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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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TRIAL CHAMBER

The Hague, 27 September 2006

PROSECUTOR V. MOMČILO KRAJIŠNIK SUMMARY OF JUDGEMENT

Please find below the summary of the judgement today read out by Presiding Judge Orić:

This Trial Chamber is sitting today to deliver its judgement in the case of the Prosecution versus Momčilo Krajišnik.

For the purposes of this hearing, the Chamber will summarize briefly its findings. We emphasize that this is a summary only, and that the authoritative account of the Chamber's findings is to be found in the written judgement, which will be made available at the end of this session.

Mr Krajišnik stood trial for one count of violations of the laws or customs of war, namely murder; one count of genocide; one count of complicity in genocide; and five counts of crimes against humanity, namely persecution, extermination, murder, deportation, and forced transfer. He is charged with having committed, planned, instigated, ordered, or otherwise aided and abetted the crimes, as well as failing to take necessary and reasonable measures to prevent such acts or to punish the perpetrators where he had a duty to do so. The indictment covers thirty-five (35) municipalities in Bosnia-Herzegovina. The crimes charged are alleged to have been committed in all thirty-five (35) municipalities, between 1 July 1991 and 30 December 1992.

Mr Krajišnik was born on 20 January 1945 in Novi Grad municipality in Bosnia-Herzegovina. Mr Krajišnik studied economics and worked as an economist in various companies in Sarajevo. He first met Radovan Karadžić in 1983. On 12 July 1990, Mr Krajišnik became a member of the Serbian Democratic Party, the SDS. On 20 September 1990, he was elected deputy to the Bosnia-Herzegovina Assembly, and on 20 December 1990 he became President of that Assembly.

The Chamber will now spend a few words on the political background of Bosnia-Herzegovina and of the emergent Bosnian-Serb Republic.

The first multi-party elections in Bosnia-Herzegovina were held on 18 November 1990. The political parties representing the three dominant ethnic groups won the majority of seats, namely the SDS, the Croatian Democratic Union, known as the HDZ, and the Party of Democratic Action, which was the main political party of the Bosnian Muslims, known as the SDA. These three parties reached an agreement among themselves on a formula for the distribution of power. Positions in all government organs and public institutions, at the central and lower levels, were distributed in accordance with party quotas.

Nonetheless, mistrust, fear, and resentment grew among the three main ethnic groups in Bosnia-Herzegovina. As a consequence, in early 1991, Bosnian Croats and Bosnian Muslims began organizing armed groups. At around the same time, the SDS began actively arming the Serb population. Bosnian Serbs also relied on the Yugoslav People's Army for protection.

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On 15 October 1991, the Bosnia-Herzegovina Assembly passed a resolution on the sovereignty of Bosnia-Herzegovina, despite strong opposition from the Serb deputies. Ten days later, the SDS formed a Bosnian-Serb Assembly, with Mr Krajišnik as president. The Bosnian-Serb Assembly began establishing parallel government structures.

The Bosnian-Serb Assembly adopted the Constitution of the Bosnian-Serb Republic on 28 February 1992. The Constitution laid out the structure of the Bosnian-Serb Republic.

The Bosnian-Serb Government was led by the Prime Minister, who at the relevant time was Branko Đerić. It consisted of thirteen Ministries.

The Bosnian-Serb Assembly consisted of eighty-two (82) deputies, the majority of whom were SDS members. On 27 March 1992, the Assembly created the National Security Council, or SNB. Radovan Karadžić was the President of the SNB while Mr Krajišnik, as President of the Assembly, was an ex officio member. The SNB held joint meetings with the Bosnian-Serb Government for the purpose of taking decisions on military, political, and administrative matters. The SNB also issued instructions to, and received reports from, local Territorial Defence units and municipal authorities.

On 12 May 1992, the Assembly replaced the SNB with a three-member Presidency, to function until a President of the Bosnian-Serb Republic could be elected. Radovan Karadžić, Nikola Koljević, and Biljana Plavšić were appointed to this Presidency. They, in turn, elected Karadžić as the President of the Presidency. The SNB stopped functioning shortly thereafter.

Although Mr Krajišnik was not formally a member of the Presidency, he attended all but possibly one session of the Presidency between May and December 1992. During these sessions, Mr Krajišnik was not a mere spectator. For example, he was responsible for the economy. Later he was also responsible for liaising and coordinating with war commissioners, who were appointed by the Presidency and were in charge of municipalities. Mr Krajišnik had a significant input in the Presidency's workings. He conducted himself as a regular member of the Presidency, and was accepted as such by the other members. Prime Minister Đerić also attended sessions of the Presidency.

The Chamber is satisfied that the Bosnian-Serb Presidency operated in fact with five members from its inception on 12 May 1992.

The Presidency wielded great power in the Bosnian-Serb Republic, beyond that of its constitutional powers. For example, the Minister of Interior, Mićo Stanišić, and the Minister of Justice, Momčilo Mandić, both reported directly to, and took instructions from, the Presidency. This, in turn, led to a weak Government. Nevertheless, the Government still had significant influence over many issues arising during the conflict, as is explained more fully in the judgement.

The Presidency also controlled the Bosnian-Serb Army, known as the VRS, which was established by the Assembly on 12 May 1992. Pursuant to the Constitution, the President of the Bosnian-Serb Republic was the Supreme Commander of the VRS. General Ratko Mladić was the commander of the VRS Main Staff. He would consult with the Presidency regularly, and the Presidency would frequently make decisions on military matters.

The Presidency also had extensive contact with municipal authorities, much of which came through Mr Krajišnik. As President of the Bosnian-Serb Assembly, Mr Krajišnik was in close contact with Assembly deputies, who were also active on the municipal level.

The Assembly's composition and operating methods thus ensured that the decision-making process was heavily influenced by SDS policy. Mr Krajišnik, both as President of the Assembly and as a prominent member of the SDS, played an important role in effecting the SDS's influence over the Bosnian-Serb Assembly.

The Chamber has also heard evidence that expressions of ethnic hatred and scaremongering in the Bosnian-Serb Assembly were condoned by Mr Krajišnik. The transcripts of sessions brought to the attention of the Chamber show that never once, during the indictment period, did he chastise deputies for insults to other national groups. On occasions, he engaged in this type of language himself. Mr Krajišnik's authority as President of the Bosnian-Serb Assembly made it easy for him to propagate views on ethnic separation.

The Chamber will now discuss in some detail the acts which occurred on the ground during this take-over of power in the indictment municipalities.

When the independence of Bosnia-Herzegovina was recognized by the international community in early April 1992, Bosnian Serbs began to seize power in the municipalities through the use of force.

The Chamber finds that from 18 March 1992 onwards, there was an attack directed against the Bosnian-Muslim and Bosnian-Croat civilian population living in the thirty-five (35) indictment municipalities. The attack included a wide range of discriminatory measures, such as the imposition of curfews; the setting up of barricades and checkpoints where members of these ethnic groups were regularly stopped and searched; searches of the houses of Muslims and Croats; and dismissals from employment.

Beginning in April, Serb forces attacked Muslims and Croats living in towns, villages, and smaller settlements, most of which were undefended and contained no military targets. Muslims and Croats were mistreated and killed. Men were often arrested and taken to detention centres, while women and children were forced to leave their homes, and were either detained or forced to leave the municipality. Their homes were then either looted and destroyed by Serb forces, or appropriated by Serb authorities. Serb forces also destroyed cultural monuments and sacred sites of importance to the Muslim and Croat populations.

The conditions in many detention centres where Muslims and Croats were held were intolerable, without sufficient food, water, medical care, and hygiene facilities. The detainees were often beaten and sometimes raped by members of the Serb forces, some of whom were employed as guards, while others were allowed access to detention centres. Many detainees suffered physical and psychological injuries and health problems. Many detainees died as a result. Many detainees were also deliberately killed, by members of paramilitaries, police or other Serb forces.

The Chamber will illustrate the events summarized above through a description of events in the municipality of Zvornik.

Zvornik was a municipality with a Muslim-majority population. The Serb crisis staff mobilized the Serb members of the Territorial Defence in early April 1992. Paramilitary forces, including Arkan's men, Šešelj's men, Yellow Wasps, and Red Berets, began to arrive in the municipality. They had been invited by Branko Grujić, the president of the crisis staff. The police in the municipality was divided along ethnic lines. The Serb members of the Zvornik police relocated to Karakaj, where the Serb crisis staff was located. The Serb police and the paramilitary forces erected barricades throughout the municipality.

Serb forces, including members of the police, the Territorial Defence, the Yugoslav People's Army, and paramilitary groups, then launched an armed attack against Zvornik town. The Serb civilian population had left town prior to the attack. Zvornik town was taken over by the Serb forces within a day. The Serbian flag was hoisted on top of the main town mosque. Many civilians were killed during the attack, and many others fled in fear.

After the attack, Arkan's men looted the homes and piled dozens of dead bodies, including the bodies of children, women, and elderly persons, onto trucks. More dead bodies lay in the streets.

In late April or early May 1992, Serb forces demanded the surrender of the Muslim village of Divič, also located in Zvornik municipality. However, before the deadline for surrender had expired, the Serb forces launched an attack on the town. Approximately 1,000 Muslims fled towards a nearby village. When some of them later attempted to return, they were turned away by Serb forces. In late May, between 400 and 500 Muslims from Divič village, including women, children, and elderly persons, were forced onto buses by members of the Yellow Wasps, and told that they would be taken to Muslim territory. They were released in Crni Vrh, and departed on foot.

In the beginning of June 1992, Muslim police officers in the Muslim village of Kozluk in Zvornik municipality were forced to surrender their uniforms and weapons to a Serb police officer. Later that month, an attack was launched on the village. A large number of Serb soldiers, Territorial Defence, and paramilitary units entered Kozluk in tanks and other military vehicles. Among the Serb forces were Branko Grujić, president of the Zvornik crisis staff, and Jovan Mijatović, a member of the Zvornik crisis staff and a deputy in the Bosnian-Serb Assembly. They informed the Muslim villagers that they had one hour to leave, or they would be killed. They also told them that they could not take any personal belongings with them, and forced them to sign statements surrendering their property. On the same day, a convoy of vehicles organized by the Serbs transported approximately 1,800 persons out of the municipality.

In early June, Serbs were seen moving into villages in Zvornik municipality from which Muslims had been expelled. Most of the nineteen (19) Muslim monuments in Zvornik municipality had been damaged or completely destroyed through shelling or by use of explosives during the attacks in April and May 1992.

Muslims were placed in detention in several locations in Zvornik, and subjected to severe physical, psychological, and sexual abuse. In early June, a paramilitary group used spiked metal bars and chains to assault the detainees being held at a facility in the village of Čelopek. Some detainees were forced to beat each other, and three were murdered by the guards. The Yellow Wasps paramilitary group killed at least five of the detainees. One man had his ear cut off, others had their fingers cut off, and at least two men were sexually mutilated.

The Karakaj technical school in Zvornik municipality became a detention centre for Muslim men, and was guarded by Serb soldiers. Over the course of several days, many of the detainees were severely beaten. About 160 detainees were later removed in small groups and executed by the Serb guards.

Incidents like the ones just described also occurred in the other indictment municipalities, namely Banja Luka, Bijeljina, Bileća, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboј, Donji Vakuf, Foča, Gacko, Hadžići, Ilidža, Ilijaš, Ključ, Kalinovik, Kotor Varoš, Nevesinje, Novi Grad, Novo Sarajevo, Pale, Prijedor, Prnjavor, Rogatica, Sanski Most, Sokolac, Teslić, Trnovo, Višegrad, Vlasenica, and Vogošća.

The Chamber now turns to its legal findings regarding these acts.

The Chamber has found that the following crimes committed in the indictment municipalities have been proven beyond a reasonable doubt: Extermination as a crime against humanity was committed against Bosnian Muslims, and against Bosnian Croats to a lesser degree, in fourteen (14) of the indictment municipalities. Murder as a crime against humanity was committed against Bosnian Muslims and Bosnian Croats in twenty-eight (28) of the indictment municipalities. Having qualified all killings as murder or extermination under article 5 of the Tribunal's Statute, there is no need to make findings under the alternative charge of murder as a war crime. Deportation as a crime against humanity was proven to have been committed against Bosnian Muslims and Bosnian Croats in seventeen (17) of the indictment municipalities, and forced transfer as a crime against humanity was committed in twenty-five (25) of the indictment municipalities. Persecution against Bosnian Muslims and Bosnian Croats as a crime against humanity was committed in all thirty-five (35) municipalities, through the

following acts: the imposition of restrictive and discriminatory measures involving the denial of fundamental rights; murder; cruel and inhumane treatment during attacks on towns and villages and within various detention centres; forcible displacement; unlawful detention; forced labour at front lines; appropriation or plunder of private property; and destruction of private property and of cultural monuments and sacred sites.

With regard to the charge of genocide, the Chamber finds that in spite of evidence of acts perpetrated in the municipalities which constituted the *actus reus* of genocide, the Chamber has not received sufficient evidence to establish whether the perpetrators had genocidal intent, that is the intent to destroy, the Bosnian-Muslim or Bosnian-Croat ethnic group, as such.

We shall now deal with the question of Mr Krajišnik's criminal responsibility for the crimes just enunciated. On the facts of this case, the Chamber finds joint criminal enterprise to be the most appropriate mode of liability. Therefore, other forms of liability charged in the indictment were not further considered.

The Chamber is of the opinion that the existence of a joint criminal enterprise does not presume preparatory planning or explicit agreement among its participants. The Chamber finds that a joint criminal enterprise existed throughout the territories of the Bosnian-Serb Republic. There was a centrally-based core component of the group, which included Mr Krajišnik, Radovan Karadžić, and other Bosnian-Serb leaders. The rank and file of the joint criminal enterprise was based in the regions and municipalities of the Bosnian-Serb Republic, and maintained close links with the leadership in the Bosnian-Serb capital of Pale. A joint criminal enterprise can exist and its members may be held liable for crimes committed by principal perpetrators in the municipalities who may not have shared the common objective of the joint criminal enterprise. It is sufficient in such cases to show that their acts were procured by members of the joint criminal enterprise in the implementation of the common objective. The possibility that one or more principal perpetrators were not aware of the joint criminal enterprise or its objective does not preclude a finding that the joint criminal enterprise committed crimes throughout the indictment municipalities through such principal perpetrators.

The common objective of the joint criminal enterprise was to ethnically recompose the territories targeted by the Bosnian-Serb leadership by drastically reducing the proportion of Bosnian Muslims and Bosnian Croats through expulsion. The Chamber finds that the crimes of deportation and forced transfer were the original crimes of this common objective. Mr Krajišnik gave the go-ahead for the expulsion programme to commence during a session of the Bosnian-Serb Assembly when he called for [and I quote], "implementing what we have agreed upon, the ethnic division on the ground" [end of quote].

The criminal means of a common criminal objective may be expanded when leading members of the joint criminal enterprise are informed of new types of crime committed pursuant to the implementation of the objective, when they take no effective measures to prevent recurrence of such crimes, and when they persist in the implementation of the common objective. In this case, the members of the joint criminal enterprise are shown to have intended the expansion of means, since implementation of the common objective can no longer be understood to be limited to commission of the original crimes.

Whereas in the early stages of the joint criminal enterprise in which Mr Krajišnik participated, the common objective may have been limited to the crimes of deportation and forced transfer, the evidence shows that the criminal means of the enterprise very soon grew to include other crimes of persecution, as well as murder, and extermination. This expanded set of crimes, as detailed in the judgement, came to redefine the criminal means through which the joint criminal enterprise's common objective would be achieved during the course of the indictment period.

The evidence does not show that, at any time during the indictment period, the crime of genocide formed part of the common objective of the joint criminal enterprise in which Mr Krajišnik is shown on the evidence to have participated, nor that Mr Krajišnik had the specific intent necessary for genocide. The evidence also does not support the conclusion that the Mr Krajišnik was complicit in genocide.

In the Chamber's view, Mr Krajišnik's overall contribution to the joint criminal enterprise was to help establish and perpetuate the SDS party and state structures that were instrumental to the commission of the crimes. He also deployed his political skills both locally and internationally to facilitate the implementation of the joint criminal enterprise's common objective through the crimes envisaged by that objective. Mr Krajišnik knew about, and intended, the mass detention and expulsion of civilians. He had the power to intervene, but he was not concerned with the predicament of detained and expelled persons. Mr Krajišnik wanted the Muslim and Croat populations moved out of Bosnian-Serb territories in large numbers, and accepted that a heavy price of suffering, death, and destruction was necessary to achieve Serb domination and a viable statehood.

Therefore, the Chamber finds that Mr Krajišnik is guilty of commission of the aforementioned crimes through his participation in a joint criminal enterprise.

We now come to the sentencing considerations.

The Prosecution has requested that Mr Krajišnik be sentenced to imprisonment for life for the crimes he has committed.

In determining the appropriate sentence, the Chamber has assessed the seriousness of Mr Krajišnik's overall criminal conduct. In this regard, the parties' submissions, as well as other relevant factors, as explained in the judgement, have been considered.

Immense suffering was inflicted upon the victims in this case, and the consequences that the crimes have had on the Muslim and Croat ethnic groups in Bosnia-Herzegovina are profound. The crimes were committed over a long period of time, often through brutal methods, with hatred or appalling lack of concern.

Mr Krajišnik's role in the commission of the crimes was crucial. His positions within the Bosnian-Serb leadership gave him the authority to facilitate the military, police, and paramilitary groups to implement the objective of the joint criminal enterprise. Mr Krajišnik had a duty to tend to the well-being of the entire population as well as a duty to uphold law and order. The population residing in the territory of the Bosnian-Serb Republic, was entitled to expect that a person of Mr Krajišnik's authority would work to prevent or punish crimes instead of taking part in their commission.

The Chamber finds that the following individual circumstances of Mr Krajišnik should be accorded some, although very slight, weight in mitigation: his lack of prior convictions; his good conduct during detention; his relatively long time in detention before his trial began; his efforts, although limited, during the indictment period to provide help to non-Serb individuals; and his age and family situation.

Mr. Krajišnik, would you please stand.

For the reasons summarized above, this Chamber, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the judgement, decides as follows:

You are found not guilty and therefore acquitted of Counts 1 and 2 of the indictment, namely genocide and complicity in genocide, with the intent to destroy, in part, the Bosnian Muslims and Bosnian Croats.

You are also found not guilty of Count 6 of the indictment, namely murder as a violation of the laws of customs of war.

The Chamber finds you guilty of the following counts:
Count 3, persecution as a crime against humanity;
Count 4, extermination as a crime against humanity;
Count 5, murder as a crime against humanity;
Count 7, deportation as a crime against humanity; and
Count 8, forced transfer as an inhumane act as a crime against humanity.

Your responsibility for the above crimes is pursuant to article 7(1) of the Tribunal's Statute. For your role in these crimes, we sentence you, Mr Krajišnik, to a single sentence of 27 years of imprisonment.

You are entitled to credit for the period of time you have been in custody. You were arrested on 3 April 2000, and are therefore entitled to credit of 2,369 days.

The Chamber stands adjourned.

Courtroom proceedings can be followed on the Tribunal's website.