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Criminal Tribunal  
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Tribunal Pénal  
International pour  
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TRIAL CHAMBER

CHAMBRE DE 1<sup>ÈRE</sup>  
INSTANCE

The Hague, 31 January 2005  
CT/P.I.S./932e

**JUDGEMENT IN THE CASE**  
**THE PROSECUTOR v. PAVLE STRUGAR**

• **PAVLE STRUGAR SENTENCED TO EIGHT YEARS' IMPRISONMENT**

*Please find below the summary of the Judgement delivered by Trial Chamber II, composed of Judge Parker (presiding), Judge Thelin, and Judge Van Den Wyngaert, as read out by the Presiding Judge.*

**SUMMARY**

The Chamber is sitting today to deliver the Judgement in the trial of Pavle Strugar.

For the purposes of this hearing, the Chamber will summarise briefly its findings, emphasising that this is a summary only, and that the only authoritative account of the Trial Chamber's findings, and of its reasons for those findings, is to be found in the written Judgement, copies of which will be made available to the parties and to the public at the conclusion of this hearing.

Before turning to the merits, the Chamber wishes to thank the translators and interpreters, the Court Management Section and the Victim and Witnesses Section, as well as Counsel and the Chamber's legal support team for having facilitated the conduct of this trial.

The Accused, Pavle Strugar, a retired Lieutenant-General of the then Yugoslav Peoples' Army (JNA), is charged in the Indictment with crimes allegedly committed on 6 December 1991, in the course of a military campaign of the JNA in the area of Dubrovnik in Croatia in October, November and December of 1991. It is alleged that in the course of unlawful artillery shelling by the JNA on the historic Old Town of Dubrovnik on 6 December 1991, two people were killed, two were seriously wounded and many buildings of historic and cultural significance in the Old Town were damaged. These allegations support the six charges in the Indictment of violations of the laws or customs of war under Article 3 of the Statute of the Tribunal, namely murder, cruel treatment, attacks on civilians, devastation not justified by military necessity, attacks on civilian objects, and destruction of institutions dedicated to, *inter alia*, religion, and the arts and sciences.

It is alleged that the Accused is guilty of each of these six counts on two distinct bases. First, pursuant to Article 7(1) of the Statute, that he personally ordered the shelling of the Old Town, and also that he personally aided and abetted the shelling. Secondly, as a superior responsible for the criminal conduct of the forces under his command pursuant to Article 7(3) of the Statute. The Accused's liability is alleged to arise out of the position he then held as commander of the Second Operational Group (2 OG).

In September 1991, hostilities between the JNA and Croatian forces began in the south coastal area of Croatia. A blockade of Dubrovnik was established from 1 October 1991. It continued into 1992. The JNA forces under the Accused's command launched combat operations to advance closer on the city of Dubrovnik in particular from 23 to 26 October 1991 and from 9 to 13 November 1991. Both times, the wider city of Dubrovnik in general, and its historic Old Town in particular, were shelled. By 13 November 1991, the JNA effectively held all the territory around the wider city of

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Dubrovnik, except for Mount Srd, the dominant topographical feature of Dubrovnik immediately above the Old Town, where there is a fortress from Napoleonic times.

In early December 1991, negotiations were held in an attempt to resolve the problem of the blockade of Dubrovnik. Dubrovnik was but one of several issues, arising out of the conflict in the then SFRY, with which the highest Croatian and Serbian levels were occupied at the time. A Croatian ministerial delegation, led by Minister Rudolf, and the JNA, represented by Admiral Jokić, met in Cavtat on 5 December 1991. They were to continue on 6 December 1991.

The events directly relevant to 6 December 1991 are the subject of a great deal of evidence. Much of it is inconsistent or conflicting. It has been necessary for the Chamber to determine where the truth lies. Our reasons are set out in detail in the written Judgement. The summary of material events that follows reflects our findings as to what, in truth, did occur.

Well before sunrise, at around 0550 hours on the morning of 6 December 1991, residents of the Old Town of Dubrovnik awoke to the sound of explosions. An artillery attack had commenced. While initially, the firing was mainly concentrated on the area around Srd, some shelling occurred on residential areas of Dubrovnik, including the Old Town and the port of the Old Town, virtually from the outset of the attack. However, the focus of the attack came to shift from Srd to the wider city of Dubrovnik, including the Old Town. The most intense shelling occurred in the morning, between 0900-0930 hours and about 1100 hours. At about 1115 hours, a considerable drop in the frequency of the shelling occurred. This lull was not long-lived however, and shelling picked up again to continue though more sporadically. Shelling decreased noticeably a little after 1500 hours and had substantially ceased by a little after 1630 hours. The shelling of Dubrovnik, including the Old Town, had continued for over 10 and a half hours on 6 December 1991.

On 6 December 1991, the JNA attempted to capture Srd. The attempt commenced between 0500 and 0600 hours on 6 December 1991, under cover of darkness. It was undertaken by two small infantry units of the 3/472 mtbr of the JNA. Each had close tank support. Less than 40 soldiers made the attack. Even so the defending Croatian forces on Srd were outnumbered. The JNA infantry and artillery actions that day were overseen and coordinated by the commander of the 3/472 mtbr Captain Kovačević, who was located at his observation post on Žarkovica, a small plateau about two kilometres to the southeast of the Old Town, with clear views to the northwest of Dubrovnik, especially the Old Town, and Srd.

A little before 0600 hours, more than half an hour before sunrise, JNA units commenced the mortar and other artillery barrage. At first, the principal target was Srd. As the two attacking units approached Srd, they came under defensive fire from Srd. In time Croatian 82mm mortar and machine-gun fire was commenced from the wider city of Dubrovnik, but not from the Old Town, against the attacking troops. As the JNA troops attacking Srd came under increasing fire, some JNA artillery fire was targeted at Croatian firing positions in the wider city of Dubrovnik in an attempt to neutralise them.

By about 0800 hours, the JNA attacking forces had approached sufficiently close to Srd to be themselves threatened by the JNA artillery barrage on Srd. The barrage of Srd was called off so that the JNA troops could continue to advance. They were, however, still under mortar attack from Croatian positions in the wider city of Dubrovnik as well as defensive fire from Srd. While there had been some shelling by the JNA of Dubrovnik, including the Old Town, virtually from the commencement of fire by JNA batteries, from the time of the cessation of the JNA artillery barrage on Srd, at about 0800 hours, the full force of the active JNA mortars and other artillery, including Maljutka rockets or missiles, appears to have been directed at Dubrovnik, including the Old Town. There was no adequate control and direction of the fire of the JNA mortars and other weapons. Fire was not confined to Croatian military targets. Instead, they fired extensively, deliberately and indiscriminately at Dubrovnik, including the Old Town. This continued for many hours, as has been indicated.

The infantry attack on Srd was the scene of very intense and desperate close combat by both Croatian and JNA forces. There were fatalities and other casualties on both sides. The Croatian defenders withdrew into positions underground in the stone fortress on Srd and called in Croatian

mortar and other fire on the attacking JNA forces surrounding the fortress. Attempts to overcome the Croatian defenders, or to force them to capitulate, were made over many hours, but without success. Eventually, after 1400 hours, the exhausted attacking JNA forces called off the attempt to capture Srđ and withdrew with tank support under cover of another JNA mortar barrage on Srđ. The withdrawal was completed by a little after 1500 hours. The attempt to capture Srđ had failed. The JNA artillery attack on Dubrovnik, including the Old Town, had continued throughout the attempt to capture Srđ.

It was a position advanced by the Defence at trial, as indeed it was an explanation of the JNA attack on Srđ and the artillery attack on the Old town offered by the JNA in December 1991, that the attack was undertaken solely on the decision of the Captain Kovačević of the 3/472 mtbr, a decision he made impulsively and contrary to superior orders, early in the morning of 6 December 1991. The reason suggested for this remarkable conduct was that during the night of 5 and 6 December, Croatian forces at Srđ had offered provocations by firing at his troops, killing one. He lost his self-control and ordered the attack in an emotional response to the conduct of the Croatian forces.

It is the finding of the Chamber that this is entirely false. Late in the afternoon on 5 December 1991, a meeting was held at the forward command post of the 9 VPS at Kupari. The 3/472 mtbr was then under the command of the 9 VPS commanded by Admiral Jokić. Senior 9 VPS staff officers, including the Chief of Staff Warship-Captain Zec, the commander of the 3/472 mtbr Captain Kovačević, and the commanders of other 9 VPS units, were present at the meeting. At the meeting a battle plan to take Srđ the following morning and before 1200 hours was determined. Srđ was the dominant feature and the one remaining position held by Croatian forces on the heights above Dubrovnik. The plan involved the use of mortars and other artillery against military targets, including those in the wider Dubrovnik, as required, to support the assault on Srđ. It involved 9 VPS units other than the 3/472 mtbr. The evidence establishes, in the Chamber's finding, that the attack on Srđ was entirely preplanned and coordinated on 5 December 1991 by 9 VPS staff officers, and was not initiated by Captain Kovačević alone, in the early morning of 6 December 1991, in response to provocations that night by the Croatian forces.

On 6 December 1991, repeated protests against the JNA artillery attack on Dubrovnik, especially the Old Town, by Minister Rudolf leading the Croatian ministerial delegation, the European Community Monitoring Mission (ECMM) and the civil authorities of Dubrovnik, were made variously to the 9 VPS, to the Accused, and in Belgrade to the Federal Secretary of Defence General Kadijević. These were entirely ineffective to stop the artillery attack.

In the Chambers finding, however, a protest by the ECMM to General Kadijević led him to telephone the Accused between 0600 hours and 0700 hours. The Accused in turn, at around 0700 hours, telephoned Admiral Jokić. These events, and what passed between the Accused and Admiral Jokić at that time and later in the day, are the subject of much controversy in the evidence. It is unnecessary for present purposes to attempt to summarise all the Chamber's consideration of these matters and its reasons for the conclusions it has reached. The Chamber would particularly note its finding, however, that at no time during the morning of 6 December 1991 did either the Accused or Admiral Jokić order that the JNA attack to capture Srđ should cease. There were discussions between Admiral Jokić and Minister Rudolf during the morning in which they agreed on a cease-fire to take effect at 1115 hours. Following this, the Accused did order a cease-fire. This order only went to some JNA units. In particular there was no order given to the infantry units trying to capture Srđ to cease their attack. As was inevitable, because the JNA attack on Srđ continued and not all JNA artillery units ceased fire, the cease-fire was ineffective and both sides continued firing. No further steps were taken by either the Accused or Admiral Jokić to stop the artillery attack on the Old Town, or any other aspect of the JNA assault.

Instead, the Accused and Admiral Jokić flew together to Belgrade in the afternoon. General Kadijević had ordered them to do so that morning, when the ECMM protest reached him. The three met in the afternoon, the Accused and Admiral Jokić returning to their commands at about 1730 hours. It is apparent that the JNA was in what is colloquially described as "damage control mode" at that stage in respect of the attack Dubrovnik, especially the Old Town. The attack had provoked virtually immediate and strong adverse international reaction. Admiral Jokić was in immediate command of all the JNA forces involved in the attack that day. He was also in communication with the Croatian and international representatives. He was assigned the task of trying to "repair the damage and sort things

out". He proposed an enquiry, which was an obvious step in deflecting adverse international opinion. What followed, in the finding of the Chamber, evidences the tenor and the effect of the understanding or instructions Admiral Jokić took from the Belgrade meeting. The next morning, he signed a ceasefire agreement. His immediate actions were to give unqualified assurances, citing the authority of General Kadrijević, of a thorough investigation and action to deal with the perpetrators, to Minister Rudolf, the Dubrovnik Crisis Committee and the ECMM. He quickly conducted what the Chamber has found was a sham enquiry. He reported briefly to the Federal Secretariat on the steps he took and generally on the action of 6 December 1991, in a way which was quite out of keeping with the facts as revealed by the evidence, so as to put the conduct of the JNA forces in a more favourable light. The next day, a "commission" of three VPS officers visited the Old Town to report on the damage. Admiral Jokić endorsed their report, which sought to minimise the nature and extent of the damage and deflect responsibility for its cause from the JNA. On the evening of 6 December 1991, he removed one acting battalion commander, Lieutenant-Colonel Jovanović of the 3/5 mtbr, from his post. Strangely, Lieutenant-Colonel Jovanović had only held this acting post for one day. He was returned to his normal duties without any adverse disciplinary or other action. The 3/5 mtbr had no responsibility for the shelling of the Old Town as the Old Town was beyond the range of its mortars. He took no other disciplinary or administrative action to better determine the truth of what had occurred, or to deal with those responsible. The Chamber notes that no further investigative or disciplinary action was taken by his immediate superior, the Accused, or in turn the Accused's superior, General Kadrijević.

Numerous propositions were advanced as to why the Old Town came to be shelled on 6 December 1991. In particular, in the course of the Defence case the view was pursued that in truth there had been little or no damage to the Old Town. The Chamber, however, is satisfied by the evidence that there was extensive damage and that it extended over substantial areas of the Old Town. One other position for which the Defence contended is that any damage, alternatively some of the damage, to the Old Town was in fact deliberately or accidentally inflicted by the Croatian defending forces or other Croatian interests. However, there is a clear and strong body of evidence, indeed an overwhelming body, that the damage inflicted in and to the Old Town of Dubrovnik on 6 December 1991 was caused by the JNA shelling. Yet a further Defence submission, and one which is somewhat inconsistent with the submissions that have just been considered, is that any damage to the Old Town on 6 December 1991 was a regrettable but unavoidable consequence of artillery fire of the JNA targeted at Croatian military positions in and, in the immediate vicinity of, the Old Town. In part, the JNA forces did target Croatian firing and other military positions, actual or believed, in the wider Dubrovnik, but none of them were in the Old Town. Despite some contrary evidence, these Croatian positions were all too distant from the Old Town to put it in danger of unintended incidental fall of JNA shells targeted at those Croatian positions. It is the finding of the Chamber that the cause of the established damage to the Old Town was extensive, deliberate and indiscriminate shelling of the Old Town over some 10 ½ hours on 6 December 1991, not only by JNA mortars but also by other JNA weapons such as ZIS and recoilless cannons and Maljutka rockets.

Turning to the specific charges, the Indictment alleges the murder of two civilians in the course of the attack. In this respect, the Chamber observes that where a town occupied by a civilian population is subjected to a deliberate artillery attack, which results in civilian deaths, these deaths may constitute murder when the perpetrators had knowledge of the probability that the attack would cause deaths. The Chamber is satisfied that the fact, and the cause, of death are established for both civilians. The actual JNA perpetrators deliberately targeted the Old Town knowing it had a civilian population. The elements of murder have been established against those perpetrators.

The Indictment further alleges an offence of cruel treatment against two victims. Similar allegations relating to a third victim were dismissed in the Chamber's Decision on Rule 98 *bis*. The elements of the crime of cruel treatment have been established against the actual JNA perpetrators.

Offences of unlawful attacks on civilians, and on civilian objects, are also charged. On 6 December 1991, the evidence is unequivocal that the Old Town was, as it still is, a living town. Though a protected World Heritage site, it had a substantial resident population of between 7,000 and 8,000. As stated earlier, the Chamber has found that the Old Town was extensively targeted by JNA artillery and other weapons on 6 December 1991 and that no military firing points or other objectives, real or believed, in the Old Town were targeted by the JNA. In the Chamber's finding, the intent of

the perpetrators was to target the civilian population and civilian objects in the Old Town. The elements of these two crimes have therefore been established against the actual JNA perpetrators.

With respect to the crime of devastation not justified by military necessity and the crime of destruction of cultural property, the allegation against the Accused, following the Rule 98bis Decision, was that damage or destruction was sustained by 116 specified buildings and structures in the course of the 6 December shelling of the Old Town of Dubrovnik. The Chamber finds that of these 116 buildings and structures, it has been established that 52 were damaged, six of them being destroyed, during the 6 December shelling of the Old Town by the JNA. The nature and extent of the damage to these buildings varied. Moreover, while several of the 52 buildings and structures had sustained some degree of damage from earlier shelling in October and November, the Chamber is satisfied that the previously damaged buildings sustained further and significant damage during the 6 December attack. In relation to the charge of devastation, the Chamber finds that the Old Town sustained damage on a large scale on 6 December 1991. In relation to the charge of destruction of cultural property, the Old Town of Dubrovnik in its entirety was entered onto the World Heritage List in 1979, so that every building of the Old Town, including its walls, are properly characterised as cultural property. It has also been established that there were no military objectives in the immediate vicinity of the 52 buildings and structures destroyed or damaged on 6 December 1991, or in the Old Town, or in its immediate vicinity, so that the destruction or damage of property in the Old Town on 6 December 1991 was not justified by military necessity. The elements of these two crimes have been established against the actual JNA perpetrators.

The Chamber now turns to the crucial question whether the Accused is proved to be *personally* criminally responsible for the artillery attack on the Old Town, OR indirectly criminally responsible as commander of the 2 OG for the conduct of the JNA troops who were the actual perpetrators of these offences. It is established that all the JNA forces involved in the military action at Dubrovnik on 6 December 1991 were components of, or subjugated to, the 9 VPS which was commanded by Admiral Jokić on 6 December 1991. Further, the 9 VPS was in turn under the operational command of the 2 OG, which was commanded by the Accused. As their superior commander, the Accused had both legal and effective control of the JNA forces who conducted the military action at Dubrovnik, including the shelling of the Old Town.

The evidence does not establish, however, that the Accused ordered the shelling of the Old Town which occurred on 6 December 1991. What is established is that the Accused did order the attempt to capture Srđ which was undertaken on 6 December 1991. In the written Judgement the Chamber has dealt with the evidence which establishes this, and also with some evidence which sought to suggest that this was not so. In particular the Chamber accepts the evidence of Colm Doyle, then in charge of the ECMM monitors in Bosnia and Herzegovina, of a conversation he had with the Accused on 6 December 1991, shortly after midday, the effect of which, in the finding of the Chamber, was an admission by the Accused that he had ordered the attack on Srđ. The actual words of the Accused could be understood to suggest he ordered the shelling of the Old Town, but for reasons set out in the written Judgement that is not the finding of the Chamber. The Accused, however, left the detailed planning of the attack on Srđ to the 9 VPS whose forces surrounded Dubrovnik, and this is what occurred late on 5 December 1991.

While the circumstances known to the Accused, at the time of his order to attack Srđ, can only have alerted him to the possibility that, as had occurred in October and November, his forces would once again ignore orders and resort to deliberate and indiscriminate shelling, especially of the Old Town, it has not been established that it was known to the Accused that at the time of his order, there was a substantial likelihood of this occurring. It has not been proved therefore that the Accused is guilty of ordering the attack on the Old Town.

The Chamber finds that it has not been proved that the Accused aided and abetted the unlawful shelling of the Old Town. In particular, while the Accused did not take all necessary and reasonable measures to ensure that the shelling ceased, he did issue a cease-fire order to take effect at 1115 hours, although this order was not implemented effectively. Further, the necessary mental element for aiding and abetting is not established. It has not been proved, therefore, that the Accused is personally criminally liable for the attack pursuant to Article 7(1) of the Statute.

We now deal with the Accused's responsibility as commander of the 2 OG pursuant to Article 7(3). On 6 December 1991, the Accused had the legal authority and the material ability to issue orders to the 3/472 mtr, and all the other JNA forces involved in the attack on Srđ and the shelling of Dubrovnik, including the Old Town, to ensure that the Old Town was not shelled and that an existing attack ceased. In the Chamber's finding, from about 0700 hours on 6 December 1991, the Accused was on notice, because of events detailed in the written Judgement, of the clear and strong risk that already his JNA artillery was repeating its previous conduct and shelling the Old Town. By that time, the risk that this was occurring was so real, and the implications were so serious, that the Accused should have seen the urgent need to determine whether the JNA artillery was in fact shelling the Old Town, without justification, and if so to ensure the attack on the Old Town was stopped. He did not do so. In particular, the finding of the Chamber is that the Accused did not give an order to Admiral Jokić at about 0700 hours on 6 December 1991 to stop the attack on Srđ. The Chamber has already indicated that an order to cease fire with effect from 1115 hours was given to some JNA artillery units, but not all, and the troops trying to capture Srđ were not ordered to cease their attack at 1115 hours.

The evidence further establishes, in the Chamber's finding, and despite strong submissions to the contrary, that after the attack, the Accused at all times had full authority to act himself to investigate and take disciplinary or other adverse action against the perpetrators of the attack on the Old Town, and also to require Admiral Jokić to take more effective measures. Despite this the Accused chose to take no action of any type.

The Chamber is therefore satisfied that the elements required for establishing the Accused's responsibility under Article 7(3) of the Statute, as the superior commander of the JNA forces who perpetrated the unlawful shelling of the Old Town on 6 December 1991, have been proved. He failed to act to stop the attack on 6 December 1991 when he could and should have done so, and afterwards he failed to ensure the perpetrators were punished.

In the present case, the elements of each of the six counts in the Indictment have been established. The Chamber observes, however, that the essential criminal conduct was an artillery attack against the Old Town. In the course of that attack civilians were killed and injured, and protected buildings were damaged and destroyed. It is the view of the Chamber, that the essential criminal conduct is directly and comprehensively reflected in Counts 3 and 6, and that the interests of justice and of sentencing are fully satisfied if convictions are recorded only for those offences.

General Strugar, please stand up.

The Chamber finds you **guilty** pursuant to Article 7(3) of the Statute of the following two counts:

- Count 3:** Attacks on civilians, a violation of the laws or customs of war, under Article 3 of the Statute;
- Count 6:** Destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science, a violation of the laws or customs of war, under Article 3 of the Statute.

While the Chamber is satisfied that the elements of the following four counts have been established pursuant to Article 7(3) of the Statute, the Chamber does **not** record a finding of guilty against you in respect of:

- Count 1:** Murder;
- Count 2:** Cruel Treatment;
- Count 4:** Devastation not justified by military necessity;
- Count 5:** Unlawful Attack on Civilian Objects.

Further, the Chamber does **not** find you guilty, pursuant to Article 7(1) of the Statute, in respect of any of the six Counts.

The Chamber has set out in some detail in the written Judgement the factors it has taken into consideration in determining sentence. In particular, it has been conscious of the serious nature of the attack on the Old Town of Dubrovnik, and the consequences for its inhabitants and for the cultural properties damaged or destroyed in the attack. The Chamber would emphasise that you are not to be sentenced for ordering the attack on the Old Town. Your criminal liability arises because you failed to take adequate measures to stop the shelling of the Old Town and because you failed to ensure that those responsible for the attack were disciplined.

In these regards you were not the immediate commander of those responsible. That was Admiral Jokić. You were Admiral Jokić's superior, and is therefore one step further removed. The Chamber takes into account that Admiral Jokić has pleaded guilty to offences arising from his part in the attack on the Old Town and has been sentenced to 7 years imprisonment.

The Chamber takes into account in particular your age and his health, which is deteriorating, and other mitigating factors which are set out in the written Judgement.

The Chamber hereby sentences you to a single sentence of eight years' of imprisonment.

You may sit down.

The Accused has been in custody for 457 days. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention so far.

Pursuant to Rule 103(C) of the Rules, the Accused 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.

The hearing is adjourned.

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*The full text of the Judgement is available upon request at the Public Information Services and is also available on the Internet site: [www.un.org/icty](http://www.un.org/icty) of the Tribunal.*