity of the offence in determining sentence. As expressed by the *Kupreškić* Trial Judgement:

The sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of participation of the accused in the crime.⁹⁰

62. The Appeals Chamber has endorsed the view that the gravity of the offence is the “litmus test” in the determination of an appropriate sentence.⁹¹ Furthermore, the Appeals Chamber has stressed that the sentence should be individualised and that the particular circumstances of the case are therefore of primary importance.⁹²

63. In assessing the “gravity of the offence,” the Trial Chamber considers it appropriate to first examine the particular circumstances in which, and by which, persecutions was committed in this case. The Trial Chamber will next examine the form and degree of participation of Dragan Obrenović in that crime.

population be subject to killings, torture, inhuman treatment, biological experiments, immense suffering of violation of bodily integrity or health; dislocation or displacement of forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror, taking hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of enemy’s army or in its intelligence service or administration; forcible labour, starvation of the population, property confiscation, pillaging, [...] who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty.”

⁸⁹ See, e.g. Articles 154 (“Racial and other discrimination”); 145 (“Organizing a group and instigating the commission of genocide and war crimes”); 141 (“genocide”); 143 (“war crime against the wounded and sick”); and 144 (“war crime against prisoners of war”) of the SFRY Criminal Code.

⁹⁰ *Kupreškić* Trial Judgement, para. 852. The Parties agree that the gravity of the criminal conduct is considered the most important factor in the sentencing process and submit that such a determination includes not only the nature of the crime but also the circumstances in the particular case, which encompass the extent and nature of involvement of the accused. Prosecution Sentencing Brief, paras 8-9; Obrenović Sentencing Brief, para. 29.

⁹¹ *Aleksovski* Appeal Judgement, para. 182 and *Čelebići* Appeal Judgement, para. 731 cite the *Čelebići* Trial Judgement, para. 1225 with approval.

⁹² *Jelišić* Appeal Judgement, para. 101, quoting with approval *Kupreškić* Trial Judgement, para. 852.

(a) Particular Circumstances of the Commission of Persecutions in this Case

64. The crime to which Dragan Obrenović has pled guilty is persecutions, a crime against humanity. This crime requires that the perpetrator commit a discriminatory act or omission, which denies or infringes upon a fundamental right recognised by international customary or treaty law, with the intent to discriminate on racial, religious or political grounds.⁹³ These elements are in addition to the basic requirements of Article 5 of the Statute for crimes against humanity.⁹⁴ Various acts or omissions of a discriminatory character have been found by the Tribunal to constitute persecutions.⁹⁵

65. The Trial Chamber considers that the seriousness of the crime of persecutions cannot be emphasised enough: this is a crime that can be committed in different manners and incorporates manifold acts.⁹⁶ It is the abhorrent discriminatory intent behind the commission of this crime against humanity that renders it particularly grave. The Trial Chamber further recalls the finding of the Appeals Chamber in relation to crimes against humanity generally,

[b]ecause of their heinousness and magnitude [crimes against humanity] constitute egregious attacks on human dignity, on the very notion of humaneness. They consequently affect, or should affect, each and every member of [human]kind, whatever his or her nationality, ethnic group and location.⁹⁷

66. The Prosecution submits that in making a determination regarding the seriousness of the crime, the individual circumstances and consequences of the crime need to be considered.⁹⁸ The Prosecution asserts that the campaign of persecution that Dragan Obrenović pleaded guilty to was of an enormous scale and encompassed a criminal enterprise to murder over 7,000 Bosnian Muslim men and displace over 30,000 women, children and elderly men. The Prosecution further submits that this campaign was conducted with particular brutality: detained men were exposed to terrible conditions, were abused and were not given any food or water for days preceding execution.⁹⁹ At the execution sites including Orahovac, Petkovci Dam, Pilica Cultural Centre, Branjevo Farm and

⁹³ See, e.g., *Krnjelac* Appeal Judgement, para. 185.

⁹⁴ These requirements are: there must be an attack; the acts of the accused form part of this attack; the attack must be directed against any civilian population; the attack should be widespread or systematic; the perpetrator should know that his acts form part of a pattern of widespread or systematic crimes committed against a civilian population, and know that his acts fit such a pattern, *Kunarac* Appeal Judgement, para. 85.

⁹⁵ Acts found to constitute persecution include, *inter alia*, murder, imprisonment, unlawful detention of civilians, deportation or forcible transfer, comprehensive destruction of homes and property, destruction of towns, villages and other public or private property and the plunder of property, trench-digging and the use of hostages and human shields, destruction and damage of religious or educational institutions, *Kvočka* Trial Judgement, para. 186 (references omitted).

⁹⁶ The Trial Chamber considers, with approval, the Prosecution's submissions in the Prosecution Sentencing Brief, paras 10-11.

⁹⁷ *Erdemović* Appeal Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah, para. 21.

⁹⁸ Prosecution Sentencing Brief, para. 12.

⁹⁹ Prosecution Sentencing Brief, para. 14.

Kozluk, victims were gunned down, were further abused while dying and eventually died agonising deaths.¹⁰⁰

67. The Defence draws a comparison of the number of persons killed in this case, to those killed in relation to the case of Biljana Plavšić, which figure was nearly 50,000.¹⁰¹ However, Dragan Obrenović does not contest the gravity of the offence in which over 7,000 people were killed.¹⁰²

68. The Trial Chamber has examined the evidence adduced by the Prosecution related to the crimes following the fall of Srebrenica, in the form of statements under Rule 92 *bis*.¹⁰³ This evidence illustrates the nature and gravity of the crimes and the impact of these crimes not only upon specific individuals, but also upon the entire Bosnian Muslim community.

69. Witness I, a farmer and bricklayer born in Srebrenica, had spent most of his life in Srebrenica. He fled to Potočari with his family on 11 July 1995.¹⁰⁴ After being separated from his family,¹⁰⁵ Witness I was taken on a bus with other men and detained on the bus in Bratunac. After spending two days detained in a school in Bratunac, having witnessed severe mistreatment of fellow detainees and hearing screams of men taken outside, followed by shots and then silence, Witness I was once again placed on a bus and taken to another school in Pilica, which was in the Zvornik Brigade's area of responsibility. During this entire period almost no food or water was provided to the detainees, and beatings and other forms of mistreatment were common.¹⁰⁶

70. According to Witness I, on the second day, the men were told that they would be going to Tuzla. Shortly thereafter, Serb soldiers brought in sheets to be torn up and used to tie the detainees' hands. Instead of being taken to freedom, Witness I and the other Bosnian Muslim detainees were taken by bus to a hilltop where he saw how columns of detainees were simply mowed down by bursts of gunfire. When it was Witness I's turn, he also fell and lay among the dead bodies of his fellow detainees as column after column of men were brought to the spot and executed.¹⁰⁷ When he finally was able to stand up and look around, he saw an estimated 1,000 to 1,500 dead people around him.¹⁰⁸

¹⁰⁰ Prosecution Sentencing Brief, para. 15.

¹⁰¹ Obrenović Sentencing Brief, para. 30.

¹⁰² Obrenović Sentencing Brief, para. 30 citing the *Krstić* Trial Judgement, para. 84 in relation to the number of persons killed.

¹⁰³ *See, supra.* footnote 45.

¹⁰⁴ Prosecution Ex. PS-2, Witness I, KT. 2365-66.

¹⁰⁵ Prosecution Ex. PS-2, Witness I, KT. 2371.

¹⁰⁶ Prosecution Ex. PS-2, Witness I, KT. 2382-86.

¹⁰⁷ Prosecution Ex. PS-2, Witness I, KT. 2391-92.

¹⁰⁸ Prosecution Ex. PS-2, Witness I, KT. 2393.

71. Witness L, who survived the execution at the Orahovac execution site, described how a man who had survived the bursts of fire begged a Serb soldier to “[f]inish [him] off” and how this Serb soldier just replied, “[s]lowly. Slowly.”¹⁰⁹ The Serb soldiers then walked through the fallen bodies and “fired single shots at the people who were probably [still] moving” in a cold-blooded manner.¹¹⁰ Blindfolded and lying on his stomach, Witness L had to listen helplessly when trucks arrived and the executions continued until late in the night.¹¹¹

72. Witness O, who in July 1995 just had turned 17 years old, was one of many Bosnian Muslim men who, instead of going to the UN compound at Potočari, left for the woods for fear for their lives on 11 July 1995.¹¹² On 13 July 1995, announcements were heard from loudspeakers that if the men surrendered to the Bosnian Serbs they would be treated in accordance with the Geneva Conventions.¹¹³ The men decided to give themselves up to the Bosnian Serb forces along the Bratunac-Konjević Polje road, near Sandići. At one point during the late afternoon of 13 July 1995, the men, then numbering between 1,000 and 2,000, were rounded up in a meadow and told that they would be taken to hangars in Bratunac where they would spend the night in order to be exchanged the following day.¹¹⁴ Neither food nor water was given to them and during the evening large trucks arrived to be filled with detainees. According to Witness O’s estimates, between 100 and 200 men were on each truck.¹¹⁵ The conditions on the back of the trucks were cramped, stuffy, and hot, and all men were very thirsty. Later in the evening, the trucks reached Bratunac and the men were forced to spend the night on the cramped trucks.¹¹⁶

73. The next morning, the trucks continued towards Karakaj. The conditions were the same as the day and night before and many men fainted.¹¹⁷ In the afternoon, the buses stopped and the detained men were moved by the Bosnian Serb soldiers into the Petkovci School. The soldiers beat and verbally abused the detainees.¹¹⁸ The classrooms were overcrowded and the air soon ran out. The detainees were not allowed to use the toilet and the floor was consequently covered with urine; people were so thirsty that they even drank it from the floor.¹¹⁹ At one point, the soldiers called people from various locations out and the men in the classrooms could hear blows and moans. The

¹⁰⁹ Prosecution Ex. PS-5, Witness L, KT. 2690.

¹¹⁰ Prosecution Ex. PS-5, Witness L, KT. 2690.

¹¹¹ Prosecution Ex. PS-5, Witness L, KT. 2691.

¹¹² Prosecution Ex. PS-6, Witness O, KT. 2863.

¹¹³ Prosecution Ex. PS-6, Witness O, KT. 2865.

¹¹⁴ Prosecution Ex. PS-6, Witness O, KT. 2874-77.

¹¹⁵ Prosecution Ex. PS-6, Witness O, KT. 2879.

¹¹⁶ Prosecution Ex. PS-6, Witness O, KT. 2881.

¹¹⁷ Prosecution Ex. PS-6, Witness O, KT. 2884-85.

¹¹⁸ Prosecution Ex. PS-6, Witness O, KT. 2890.

¹¹⁹ Prosecution Ex. PS-6, Witness O, KT. 2902-03.

men thus called out never returned.¹²⁰ When darkness fell, the Bosnian Serb soldiers ordered groups of three to five detainees to come out, after which bursts of fire could be heard; this continued until very late in the evening.¹²¹ Later in the night, the hands of the detainees were tied with string and again the detainees boarded the trucks. They were driven to the Petkovci Dam and when they arrived, the Bosnian Serb soldiers ordered them to leave the trucks in groups of five.¹²² When it was Witness O's turn and he reached the execution site, he saw row after row of dead people on the ground. He was told to stand with his back to the several Bosnian Serb soldiers present and to start falling towards the ground.¹²³ At this point, firing started and the men fell to the ground in rows.¹²⁴ Witness O was wounded in his chest, arm and leg, and spent the remainder of the night lying face down listening to the murder of row after row of men. After the executions were completed, the Bosnian Serb soldiers would walk among the dead laughing and shooting sporadically in the bodies on the ground.¹²⁵ Together with another wounded man, Witness O eventually managed to get away from the execution site. In the morning of 15 July 1995, before leaving the area, they saw together how excavators were loading dead bodies.¹²⁶ Eventually, Witness O and the injured man reached territory controlled by the Bosnian Muslim Army.¹²⁷

74. Witnesses DD, who was born in Srebrenica and lived in a neighbouring village, described her life after being separated from her two sons and husband, as a refugee living in a collective centre with her surviving son. In response to a comparison between her life before the events at Srebrenica and now she stated, "[t]here's no comparison. I've told you my whole life, what it was like before and what it is like now. How can you compare the two?"¹²⁸ Witness DD stated that she sometimes thought that it would have been better if she and her son had not survived.¹²⁹ Upon being asked what she thought has happened to her husband and two sons, she replied:

How do I know? As a mother, I still have hope. I just can't believe that this is true. How is it possible that a human being could do something like this, could destroy everything, could kill so many people? Just imagine this youngest boy I had, those little hands of his, how could they be dead? I imagine those hands picking strawberries, reading books, going to school, going on excursions. Every morning I wake up, I cover my eyes not to look at other children going to school, and husbands going to work, holding hands.¹³⁰

¹²⁰ Prosecution Ex. PS-6, Witness O, KT. 2902.

¹²¹ Prosecution Ex. PS-6, Witness O, KT. 2903.

¹²² Prosecution Ex. PS-6, Witness O, KT. 2904, 2906, 2909-10.

¹²³ Prosecution Ex. PS-6, Witness O, KT. 2912.

¹²⁴ Prosecution Ex. PS-6, Witness O, KT. 2912.

¹²⁵ Prosecution Ex. PS-6, Witness O, KT. 2914-16.

¹²⁶ Prosecution Ex. PS-6, Witness O, KT. 2922-26.

¹²⁷ Prosecution Ex. PS-6, Witness O, KT. 2927.

¹²⁸ Prosecution Ex. PS-4, Witness DD, KT. 5760.

¹²⁹ Prosecution Ex. PS-4, Witness DD, KT. 5760-61.

¹³⁰ Prosecution Ex. PS-4, Witness DD, KT. 5761.

75. Witness DD further highlighted the particular effect of the crimes committed following the fall of Srebrenica on the women. As a housewife and mother of four, she had looked to her husband to take care of all decisions regarding the family, official matters and finance, and “nothing could be done without him.”¹³¹ Witness DD now lives in a collection centre is unemployed and relies on the 140 convertible marks she receives from her husband’s former employment.

76. The impact of the events of Srebrenica upon the lives of the families affected has created what is known as the “Srebrenica syndrome”.¹³² The greatest and most stressful traumatic event for Srebrenica survivors is the disappearance of a large number of men, such that every woman suffered the loss of a husband, a father, brothers or uncles. In addition to the loss of numerous relatives,¹³³ many of the families do not know the truth regarding the fate of their family members and are still waiting for news.¹³⁴ Children who witnessed separations suffer from a range of problems years after the events.¹³⁵

Findings

77. The Trial Chamber, in making its determination regarding the gravity and nature of the offence, has reviewed the evidence presented before it. The Trial Chamber has considered the purpose of the joint criminal enterprise in which Dragan Obrenović was a participant. The crimes committed following the fall of Srebrenica were of an enormous magnitude and scale, and the gravity of these crimes is unquestionable. Over 7,000 men were separated from their families, murdered and buried in mass graves. The manner in which the executions were carried out, as described by Witness I, Witness L, and Witness O was both methodical and chilling in its “efficiency” and display of utter inhumanity. Over eight years later, the impact of the crimes committed after the fall of Srebrenica continue to be felt upon the women, children and men who survived the horrific events.

¹³¹ Prosecution Ex. PS-4, Witness DD, KT. 5746-47.

¹³² Prosecution Ex. PS-3, Witness Ibrahimfendić, KT. 5817-18. Teufika Ibrahimfendić is a psychologist who specialises in war trauma.

¹³³ Prosecution Ex. PS-3, Witness Ibrahimfendić, KT. 5817: “A woman I worked with, 56 male members of her immediate and broader family went missing in a single day.”

¹³⁴ Prosecution Ex. PS-3, Witness Ibrahimfendić, KT. 5817-18. “The fact that they do not know the truth – even the worst truth, would be better for them than this uncertainty, this constant, perpetual uncertainty as to what happened to their loved ones, because they keep waiting, they’re waiting for something. They cannot begin life, they cannot face up with the reality of the death of a missing person. They only remember the moment they bade farewell, the moment when they had agreed to meet in a spot that would be safe. And this is still something that guides them in their thoughts. This is exhausting, discouraging. They think that life has no value.” *Id.*, T. 5818.

¹³⁵ Prosecution Ex. PS-3, Witness Ibrahimfendić, KT. 5818-24.

(b) Form and Degree of Participation of Dragan Obrenović in the Crime of Persecutions

78. It is recalled that the basis of liability for crimes within the jurisdiction of the Tribunal is *individual* criminal responsibility.¹³⁶ An accused shall be held liable for *his* actions and omissions – no more and no less. In crimes as massive as those committed following the fall of Srebrenica, the Trial Chamber finds that it must be particularly vigilant in ensuring that its consideration of the gravity of the offence focuses on those acts or omissions of the individual accused for which he is personally responsible. The Trial Chamber recalls that there are at least seven people for whom indictments have been brought by the Tribunal for crimes committed in Srebrenica but remain at large, namely: Radovan Karadžić, President of the Republika Srpska and Supreme Commander of the VRS; General Ratko Mladić, Commander of the VRS Main Staff; Colonel Ljubiša Beara, Chief of Security of the VRS Main Staff; Lt. Colonel Vujadin Popović, Assistant Commander for Security of the Drina Corps; Lt. Colonel Vinko Pandurević, Commander of the Zvornik Brigade; Lieutenant Drago Nikolić, Assistant Commander for Security of the Zvornik Brigade; and Lt. Colonel Ljubiša Borovčanin, Deputy Commander of the MUP Special Police Brigade. Additionally, trial proceedings have concluded against three more persons: General Radislav Krstić, Commander of the Drina Corps; Momir Nikolić, Assistant Commander and Chief of Security and Intelligence of the Bratunac Brigade of the VRS; and Dražen Erdemović, a soldier of the VRS 10th Sabotage Detachment.

79. The Trial Chamber will examine the positions held by Dragan Obrenović during the time of the Indictment; the actions taken by Dragan Obrenović; and Dragan Obrenović's knowledge of the crimes before, during or after their commission. The Trial Chamber will then assess Dragan Obrenović's liability under Article 7(1) and Article 7(3), and make its findings on the form and degree of his participation.

80. The Prosecution maintains that when Dragan Obrenović committed the crime of persecutions as part of a joint criminal enterprise with other VRS officers and Serb leaders, he was the Deputy Commander of the Zvornik Brigade and was in command of the Zvornik Brigade from 13 July 1995 until midday on 15 July 1995. On 13 July 1995, upon being informed of the order of the superior command to detain and execute thousands of Muslim men, Dragan Obrenović did not contact his superiors or protest; instead, he authorised his subordinates' involvement in the operations. Upon the return of the commander of the Zvornik Brigade on 15 July 1995, he returned to his position as Chief of Staff and continued participating in the joint criminal enterprise.¹³⁷

¹³⁶ See, Article 7 of the Statute.

¹³⁷ Prosecution Sentencing Brief, para. 17.

81. Dragan Obrenović accepts responsibility, as Acting Commander of the Zvornik Brigade from 13 July until mid-day 15 July 1995, for the implementation of the plan to kill the Muslim prisoners.¹³⁸ As the crimes in the Zvornik Brigade area of responsibility commenced on 13 July, the Trial Chamber finds this date as the appropriate starting point for assessing Dragan Obrenović's responsibility as the Acting Commander. The Trial Chamber observes that Dragan Obrenović's position upon the return of his commander, Vinko Pandurević, was Deputy Commander and Chief of Staff – this position is one that entailed decision-making, the exercise of leadership and command over subordinates, albeit as second in command in the Zvornik Brigade.

82. The Trial Chamber observes that the following actions are attributable personally to Dragan Obrenović:

- (a) Dragan Obrenović released Drago Nikolić, the Zvornik Brigade Security Officer, from the Brigade's Forward Command Post in order to prepare for the arrival of a huge number of Muslim prisoners from Bratunac in Zvornik to be shot there.¹³⁹
- (b) Dragan Obrenović ordered the commander of the Military Police of the Zvornik Brigade and five military policemen to assist Drago Nikolić, who had asked him to release the Military Police Company for assistance.¹⁴⁰
- (c) While Dragan Obrenović was in the field on 14 July 1995 leading his men in fighting against the 28th ABiH Division, he was informed that Colonel Ljubiša Beara, Chief of Security of the VRS Main Staff, had brought a large number of prisoners in buses to the Zvornik area.¹⁴¹ Dragan Obrenović then approved the release of two machine operators from the line, knowing that their task was to take part in the burial of prisoners.¹⁴²

83. Dragan Obrenović was involved in heavy fighting around the town of Zvornik from the evening of 15 July until the early afternoon of 16 July 1995. During this time, he had no telephone communication, but he still had his radio.¹⁴³ He returned to the Zvornik Brigade's Forward Command Post on the evening of 16 July 1995.¹⁴⁴

84. The Trial Chamber notes that Dragan Obrenović had knowledge about the following actions or events:

- (a) On the evening of 13 July 1995, Dragan Obrenović learned that Muslim prisoners were being transported to the Zvornik area; when he asked why they were not being transported to the POW camp in Batkovići, Drago Nikolić told him the prisoners were

¹³⁸ Vinko Pandurević, the commander of the Zvornik Brigade, was in the field at that time and did not return before midday of 15 July; Statement of Facts, page 1. *See also*, Indictment, para. 7.

¹³⁹ Statement of Facts, page 1.

¹⁴⁰ Statement of Facts, page 1.

¹⁴¹ Statement of Facts, page 2.

¹⁴² Statement of Facts, page 2.

¹⁴³ Statement of Facts, page 6.

¹⁴⁴ Statement of Facts, page 6.

not going there because the Red Cross knew about the camp. The orders, which came from Ratko Mladić, were for the prisoners to be brought to Zvornik to be shot.¹⁴⁵

- (b) In the afternoon of 14 July 1995, while in the field, Dragan Obrenović learned that a large number of Muslim prisoners had arrived in the Zvornik area by bus.¹⁴⁶
- (c) Dragan Obrenović knew that the machine operators he released from the line were going to participate in the burial of Muslim prisoners.¹⁴⁷
- (d) In the late afternoon of 14 July 1995, Dragan Obrenović knew that reinforcements from the 4th Battalion of the Zvornik Brigade had been sent to Orahovac to “sort out the problem” with the Muslim prisoners from Srebrenica.¹⁴⁸
- (e) On the morning of 15 July 1995, Dragan Obrenović was informed by Dragan Jokić, member of the Zvornik Brigade, about a “huge problem with the burials of those executed and the guarding of prisoners still to be executed.”¹⁴⁹ Thus, Dragan Obrenović had knowledge that the executions were occurring.
- (f) Dragan Obrenović knew that Lt. Colonel Popović, Assistant Commander for Security of the Drina Corps, had instructed Dragan Jokić not to make a record of the activities involving the killing operation or speak on the radio about it.¹⁵⁰
- (g) Dragan Obrenović was told of the conditions in which prisoners had been kept in Bratunac.¹⁵¹
- (h) Dragan Obrenović was told that “large numbers of prisoners” from the column had been captured while trying to cross the Konjević Polje road.¹⁵²
- (i) As of 15 July 1995, Dragan Obrenović was told that “a large number of prisoners” had been killed in the Kravica Warehouse.¹⁵³
- (j) When Dragan Obrenović met with his commander, Vinko Pandurević, in the early afternoon of 15 July 1995, he realised that his commander had knowledge of the murder operation.¹⁵⁴
- (k) In the afternoon of 15 July 1995, Dragan Obrenović met with the commander of the 4th Battalion of the Zvornik Brigade, Lazar Ristić. At this time, he learned that the commander of the 4th Battalion had sent eight men to Orahovac on 14 July 1995, upon the request of Milorad Trbić, Deputy Chief of Security for the Zvornik Brigade, to assist in guarding the prisoners. Lazar Ristić did not know about the killing of the prisoners in Orahovac when he sent the men but learned about it in the evening of 14 July. Dragan Obrenović was thus informed that members of the 4th Brigade participated in guarding prisoners before they were executed at a nearby location.¹⁵⁵

¹⁴⁵ Statement of Facts, page 1.

¹⁴⁶ Statement of Facts, page 2.

¹⁴⁷ Statement of Facts, page 2.

¹⁴⁸ Statement of Facts, pages 2-3.

¹⁴⁹ Statement of Facts, page 3.

¹⁵⁰ Statement of Facts, page 3.

¹⁵¹ Statement of Facts, page 4.

¹⁵² Statement of Facts, page 4.

¹⁵³ Statement of Facts, page 4.

¹⁵⁴ Statement of Facts, page 5.

¹⁵⁵ Statement of Facts, page 5.

- (l) Dragan Obrenović knew that a member of the 4th Battalion of the Zvornik Brigade had volunteered to take part in the execution of prisoners in Orahovac. Dragan Obrenović was told by a person who had heard from someone else that Drago Nikolić had personally taken part in the execution at Orahovac.¹⁵⁶ Dragan Obrenović informed his commander of this on 17 July 1995, and Pandurević did not say anything.¹⁵⁷
- (m) Dragan Obrenović knew that prisoners had been brought to a school near the 6th Infantry Battalion of the Zvornik Brigade. He knew that prisoners had been executed at the school and that members of the 6th Battalion Rear Services had participated in the removal of the bodies of prisoners killed at the Petkovci school to the “Dam” to be buried there.¹⁵⁸
- (n) Dragan Obrenović was aware that members of the Zvornik Brigade took part in burials of executed prisoners at Branjevo Military Farm¹⁵⁹ and next to Kozluk.¹⁶⁰
- (o) Dragan Obrenović knew that his commander had given an order on 18 July 1995 that persons should not be captured during sweeping operations but rather, be shot, due to risks associated with capturing the prisoners. On 21 July 1995, the order was changed so that captured men would be detained rather than shot.¹⁶¹
- (p) Dragan Obrenović further “had knowledge of and acquiesced to the capture, interrogation and execution” of five Muslim men captured from the column.¹⁶²
- (q) In mid-September 1995, Dragan Obrenović had knowledge that fuel and equipment from the Zvornik Brigade was being taken for the reburial operation. When Dragan Obrenović returned from almost one month in Krajina, he learned about the reburial operation and the involvement of some members of the Zvornik Brigade, including Drago Nikolić, in it.¹⁶³

Findings

85. The Trial Chamber has examined the crime of persecutions for which Dragan Obrenović has admitted responsibility. It further recalls the Statement of Facts, which forms the basis of Dragan Obrenović’s conviction, as outlined above in Section II. Dragan Obrenović has been convicted under both Article 7(1) and 7(3) of the Statute. As described above, Dragan Obrenović not only knew that members of the Zvornik Brigade took part in the organisation of the killings and the burials of the executed Muslim prisoners, but also approved the release of members of the Zvornik Brigade to participate in the implementation of this plan on at least three occasions. The Trial Chamber finds that by approving the removal of his soldiers, Dragan Obrenović participated in the implementation of the plan to kill the Muslim prisoners. While the plan to kill the Muslim prisoners was decided by commanders above Dragan Obrenović, he released his men from their

¹⁵⁶ Statement of Facts, pages 5-6.

¹⁵⁷ Statement of Facts, page 6.

¹⁵⁸ Statement of Facts, page 6. *See also*, Indictment, para. 46.8.

¹⁵⁹ *See* Indictment, paras 46.9, 46.10, 46.11.

¹⁶⁰ *See* Indictment, para. 46.12. *See also* Plea Agreement, para. 5.

¹⁶¹ Statement of Facts, page 7.

¹⁶² *See* Indictment, paras 47.7, 47.8. *See also* Plea Agreement, para. 5 g) and i).

actual duties and ordered them to follow the orders that came from above. The Trial Chamber considers his participation through this action to be aiding and abetting. Dragan Obrenović has accepted criminal responsibility for his participation in the joint criminal enterprise as the common purpose of which was *inter alia* to execute and bury thousands of Muslim men and boys from 12 July until and about 19 July 1995. The Trial Chamber finds that his participation is best characterised as “co-perpetratorship.”¹⁶⁴

86. For those actions of which Dragan Obrenović had knowledge either before or after their commission that are part of the overall killing operation, i.e., the detention of Bosnian Muslim men in Bratunac in buses, the killing of the prisoners in the Kravica Warehouse and the capture of Bosnian Muslim men from the column, the Trial Chamber observes that Dragan Obrenović has taken individual criminal responsibility for these actions as a member of the joint criminal enterprise. It further recalls, however, his particular position and place in the overall chain of command when assessing how these actions reflect on his individual criminal responsibility.

87. As is evident from the Statement of Facts and overview of Dragan Obrenović’s actions and knowledge, it is clear that Dragan Obrenović was not present at execution sites while the killing operation was carried out. During the critical time period, Dragan Obrenović attempted to fulfil his military duties in the field leading his men during heavy fighting against the ABiH 28th Division at the frontline: Dragan Obrenović’s primary concern and focus was the military defence of Zvornik. Even while focusing on the defence of Zvornik, however, Dragan Obrenović had a responsibility as the Acting Commander and as the Deputy Commander and Chief of Staff to prevent the commission of crimes by his subordinates, and in the event that such crimes were committed, to punish those who committed criminal offences.¹⁶⁵ Dragan Obrenović did neither and is therefore also responsible under Article 7 (3) of the Statute.

88. Weighing Dragan Obrenović’s different forms of individual criminal responsibility, the Trial Chamber finds that Dragan Obrenović’s liability stems primarily from his responsibilities as a commander. While Dragan Obrenović only released seven of his soldiers to prepare for the arrival of the Muslim prisoners in Zvornik and two of his men to take part in the burial of prisoners he knew or had reason to know that members of several units of the Zvornik Brigade took part in the killing operation at various locations by guarding, executing and burying Muslim prisoners. The central part of Dragan Obrenović’s responsibility arises therefore from his failure to act in the face

¹⁶³ Statement of Facts, pages 8-9.

¹⁶⁴ See, *Krnjelac* Appeal Judgement, para. 29.

¹⁶⁵ See, *supra*, para. 82 (d), (k), (l), (m), (n) and (q).

of the commission of the crime of persecutions – by being passive when he should have prevented his subordinates from committing the criminal acts or punished them for such crimes afterwards.

89. The Trial Chamber further notes that Dragan Obrenović tried to convince the VRS Main Staff to open the frontline to let the Muslim column pass through into Muslim territory. Dragan Obrenović also discussed the opening of a corridor with his Commander Vinko Pandurević, who eventually ordered the opening of a corridor for around 27 hours in the afternoon of 16 July 1995.¹⁶⁶ Because of the opening of the corridor further heavy fighting was prevented and many members of the ABiH 28th Division and refugees safely reached Muslim-held territory. The Trial Chamber finds that, regardless of his motives, Dragan Obrenović through his actions spared many lives.

90. Considering these facts the Trial Chamber finds a sentence in the range of 20 years to 40 years imprisonment to be appropriate based on the gravity of the crime committed by Dragan Obrenović, and particularly his role and participation in the commission of that crime, and having taken into consideration the sentencing practices in the former Yugoslavia as well as the sentencing practices of this Tribunal.¹⁶⁷ The Trial Chamber will now consider whether any aggravating or mitigating circumstances exist in this case, and, if so, the effect of any such circumstances on the determination of an appropriate sentence for Dragan Obrenović.

3. Individual Circumstances Related to Dragan Obrenović

91. The Appeals Chamber has held that as the factors to be taken into account for aggravation or mitigation of a sentence have not been defined exhaustively by the Statute or the Rules, a trial chamber has considerable discretion in deciding what constitutes such factors.¹⁶⁸ The Trial Chamber is obliged to take into account mitigating circumstances when determining the sentence,

¹⁶⁶ Statement of Facts, pages 3, 4 and 7.

¹⁶⁷ The Trial Chamber recalls the finding of the Appeals Chamber in the *Jelisić* Appeal Judgement, para. 96: “The Appeals Chamber agrees that a sentence should not be capricious or excessive, and that, in principle, it may be thought to be capricious or excessive if it is out of reasonable proportion with a line of sentences passed in similar circumstances for the same offences.” The Trial Chamber has selected the following examples because of the similarity of offence or gravity. *See e.g.*, Milimir Stakić was sentenced to life imprisonment for crimes including persecutions; Radislav Krstić was sentenced to 46 years imprisonment, for crimes including that of persecutions (the conviction also included the charge of genocide although the underlying factual basis is similar to that of this case); Tihomir Blaškić was sentenced to 45 years imprisonment, for crimes including that of persecutions; Goran Jelisić was sentenced to 40 years (though the convictions were for offences other than persecutions); Dragoljub Kunarac was sentenced to 28 years (though the convictions were for offences other than persecutions); Dario Kordić was sentenced to 25 years for crimes including persecutions; Zoran Zigić was sentenced to 25 years for crimes including persecutions; Mladjo Radić was sentenced to 20 years for crimes including persecutions; Mitar Vasiljević was sentenced to 20 years imprisonment, for crimes including that of persecution; and Vladimir Šantić was sentenced to 18 years for crimes including persecutions. The Trial Chamber recognises that many of these persons were convicted for crimes in addition to persecutions as a crime against humanity.

¹⁶⁸ *Čelebići* Appeal Judgement, para. 780.

but the weight to be attached is within the discretion of the Trial Chamber.¹⁶⁹ Aggravating factors must be proved beyond a reasonable doubt.¹⁷⁰ Mitigating factors need to be established on the balance of probabilities, and not beyond reasonable doubt.¹⁷¹

(a) Aggravating circumstances

92. Rule 101 (B)(i) of the Rules requires the Trial Chamber, in determining sentence, to examine any aggravating circumstances in relation to the crimes of which the accused stands convicted.

(i) Submissions of the Parties

93. The Prosecution submits that three aggravating factors in this case should be considered by the Trial Chamber, pursuant to Rule 101 (B)(i) of the Rules: (i) the position of leadership of Dragan Obrenović; (ii) the role of Obrenović as Deputy Commander; and (iii) the vulnerability of the victims and the depravity of the crimes.

94. The Defence submits that only those facts that are proved beyond reasonable doubt should be taken into consideration as aggravating factors.¹⁷²

a. Position of leadership and role of Dragan Obrenović

95. The Prosecution argues that as the Deputy Commander in command of the Zvornik Brigade from 13 July until 15 July 1995, Dragan Obrenović participated in authorising, organising and implementing the plan to execute over 6,000 Muslim men and boys in his zone of responsibility and co-ordinated the execution of the plan with his subordinates. Due to his position, the Prosecution submits that Dragan Obrenović should bear significant responsibility for his actions.¹⁷³ Additionally, in accordance with the jurisprudence of the Tribunal, the Prosecution submits that the leadership position of Dragan Obrenović should be considered an aggravating factor, despite his relatively low rank.¹⁷⁴

96. The Defence recognises that the direct participation of a superior in a crime under Article 7(1) of the Statute may be an aggravating circumstance though the degree depends upon the level of

¹⁶⁹ *Čelebići* Appeal Judgement, para. 777.

¹⁷⁰ *Čelebići* Appeal Judgement, para. 763, *Kunarac* Trial Judgement, para. 847 and *Sikirica* Sentencing Judgement, para. 110.

¹⁷¹ *Kunarac* Trial Judgement, para. 847, *Sikirica* Sentencing Judgement, para. 110 and *Simić* Sentencing Judgement, para. 40.

¹⁷² Obrenović Sentencing Brief, para.31 citing *Čelebići* Appeal Judgement, para.763.

¹⁷³ Prosecution Sentencing Brief, para. 19.

¹⁷⁴ Prosecution Sentencing Brief, para. 20.

authority and form of participation.¹⁷⁵ The Defence argues that all the other persons charged for the crimes at Srebrenica were in positions above Dragan Obrenović. Although he accepts responsibility for his role in the offence as acting commander of portions of the Zvornik Brigade and does not dispute that his conduct makes him legally responsible for these acts, the actual level of authority and position of Dragan Obrenović should be taken into account in the overall hierarchy as well as his relatively limited participation in the plan.¹⁷⁶ The Defence draw a comparison with the case of Biljana Plavšić, who though occupying a superior position, was not involved in the first rank of leadership and had a lesser role in the execution of the crimes. The Defence maintains that Dragan Obrenović was only a 32 year old army major, temporarily in command of part of a brigade and was not in the first rank of leadership.¹⁷⁷ The Defence submits that despite higher numbers of victims, broader range of crimes and a higher position than the present case, Biljana Plavšić was sentenced to eleven years.¹⁷⁸

b. Vulnerability of victims and depravity of the crimes

97. The Prosecution submits that depravity of the crimes and vulnerability of the victims are factors that the Trial Chamber should find to be aggravating factors.¹⁷⁹ The victims were helpless women, children and elderly, as well as captured military age men, who were in a vulnerable position and were subjected to extreme depravity.¹⁸⁰

98. The Defence submits that while factors such as humiliation of victims, sadistic behaviour and depravity have been considered separately as aggravating in certain instances, the Trial Chamber in the *Plavšić* case correctly held that these are subsumed in the overall gravity of the offence.¹⁸¹ Furthermore, in the present case these factors are less aggravating in number and scope than in the *Plavšić* case.¹⁸²

(ii) Findings

99. The Trial Chamber notes that the position of leadership of an accused can be considered as aggravating factor.¹⁸³ The actual authority is of consequence, whereby not only high-ranking, but

¹⁷⁵ Obrenović Sentencing Brief, para. 35.

¹⁷⁶ Obrenović Sentencing Brief, paras 36-37.

¹⁷⁷ Obrenović Sentencing Brief, paras 37-38.

¹⁷⁸ Obrenović Sentencing Brief, para. 37.

¹⁷⁹ Prosecution Sentencing Brief, paras. 22-23 referring to the *Čelebići* Trial Judgement, paras 1262, 1264 and 1268 and *Aleksovski* Trial Judgement, para. 227.

¹⁸⁰ Prosecution Sentencing Brief, paras. 22-23.

¹⁸¹ Obrenović Sentencing Brief, paras. 33-34 citing *Plavšić* Sentencing Judgement, para.58.

¹⁸² Obrenović Sentencing Brief, para. 34.

¹⁸³ *Prosecutor v. Mladen Naletilić et al.*, Case No. IT-98-34-T, 31 March 2003, para.751; *Kordić* Trial Judgement, para.853.

also a middle-ranking command position can aggravate the sentence.¹⁸⁴ The Trial Chamber finds that Dragan Obrenović was in a position of authority as Acting Commander and Deputy Commander of the Zvornik Brigade. The Trial Chamber recalls that Dragan Obrenović's criminal liability arises in large measure from this responsibility as a commander pursuant to Article 7(3) of the Statute. The Trial Chamber finds it would be inappropriate to use the same conduct to both establish liability and to establish an aggravating circumstance in this case.

100. The Trial Chamber recalls, however, the purpose behind the doctrine of command responsibility: to ensure compliance with the laws and customs of war and international humanitarian law generally.¹⁸⁵ When a commander fails to ensure compliance with the principles of international humanitarian law such that he fails to prevent or punish his subordinates for the commission of crimes that he knew or had reason to know about, he will be held liable pursuant to Article 7(3). When a commander orders his subordinates to commit a crime within the jurisdiction of the Tribunal, he will be held liable pursuant to Article 7(1) of the Statute. When commanders, through their own actions or inactions, fail in the duty, which stems from their position, training, and leadership skills, to set an example for their troops that would promote the principles underlying the laws and customs of war and thereby – either tacitly or implicitly – promote or encourage the commission of crimes, this may be seen as an aggravating circumstance. The Trial Chamber finds that such is not the case with regards to Dragan Obrenović.

101. The Trial Chamber finds that the depravity of the crimes is subsumed in the overall gravity of the offence, and has already been addressed above. Therefore, the Trial Chamber does not consider this separately as an aggravating factor. The Trial Chamber finds that a comparison with crimes committed by others is not particularly helpful in this case.

102. The Trial Chamber takes particular note of the vulnerability of the victims. They were all in a position of helplessness and were subject to cruel treatment at the hands of their captors. In this situation, the Trial Chamber finds this to be an aggravating factor in the commission of the crimes.

103. The Trial Chamber finds that the following aggravating circumstances have been proven beyond reasonable doubt: the vulnerability of the victims.

¹⁸⁴ *Kordić* Trial Judgement, para.855.

¹⁸⁵ *See, Prosecutor v. Hadžihasanović et. al.*, Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, para. 66.

(b) Mitigating circumstances

104. Rule 101 (B)(ii) of the Rules requires that the Trial Chamber, in determining sentence, take into account “any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction[.]”

(i) Submissions of the Parties

105. The Prosecution submits that the consideration of mitigating factors, in accordance with Rule 101(B)(ii) of the Rules and the jurisprudence of both the Tribunal and the ICTR, does not detract from the gravity of the crime but relates to the assessment of the penalty.¹⁸⁶ In this case, the Prosecution submits that the mitigating circumstances are the guilty plea, acceptance of responsibility, remorse, co-operation with the Office of the Prosecutor and previous good character.¹⁸⁷ In addition to the factors listed by the Prosecution, the Defence submits that the fostering of reconciliation and Dragan Obrenović’s offer to voluntarily surrender should be considered mitigating factors in this case.¹⁸⁸

106. The Defence submits that mitigating circumstances vary from case to case and the Trial Chamber has the discretion to consider any factors that it deems to be mitigating.¹⁸⁹

a. Guilty plea and acceptance of responsibility

107. The Parties submit that the plea of guilt should be considered as a “pre-trial” plea, as Dragan Obrenović agreed to enter this plea before the commencement of trial proceedings.¹⁹⁰ The Parties assert that this should be regarded in mitigation of sentence as a plea entered into at this stage saves resources and more importantly does away with the requirement of evidence from witnesses and victims.¹⁹¹ The Parties further submit that a guilty plea is important because it promotes the establishment of the truth, which helps the process of reconciliation between the communities in the region.¹⁹² The Prosecution emphasizes that this is the first time that a VRS commander has acknowledged criminal responsibility for the events of Srebrenica, which acknowledgment provides a “unique perspective” into the events at Srebrenica, and which will have a tremendous impact upon

¹⁸⁶ Prosecution Sentencing Brief, para. 25 referring to the *Kambanda* Sentencing Judgement, para.56.

¹⁸⁷ Prosecution Sentencing Brief, para. 25.

¹⁸⁸ Obrenović Sentencing Brief, para. 44.

¹⁸⁹ Obrenović Sentencing Brief, para. 42 referring to *Plavšić* Sentencing Judgement, para. 65 and *Krstić* Trial Judgement, para. 713. Further, drawing upon the practice of the Former Yugoslavia, Article 42(2) of the SFRY Criminal Code states that the judge may consider mitigating factors which indicate that the objective of the sentence may be achieved by imposing a lesser sentence, Obrenović Sentencing Brief, para.43.

¹⁹⁰ Prosecution Sentencing Brief, para. 26; Obrenović Sentencing Brief, para. 48.

¹⁹¹ Prosecution Sentencing Brief, para. 26. *See*, Obrenović Sentencing Brief, paras 46(d)-(e).

¹⁹² Prosecution Sentencing Brief, para. 27; Obrenović Sentencing Brief, para. 46 (a)-(e).

the people of the region as well as the international community.¹⁹³ The Prosecution further submits that Dragan Obrenović's plea of guilt, and his testimony was given "clearly, concisely, without hesitation and most importantly without excuse."¹⁹⁴

108. The Defence notes that in many cases before the Tribunal, a guilty plea has resulted in a reduction of the sentence that the accused would have otherwise received.¹⁹⁵ The Defence submits that "[a]n admission of guilt can lead to others coming forward and assisting the Tribunal's work, who might not have done so but for the plea of an accused."¹⁹⁶ The Defence refers to a certain "ranking official of the Republika Srpska" who agreed to an interview with Prosecution about Srebrenica, primarily due to the guilty pleas entered by Dragan Obrenović and Momir Nikolić.¹⁹⁷

109. The Defence maintains that the plea of guilt entered by Dragan Obrenović demonstrates his honesty and his personal accountability "in the light of his legal responsibilities as an officer charged with at least temporary control over subordinates [who] permitted and facilitated the crimes by making certain of his unit's personnel and equipment available to participate in the crimes."¹⁹⁸ This was a "moral decision" that was made by him personally, and he did not want to contest the charges.¹⁹⁹

110. The Defence further submits that by breaking the "wall of silence erected around the events of Srebrenica," Dragan Obrenović is promoting reconciliation between the communities of the former Yugoslavia. This plea has ended eight years of denial and the impact of this has been great.²⁰⁰ The Defence asserts that such a factor is of "significant weight" in mitigation.²⁰¹ The Defence asserts that due to his rank as an army officer, Dragan Obrenović is not in the position to promote reconciliation at the same level and with the same public effect as a former President, such as Biljana Plavšić, but that his guilty plea is still a personal step towards the goal of reconciliation.²⁰²

¹⁹³ Prosecution Sentencing Brief, para. 28; Prosecution Closing Statement, Sentencing Hearing, T. 1531-1532, T. 1535.

¹⁹⁴ Prosecution Closing Statement, Sentencing Hearing, T. 1534.

¹⁹⁵ Obrenović Sentencing Brief, para. 46 referring to *Erdemović* Second Sentencing Judgement, para. 16, *Jelisić* Trial Judgement, para. 127, *Simić* Sentencing Judgement, para. 84, *Todorović* Sentencing Judgement, para. 80 and *Sikirica* Sentencing Judgement, paras. 151, 193, 228.

¹⁹⁶ Obrenović Sentencing Brief, para. 47.

¹⁹⁷ Obrenović Sentencing Brief, para. 47.

¹⁹⁸ Obrenović Sentencing Brief, para. 49.

¹⁹⁹ Defence Closing Statement, Sentencing Hearing, T. 1540.

²⁰⁰ Obrenović Sentencing Brief, para. 53. Defence Ex. DS-12a, an article by Emir Suljagić, a survivor of Srebrenica, explaining the significance of the guilty pleas of Momir Nikolić and Dragan Obrenović.

²⁰¹ Obrenović Sentencing Brief, para. 53.

²⁰² Obrenović Sentencing Brief, para. 54.

Findings

111. The Trial Chamber finds that Dragan Obrenović's guilty plea is indeed significant and can contribute to fulfilling the Tribunal's mandate of restoring peace and promoting reconciliation. The recognition of the crimes committed against the Bosnian Muslim population in 1995 – crimes that continue to have repercussions into the present – by a participant in those crimes contributes to establishing a historical record and countering denials of the commission of these crimes. Although the victims of these crimes and family members of those killed were fully aware of the crimes committed before Dragan Obrenović pled guilty, it cannot be doubted that the *recognition* of the crimes committed against them by a former officer of the Army of Republika Srpska may provide some form of closure.²⁰³

112. The Defence tendered an article by Emir Suljagić, a Bosnian Muslim from Srebrenica, on the impact of Dragan Obrenović's guilty plea on him as an individual who had survived but who had lost relatives and close friends during the executions in July 1995, and as a member of the Bosnian Muslim community.²⁰⁴ Mr. Suljagić writes that although the confession of Mr. Obrenović and Mr. Nikolić will likely not transform Bosnian Serb views, for him personally:

the confessions have brought me a sense of relief I have not known since the fall of Srebrenica in 1995. They have given me the acknowledgement I have been looking for these past eight years. While far from an apology, these admissions are a start. We Bosnian Muslims no longer have to prove we were victims. Our friends and cousins, fathers and brothers were killed – we no longer have to prove they were innocent.

113. The Trial Chamber notes that Dragan Obrenović's guilty plea came before the start of trial. At the same time, the Trial Chamber recalls that Dragan Obrenović's plea of guilty came only after concluding a plea agreement with the Prosecution. However, an accused is always permitted to change his plea for one or more of the charges against him *without* having reached any agreement with the Prosecution. Of course, under the Statute of the Tribunal, an accused has the right to be presumed innocent, to have a fair and public trial and to not be compelled to confess guilt.²⁰⁵ Additionally, the accused is under no obligation to relieve the Prosecution of its burden to prove guilt beyond reasonable doubt.²⁰⁶

²⁰³ See, *Plavšić Sentencing Judgement*, paras 75-77 on the testimony of Dr. Alex Boraine, an expert on reconciliation and accountability issues and the former Deputy Chairperson on the Truth and Reconciliation Commission in South Africa, on the importance of the acknowledgement and acceptance of responsibility for grave crimes on the process of reconciliation.

²⁰⁴ "Truth at The Hague", Emir Suljagić, *New York Times*, 1 June 2003, Defence Ex. DS-12.

²⁰⁵ Article 21 of the Statute.

²⁰⁶ See, Rule 87 of the Rules. While a Trial Chamber may view a plea of guilty as a mitigating factor, the Trial Chamber considers it important to recall that no accused shall be penalised for exercising his or her right to go to trial and have the Prosecution prove its case.

114. The Trial Chamber further recalls the submissions of the Defence on the reason for Mr. Obrenović's guilty plea. Mr. Obrenović's defence team was concerned about him making a plea of guilt before the start of trial because they feared that the Trial Chamber would not have a full understanding of the facts surrounding his role in the events and that this lack of full understanding of the events could prejudice Mr. Obrenović at the time of sentencing.²⁰⁷ However,

There came a time, [...] when Mr. Obrenović thanked us for our legal advice, but pointed out that he had a moral decision to make which was his alone and that he decided he didn't want to contest the charges. [...] He asked us to approach Mr. McCloskey in open negotiations with the goal of his pleading guilty.²⁰⁸

115. The Trial Chamber further finds that Dragan Obrenović, in accepting his responsibility and his guilt has never sought to offer excuses or shift the responsibility for his actions.

116. Taking into account these considerations, the Trial Chamber finds that Dragan Obrenović's guilty plea is a significant factor in mitigation of the sentence due to its contribution to establishing the truth, promoting reconciliation and because of Dragan Obrenović's unreserved acceptance of his individual criminal responsibility for his role in the crime of persecutions.

117. The Trial Chamber also considers Dragan Obrenović's guilty plea as a mitigating factor because it spared witnesses from being required to come and testify about painful and traumatic events. This is particularly appreciated in the case of Srebrenica where there are numerous indictments brought by the Prosecution, and future trials will likely require the presence of these witnesses.

118. Finally, the Trial Chamber notes that other accused have been given credit for pleading guilty before the start of trial or at an early stage of the trial because of the savings of Tribunal resources. Both parties have made submissions that this aspect of a guilty plea should be considered as a mitigating factor.²⁰⁹ Recalling its finding in the *Nikolić* Sentencing Judgement,²¹⁰ the Trial Chamber will allocate little weight to this aspect of the benefits of a guilty plea.

b. Remorse

119. The Parties submit that Dragan Obrenović has expressed remorse for the victims in this case in a letter to the Prosecution and in his statement at the sentencing hearing.²¹¹ The Defence asserts that Dragan Obrenović is "his own worst judge. He knows the impact of his failure more than

²⁰⁷ Defence Closing Statement, Sentencing Hearing, T. 1538.

²⁰⁸ Defence Closing Statement, Sentencing Hearing, T. 1540.

²⁰⁹ Prosecution Sentencing Brief, para. 26; Obrenović Sentencing Brief, para. 46(d)

²¹⁰ See, *Nikolić* Sentencing Judgement, para 67.

²¹¹ Prosecution Sentencing Brief, para. 29; Obrenović Sentencing Brief, para. 51.

anyone. He has already sentenced himself. He is like Lady Macbeth, sentenced forever to the Sisyphean task of constantly washing her hands in a futile attempt to erase an indelible stain.”²¹²

120. Dragan Obrenović expressed his remorse to the Trial Chamber, saying

I am here before Your Honours because I wish to express my remorse. I have thought for a long time, and I'm always followed by the same thought - guilt. I find it very hard to say this truth. I am to blame for everything I did at that time. I am trying to erase all this and to be what I was not at that time. I am also to blame for what I did not do, for not trying to protect those prisoners. [...] There is misfortune on all sides that stays behind as a warning that this should never happen again. My testimony and admission of guilt will also remove blame from my nation because it is individual guilt, the guilt of a man named Dragan Obrenović. I stand by this. I am responsible for this. The guilt for this I feel remorse and for which I apologise to the victims and to their shadows, I will be happy if this contributed to reconciliation in Bosnia, if neighbours can again shake hands, if our children can again play games together, and if they have the right to a chance. I will be happy if my testimony helps the families of the victims, if I can spare them having to testify again and this relieve the horrors and the pain during their testimony. It is my wish that my testimony should help prevent this ever happening again, not just in Bosnia, but anywhere in the world. It is too late for me now, but for the children living in Bosnia now, its not too late and I hope that this will be a good warning to them. [...] What has won the victory is misfortune and unhappiness, as a consequence of blind hatred. [...] If my confession, my testimony, and my remorse, if my attempt to face myself contributes to the quicker healing of these wounds, I will have done my duty of a soldier, a fighter, a human being and a father.²¹³

Findings

121. The Trial Chamber has had the opportunity to observe Dragan Obrenović at the Plea Hearing, over his seven days of testimony in the *Blagojević* Trial and at the Sentencing Hearing. The Trial Chamber has carefully considered Dragan Obrenović's expression of remorse and his apologies to the victims for his participation in, what he described as, the “horror of Srebrenica”.²¹⁴ Through his statements and his actions, the Trial Chamber finds that Dragan Obrenović is genuinely remorseful for his role in the crimes for which he has been convicted, and seeks to atone for his criminal conduct. Therefore, the Trial considers Dragan Obrenović's remorse to be a substantial mitigating factor in his case.

c. Co-operation with the Prosecution

122. The Prosecution submits that Dragan Obrenović has co-operated fully with the Office of the Prosecutor,²¹⁵ and that he has accepted responsibility and provided a truthful account of his activities as well as those of others.²¹⁶ The Prosecution submits that Dragan Obrenović has met with the Prosecution whenever required and answered questions truthfully and that he provided testimony in the *Blagojević* Trial that was “extraordinary in its objectivity, clarity and integrity.”

²¹² Defence Closing Statement, Sentencing Hearing, T. 1548-1549.

²¹³ Statement by Dragan Obrenović, Sentencing Hearing, T.1556-1558.

²¹⁴ Sentencing Hearing, T. 1556.

²¹⁵ Prosecution's Supplemental Submissions, para. 3.

²¹⁶ Prosecution's Supplemental Submissions, para. 5.

The Prosecution further submits, “The facts and circumstances independently proven in [the *Blagojević* Trial] corroborate Mr. Obrenović’s testimony and establish without question that Mr. Obrenović was telling the truth.”²¹⁷ Dragan Obrenović also provided valuable information regarding the inner-workings of the VRS and his unique contribution as a military expert should be considered.²¹⁸ For these reasons, the Prosecution asserts that he will be an important witness in other trials at the Tribunal, including that of General Krstić. The Prosecution further submits that Dragan Obrenović has co-operated beyond what was necessary under the Plea Agreement.²¹⁹ Finally, the Prosecution submits that he has not shown any prejudice against any of the other accused in the case, or other individuals.²²⁰

123. The Defence maintains that co-operation with the Prosecution is a significant factor that is vital to the mission of the Tribunal, and has been recognised by the Tribunal as such.²²¹ The Defence asserts that Dragan Obrenović has co-operated with the Prosecution prior to and after his arrest, as well as after entering his plea of guilt.²²²

124. As evidence of his co-operation before his arrest, Dragan Obrenović permitted the Prosecutors and investigators to conduct a search of brigade property and made available weapons for ballistic testing.²²³ Dragan Obrenović also met representatives from the Prosecution on three occasions and on the last occasion, offered to surrender and provided the Prosecution with information as to how he could be contacted in the event that charges were filed.²²⁴ The Defence further submits that Dragan Obrenović could have chosen to become a fugitive, but instead chose to face the charges against him.²²⁵ Finally, the Defence submits, as evidence of his pre-arrest co-operation, a copy of the plaque presented to him by the SFOR for maintaining the peace pursuant to the Dayton Accords for the period of 20 March through 20 September 1999.²²⁶

125. The Defence submits that following his arrest, Dragan Obrenović attended an interview with representatives of the Prosecution regarding alleged war crimes committed by Muslim forces

²¹⁷ Prosecution’s Supplemental Submissions, para. 7.

²¹⁸ Prosecution’s Supplemental Submissions, para. 8. The Prosecution asserts that his military insight and the original materials that he provided have proved to be of “tremendous value.” Prosecution’s Closing Statement, Sentencing Hearing, T, 1535.

²¹⁹ “Confidential Addendum to Prosecution’s Supplemental Submission Regarding the Sentencing of Dragan Obrenović”, filed under seal on 23 October 2003 and “Prosecution’s Second Supplemental Submission Regarding the Sentencing of Dragan Obrenović”, filed confidentially on 26 November 2003.

²²⁰ Prosecution’s Supplemental Submissions, para. 6.

²²¹ Obrenović Supplemental Submissions, para. 3, citing *Erdomović* Second Sentencing Judgement, para. 21.

²²² Obrenović Supplemental Submissions, para. 3.

²²³ Obrenović Supplemental Submissions, para. 6.

²²⁴ Obrenović Supplemental Submissions, para. 7.

²²⁵ Obrenović Supplemental Submissions, para. 15.

²²⁶ Obrenović Supplemental Submissions, para. 5 and Defence Ex. DS-13a.

against Serb military and civilians in the Zvornik area from 1991 through 1992.²²⁷ In doing so, he waived his right to silence, despite the fact that he was not given any reassurances regarding the possible use of the substance of the interview against him.²²⁸

126. Pursuant to the Plea Agreement, Dragan Obrenović agreed to meet the investigators at any time and also to testify in trials related to the events at Srebrenica. The Defence submits that he has fulfilled – and will continue to fulfil – these obligations.²²⁹

127. The Defence submits that the co-operation by Dragan Obrenović has exceeded what was required under the Plea Agreement, and that it “mark[s] a turning point in the tragic story of Srebrenica [that has] made it impossible for those denying even the occurrence of those crimes to maintain credibility.”²³⁰

Findings

128. The Trial Chamber notes that the Prosecution acknowledges full co-operation from Dragan Obrenović. The Trial Chamber finds that Dragan Obrenović provided truthful testimony and detailed information in the *Blagojević* Trial regarding his knowledge of the events related to Srebrenica and the VRS military structure. The Trial Chamber agrees with the Prosecution that Dragan Obrenović answered each question as clearly and precisely as he could, regardless of whether it was asked by the Prosecution, defence counsel or the Trial Chamber.²³¹ The Trial Chamber further notes that he testified in the *Krstić* Appeal Proceedings and has further agreed to testify in other proceedings. In addition, he assisted the Prosecution by providing it with numerous documents relevant for the *Blagojević* Trial and investigations in other cases. The Trial Chamber also finds that Dragan Obrenović co-operated with the Prosecution during the investigation phase when he permitted the Prosecution to conduct a search of the Zvornik Brigade’s property.

129. Therefore, the Trial Chamber finds substantial co-operation with the Prosecution in this case to be a significant mitigating circumstance.

²²⁷ Obrenović Supplemental Submissions, para. 8.

²²⁸ Obrenović Supplemental Submissions, para. 8.

²²⁹ Obrenović Supplemental Submissions, para. 10.

²³⁰ Obrenović Supplemental Submissions, para. 16.

²³¹ See, Prosecution’s Supplemental Submissions, para. 7.

d. Character of the accused

130. The Prosecution accepts that prior to the war, Dragan Obrenović was an upstanding professional soldier and a member of good standing in the community.²³²

131. The Defence submits that Dragan Obrenović has not had any previous convictions and has been a professional soldier all his life.²³³ The Defence maintains that Dragan Obrenović was not a bigoted person and until the events in July 1995, lived an exemplary life;²³⁴ he was a man of exceptional ability who was admired and respected by his subordinates, his superiors, and the civilian community that he served..²³⁵

132. The Defence called witnesses who testified before the Trial Chamber regarding Dragan Obrenović's character. These witnesses confirmed that Dragan Obrenović did not discriminate and was a man of good character.²³⁶ Zorica Rikić testified that beginning in the autumn of 1994 Dragan Obrenović helped a Muslim family whom he had not previously known with a supply of food and provisions every month.²³⁷ The father of this family, an elderly Muslim man, testified that Dragan Obrenović sent his driver with supplies for the family once a month for a period of almost two years, and never asked for anything in return.²³⁸ Zorica Rikić and Witness DA also testified that Dragan Obrenović also helped a Serbian widow and her three sons.²³⁹ Dusanka Bosković, a widow, testified that Dragan Obrenović provided food and clothes for her family and those of many other widows beginning in 1993. Dusanka Bosković testified that Dragan Obrenović never made any distinction in his assistance on the basis of nationality, "He never asked us whom we gave this assistance to. He never asked us what the names of the people who would receive assistance were. He said, 'Provide those who need assistance with assistance'."²⁴⁰ Furthermore, Dusanka Bosković's testimony reflects that Dragan Obrenović's willingness to help others extended even to a willingness to give of his own personal belongings.

133. Finally, a Bosnian Muslim witness testified that Dragan Obrenović saved his life and those of his family in the beginning of the war by personally taking them out of Serb-held territory to safety. The witness had been warned and told to flee his home by a Serbian neighbour because other Serbs were planning on killing him and his family as revenge for the murder of a Serb with

²³² Prosecution Sentencing Brief, para. 30.

²³³ Obrenović Sentencing Brief, para. 52.

²³⁴ Obrenović Defence Closing Statement, Sentencing Hearing, T. 1542-43.

²³⁵ Obrenović Defence Closing Statement, Sentencing Hearing, T. 1544.

²³⁶ Zorica Rikic, Sentencing Hearing, T. 1498 (private session) and Dusanka Bosković, Sentencing Hearing, T. 1516.

²³⁷ Zorica Rikic, Sentencing Hearing, T. 1498-1499 (private session).

²³⁸ This witness testified in closed session. Witness DA, Sentencing Hearing, T. 1504-1505

²³⁹ Zorica Rikic, Sentencing Hearing, T. 1499; Witness DA, Sentencing Hearing, T. 1506 (closed session).

whose death they had actually had no involvement.²⁴¹ The witness's sister-in-law went to the area where she heard that negotiations were taking place to try and get help in moving the family to safety. After receiving no assistance from a man taking part in the negotiations, the witness's sister-in-law approached Dragan Obrenović, whom she did not know but whom she could see was a soldier.

She explained my situation to [Dragan Obrenović]. She told him where I was. And he replied, "No problem." She explained what the house looked like, but he didn't know exactly where it was, so he said we should put three blankets over the balcony so that he could identify the house. My wife went out to the balcony, because we didn't dare leave. All the blinds were down. We were sitting in the dark. She quickly went out and threw the blankets over the balcony and came back in the house, and we waited. Not long after that a car arrived. We didn't know who it was, but a car stopped. There was a driver and someone sitting next to him. They got out, and rang the doorbell. We opened up. He introduced himself. He asked us whether we were alright. He asked us if we had anything to eat. He probably saw by our faces that we were terrified. So he tried to calm us down. We took some bags, [...], so he actually took my bags, and I went down the stairs with my wife. He brought us to the car, opened the door for us, put the bags in the boot, and we got in the car. ... We passed through the checkpoints. No one stopped us, no one maltreated us. And I was taken directly to a relative of mine.²⁴²

The witness confirmed that "he" was "Captain Dragan." The witness had never known Dragan Obrenović before that night and he has never had any contact with Dragan Obrenović since, but the witness thanked Dragan Obrenović for what he did.²⁴³

Findings

134. Based on the evidence presented, the Trial Chamber finds that prior to the war Dragan Obrenović was a highly respected member of his community who did not discriminate against anybody. Furthermore, the Trial Chamber finds based on the testimony, that even during the war Dragan Obrenović provided help on ongoing basis to several Muslims whom he previously had not known. The Trial Chamber finds this a important mitigating factor.

e. No opportunity for voluntary surrender

135. The Defence maintains that Dragan Obrenović knew that he was a suspect and would probably be arrested. In light of this, at the last interview with members of the Office of the Prosecutor before his arrest, he offered to surrender voluntarily.²⁴⁴ The Defence asserts that despite this offer and Mr. Obrenović being prepared to surrender, the Prosecution decided to arrest him and therefore he cannot represent that he surrendered voluntarily. The Defence submits that this offer to

²⁴⁰ Dusanka Bosković, Sentencing Hearing, T. 1513-1514.

²⁴¹ This witness testified in closed session. Witness DB, Sentencing Hearing, T. 1524-1525.

²⁴² Witness DB, Sentencing Hearing, T. 1528-29 (closed session).

²⁴³ Witness DB, Sentencing Hearing, T. 1529-30 (closed session).

²⁴⁴ Obrenović Sentencing Brief, para. 55 referring to an interview of 19 October 2000, page 44.

surrender is a positive factor that should be taken into consideration by the Trial Chamber as a mitigating circumstance.²⁴⁵

Findings

136. The jurisprudence of the Tribunal recognises voluntary surrender as a mitigating factor as it shows co-operation with the Tribunal.²⁴⁶ The Trial Chamber notes that Dragan Obrenović was arrested even though he had offered to surrender voluntarily knowing of his status as a suspect. The Trial Chamber finds his offer to voluntarily surrender, as reflected in the record of an interview held with the Prosecution, to be a factor in mitigation of sentence. However, since the Trial Chamber would have to speculate in order to determine whether Dragan Obrenović *would* in fact have voluntarily surrendered if given the opportunity, the Trial Chamber attaches little weight to this factor.

f. Comportment in the UNDU

137. The Defence submits that the comportment of Dragan Obrenović in the UNDU has been considerate, that he has complied with the rules and that he has had cordial relations with the other detainees.²⁴⁷

Findings

138. The behaviour of Dragan Obrenović while in custody at the UNDU and in the course of the proceedings before the Tribunal has been proper. While this has been recognised as a mitigating factor in numerous cases before this Tribunal, the Trial Chamber recalls that all accused are expected to comport themselves appropriately while at the UNDU; failure to do so may constitute an aggravating factor. Accordingly, this Trial Chamber will not accord significant weight to this factor.

g. Personal circumstances

139. Dragan Obrenović is married to an economist and is the father of a six-year old boy. His parents are respectable citizens of Rogatica, Bosnia and Herzegovina, and he has two brothers, a policeman and an electrician.²⁴⁸

²⁴⁵ Obrenović Sentencing Brief, para. 56.

²⁴⁶ *See, Plavšić* Sentencing Judgement, para. 84.

²⁴⁷ Obrenović Supplemental Submissions, para. 9 and Defence Ex DS-15a (Internal Memorandum from the Commanding Officer, UNDU to the Registrar, 1 October 2003).

²⁴⁸ Obrenović Sentencing Brief, para. 58.

Findings

140. The Trial Chamber finds that family circumstances, while recognised as a mitigating circumstance, cannot be given any significant weight in a case of this gravity.²⁴⁹

(ii) Findings

141. The Trial Chamber finds that the following mitigating circumstances have been established on the balance of probabilities and has accorded each factor appropriate weight: guilty plea and acceptance of responsibility; remorse; character of the accused; co-operation with the Prosecution; offer of voluntary surrender; comportment in the UNDU; and personal circumstances of the accused.

(c) Steps toward Rehabilitation

142. The Trial Chamber recalls that Dragan Obrenović did not specifically request that his steps toward rehabilitation be taken into consideration in mitigation of sentence; however, the Trial Chamber takes note of the argument of Defence counsel:

Civilised society requires individual accountability. If one makes the right choice when others around him are headed down the wrong roads, then properly he becomes the hero to posterity. But if one makes the wrong choice, that's not the end of the matter. His responsibilities do not end and the book of his life is not yet closed. He still must decide what he's going to do about his mistake.²⁵⁰

143. The Trial Chamber cannot but agree. This Trial Chamber has recognised that one of the purposes of punishment is rehabilitation. In so doing, the Trial Chamber also finds the necessary corollary that where an accused has demonstrated that he has already taken affirmative steps on the path toward rehabilitation, and that the process of rehabilitation is likely to continue in the future that this should be recognised in mitigation of sentence.

Findings

144. In this regard, the Trial Chamber finds that Dragan Obrenović has, under the propulsion of his own conscience, begun the process toward rehabilitation. This process began shortly after the murder operations following the fall of Srebrenica, when after hearing a survivor of an execution on the radio, Dragan Obrenović questioned General Radislav Krstić as to why the Muslims had been killed.

²⁴⁹ See, *Nikolić* Sentencing Judgement, para. 170.

²⁵⁰ Obrenović Defence Closing Statement, Sentencing Hearing, T. 1553.

We stood there for about two minutes listening to the survivor and General Krstić ordered that the radio be switched off and said we should not listen to enemy radio. [...] On the way back I thought about the survivor's story on the radio and this led me to ask General Krstić why the killings took place. I had said that we knew the people killed were all simple people and asked for the reason why they had to be killed. [...] General Krstić asked me where I had been. I said that I went to the field in Snagovo as ordered. Krstić cut me short and said that we should speak no more about this.²⁵¹

The process continued when in 1998 Dragan Obrenović permitted the office of the Prosecutor to search the premises of the Zvornik Brigade knowing that the search was likely to yield information that could incriminate him. Later, knowing that he held the status of a suspect, Dragan Obrenović agreed to speak with the Office of the Prosecutor and cooperate in their investigation of Srebrenica on three occasions and went so far as to offer to turn himself in should an indictment be brought against him.

145. Dragan Obrenović has continued the process toward rehabilitation since his arrest by taking full responsibility for the crimes he has committed, and by co-operating fully with Office of the Prosecutor. Furthermore, Dragan Obrenović, in his sentencing statement, gave the Trial Chamber his perspective and background of the violence and the war that took place in the former Yugoslavia, and its dehumanising impact upon all peoples of the area, regardless of ethnicity and affiliation. Dragan Obrenović has had the courage to confront his role he played during the crimes committed in Srebrenica and has himself admitted,

[O]f course I knew that what I was participating in was wrong. Any sane person would know that. And yet I did it anyway. The pressures of the time, as great as they were, did not constitute a reason or excuse to commit the offense to which I have pleaded guilty. [...] I am trying to explain how I came to be before you. In doing so, I want to concentrate on my own failings as an officer and an individual, at this most critical point in my life. [...] I do not want to see my son or his playmates ensnared in the hatreds and violence which have brought me to this point. I do not want to see anyone ensnared in that horrible trap. It is for this reason, as well as a profound sense of guilt and a hope to atone for some of the pain and suffering which my role in these crimes causes and salvage what remains of my life, that I chose to plead guilty and not contest the charges.²⁵²

146. The Trial Chamber finds by his expressed words and, more importantly, his *deeds*, that it is likely that upon his eventual release from his term of imprisonment, Dragan Obrenović will continue the path that he has begun by continuing to take positive acts to atone for his responsibility in the crimes at Srebrenica. Therefore, the Trial Chamber finds that Dragan Obrenović's affirmative steps toward rehabilitation are a factor in mitigation of sentence.

²⁵¹ Statement of Facts, page 8.

²⁵² Defence Ex. D-10 a, Sentencing Statement of Dragan Obrenović, 30 July 2003, pp. 5-8, 10.

V. TRIAL CHAMBER'S DETERMINATION OF SENTENCE

147. In accordance with the Plea Agreement, the Prosecution has recommended a sentence between 15 and 20 years, pursuant to Rule 62 *ter* (A)(ii).²⁵³ The Defence submits that the appropriate sentence, taking into consideration the circumstances of this case, would be between the range of eight to twelve years.²⁵⁴ The Parties rightly acknowledged that under Rule 62 *ter* (B), the Trial Chamber “shall not be bound” by any agreement between the parties on the sentence. Additionally, Dragan Obrenović explicitly waived his right to appeal a finding of guilt or any matters relating to sentencing “if the sentence imposed is with the range of sentence agreed upon by the parties.”²⁵⁵

148. The Trial Chamber has given due consideration to the recommendations of both the Prosecution and Defence.

A. Conclusions

149. Dragan Obrenović has accepted criminal responsibility for his role in the commission of persecutions following the fall of Srebrenica. This horrendous crime, which was carried out by methods including the cold-blooded murder of thousands of Bosnian Muslim men, was one of the darkest moments of the long war in the former Yugoslavia.

150. Dragan Obrenović was deputy commander and chief of staff of the Zvornik Brigade – the brigade responsible for the municipality in which the vast majority of the executions took place. During the two days when many of these executions took place, he was the acting commander of the Zvornik Brigade. Dragan Obrenović, as he has admitted, took actions which furthered the killing operation: he released seven of his men to “assist” with the prisoners – prisoners that he knew were brought to Zvornik to be shot. He approved the release of two military operators from the line, knowing that their task was the burial of executed prisoners. For these actions, Dragan Obrenović bears criminal responsibility.

151. The Trial Chamber has heard that Dragan Obrenović was a man of exceptional character and a soldier – an officer – whose subordinates “would have followed him down the barrel of a cannon.”²⁵⁶ Although there are few direct actions that Dragan Obrenović took to further the murder operations, his *inaction* during these critical, devastating days itself had an impact on those working with, and under, him. Dragan Obrenović spent most of these fateful days in the battlefield, but he

²⁵³ Prosecution Supplemental Sentencing Brief, para. 12.

²⁵⁴ Obrenović Supplemental Sentencing Brief, para. 18.

²⁵⁵ Plea Agreement, para. 14.

was *aware* of the larger murder operation taking place. Through his failure to prevent his subordinates from participating in the detention, murder and burial of Bosnian Muslim men, Dragan Obrenović bears criminal responsibility. Through his failure to punish his subordinates after they committed crimes which he knew or had reason to know about, Dragan Obrenović bears criminal responsibility.

152. The criminal responsibility borne by Dragan Obrenović for the widespread or systematic crimes committed following the fall of Srebrenica must reflect his individual criminal conduct – his actions and his omissions. Without diminishing in any way the criminal conduct of Dragan Obrenović, the Trial Chamber recalls that he is not alone in bearing criminal responsibility for the massive crimes committed against the Bosnian Muslim population. He did not conceive of the murder operation. His punishment must reflect only *his* role and participation in the crime of persecutions. Others, who should one day face judgement before this Tribunal, will accordingly be judged and sentenced for *their* roles.

153. The Trial Chamber has found that there exist in this case numerous mitigating circumstances upon which the Trial Chamber has placed substantial weight. Through the unqualified acceptance of his responsibility and his guilt, his sincere remorse, his substantial co-operation with the Prosecution, and his character, Dragan Obrenović has mitigated his sentence. The Trial Chamber stresses that the allocation of significant weight to the mitigating circumstances in this case should not be interpreted as dismissal of the gravity of the offence for which Dragan Obrenović has been convicted. The Trial Chamber has considered the scale of the crimes in which Dragan Obrenović participated. The Trial Chamber has further considered the impact of these crimes on the victims and their survivors. Both are enormous.

154. As the Trial Chamber has stressed to both Parties and to Dragan Obrenović, it is not bound by their recommendations relating to the sentence. The Trial Chamber has carefully considered the submissions, and the recommended sentence, by each party.

B. Credit for Time Served

155. Dragan Obrenović was detained by SFOR on 15 April 2001 and transferred to the Tribunal on the same day. Pursuant to Rule 101 (C) of the Rules of the Tribunal, Dragan Obrenović is entitled to credit for the time he has spent in detention, namely 969 days in total.

²⁵⁶ Sentencing Hearing, Defence Closing Arguments, T. 1544.

VI. DISPOSITION

156. 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** Dragan Obrenović to **SEVENTEEN years** imprisonment. He is entitled to credit for 969 days in relation to the sentence imposed by the Trial Chamber, as credit for time served in detention as of the date of the Sentencing Judgement.

157. Pursuant to Rule 103(C), Dragan Obrenović shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

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

Liu Daqun
Presiding

Volodymyr Vassylenko

Carmen Maria Argibay

Dated this tenth day of December 2003,
At The Hague
The Netherlands

[Seal of the Tribunal]

VII. ANNEX A: GLOSSARY

ABiH	Muslim Army of Bosnia-Herzegovina
<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999
BT.	Transcript of hearings in the case <i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T
<i>Blagojević</i> Trial	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, 3 March 2000.
Bratunac Brigade	1 st Bratunac Light Infantry Brigade.
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-A, Judgement, 20 February 2001.
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-T, Judgement, 16 November 1998.
Defence or Obrenović Defence	Defence for Dragan Obrenović
Defence Ex. DS-	Exhibits tendered by the Defence and admitted into evidence by the Trial Chamber.
<i>Erdemović</i> Appeal Judgement	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-A, Judgement, 7 October 1997.
<i>Erdemović</i> Second Sentencing Judgement	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-Tbis, Sentencing Judgement, 5 March 1998.
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998.
Geneva Conventions	Geneva Conventions I through IV of August 12, 1949.
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violation of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and other such Violations Committed in the Territory of Neighboring States, between 1 January and 31 December 1994.

Indictment	<i>Prosecutor v. Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić</i> , Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002.
Initial Indictment	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-01-43-I Indictment, 9 April 2001.
International Tribunal or Tribunal or ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.
<i>Jelisić</i> Appeal Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001.
JNA	Army of Socialist Republic of Yugoslavia (Yugoslav People's Army)
Joint Indictment	<i>Prosecutor v. Vidoje Blagojević, Dragan Obrenović and Dragan Jokić</i> , Case No. IT-02-53-I, Joinder Indictment, 22 January 2002.
Joint Motion	<i>Prosecutor v. Vidoje Blagojević, Dragan Obrenović and Dragan Jokić</i> , Case No. IT-02-60-T, Joint Motion for Consideration of Plea Agreement Between Dragan Obrenović and the Office of the Prosecutor, 20 May 2003.
KT.	Transcript of hearings in the case <i>Prosecutor v. Radislav Krstić</i> , Case No, IT-98-33-T
<i>Kambanda</i> Sentencing Judgement	<i>Prosecutor v. Jean Kambanda</i> , Case No. ICTR-97-23-S, Judgement, 4 September 1998.
<i>Kordić</i> Trial Judgement	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001.
<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003.
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002.
<i>Krstić</i> Trial Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Judgement, 2 August 2001.
<i>Kunarac</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-A, Judgement, 12 June 2002.
<i>Kunarac</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-T, Judgement, 22 February 2001.
<i>Kupreškić</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-A, Judgement, 23 October 2001.

<i>Kupreškić</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-T, Judgement, 14 January 2000.
<i>Kvočka</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30-T, Judgement, 2 November 2001.
MUP	Ministry of the Interior
<i>Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003.
Obrenović Sentencing Brief	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Dragan Obrenović's Sentencing Brief, 30 July 2003 (confidential, in part)
Obrenović Supplemental Submissions	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Dragan Obrenović's Supplemental Sentencing Brief Relating to Co-operation, 23 October 2003 (confidential, in part)
Parties	Defence and Prosecution
Plea Agreement	<i>Prosecutor v. Vidoje Blagojević, Dragan Obrenović, and Dragan Jokić</i> , Case No. IT-02-60-T, Annex A to the Joint Motion for Consideration of Plea Agreement between Dragan Obrenović and the Office of the Prosecutor, 20 May 2003.
Plea Hearing	<i>Prosecutor v. Vidoje Blagojević, Dragan Obrenović and Dragan Jokić</i> , Case No. IT-02-60-T, Plea Hearing, 21 May 2003.
<i>Plavšić</i> Sentencing Judgement	<i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003
Prosecution or The Prosecutor	The Office of the Prosecutor
Prosecution Ex. PS-	Exhibits tendered by the Prosecution and admitted into evidence by the Trial Chamber.
Prosecution Sentencing Brief	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Prosecutor's Brief on the Sentencing of Dragan Obrenović, 30 July 2003.
Prosecution's Supplemental Submissions	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Prosecution's Supplemental Submissions Regarding the Sentencing of Dragan Obrenović, 23 October 2003.
Rules	Rules of Procedure and Evidence of the International Tribunal, IT/32/Rev.28, 17 July 2003.
SDS	Serbian Democratic Party

SFOR	International Stabilisation Force
SFRY	Socialist Federal Republic of Yugoslavia
SFRY Criminal Code	Criminal Code of the Socialist Federal Republic of Yugoslavia, published in the Official Gazette SFRJ No. 44 of October 8, 1976 and took effect on July 1, 1977.
<i>Sikirica</i> Sentencing Judgement	<i>Prosecutor v. Duško Sikirica et al</i> , Case No. IT-95-8-S, Sentencing Judgement, 13 November 2001.
<i>Simić</i> Sentencing Judgement	<i>Prosecutor v. Milan Simić</i> , Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002.
Statement of Facts	<i>Prosecutor v. Vidoje Blagojević, Dragan Obrenović, and Dragan Jokić</i> , Case No. IT-02-60-T, Statement of Facts as set out by Dragan Obrenović - “Tab A” to “Annex A” to the Joint Motion for Consideration of Plea Agreement between Dragan Obrenović and the Office of the Prosecutor, 20 May 2003.
T.	Transcript of hearing in the present case. All transcript page numbers referred to in the course of this judgement are from the unofficial, uncorrected version of the transcript. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public.
<i>Tadić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A and IT-94-1-Abis, Judgement in sentencing appeals, 26 January 2000.
<i>Tadić</i> Sentencing Judgement (1997)	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Sentencing Judgement, 14 July 1997.
<i>Tadić</i> Sentencing Judgement (1999)	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-Tbis-R117, Sentencing Judgement, 11 November 1999.
<i>Todorović</i> Sentencing Judgement	<i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001.
Trial Chamber	Trial Chamber I Section A of the Tribunal.
UNDU	United Nations Detention Unit
UNPROFOR	United Nations Protection Force
VRS	Army of the Serbian Republic of Bosnia and Herzegovina/Republika Srpska
Zvornik Brigade	1 st Zvornik Infantry Brigade

**VIII. ANNEX B: STATEMENT OF FACTS AND ACCEPTANCE OF
RESPONSIBILITY**