

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Case No. IT-03-72-I

THE PROSECUTOR

v.

MILAN BABIC

ANNEX A

**TO THE JOINT MOTION FOR CONSIDERATION OF PLEA AGREEMENT BETWEEN
MILAN BABIC AND THE OFFICE OF THE PROSECUTOR PLEA AGREEMENT**

Introduction

1. This constitutes the Plea Agreement ("Agreement"), pursuant to Rule 62bis of the Rules of Procedure and Evidence ("the Rules"), between the Accused, Milan Babic, through his Counsel Peter Michael Mueller and Robert Fogelnest, and the Office of the Prosecutor (OTP). The purpose of this Agreement is to set forth in its entirety the understanding of the parties as to the nature of the Agreement and the possible consequences of Mr. Babic's plea of guilty, and to assist the parties and the Trial Chamber in ensuring that the plea is valid, voluntary, and informed according to the Rules set forth by this Tribunal. The terms of the Agreement are as follows:

Plea to Count 1 of the Indictment, Persecutions, A Crime Against Humanity

2. Milan Babic agrees to plead guilty to Count 1 of the Indictment, *The Prosecutor v. Milan Babic*, Criminal No. IT-03-72-I ("Indictment"), alleging Persecutions, a Crime Against Humanity ("Persecutions"), punishable under Articles 5(h) and 7(1) of the Statute of the Tribunal ("Statute"). Article 5(h) of the Statute states, in relevant part:

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population

h. persecutions on political, racial and religious grounds

3. Milan Babic agrees that he is pleading guilty to Count 1 because he is in fact guilty as a co-perpetrator of the joint criminal enterprise and acknowledges full responsibility for his actions that are the subject of the Indictment.

Consideration for Milan Babics Plea and Co-operation

4. In exchange for Milan Babic's plea of guilty to Count 1, Persecutions, his complete co-operation with the OTP as set forth in paragraphs 9 to 11 of this Agreement, and the fulfilment of all his obligations under this Agreement, the Office of the Prosecutor agrees to the following:
 - a. At the time of the acceptance of the guilty plea by the Trial Chamber, the Prosecutor will move to dismiss without prejudice to either party the remaining charges against Milan Babic set out in the Indictment.
 - b. The Prosecutor will recommend to the Trial Chamber that it impose a term of

imprisonment of no more than 11 years. Milan Babic understands that the Trial Chamber is not bound to accept any recommendation and may impose a sentence above or below. At sentencing, the Defence may recommend any sentence it deems appropriate.

- c. The Prosecutor will take necessary and reasonable steps to ensure the safety and protection of Milan Babic and members of his immediate family. In this regard, Milan Babic understands that all decisions concerning the safety and protection of him and his immediate family are ultimately within the sole discretion of the Office of the Registrar of the ICTY.

Nature of the Charge

5. Milan Babic understands that if a trial were held, the Prosecutor would be required to prove the following elements beyond a reasonable doubt:

Joint Criminal Enterprise

- a. A plurality of persons were involved in the commission of the crime of Persecutions;
- b. There was a common plan, design or purpose which amounted to or involved the commission of the crime of Persecutions;
- c. The Accused participated in the common design involving the perpetration of the crime of Persecutions;
- d. The co-perpetrators of the joint criminal enterprise shared the intent to perpetrate the crime of Persecutions.

Persecutions

- a. an armed conflict existed during the time frame of the Indictment;
- b. there was a widespread or systematic attack directed against a civilian population;
- c. the plan and conduct of the joint criminal enterprise was related to the widespread or systematic attack directed against a civilian population;
- d. the Accused had knowledge of the wider context in which the conduct of the joint criminal enterprise occurred;
- e. members of the joint criminal enterprise committed acts or omissions pursuant to the plan of the joint criminal enterprise against a victim or victim population violating a basic or fundamental human right;
- f. the conduct of the joint criminal enterprise was committed on political, racial religious grounds;
- g. the conduct of the joint criminal enterprise was committed with a deliberate intent to discriminate.

Factual Basis

6. Milan Babic and the Prosecution agree that if the Prosecution were to proceed with evidence, the facts and allegations set forth in the Factual Statement, Tab 1 to this Annex, would be proven beyond a reasonable doubt, and that those facts are true and correct and not disputed by Milan Babic.

7. The Prosecution and Milan Babic agree that the evidence supports a finding of guilt of Milan Babic as a co-perpetrator of the joint criminal enterprise as alleged in Count 1, Persecutions, of the Indictment.

Co-operation by Milan Babic

8. Milan Babic agrees to accept responsibility for his actions and to co-operate with, and to provide truthful and complete information to, the Office of the Prosecutor whenever requested. In accordance with such co-operation, Milan Babic agrees to meet as often as necessary with members of the Office of the Prosecutor in order to provide them with full and complete information and evidence that is known to him. Mr. Babic agrees to be truthful and candid, and to freely answer all questions put to him by members of the Office of the Prosecutor. Mr. Babic agrees to testify truthfully at any trials, hearings, or other proceedings before the International Criminal Tribunal for the Former Yugoslavia (ICTY) as requested by the OTP.

9. The Prosecution and Mr. Babic also agree that they will not seek to delay sentencing until after Mr. Babic's co-operation is complete, but will in fact proceed with sentencing as expeditiously as possible.

10. It is understood and agreed by Milan Babic and the Prosecution that all information and testimony provided by Mr. Babic must be absolutely truthful. This means that Milan Babic must neither minimise his own actions nor fabricate someone else's involvement.

Maximum Possible Penalty and Sentencing

11. Milan Babic understands that, pursuant to Rule 101 of the Rules, the maximum sentence that can be imposed by the Trial Chamber for a guilty plea to the charge of Persecutions as set forth in the Indictment is a term of imprisonment up to and including the remainder of the convicted person's life.

12. Milan Babic understands that, pursuant Rule 62 *ter* (B), the Trial Chamber shall not be bound by any agreement between the Prosecutor and the Defence.

13. Milan Babic agrees that regardless of the sentence imposed, he will not move to withdraw his guilty plea or appeal his conviction pursuant to his guilty plea. Milan Babic reserves his right to appeal the sentence.

14. Milan Babic understands that, pursuant to Article 24 of the Statute and Rule 101(B) of the Rules, the Trial Chamber will take into account in determining the appropriate sentence such factors as the gravity of the offence and the individual circumstances of the convicted person. In addition, the Trial Chamber will take into account such factors as: any aggravating circumstances, any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction, the general practice regarding prison sentences in the courts of the former Yugoslavia, and the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served. At sentencing the Prosecution will argue that in the circumstances of this case the only aggravating factor present is the leadership position of the Accused.

15. Milan Babic understands that, at the sentence hearing, the Prosecution and the Defence will provide to the Trial Chamber any and all information they deem relevant to sentencing.

Waiver of Rights

16. By pleading guilty, Milan Babic understands he will be giving up the following rights:

- a. the right to plead not guilty and require the Prosecution to prove the charges in the Indictment beyond a reasonable doubt at a fair and impartial public trial;

- b. the right to prepare and put forward a defence to the charges at such public trial;
- c. the right to be tried without undue delay;
- d. the right to be tried in his presence, and to defend himself in person at trial or through legal assistance of his own choosing at trial;
- e. the right to examine at his trial, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf at a trial under the same conditions as witnesses against him;
- f. the right not to be compelled to testify against himself or to confess guilt;
- g. the right to testify or to remain silent at trial; and
- h. the right to appeal a finding of guilty or to appeal any pre-trial rulings.

17. It is understood that by pleading guilty the Accused does not waive his right to be represented by Counsel at all stages of the proceedings.

Voluntariness of the Plea

18. Milan Babic acknowledges that he has entered this Plea Agreement freely and voluntarily, that no threats were made to induce him to enter this guilty plea, and that the only promises made to him are those set forth in this agreement.

Other Agreements

19. Except as expressly referenced at paragraph 4 hereto, there are no additional promises, understandings or agreements between the Office of the Prosecutor and Milan Babic or his Counsel, Peter Michael Mueller and Robert Fogelnest.

Declaration of Milan Babic

20. I, Milan Babic, have read this Plea Agreement in a language which I understand and have carefully reviewed every part of it with my Counsel, Peter Michael Mueller and Robert Fogelnest. Messrs. Mueller and Fogelnest have advised me of my rights, or possible defences, and of the consequences of entering into this Agreement and I am fully satisfied with their representation of me. No other promises or inducements have been made to me, other than those contained in this Agreement. Furthermore, no one has threatened me or forced me in any way to enter into this Agreement. I have entered into this Agreement freely and voluntarily, and am of sound mind. I understand the terms of this Agreement, and I voluntarily agree to each of the terms.

Milan Babic

Date

Declaration of Counsel

21. We, Peter Michael Mueller and Robert Fogelnest, are Milan Babic's Counsel. We have carefully reviewed every part of this Agreement with our client. Further, we have fully advised our client of his rights, and possible defences, of the maximum possible sentence and the consequences of entering into this Agreement. To our knowledge, our client is of sound mind and his decision to enter into this Agreement is an informed and voluntary one.

Peter Michael Mueller
Counsel for Milan Babic

Robert Fogelnest
Counsel for Milan Babic

On this 22 January 2004, the undersigned parties fully agree to each and every term and condition of this Plea Agreement:

Milan Babic

Peter Michael Mueller
Counsel for Milan Babic

Carla Del Ponte
Prosecutor

Robert Fogelnest
Counsel for Milan Babic

Hildegard Uertz-Retzlaff
Senior Trial Attorney
Office of the Prosecutor