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Tribunal Pénal  
International pour  
l'ex-Yougoslavie

## JUDGEMENT SUMMARY

*(Exclusively for the use of the media. Not an official document)*

TRIAL CHAMBER

The Hague, 12 June 2007

### SUMMARY OF JUDGEMENT FOR MILAN MARTIĆ

*Please find below the summary of the judgement today read out by Judge Moloto:*

#### Summary of judgement

This Trial Chamber is sitting today to deliver its judgement in the case of the Prosecutor v. Milan Martić. First of all, the Trial Chamber wishes to thank the Parties, the Registry staff, and all others who have assisted in the smooth and efficient running of this trial.

The Trial Chamber emphasises that this is but a summary of its findings and that the only authoritative account is the written judgement, which will be made available after this hearing.

This trial started on the 13<sup>th</sup> of December 2005 and concluded on the 12<sup>th</sup> January 2007. During the trial, which encompassed some 11,000 transcript pages, the Chamber heard the evidence of 67 live witnesses and admitted written evidence of 33 witnesses. The Trial Chamber admitted just over one thousand exhibits.

The Indictment in this case charges Milan Martić with individual criminal responsibility in 19 counts, which set out:

- 9 counts of violations of the laws or customs of war under Article 3 of the Statute, including murder, attacks on civilians, torture, cruel treatment, destruction of villages and institutions dedicated to religion and education, and plunder of public or private property, and
- 10 counts of crimes against humanity under Article 5 of the Statute, including persecution, extermination, murder, torture, inhumane acts, and deportation.

The Prosecution has alleged that Serb forces committed the crimes charged against Croats and other non-Serbs in areas of Croatia referred to as the Autonomous Region of Krajina, the so-called "SAO Krajina", which later became the Republic of Serbian Krajina or "RSK" for short. These crimes are alleged to have been committed from August 1991 through 1995.

The said forces which were alleged to have been involved included, among others:

- units of the Yugoslav People's Army, called the "JNA",
- units of the Territorial Defence, called the "TO", and
- units of the Ministry of the Interior, called "MUP", of the SAO Krajina and of the RSK, as well as of the Republic of Serbia, and
- paramilitary forces.

The MUP forces included the ordinary police of the SAO Krajina and later the RSK, and the so-called *Milicija Krajine*. The Prosecution has alleged that these MUP forces were commonly referred to as "Martić's Police".

The Prosecution has alleged that the persecutions included, as underlying crimes, the extermination and murder of hundreds of Croats and other non-Serb civilians, throughout the territory of the SAO Krajina and the RSK, including specifically in the villages of Hrvatska Dubica, Cerovljani, Baćin, Saborsko, Poljanak, Lipovača, Škabrnja, Nadin, and Bruška. These acts were also alleged to have been committed during attacks by the previously mentioned forces on these villages and in these areas.

It was alleged that tens of thousands of Croats and other non-Serb civilians were deported from the SAO Krajina and the RSK to areas under Croatian control, or to other countries.

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Moreover, the Prosecution has alleged that Croats and other non-Serbs were routinely detained for prolonged periods in detention facilities where acts of torture and cruel and inhumane treatment were committed.

It was also alleged that public and private property in the SAO Krajina and the RSK was intentionally destroyed and plundered, including buildings dedicated to religion or education, and that restrictive and discriminatory measures were imposed against the Croat and other non-Serb civilians.

Lastly, the Prosecution has charged Milan Martić with responsibility for the shelling of Zagreb, which occurred on the 2<sup>nd</sup> and 3<sup>rd</sup> of May 1995.

For each count, the Prosecution has charged individual criminal responsibility pursuant to Article 7(1) of the Statute and pursuant to Article 7(3) of the Statute. In particular, the Prosecution alleges that Milan Martić participated in a joint criminal enterprise together with, among others, Slobodan Milošević, Milan Babić, Radovan Karadžić, Ratko Mladić, Jovica Stanišić, Franko "Frenki" Simatović, and other named and unnamed individuals of the forces mentioned previously.

The Prosecution has alleged that the common purpose was:

“the forcible removal of a majority of the Croat, Muslim and other non-Serb population from approximately one-third of the territory of Croatia and large parts of Bosnia and Herzegovina in order to make them part of a new Serb-dominated state.”

In other words, the alleged common purpose was the commission of the crimes of deportation and forcible transfer.

The Prosecution has alleged that all of the crimes charged were within the object of the joint criminal enterprise and that at all relevant times Milan Martić held the necessary state of mind for the commission of each of these crimes. In the alternative, the Prosecution has alleged that the crimes enumerated in Counts 1 to 9 and 12 to 19 - that is, crimes other than deportation and forcible transfer - were a natural and foreseeable consequence of the execution of the common purpose. It is alleged that Milan Martić was aware that such crimes were the possible outcome of the execution of this joint criminal enterprise.

The Trial Chamber will now turn to the Accused himself. Milan Martić was born on the 18<sup>th</sup> of November 1954 in the village of Žagrović, Knin municipality in the Republic of Croatia. He graduated from the Post-Secondary Police School in Zagreb and worked firstly as a policeman in Šibenik and later as a Junior Police Inspector in Knin. He was eventually promoted to Chief of the Knin Public Security Station.

From 1991 until August 1995, Milan Martić held several positions within the SAO Krajina and the RSK governments, including Minister of Defence of the SAO Krajina, Deputy Commander of the TO of the SAO Krajina, Minister of the Interior of the SAO Krajina as well as of the RSK, and, from early 1994, he became President of the RSK.

The Trial Chamber will give a brief summary of the political background to the events relevant to this case. In April and May 1990, multi-party elections were held in Croatia, in which the Croatian Democratic Union won two-thirds of the seats in the Parliament. In the same elections, the Serbian Democratic Party gained power in several municipalities, including Benkovac, Korenica, and Knin. On the 25<sup>th</sup> of July 1990, a Serbian Assembly was established in Srb, north of Knin, as the political representation of the Serbian people in Croatia. This Serbian Assembly declared sovereignty and autonomy of the Serb people in Croatia. In late August and early September 1990, a referendum of Serbs was held, which resulted in 97.7% voting in favour of Serb autonomy in Croatia.

On 21 December 1990 in Knin, the Serbian Autonomous Region of Krajina was proclaimed by municipalities in the regions of Northern Dalmatia and Lika, in south-western Croatia. On the 22<sup>nd</sup> of December 1990, the Croatian constitution was amended to define Croatia as a “national state of the Croatian nation and a state of members of other nations or minorities who are citizens”. In January 1991, the SAO Krajina established a “Regional Secretariat for Internal Affairs” in Knin and Milan Martić was appointed Secretary for Internal Affairs. The government of Croatia was informed that the Croatian MUP would no longer be considered as having authority within the SAO Krajina. On the 27<sup>th</sup> of June 1991, Milan Martić was appointed Minister of the Interior of the SAO Krajina. On the 19<sup>th</sup> of

December 1991, the SAO Krajina was replaced by the Republic of Serbian Krajina. Milan Martić continued as Minister of the Interior.

The evidence presented to this Trial Chamber has shown that the President of Serbia, Slobodan Milošević, openly supported the preservation of Yugoslavia as a federation of which the SAO Krajina would form part. However, the evidence has established that Slobodan Milošević *covertly* intended the creation of a Serb state. This state was to be created through the establishment of paramilitary forces and the provocation of incidents in order to create a situation where the JNA could intervene. Initially, the JNA would intervene to separate the parties but subsequently the JNA would intervene to secure the territories envisaged to be part of a future Serb state.

This evidence has been corroborated by evidence relating to the events on the ground. During the spring and summer of 1991, armed clashes took place between SAO Krajina and Croatian police in several areas. There were also raids and attacks by SAO Krajina police and other forces on several Croat-majority areas, including Lovinac, Ljubovo, and Glina.

The evidence has shown that the JNA intervened during these clashes in order to separate the two sides. However, this changed on the 26<sup>th</sup> of August 1991. On this date, the JNA 9<sup>th</sup> Corps participated on the side of the SAO Krajina's *Milicija Krajine* and TO forces in an attack on the Croat-majority village of Kijevo, near Knin. The attack followed an ultimatum issued by Milan Martić, in which he stated that:

You and your leadership have brought relations between the Serbian and Croatian populations to such a state that further co-existence in *our Serbian territories* of the SAO Krajina is impossible [...]

The attack on Kijevo marked a turning point in the JNA's role in the conflict in Croatia, and from that point, the JNA *participated* in attacks on majority-Croat areas and villages together with SAO Krajina MUP and TO forces. From August 1991 and into early 1992, these combined forces attacked several Croat-majority villages and areas, including Hrvatska Kostajnica, Cerovljani, Hrvatska Dubica, Baćin, Saborsko, Poljanak, Lipovača, Škabrnja and Nadin. The evidence shows that the attacks were carried out in order to connect Serb villages and areas across non-Serb areas. During these attacks, the crimes of murder, destruction, plunder, detention, torture, and cruel treatment were committed against the non-Serb population.

The evidence is clear that the SAO Krajina and the RSK leadership, including Milan Martić, endorsed Slobodan Milošević's vision to create a Serb-dominated state.

In early July 1991, Milan Martić stated that the *Milicija Krajine* of the SAO Krajina MUP were "defending Serbian land and the Serbs' ethnic area". On the 19<sup>th</sup> of August 1991, Milan Martić stated that he would accept no autonomy and that "the territories controlled by the police and the Territorial Defence of the Serbian Autonomous Region of Krajina will forever remain Serbian". In December 1991, Milan Martić further stated that "nobody [...] has the right to deny the Serbian people the right to live in their own country".

This plan to link up Serb villages and areas continued throughout 1992 with various armed clashes and attacks, including the so-called "Operation Corridor", which was a military operation aimed at linking the Croatian and Bosnian Kraljinas with Serbia. RSK forces under the command of among others Milan Martić participated in this operation.

At a meeting on the 14<sup>th</sup> of June 1993 with Cedric Thornberry, the United Nations Protection Force's Director of Civil Affairs, Milan Martić stated that the "joint life of Croats and Serbs in one State is impossible because of genocide politics of Croatia. We want to separate in 2 states [...]." The Trial Chamber notes that around this time in speeches in the media, Milan Martić stated that he could not guarantee the safety of the Croat population in Knin. On the 21<sup>st</sup> of January 1994, during the campaign for the RSK presidential elections, Milan Martić stated that he would "speed up the process of unification" and "pass on the baton to our all Serbian leader Slobodan Milošević."

It is therefore clear that Milan Martić endorsed the goal of creating a unified Serb state and that he advocated and pursued this goal at all times.

The Trial Chamber considers that an objective to unite with other ethnically similar geographical areas in and of itself does not amount to a common purpose within the meaning of the law on joint criminal enterprise pursuant to Article 7(1) of the Statute. However, the Trial Chamber has found that where the creation of a unified territory is intended to be implemented through the

commission of crimes within the Statute this may be sufficient to amount to a common criminal purpose.

The Trial Chamber has taken particular note of the fact that the attacks on predominantly Croat areas during the autumn of 1991 and early 1992 followed a generally similar pattern, that is: the area or village in question was shelled, after which armed ground units entered. After the fighting had subsided, acts of killing and violence were committed against the non-Serb civilian population who had not managed to flee. Houses, churches and property were destroyed, and widespread looting was carried out as part of the forcible removal. On several occasions, the SAO Krajina police and TO organised transport for the non-Serb population in order to remove it from SAO Krajina territory altogether to locations under Croatian control. Members of the non-Serb population would also be rounded up and taken away to detention facilities, including in central Knin, and eventually exchanged and transported to areas under Croatian control.

Thus, the threat clearly expressed in Milan Martić's ultimatum in Kijevo was carried out in the territory of the SAO Krajina through the commission of widespread, grave crimes. This created an atmosphere of fear in which the further presence of Croats and other non-Serbs in the SAO Krajina was made impossible. The Trial Chamber has therefore concluded that the displacement of the Croat and other non-Serb population which followed these attacks was not merely the consequence of military action, but in fact its primary objective.

By way of illustration, the Trial Chamber will describe the take-over of the Hrvatska Kostajnica area and the crimes committed there.

During August and September 1991, there was intensive fighting in the predominantly Croat area of Hrvatska Kostajnica. In mid-September 1991, SAO Krajina TO and MUP forces took control of Hrvatska Kostajnica and from there, as well as from Bosanska Kostajnica in Bosnia and Herzegovina, the village of Hrvatska Dubica was shelled and the Croatian forces withdrew. An SAO Krajina TO and MUP force was then set up in Hrvatska Dubica. In the same operation, the nearby villages of Cerovljani and Baćin were also taken.

In September and October 1991, houses belonging to Croats were torched in Hrvatska Dubica and the neighbouring village of Cerovljani, and widespread looting was committed by the TO, the *Milicija Krajine*, the JNA as well as by local Serbs. Local Croats were detained and subjected to mistreatment and were also used as live shields by the Serb forces. Serbs moved into the houses which the fleeing Croats had left.

In the morning on the 20<sup>th</sup> of October 1991, a truck bearing the insignia "Milicija SAO Krajina" driven and controlled by members of the SAO Krajina TO and MUP collected local civilians, who were almost exclusively Croats, under the pretext of holding a meeting in the local fire station. In total, more than 40 civilians were brought to this fire station. They were guarded by several armed Serb soldiers, and they were not free to leave. Every two or three hours there was a change of guard, and the detainees' names would be read out from a list to verify that no one was missing. Over the course of the day, eleven of the detainees managed to escape or were released because they had contacts with Serbs.

The following day, those detained in the fire station were taken by the soldiers to Krečane just outside of the village of Baćin, on the banks of the Una river, and were killed. Their bodies were buried in several graves, including a mass grave at that location. The Trial Chamber visited this location during its site visit in September 2006.

An almost identical incident occurred in nearby Cerovljani in October 1991, during which the remaining Croat and other non-Serbs civilians were rounded up by armed Serbs under the pretext of having a meeting. They were then detained for one night in the local community centre. One woman was released because she had contact with Serbs. The bodies of several of the persons who had been detained in this community centre were subsequently exhumed from the mass grave at Krečane near Baćin. The Trial Chamber has also found that the non-Serb civilians who remained in Baćin were also taken to Krečane where they were killed.

The Trial Chamber was presented with considerable evidence of acts of persecution carried out against the non-Serb population. Widespread acts of murder and violence, detention and intimidation became pervasive throughout the RSK territory from 1992 to 1995. These acts were committed by RSK TO and MUP forces, and by the JNA, as well as by members of the local Serb population, and created such a coercive atmosphere that the Croat and other non-Serb inhabitants of the RSK were left with no option but to flee or to be deported by force by RSK forces. In this respect,

the Trial Chamber has taken particular note of the evidence that the RSK MUP forces directed the non-Serb population to collection points from which transport was organised to areas under Croatian control. By 1994, the RSK was virtually entirely Serb.

The Trial Chamber has found that all crimes charged in the Indictment, with the exception of extermination under Count 2, were committed in the SAO Krajina and the RSK from August 1991 through 1995, including murder, imprisonment, torture, cruel treatment, destruction, including of buildings dedicated to religion, as well as plunder. However, the Trial Chamber stresses that there are incidents underlying the crimes charged for which the Trial Chamber does not find Milan Martić guilty. The Trial Chamber refers to the judgement in this respect.

In relation to extermination, the Trial Chamber recalls that a minimum number of victims is not required and that the crime may be established by an accumulation of separate and unrelated killings. The Trial Chamber has, in particular, considered the evidence that the killings charged were committed within a limited period of time and within a limited territory. However, having considered these factors, as well as the totality of the evidence surrounding the killing incidents charged as extermination, the Trial Chamber found that the crime of extermination was not committed on an accumulated basis in this case.

In the alternative, the Prosecution has argued that the killings committed at Krečane near Baćin amount to extermination in and of themselves. The Trial Chamber considers that the killings committed at Krečane were without doubt grave, particularly considering the organised and callous manner in which the evidence shows that they were carried out. However, the Trial Chamber finds that these killings, even taken together, cannot be considered as having been committed on a large scale. In other words, the killings at Krečane near Baćin do not meet the element of massiveness required for extermination.

The Trial Chamber will now turn to discuss the individual criminal responsibility of Milan Martić.

The Trial Chamber has found that with regard to Counts 3 to 14, and Count 1, Persecution, insofar as it relates to these counts, Milan Martić's individual criminal responsibility is one of participation in a joint criminal enterprise pursuant to Article 7(1) of the Statute.

The Trial Chamber has found that from at least August 1991 the political objective to unite Serb areas in Croatia and in BiH with Serbia in order to establish a unified Serb territory was implemented through widespread and systematic armed attacks on predominantly Croat and other non-Serb areas and through the commission of acts of violence and intimidation. In the SAO Krajina and the RSK, this campaign of violence and intimidation against the Croat and non-Serb population was a consequence of the position taken by the leadership that co-existence with the Croat and other non-Serbs, in Milan Martić's own words, "in our Serbian territories of the SAO Krajina [was] impossible". The implementation of the political objective to establish a unified Serb territory in these circumstances necessitated the forcible removal of the Croat and other non-Serb population from the SAO Krajina and RSK. The Trial Chamber has therefore found it established beyond reasonable doubt that the common purpose of the joint criminal enterprise was the establishment of an ethnically Serb territory through the displacement of the Croat and other non-Serb population, as charged in Counts 10 and 11.

The evidence establishes that the SAO Krajina and RSK leadership, including in particular Milan Martić, sought and received significant financial, logistical and military support from Serbia. The support came from the MUP and the State Security Service of Serbia, from the JNA and from the Republika Srpska in Bosnia and Herzegovina. Milan Martić stated that he "personally never ceased this cooperation" and that there was "good cooperation with the leadership of Serbia, notably the [MUP]." In fact, the relationship with Serbia was so close that the SAO Krajina police was mainly financed with funds and material from Serbia. The support from Serbia continued throughout the indictment period. One witness even described the Army of the RSK and the Yugoslav Army as one and the same organisation, only located at two separate locations.

The Trial Chamber has therefore found that among others Blagoje Adžić, Milan Babić, Radmilo Bogdanović, Veljko Kadijević, Radovan Karadžić, Slobodan Milošević, Ratko Mladić, Vojislav Šešelj, Franko "Frenki" Simatović, Jovica Stanišić, and Captain Dragan Vasiljković participated in the furtherance of the common purpose of the joint criminal enterprise.

The evidence shows that Milan Martić's contacts with other members of the joint criminal enterprise were close and direct. As a result, substantive financial, logistical and military support

was rendered to the SAO Krajina and the RSK. The evidence is clear that Milan Martić actively worked together with the other participants to achieve the objective of a united Serb state, something which he, as noted, expressed publicly on several occasions. This objective he achieved by the forcible removal of the non-Serb population. The evidence establishes that Milan Martić was one of the most important and influential political figures in the SAO Krajina and RSK governments. As Minister of the Interior, Milan Martić exercised absolute authority over the MUP, including the power to intervene on an individual level by appointing and removing chiefs of public security stations and to disband units.

The evidence shows that the displacement of the Croat and other non-Serb population had commenced in and around Knin by 1991. Milan Martić contributed to this displacement by fuelling the atmosphere of fear through his media speeches that he could not guarantee the safety of the Croats. Furthermore, the ultimatum issued by Milan Martić in relation to Kijevo at the end of August 1991 is indicative of Milan Martić's mindset in relation to the Croat and other non-Serb population of the SAO Krajina.

The Trial Chamber considers that the sheer scale of the widespread and pervasive crimes perpetrated against the non-Serb population must have rendered such crimes common knowledge. Crimes committed within the territory of the RSK were even discussed at RSK government sessions. The evidence also shows that Milan Martić and the MUP were informed by the United Nations Civilian Police of the multitude of crimes committed against non-Serbs. In fact, Milan Martić himself issued detailed instructions concerning the cooperation of the MUP with the United Nations Civilian Police. In addition, at a meeting in 1993 with Cedric Thornberry, the UNPROFOR Director of Civil Affairs, Milan Martić requested that Croats who wished to leave the RSK sign statements that no one had put pressure on them to leave. There is therefore absolutely no doubt that Milan Martić was aware that the non-Serb population was being driven out as a result of the coercive atmosphere and widespread acts of violence and intimidation in the SAO Krajina and the RSK.

However, despite the overwhelming evidence of crimes committed throughout SAO Krajina and RSK territory, the Trial Chamber was only presented with evidence of a few examples where Milan Martić intervened to punish members of the MUP who had behaved in a criminal manner. The Trial Chamber cannot but conclude that Milan Martić deliberately refrained from intervening against perpetrators who committed such crimes.

The Trial Chamber has therefore found that Milan Martić intended to forcibly displace the Croat and other non-Serb population from the SAO Krajina and the RSK, and that he actively participated in the furtherance of the common purpose of the joint criminal enterprise to create a unified Serb state by such forcible removal of the Croat and other non-Serb population.

The Trial Chamber has found that the crimes perpetrated against the non-Serb population, with the exception of deportation and forcible transfer, were outside of the common purpose of the joint criminal enterprise. However, the Trial Chamber recalls that Milan Martić was aware that the non-Serb population was being subjected to widespread and systematic crimes, including murder, unlawful detentions, beatings while detained, and crimes against property, following the coercive atmosphere in the SAO Krajina and the RSK. The Trial Chamber considers that this atmosphere was created and sustained by the actions of Milan Martić and other members of the joint criminal enterprise. The Trial Chamber has therefore found that these crimes were foreseeable to Milan Martić.

Furthermore, the evidence includes only scarce reference to Milan Martić acting to take measures to prevent or punish such crimes. In fact, despite the overwhelming evidence of the scale and gravity of the crimes being committed against the non-Serb population, Milan Martić persisted in pursuing the common purpose of the joint criminal enterprise. Thus, the Trial Chamber considers it proven beyond reasonable doubt that Milan Martić willingly took the risk that the crimes which have been found to be outside the common purpose might be perpetrated against the non-Serb population. The Trial Chamber has therefore found that Milan Martić incurs individual criminal responsibility pursuant to Article 7(1) of the Statute for Counts 3 to 14, and Count 1, Persecution, insofar as it relates to these counts.

The Trial Chamber now turns to the attacks on Zagreb on the 2<sup>nd</sup> and 3<sup>rd</sup> of May 1995, with which Milan Martić is charged under Counts 15 to 19.

In the early morning hours of the 1<sup>st</sup> of May 1995, armed forces of Croatia launched a military offensive known as "Operation Flash" on Western Slavonia in the RSK. Negotiations to find a peaceful settlement took place during the operation and agreements were eventually reached on the 3<sup>rd</sup> of

May 1995. Operation Flash ended around the 4<sup>th</sup> of May 1995 with the RSK losing control over Western Slavonia. As a result, a large part of the Serb population fled Western Slavonia.

At 1 p.m. on the 1<sup>st</sup> of May 1995, Milan Čeleketić, the Chief of the Main Staff of the RSK Army, ordered artillery fire on the city of Sisak near Zagreb. The order was given in the presence of Milan Martić, who was by then the President of the RSK and according to the Constitution led the armed forces in peace and war. Artillery fire was opened at 5 p.m. that day. On the same day, Milan Čeleketić deployed the M-87 Orkan unit from the Knin area to Vojnić which is located about 50 kilometres south of Zagreb. The unit was to take up positions by 2 p.m. that day. The Trial Chamber will describe the characteristics of the M-87 Orkan shortly.

On the 1<sup>st</sup> of May 1995, a meeting was held between, among others, Milan Martić as President of the RSK, Milan Čeleketić and the Prime Minister and ministers of the RSK government. Both peaceful solutions, involving negotiations and a surrender of parts of Western Slavonia, and non-peaceful solutions were discussed. The evidence shows that, Milan Martić and Milan Čeleketić were not in favour of a peaceful solution.

In the mid-morning of the 2<sup>nd</sup> of May 1995, without warning, several Orkan rockets struck locations in Zagreb, including the main square, several shopping streets, a school, the village of Plešo near Zagreb airport and the airport itself. Five persons, all civilians, were killed in these attacks and at least 160 persons were severely injured. Many of these victims still today suffer from their injuries.

At midday the following day, 3<sup>rd</sup> May 1995, Zagreb was again shelled by Orkan rockets. The areas hit were the Croatian National Theatre at Marshall Tito Square, a children's hospital, as well as another square. These attacks claimed two lives and injured 54 people. Many of these victims also still suffer from their injuries.

There is considerable evidence that Milan Martić had considered attacking Zagreb prior to the 2<sup>nd</sup> of May 1995. Already in 1992 and 1993, Milan Martić, as Minister of the Interior, considered attacking Zagreb as a response to Croatian attacks on RSK cities. On one occasion, he stated that:

“it would be better for Tudjman and his soldiers not to touch us again because that would compel us to head forcefully for Zagreb and to turn it into Vukovar.”

In June 1993, Milan Martić informed Slobodan Milošević that the P-65 LUNA rocket system had been moved to the area of Banija and Kordun in order to carry out possible attacks on Zagreb should RSK towns come under attack.

In a meeting on the 24<sup>th</sup> of October 1994 with Peter Galbraith, the United States Ambassador to Croatia, Milan Martić, then President of the RSK, threatened to shell Zagreb, stating in effect that attacking civilian targets in Zagreb and attacking the city itself was a way in which the RSK could respond to a Croatian attack. Ambassador Galbraith informed Milan Martić that attacking Zagreb would be a crime.

In February 1995, in a speech to the commanding officers of the RSK Army Milan Martić stated emphatically that “[n]o one can stop us to fire at Zagreb, Osijek, Vinkovci, Zadar, Karlovac, Split”.

On the 3<sup>rd</sup> of May 1995, that is on the second day of the attacks on Zagreb, Milan Martić stated:

As a counter measure to what Tudjman did to you here, we have shelled all their cities: Sisak several times and Karlovac, Zagreb yesterday and today. This was done for you. Today, an ultimatum followed if they continue to attack our besieged forces, we will continue to attack Zagreb and destroy their cities.

In several media statements, Milan Martić admitted to having ordered the attacks. For instance, in a radio interview on the 5<sup>th</sup> of May 1995, Milan Martić stated:

That order was given by me, personally, as a retaliation to Franjo Tudman and his staff for the order he had given to commit aggression against the Western Slavonia.

Also on the 5<sup>th</sup> of May 1995, in a meeting with the United Nations Special Envoy Yasushi Akashi, Milan Martić stated, in response to Yasushi Akashi's condemnation of the attacks, that “[h]ad I not ordered

the rocket attacks [...] they would have continued to bomb our cities". Milan Martić then proceeded to threaten to resume the attacks if their conditions were not met. Milan Martić spoke of "massive rocket attacks on Zagreb which would leave 100,000 people dead."

The Trial Chamber will now focus on the M-87 Orkan. This weapon is a multi-barrelled rocket launcher, which launches *non-guided* rockets. The primary use of the M-87 Orkan is to target soldiers and armoured vehicles. The evidence shows that each rocket launched on Zagreb on the 2<sup>nd</sup> and 3<sup>rd</sup> of May 1995 contained a cluster warhead loaded with 288 so-called bomblets. These bomblets are ejected at a height of 1,000m above the targeted area. Upon impact, each bomblet explodes and releases 420 steel pellets. The lethal range of each pellet is ten metres. This means that each rocket releases around 120,000 pellets.

The maximum firing range is 50 kilometres and at this distance the weapon displays a targeting error of *one kilometre* in any direction.

The evidence shows that on the 2<sup>nd</sup> and the 3<sup>rd</sup> of May 1995 the M-87 Orkan was fired from the Vojnić area, near Slavonsko Polje which is at the extreme of the weapon's range. The evidence shows that by virtue of its characteristics and the firing range in this specific instance, the M-87 Orkan was *incapable* of hitting specific targets. For these reasons, the Trial Chamber has found that the M-87 Orkan is an indiscriminate weapon, the use of which in densely populated civilian areas, such as Zagreb, will result in the infliction of severe casualties.

The Defence has argued that there were military targets in Zagreb at the time of the attacks on the 2<sup>nd</sup> and the 3<sup>rd</sup> of May 1995, including the Ministry of Interior, Ministry of Defence, Zagreb airport, and the Presidential Palace. In view of the characteristics of the M-87 Orkan, the Trial Chamber has found that the presence or otherwise of military targets in Zagreb is irrelevant. The Defence's argument has therefore been dismissed.

By the 2<sup>nd</sup> of May 1995, the effects of firing the M-87 Orkan on Zagreb were known to those involved. Moreover, before the decision was made to once again use this weapon on Zagreb on the 3<sup>rd</sup> of May 1995, the full impact of using such an indiscriminate weapon was known *beyond doubt* as a result of the extensive media coverage on the 2<sup>nd</sup> of May 1995 of the effects of the attack on Zagreb.

The Defence advances the argument that the attacks on Zagreb were lawful reprisals under customary international law. It argues that the attacks were carried out with the aim of putting an end to violations of international humanitarian law committed by "the Croatian military and police forces" particularly during Operation Flash. The Defence submits that this operation was a breach of the cease-fire agreement and conducted without respect for the norms of international humanitarian law.

In the law of armed conflict, belligerent reprisals are acts which would otherwise be unlawful, but which are rendered lawful by the fact that they are taken in response to a violation of that law committed by another belligerent. As a drastic and exceptional measure, reprisals are subject to strict conditions, which are well-established in customary law.

Reprisals may be used only as a last resort and only when all other means have proven to be ineffective. They may only be undertaken when a prior and formal warning has been given, which has failed to put an end to the violations committed by the adversary. Moreover, the decision to undertake reprisals may only be taken by the highest political or military level. A further requirement is that reprisals must be proportionate to the initial violation of the opposite party. The reprisals must also be ceased as soon as they have been achieved. Lastly, acts of reprisal must respect the "laws of humanity and dictates of public conscience". The Trial Chamber interprets this condition to mean that reprisals must be exercised, to the extent possible, in keeping with the principle of the protection of the civilian population in armed conflict and the general prohibition of targeting civilians.

The Trial Chamber disagrees with the Defence and finds that the evidence fails to show that the conditions for lawful reprisals have been met. First, even if the Trial Chamber were to assume that the Croatian forces had engaged in serious violations of international humanitarian law during Operation Flash, the evidence shows that the shelling was not carried out as a last resort, after all other means had been exhausted. Indeed, the evidence shows that peace negotiations were ongoing during Operation Flash, until the 3<sup>rd</sup> of May 1995. Furthermore, no formal warning was given prior to the attacks that reprisals would be carried out in reaction to the alleged violations conducted during Operation Flash. The Trial Chamber cannot therefore find that the shelling of Zagreb constituted a lawful reprisal. The Defence argument has consequently been dismissed.

The Trial Chamber has found that Milan Martić's responsibility for the attacks on Zagreb on the 2<sup>nd</sup> and the 3<sup>rd</sup> of May 1995 is most appropriately described as "ordering" pursuant to Article 7(1) of the Statute. Other modes of liability have therefore not been considered. In order to reach this finding, the Trial Chamber has considered the considerable evidence that Milan Martić from 1992 onwards considered attacking Zagreb as a response to Croatian attacks on the RSK. The Trial Chamber has also considered Milan Martić's repeated admissions in the media that he ordered the attacks as well as the evidence that Milan Martić and Milan Čeleketić were not in favour of a peaceful solution to Operation Flash. Milan Martić was also present when Milan Čeleketić ordered the shelling of Sisak. The Trial Chamber considers the totality of the evidence to establish that Milan Martić was involved from the beginning in the RSK's military response to Operation Flash.

The Trial Chamber has considered the evidence that according to the RSK Constitution, the President led the RSK Army in times of peace and war, in accordance with the Constitution and the decisions of the Supreme Defence Council. Accordingly, any decision to shell Zagreb should have been taken by the collegiate body of the Supreme Defence Council. However, the evidence establishes beyond reasonable doubt that Milan Martić and Milan Čeleketić circumvented the Supreme Defence Council. In this regard, the Trial Chamber has considered the evidence of Rade Rašeta, Chief of Security of the Main Staff of the RSK Army, that the decisions to attack Zagreb on the 2<sup>nd</sup> and the 3<sup>rd</sup> of May 1995 were not taken by the Supreme Defence Council but by Milan Čeleketić and Milan Martić. This is also supported by other evidence before the Trial Chamber.

In light of the totality of the evidence, the Trial Chamber has found it established beyond reasonable doubt that Milan Martić ordered the shelling of Zagreb on the 2<sup>nd</sup> and the 3<sup>rd</sup> of May 1995.

The Trial Chamber will now turn to the matter of sentencing. Many of the crimes proved in this case were committed with discriminatory intent and the Trial Chamber considers that this is a factor to be taken into consideration when assessing the gravity of the criminal conduct of Milan Martić. Milan Martić has also been found guilty of the crimes of deportation and forcible transfer. The Trial Chamber particularly notes that the non-Serb population was subjected to widespread and systematic crimes as a result of the coercive atmosphere in the SAO Krajina and the RSK between 1991 and 1995. The scale and systematic nature of these crimes are factors which the Trial Chamber considers to be of particular gravity.

The Trial Chamber recalls that the majority of the crimes for which Milan Martić has been found guilty were committed against elderly people, persons held in detention, and civilians. The special vulnerability of these groups of victims add to the gravity of the crimes.

The Trial Chamber recalls the effects of the crimes committed on victims and their families and notes that virtually the entire Croat and other non-Serb population was expelled from this area. Many victims had their property looted and burnt. The Trial Chamber recalls in particular the horrific injuries and the serious suffering inflicted on civilians as a consequence of the indiscriminate attacks on Zagreb, which Milan Martić ordered. The impact and long-lasting effects of these crimes, for which Milan Martić is individually criminally responsible including as a direct perpetrator, render them especially grave.

In relation to aggravating circumstances, the Trial Chamber has considered the fact that Milan Martić was one of the most important and influential political figures. Milan Martić exercised absolute authority over the MUP, and as President of the RSK, Milan Martić held the highest political office and controlled the armed forces of the RSK. The Trial Chamber considers that in holding such positions, Milan Martić was obligated to prevent the commission of crimes and to ensure that all inhabitants of the territories under his authority enjoyed respect for human rights. However, the evidence presented to the Trial Chamber proves beyond reasonable doubt that Milan Martić abused his positions and that he, through continuous and systematic efforts to create an ethnically Serb territory, promoted an atmosphere of mistrust and fear between Serbs and non-Serbs, in particular Croats. Lastly, the Trial Chamber considers that the widespread criminal conduct which covered the entire SAO Krajina and RSK territory during a period of more than four years serves as an aggravating circumstance.

In relation to mitigating circumstances, the Trial Chamber recalls that during the summer and autumn of 1991, Milan Martić instructed persons involved in humanitarian assistance to treat Croat and Serb refugees arriving from Drniš equally. The Trial Chamber further recalls Slobodan Jarčević's testimony that Milan Martić "demonstrated the nobility of his character" by looking after refugees who arrived from BiH in 1994, despite the difficulties which the RSK was facing due to international sanctions. However, the Trial Chamber considers that even though there is evidence showing positive traits in the character of Milan Martić and that sporadic help was given by him to

Croats and other non-Serbs, the effect thereof is diminished by the fact that Milan Martić at all times relevant for the crimes for which he has been found guilty, held positions in which he was able and obliged to take measures to address acts of violence. The Trial Chamber recalls that in such a case, sporadic benevolent acts or ineffective assistance may be disregarded. Moreover, the Trial Chamber has considered the fact that Milan Martić and his family were expelled and displaced following Operation Storm to be a mitigating circumstance of limited weight.

The Trial Chamber notes that Milan Martić evaded justice for around seven years in the knowledge that an indictment was issued against him. The Trial Chamber therefore finds that the fact that Milan Martić surrendered in 2002 to the Tribunal, although constituting a mitigating factor in this case, will be given only minimal weight.

The Trial Chamber has taken account of all relevant legal considerations, the details of which are set forth in the written judgement. Mr. Martić, please rise.

This Trial Chamber, having considered all of the evidence and the arguments of the Parties, and based upon the factual and legal findings as determined in the judgement, finds you, Milan Martić, **NOT GUILTY** of:

**Count 2:** Extermination, a crime against humanity.

The Trial Chamber finds you, Milan Martić, **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

**Count 1:** Persecutions, a crime against humanity

**Count 3:** Murder, a crime against humanity

**Count 4:** Murder, a violation of the laws or customs of war

**Count 5:** Imprisonment, a crime against humanity

**Count 6:** Torture, a crime against humanity

**Count 7:** Inhumane acts, a crime against humanity

**Count 8:** Torture, a violation of the laws or customs of war

**Count 9:** Cruel treatment, a violation of the laws or customs of war

**Count 10:** Deportation, a crime against humanity

**Count 11:** Forcible transfer, a crime against humanity

**Count 12:** Wanton destruction of villages, or devastation not justified by military necessity, a violation of the laws or customs of war

**Count 13:** Destruction or wilful damage done to institutions dedicated to education or religion, a violation of the laws or customs of war

**Count 14:** Plunder of public or private property, a violation of the laws or customs of war

**Count 15:** Murder, a crime against humanity

**Count 17:** Inhumane acts, a crime against humanity

**Count 19:** Attacks on civilians, a violation of the laws or customs of war

The Trial Chamber has found that the elements have been established for murder and cruel treatment, respectively charged under Count 16 and Count 18 as violations of the laws or customs of war. As these crimes are absorbed by the crime of attacks on civilians under Count 19, the Trial Chamber has only entered a conviction for the crime of attacks on civilians.

The Trial Chamber sentences you to a single sentence of **thirty-five (35) years** of imprisonment. Pursuant to Rule 101(C) of the Rules, you are entitled to credit for time spent in detention, which as of the date of this judgement amounts to 1,855 days. You are also entitled to credit for such additional time you may serve pending the determination of any appeal. Pursuant to Rule 103(C) of the Rules, you shall remain in the custody of the Tribunal pending finalisation of arrangements for your transfer to the State where you shall serve your sentence.

The hearing is now adjourned.