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JUDGEMENT IN THE CASE THE PROSECUTOR V. RADOSLAV BRDJANIN

RADOSLAV BRDJANIN SENTENCED TO 32 YEARS' IMPRISONMENT

Please find below the summary of the Judgement delivered by Trial Chamber II, composed of Judges Agius (Presiding), Janů and Taya, as read out by the Presiding Judge.

I. Introduction

Trial Chamber II of the International Criminal Tribunal for the Former Yugoslavia is sitting today to deliver its Judgement in the trial of Radoslav Brdjanin.

The Accused was charged with genocide, complicity in genocide, grave breaches of the Geneva Conventions, violations of the laws and customs of war and crimes against humanity, committed in 13 municipalities in the Bosnian Krajina between 1 April 1992 and 31 December 1992. The area relevant to the Indictment includes the municipalities of Banja Luka, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Celinac, Donji Vakuf, Kljuc, Kotor Varoc, Prijedor, Prnjavor, Sanski Most, Sipovo and Teslic.

The Accused stood trial for the following 12 charges:

- Genocide (Count 1) and complicity in genocide (Count 2): namely for having participated in a campaign designed to destroy Bosnian Muslims and Bosnian Croats, in whole or in part, as national, ethnical, racial or religious groups, as such, in the municipalities of the ARK;
- Persecutions, a crime against humanity (Count 3): namely for having subjected the Bosnian Muslim and Bosnian Croat populations to killings, torture and mistreatment, for denying them fundamental rights, for deporting or forcibly transferring them as well as destroying, wilfully damaging and looting property in predominantly Bosnian Muslim and Bosnian Croat populated areas and destroying or wilfully damaging Bosnian Muslim and Bosnian Croat religious and cultural buildings;
- Extermination, a crime against humanity, (Count 4) and wilful killing, a grave breach of the Geneva Conventions of 1949, (Count 5): namely for having participated in the campaign designed to exterminate members of the Bosnian Muslim and Bosnian Croat populations in the ARK through a significant number of killings in non-Serb areas, camps and other detention facilities and during deportation or forcible transfers;
- Torture, a crime against humanity (Count 6) and a grave breach of the Geneva Conventions of 1949 (Count 7): namely for having inflicted severe pain or suffering on the Bosnian Muslim and Bosnian Croat population through inhuman treatment

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including sexual assaults, rapes, brutal beatings and other forms of severe maltreatment in various locations;

- Deportation, a crime against humanity (Count 8) and inhumane acts (forcible transfer), a crime against humanity (Count 9): namely for having deported or forcibly transferred Bosnian Muslims and Bosnian Croats from the ARK to areas under the control of the legitimate government of Bosnia-Herzegovina and to Croatia;
- Unlawful and wanton extensive destruction and appropriation of property not justified by military necessity, a grave breach of the Geneva Conventions of 1949 (Count 10);
- Wanton destruction of cities, towns or villages, or devastation not justified by military necessity, a violation of the laws or customs of war (Count 11);
- Destruction or wilful damage done to institutions dedicated to religion, a violation of the laws or customs of war (Count 12).

The Prosecution, while not alleging that the Accused physically perpetrated any of the crimes in question, alleged that he is individually criminally responsible pursuant to Article 7(1) of the Statute, namely for having participated in a joint criminal enterprise, the purpose of which was the permanent forcible removal of Bosnian Muslim and Bosnian Croat inhabitants from the territory of the planned Serbian state by the commission of the crimes alleged in Counts 1 through 12. Alternatively, the Prosecution pleaded the Accused's individual criminal responsibility pursuant to an extended form of joint criminal enterprise, the purpose of which was the commission of the crimes of deportation and forcible transfer, whereby the commission of the other crimes charged in the Indictment was alleged to have been a natural and foreseeable consequence of the perpetration of the crimes of deportation and forcible transfer.

In addition, the Accused was charged pursuant to Article 7(1) of the Statute for having planned, instigated, ordered or otherwise aided and abetted in the planning, preparation or execution of these crimes, as well as pursuant to Article 7(3) of the Statute for the crimes committed by his subordinates whilst he was holding positions of superior authority.

Throughout the trial proceedings, which commenced on 23 January 2002 and ended on 22 April 2004, the Trial Chamber was confronted with a large amount of evidence, testimonial and documentary. It sat 284 trial days, during which it heard the evidence of 135 *viva voce* Prosecution witnesses and 19 *viva voce* Defence witnesses. Additionally, the Prosecution tendered 104 written witness statements pursuant to Rule 92*bis*. The Trial Chamber called one witness *proprio motu* pursuant to Rule 98. In total, 2736 and 314 exhibits were tendered in evidence by the Prosecution and by the Defence respectively. The complete trial record amounts to over 61,000 pages.

For the purpose of this hearing, I shall briefly summarise the Trial Chamber's findings and the reasons for these findings. I emphasise, however, that this is only a summary and that it does not in any way form part of the Judgement of the Trial Chamber. The only authoritative account of the findings of the Trial Chamber is in the written Judgement which will be available to the Parties and the public, today, at the end of these proceedings.

II. Facts of the Case

1. The Strategic Plan and its implementation

The death of Marshal Tito and the collapse of the League of Communists in January 1990 led to the emergence of nationalist parties throughout the former Yugoslavia. The first multi-party elections were held in November 1990 in Bosnia and Herzegovina ("BiH"). The SDA

(Bosnian-Muslim Party for Democratic Action), the HDZ (Croatian Democratic Union) and the SDS (Serbian Democratic Party) collectively won the overwhelming majority of votes.

The break up of the Socialist Federal Republic of Yugoslavia ("SFRY"), and in particular the secession of Slovenia and Croatia, had a significant impact on the socio-political situation in BiH. From late summer 1991, many military aged men from BiH were mobilised to join the army to fight in Croatia. A large number of Bosnian Serbs responded, but Bosnian Muslims and Bosnian Croats, supported by their respective leaders, generally did not. This led to increased tension between the ethnicities, especially in the Bosnian Krajina region bordering Croatia.

Other sources of anxiety and fear for the people in the Bosnian Krajina were the threatening conduct of the soldiers returning from the battlefields in Croatia and the influx of large numbers of Serbian refugees from Croatia, the latter causing serious housing problems. Furthermore, the conflict in Slovenia and Croatia had a disastrous impact on the economy of BiH. The flow of goods between the republics was interrupted and the whole of the SFRY was affected by hyper-inflation.

In this atmosphere of tension, the three main nationalist parties, having separate national agendas with conflicting interests, failed to reconcile their differences and started moving in opposite directions. Most importantly, they disagreed on the question of the constitutional status of BiH. While the SDA and the HDZ, following the declarations of independence of Slovenia and Croatia, promoted the secession of the Socialist Republic of Bosnia and Herzegovina ("SRBH") from the SFRY, the SDS strongly advocated the preservation of Yugoslavia as a state, in order to ensure that the Serbs would continue to live together in a single state, and would not become a minority in an independent Bosnian state.

During the second half of 1991, it appeared increasingly unlikely that the SRBH would remain within the SFRY. The Trial Chamber is satisfied beyond reasonable doubt that during this period, the Bosnian Serb leadership, including the Main Board and other senior members of the SDS, as well as Bosnian Serb representatives of the armed forces, devised a plan to link Serb-populated areas in BiH together, to gain control over these areas and to create a separate Bosnian Serb state, from which most non-Serbs would be permanently removed ("Strategic Plan"). The Bosnian Serb leadership knew that the Strategic Plan could only be implemented by the use of force and fear.

On 19 December 1991, the Main Board of the SDS issued a document entitled "Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances" ("Variant A and B Instructions"). These instructions provided for the conduct of specified activities in all municipalities in which Serbs lived, and essentially mapped out the take-over of power by Bosnian Serbs in municipalities where they constituted a majority of the population ("Variant A") and where they were in a minority ("Variant B").

On 9 January 1992, the newly created Assembly of the Serbian People in Bosnia and Herzegovina ("SerBiH Assembly") proclaimed the Serbian Republic of Bosnia and Herzegovina ("SerBiH"). It was composed of so-called Serbian autonomous regions and districts, which included the Autonomous Region of Krajina ("ARK"). During the 16th session of the SerBiH Assembly that took place on 12 May 1992, at a time when the armed conflict had already begun, Radovan Karadžić articulated the six strategic goals of the Serbian People of Bosnia and Herzegovina. The first and most fateful of these goals was the "separation from the other two national communities – separation of states". In essence, these strategic goals constituted a plan to seize and control territory, establish a Bosnian Serb state, defend defined borders and separate the ethnic groups within BiH by forcibly and permanently removing most of the non-Serb population from the territory of the proclaimed Bosnian Serb state. General Lieutenant Colonel Ratko Mladić, the Commander of the newly established Army of the

Serbian Republic of Bosnia and Herzegovina ("VRS") accepted that the VRS would be instrumental in implementing these political strategic goals and indeed transferred them into operational imperatives for the VRS.

The Strategic Plan was implemented in successive steps, so that the Trial Chamber was able to clearly recognise a pattern of criminal conduct by the actors involved throughout the relevant municipalities.

Already prior to the outbreak of the armed conflict, the SDS started waging a propaganda war which had a disastrous impact on the people of all ethnicities, creating mutual fear and hatred and particularly inciting the Bosnian Serb population against the other ethnicities. Within a short period of time, citizens who had previously lived together peacefully became enemies and many of them, in the present case mainly Bosnian Serbs, became killers, influenced by a media which, by that time, was already under the control of the Bosnian Serb leadership. The use of propaganda was an integral part of the implementation of the Strategic Plan and created a climate in which people were prepared to tolerate the commission of crimes and to commit crimes.

A further measure towards the implementation of the Strategic Plan was the dismissal of Bosnian Muslims and Bosnian Croats from key positions in the army, the police and other public institutions and enterprises. This process had already started during the war in Croatia when the refusal of non-Serbs to respond to mobilisation had resulted in their dismissal. It escalated during the period relevant to the Indictment, resulting in the dismissals of almost all Bosnian Muslims and Bosnian Croats from their positions who were thus deprived of their livelihood.

In addition, Bosnian Serb authorities exerted undue pressure on Bosnian Muslims and Bosnian Croats in an organised manner to force them to leave the area. Non-Serbs did not receive the same attention and medical treatment at hospitals as Bosnian Serbs did. Their freedom of movement was severely restricted in the form of checkpoints and curfews, in contrast with the freedom of movement enjoyed by Bosnian Serbs. Moreover, they were not protected against harassment and abuse from Bosnian Serb armed individuals. Bosnian Muslims and Bosnian Croats were oppressed and pressurised to an extent that living in the Bosnian Krajina became unbearable for them.

In late 1991 and early 1992, all three national parties began arming themselves. The evidence shows that the SDS received substantial support from the army which systematically supplied light arms and weapons to local SDS committees in Bosnian Serb claimed municipalities of the Bosnian Krajina as well as to Serbian paramilitary groups. Distribution of arms and weapons to Bosnian Serb civilians was carried out by the local communes and was supervised by the SDS, with the support of the army and the local police. The distribution was carried out without considering to whom these weapons would be given and for which purpose they could be used. Bosnian Muslims and Bosnian Croats were also preparing for a war and correspondingly arming themselves. However, their efforts to procure and distribute weapons were nowhere near as successful as those of the Bosnian Serbs, both in terms of the number and the quality of the obtained weapons.

While the arming operations were taking place, public announcements were made through the media that illegally possessed weapons had to be returned to the Territorial Defence ("TO") staffs or to the local police by a certain deadline. Although some of these announcements were formulated in a neutral manner, calling upon all paramilitary groups and individuals of all ethnicities to return illegally possessed weapons, they were in practice enforced by the Serbian controlled police and army in a discriminatory fashion against non-Serbs only. In practice, non-Serbs were also deprived of legally-owned weapons. The selective disarmament of non-

Serbs created an imbalance of arms which rendered them totally vulnerable and prevented them from setting up any effective resistance or even from defending themselves.

By the spring of 1992, a number of Serbian paramilitary groups had been formed in BiH or had arrived from Serbia. Some of these paramilitary groups were trained and equipped by the army and were closely associated with it or with the SDS. The paramilitaries created an atmosphere of fear and terror by committing crimes against Bosnian Muslims and Bosnian Croats including rape, murder, plunder and the destruction of their property. They engaged in war profiteering and looting. Serbian paramilitary groups also participated in combat operations of the 1st Krajina Corps of the VRS throughout the ARK, and, from mid-June 1992 onwards, they were formally incorporated into the structure of the VRS and put under its command. The Trial Chamber is satisfied that both the army as well as the SDS used paramilitary groups as an operative tool that contributed to the implementation of the Strategic Plan.

When the armed conflict broke out in BiH in April 1992, the scale of crimes committed against the non-Serb civilian population in the Bosnian Krajina escalated. These crimes came about through close co-operation between the Bosnian Serb police, the army and Serbian paramilitary groups. The clearly recognisable pattern of criminal activity allows for only one reasonable conclusion, namely that these crimes were committed with the aim of implementing the Strategic Plan of the Bosnian Serb leadership to take control of the territory claimed for the Serbian State within BiH and to permanently remove most non-Serbs from this territory.

The Bosnian Serb forces attacked non-Serb towns, villages and neighbourhoods throughout the 13 municipalities relevant to the Indictment. These attacks mostly started after the expiry of a deadline for non-Serbs to surrender their weapons. Sometimes an incident caused by non-Serbs would be used as a pretext. Attacks commenced with intensive shelling from heavy army weaponry. Muslim villages and neighbourhoods were targeted, with houses and institutions dedicated to religion shelled indiscriminately, resulting in extensive destruction and civilian casualties. Many of the survivors fled and sought shelter in the surrounding areas. After the shelling, armed soldiers entered the villages, looted and torched houses, and expelled or killed some of the villagers who remained behind. In some instances, women were raped.

Overall, the Bosnian Muslim and Bosnian Croat population of the attacked towns, villages and neighbourhoods were not able to set up any effective resistance to these armed attacks. They were not adequately organised and they did not have sufficient weapons with which they could oppose the attackers.

During the spring and summer of 1992, Bosnian Serb forces committed killings on a massive scale throughout the ARK. While the Judgement provides a more complete picture, I shall now only mention three examples:

On 31 May 1992, Bosnian Serb soldiers entered the Muslim hamlet of Begici in Sanski Most municipality and rounded up its inhabitants. Men were separated from women and children. Between 20 and 30 men were taken towards the Vrhpolje bridge where they were supposed to be put on buses. Four Bosnian Muslim men were killed by Jadranko Palija on the way to the bridge. Upon arrival, the other men were ordered to take off their clothes and line up. Many Bosnian Serb soldiers in different uniforms were present. One of them said that 70 Bosnian Muslims had to be killed in retaliation for the death of seven Bosnian Serb soldiers in the area. Then, the Bosnian Muslim men were ordered to jump off the bridge into the Sana River one by one. Once in the water, the soldiers opened fire upon them. Rajif Begic survived after swimming under water for about 100 metres downstream. From the place where he was hiding, he was able to observe the executions at the bridge. The Trial Chamber found that a total of at least 28 persons were killed in this incident.

On 1 June 1992, approximately one hundred residents from various hamlets in the Ključ Municipality were confined in the old primary school in Velagici. Both Bosnian Serb policemen and soldiers were present. Shortly before midnight, people were taken out from the school and ordered to line up in front of the building. Then, two Bosnian Serb soldiers armed with automatic rifles opened fire on them. The soldiers continued firing until every person had fallen down. Thereafter, they shot at those who still appeared to be alive. One person survived the massacre. The Trial Chamber is satisfied that at least 77 civilians were killed in this incident.

On 21 August 1992, four buses comprised only of men set off from Trnopolje camp. At a junction near Kozarac, the buses from Trnopolje were joined by other buses full of prisoners that came from Tukovi. The convoy was accompanied by members of a special police unit of the Prijedor SJB. Towards late afternoon, before reaching the line of separation between Bosnian Serb and Bosnian Muslim controlled territory, shortly after Skender Vakuf and near Mount Vlacic, two of the buses, each carrying approximately 100 persons, stopped. On one side of the road, there was a deep gorge, on the other side, a steep face of rock. The area is referred to as Koricanske Stijene. The men from the buses were taken in a column to the edge of the cliff and ordered to kneel down. The police officer in charge said: "Here we exchange the dead for the dead and the living for the living." Before the victims were executed, they cried and pleaded for their lives. Then the shooting started. The dead bodies fell into the abyss or were pushed over the edge, sometimes by other Bosnian Muslims prior to their own execution. Grenades were thrown into the gorge to make sure no one would survive. The entire operation lasted not more than half an hour. The Trial Chamber is convinced that, at a minimum, 200 men were killed on this day at Koricanske Stijene.

In the spring of 1992, camps and other detention facilities were established throughout the territory of the Bosnian Krajina in army barracks and compounds, factories, schools, sport facilities, police stations and other public buildings. These camps and detention facilities were set up and controlled by the Bosnian Serb army, police or civilian authorities. Non-Serb civilians were arrested *en masse* and detained in these camps and detention facilities. For example, in Prijedor Municipality, after the armed attacks on non-Serb villages by Bosnian Serb armed forces, women and children were separated from the men, all of whom were loaded onto buses and taken to Trnopolje, Omarska or Keraterm. While prominent members of the SDA and the HDZ were among the first to be arrested, the overwhelming majority were normal citizens arrested solely because of their ethnicity. The conditions in the camps and some detention facilities were particularly harsh. Inmates were interrogated, tortured, beaten and subjected to inhuman and degrading conditions of life. Women were raped and killings occurred on a regular basis. The tragic peak of killings inside these camps was reached with a massacre in "Room 3" of Keraterm camp, perpetrated by Bosnian Serb army personnel, during which at least 190 Bosnian Muslims from the Brdo area in Prijedor Municipality were killed.

Already before the outbreak of the armed conflict in BiH, Bosnian Muslims and Bosnian Croats living in the Bosnian Krajina were feeling increasingly insecure and started leaving the region in convoys. As the events in the Bosnian Krajina developed, from the spring of 1992 onwards, active and systematic repression and expulsion of Bosnian Muslims and Bosnian Croats was carried out by the Bosnian Serb authorities throughout the Bosnian Krajina. Convoys of buses and trains were organised by the Bosnian Serb authorities to drive tens of thousands of men, women and children out of Bosnian Serb claimed territory to either Bosnian Muslim held territory within BiH or to Croatia. On 12 June 1992, the Agency for Population Movement and Exchange of Material Wealth was established in Banja Luka, assisting in the implementation of the policy of 'ethnic cleansing'. The non-Serb population often sought to leave, and requested the convoys, which were then organised by the Bosnian Serb authorities. However, they did not leave of their own free will, but were forced to do so due to the conditions imposed on them. Moreover, in many instances the Bosnian Serb authorities made

them sign documents stating that they renounced claims to all the property that they left behind in favour of the SerBiH. The Trial Chamber is satisfied that this measure was intended to dissuade the Bosnian Muslims and the Bosnian Croats leaving the territory from returning at a later stage. At the same time, the cleansed areas in northern Bosnia that had been emptied of Bosnian Muslims and Bosnian Croats and had not been destroyed were re-populated by resettling Serbian refugees coming from Croatia.

The Trial Chamber is satisfied beyond reasonable doubt that the crimes that were committed in the Bosnian Krajina from April 1992 until the end of December 1992, occurred as a direct result of the over-arching Strategic Plan. The ethnic cleansing was not a by-product of the criminal activity, it was its very aim. The conditions of life imposed on the non-Serb population of the Bosnian Krajina and the military operations against towns and villages which were not military targets were undertaken with the sole purpose of driving people away. By August 1992, the consistent application of such a discriminatory policy was completely clear to objective observers on the ground. The evidence shows a consistent, coherent and criminal strategy of cleansing the Bosnian Krajina of ethnic groups other than Bosnian Serbs implemented by the SDS and the Bosnian Serb forces.

During the implementation of this policy, effective control over the Bosnian Serb military, police and civilian structures was exercised variously by political leaders from the Bosnian Serb Supreme Command and other governmental authorities of the SerBiH. It was impossible to implement a systematic policy of this magnitude, just by spontaneous action or by criminal actions conducted by isolated radical groups. Moreover, the actual methods used to implement the Strategic Plan were controlled and coordinated from a level higher than the respective municipalities, even though some municipalities distinguished themselves by taking certain initiatives.

2. The regional level of authority

Already in early 1991, the SDS embarked on a programme of regionalisation, the ultimate object of which was the implementation of the Strategic Plan. On 7 April 1991, the SDS Regional Board decided to create the Community of Municipalities of Bosnian Krajina ("ZOBK"). On 16 September 1991, the ZOBK Assembly transformed itself into the Autonomous Region of Krajina ("ARK"). The Accused became its First Vice-President. While it is difficult to precisely define which municipalities belonged to the ARK at any given time, the Trial Chamber is satisfied that all thirteen municipalities addressed in the Indictment were members of the ARK during the period relevant to the instant case.

Notwithstanding Articles 4 and 5 of the ARK Statute, suggesting that it was a multi-ethnic institution, the ARK was essentially a purely Serbian authority. The ARK was vested with powers of a political nature that belonged to the municipalities, including powers in the area of defence. The Trial Chamber is satisfied that the ARK as an intermediate level of government was established by the Serb leadership to co-ordinate the implementation of the Strategic Plan by the municipalities in that region.

On 5 May 1992, the ARK Executive Council issued a decision on the formation of the ARK Crisis Staff, appointing the Accused as its President. The Trial Chamber is satisfied that, as with municipal Crisis Staffs in their respective areas of jurisdiction, the ARK Crisis Staff was established primarily to ensure the co-operation between the political authorities, the army and the police at the regional level, with a view to co-ordinating the implementation of the Strategic Plan by the different authorities.

Among the 15 core members of the ARK Crisis Staff were the political and military leadership of the ARK, as well as persons holding key public positions in the ARK and individuals linked to paramilitary organisations. In addition to these core members, the meetings of ARK Crisis

Staff were attended on a weekly basis by the Presidents of the Crisis Staffs of other member municipalities or their representatives. The composition of the ARK Crisis Staff not only secured its authority and influence over the various bodies represented on it, but also made sure that in the eyes of the public the ARK Crisis Staff was seen to be vested with such authority and influence.

Indeed, between 5 May 1992 and 17 July 1992, at which time the ARK Crisis Staff stopped functioning, the ARK Crisis Staff assumed all powers and functions of the ARK Assembly and acted as an intermediate level of government between the authorities of the SerBiH and the municipalities. The ARK Crisis Staff was the highest civilian authority in the ARK and exercised *de facto* authority over the municipalities and the police and had great influence over the army and Serb paramilitary groups. The extent and the limits of the power of the ARK Crisis Staff are discussed in great detail in the Trial Chamber Judgement.

The Trial Chamber is satisfied beyond reasonable doubt that the Accused not only formally represented the ARK Crisis Staff as its President, but was in fact at the very heart of the ARK Crisis Staff as its key figure. He was the driving force behind the major decisions issued by the ARK Crisis Staff, which is the reason why the Trial Chamber comes to the conclusion that the decisions of the ARK Crisis Staff can be attributed to the Accused.

The municipalities, the police and, to some extent the army, systematically implemented ARK Crisis Staff decisions in three key areas: a) dismissals of non-Serb professionals; b) disarmament of paramilitary units and individuals illegally possessing weapons, selectively enforced against non-Serbs; and c) resettlement of the non-Serb population. In the view of the Trial Chamber, these areas were crucial and vital to the success of the over-all plan of 'ethnic cleansing' and gave a substantial contribution to the implementation of the Strategic Plan.

III. Legal Findings

This being a summary of the Trial Chamber Judgement, I shall not go into all the details of the Trial Chamber's legal assessment but rather to highlight the following key points:

- The Trial Chamber is satisfied that all the *chapeau* elements required for the application of each of the Articles of the Statute pursuant to which the Accused has been charged with in the Indictment have been met.
- Regarding the *mens rea* for extermination, the Trial Chamber found that it is analogous to the *mens rea* for murder as a crime against humanity with the difference that the Prosecution is required to prove beyond reasonable doubt that the accused had the intention to kill persons on a massive scale or to create conditions of life that led to the death of a large number of people. The Trial Chamber found that all the killing incidents alleged in the Indictment were proved beyond reasonable doubt except for: the incident in Lisjna on or about 1 June 1992, the incident in Vrbanjci on 25 June 1992, the incident on the way from Kukavice and surrounding areas in Kotor Varos on or about 25 June 1992 and the incident in Dujo Banovic's house in Kenjari on or about 27 June 1992. In sum, the Trial Chamber is satisfied beyond reasonable doubt that at least 1669 Bosnian Muslims or Bosnian Croats were killed by Bosnian Serb forces in these events, all of whom were non-combatants. The Trial Chamber is further satisfied that these killings fulfil the element of massiveness for the crime of extermination.
- The definition of torture adopted by this Trial Chamber reflects that contained in the Convention against Torture and reads "the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person, amongst others." Having considered the objective and the subjective severity of the mistreatment, the

Trial Chamber found that the treatment inflicted on the victims, and examined at length in the Judgement, constituted severe pain and suffering for a designated purpose of intimidating, discriminating or obtaining information, thus amounting to torture. The Trial Chamber wishes to note that some acts, such as rape, by definition meet the severity threshold.

- By a majority vote, the Trial Chamber is satisfied that the *actus reus* of deportation consists of the forcible displacement of individuals across a State border from the area in which they are lawfully present without grounds permitted under international law, whereas such displacement within the boundaries of a State constitutes the *actus reus* of forcible transfer, punishable as other inhumane acts as a crime against humanity. The Trial Chamber was confronted with a great deal of evidence regarding the deportation or forcible transfer of a large proportion of the Bosnian Muslim and Bosnian Croat population from the ARK to other areas both within and outside BiH. In view of the specificity with which the charges were pleaded, the Trial Chamber was precluded from making any finding of guilt with respect to incidents where the transfer destination was to locations other than Travnik (under the control of the legitimate government of BiH) or Karlovac (Croatia). Having examined all the evidence, the Trial Chamber is satisfied beyond reasonable doubt that a large number of deportations to Karlovac and forcible transfers to Travnik, originating in the ARK, took place during the period relevant to the Indictment.

- The Trial Chamber is satisfied that all the incidents of extensive destruction and appropriation of Bosnian Muslim and Bosnian Croat property by the Bosnian Serb forces alleged in the Indictment were proved beyond reasonable doubt except for incidents in Ramici, Humici, Vrhpolje, Trnova, Sasina, Komusina, Rasjeva, Kamenica and Sipovo. However, for Article 2(d) of the Statute to apply, the Trial Chamber needs to be satisfied beyond reasonable doubt that either the property destroyed and appropriated was located in occupied territory or the property is subject to general protection under the Geneva Conventions. The Trial Chamber found that in the present case the evidence adduced was insufficient to prove either of these two alternatives and therefore found that no violation of Article 2(d) occurred. In contrast, the protection of Article 3(b) of the Statute, however, extends to all property in the territory involved in a war, including that located in enemy territory. The Trial Chamber therefore found that the destruction of property in the relevant municipalities of the ARK were in violation of Article 3(b) of the Statute. The Trial Chamber is also satisfied that institutions dedicated to religion were destroyed and devastated in the relevant municipalities of the Indictment in violation of Article 3(d) of the Statute.

- Regarding the crime of genocide, the Trial Chamber concluded that the protected groups, within the meaning of Article 4 of the Statute, must be defined, in the present case, as the Bosnian Muslims and Bosnian Croats. The Trial Chamber is satisfied that the targeted parts of the groups were the Bosnian Muslims and Bosnian Croats of the ARK, and that these amounted to "substantial parts" of the protected groups. In this case, the Prosecution pleaded three different types of acts as genocide. As stated earlier, the Trial Chamber found that Bosnian Muslim and Bosnian Croat non-combatants were killed by Bosnian Serb forces. The Trial Chamber is also satisfied beyond reasonable doubt that serious bodily and mental harm was intentionally inflicted upon Bosnian Muslims and Bosnian Croats detained in camps and other detention facilities. Further, the Trial Chamber is satisfied that the conditions in these camps and other detention facilities were deliberately inflicted upon the Bosnian Muslim and Bosnian Croat detainees and amounted, in some cases, to conditions calculated to bring about physical destruction. As a result, it remained to be determined whether these offences were committed with the specific intent for genocide, conscious

that where direct evidence of intent is absent, the specific intent may still be inferred from the factual circumstances and particularly conscious also that where an inference needs to be drawn, it has to be *the only reasonable inference available on the evidence*. In this case, the Trial Chamber is not satisfied that the only reasonable inference that may be drawn from the evidence is that the offences were committed with the specific intent to destroy the Bosnian Muslim and Bosnian Croat groups of the ARK. One reason for this is that the number of Bosnian Muslim and Bosnian Croat men, women and children forcibly displaced from the ARK in this case is extremely high, particularly when compared to the number of Bosnian Muslims and Bosnian Croats subjected to the acts enumerated in Article 4(2)(a), (b) and (c) of the Statute. This fact does not support the conclusion that the intent to destroy the groups in part, as opposed to the intent to forcibly displace them, is the only reasonable inference that may be drawn from the evidence. The Judgement details the Trial Chamber's reasons in full. On the basis of the evidence presented in this case, the Trial Chamber has not found beyond reasonable doubt that genocide was committed in the relevant ARK municipalities, from April to December 1992.

- The Trial Chamber found that the crime of persecution consists of an act or an omission which discriminates in fact and denies or infringes upon a fundamental right laid down in international customary or treaty law and was carried out deliberately with the intent to discriminate on one of the listed grounds, specifically race (the concept of "race" including ethnicity), religion or politics. The Trial Chamber found that the campaign of persecution against Bosnian Muslims and Bosnian Croats included killings, torture, physical violence, rapes and sexual assaults, constant humiliation and degradation, destruction and appropriation of non-Serb property and institutions dedicated to religion, deportation and forcible transfer, and the denial of fundamental rights, namely the denial of the fundamental rights to employment, freedom of movement, right to proper medical care and proper judicial process. The Trial Chamber is further satisfied that the acts were discriminatory in fact and were committed by the perpetrators with the requisite discriminatory intent on racial, religious and political grounds.

IV. Criminal Responsibility of the Accused

I would now like to turn to the question as to whether the Accused, Radoslav Brdjanin, is criminally responsible for any of the crimes charged in the Indictment under any of the modes of liability included therein. For this purpose, it is necessary to clarify some of the core issues examined by the Trial Chamber to establish the Accused's criminal responsibility.

The Trial Chamber is satisfied beyond reasonable doubt that, both prior to and during the period covered in the Indictment, Radoslav Brdjanin was a leading political figure in the ARK and that he held key positions at the municipal, regional and republic levels, including that of First Vice-president of the ARK Assembly, President of the ARK Crisis Staff, and later Acting Deputy Prime Minister for Production, Minister for Construction, Traffic and Utilities and acting Vice-President of the Government of the Republika Srpska.

The Trial Chamber is satisfied that between mid-1991 and the end of 1992, the Accused possessed *de jure* and *de facto* powers that made him one of the most significant political figures in the ARK. The sources of his powers were twofold: In the first place, the Accused possessed power by virtue of the political positions that he occupied at the municipal, regional and republic levels. In the second place, he was entrusted with political power directly by the Bosnian Serb leadership, including Radovan Karadžić.

The Trial Chamber is further satisfied that the Accused espoused the Strategic Plan and knew that it could only be implemented by the use of force and fear.

Amongst the political figures in the Bosnian Krajina, it was the Accused who was identified by the Bosnian Serb leadership as best representing the interests of the SerBiH. He was chosen to play a leading role in co-ordinating the implementation of the Strategic Plan in the ARK. For this purpose, the top leadership of the SerBiH granted the Accused a high degree of authority and autonomy in areas of fundamental political importance, which is indicative of the trust the Accused enjoyed at the highest political level. In a telephone conversation on 31 October 1991, Radovan Karadžić assured the Accused that he had all the power in the Bosnian Krajina and indicated that he should take more decisions without consulting the party leadership. Moreover, in a conversation between Radovan Karadžić and a certain Miroslav on 7 January 1992, the Accused was identified as a mature and politically strong personality, who would be able to take power.

Radoslav Brđanin made a substantial contribution to the implementation of the Strategic Plan in three distinct phases: before the establishment of the ARK Crisis Staff, in his capacity as member of the SerBiH Assembly and the ARK Assembly, as the President of the ARK Crisis Staff and after the ARK Crisis Staff ceased to exist, in his capacity as a minister in the RS Government.

Before the creation of the ARK Crisis Staff, Radovan Karadžić was already discussing and relying upon the Accused, amongst others, to set up civilian commands to ensure territorial defence and civilian protection, to liaise with military officers and prepare for the mobilisation of the Bosnian Serb military and to implement the policy of dismissing non-Serbs from their jobs.

As President of the ARK Crisis Staff, the Accused exercised *de facto* authority over the municipal authorities and the police and had substantial influence over the army and paramilitary groups. Through the decisions of the ARK Crisis Staff, that can be attributed to him, the Accused contributed to the implementation of the aims of the Bosnian Serb leadership in the ARK.

After the ARK Crisis Staff was wound up, the Accused not only maintained his political power in the Bosnian Krajina but also extended his power at the republic level. He continued to meet with high ranking military and political officials to discuss issues concerning the implementation of the Strategic Plan.

The Trial Chamber found that the Accused made one of his most substantial contributions to the implementation of the Strategic Plan by way of a propaganda campaign against Bosnian Muslims and Bosnian Croats which he conducted at the different stages of his political career. His positions of authority gave him access to the media which he used to make public statements creating fear and hatred between Bosnian Serbs on the one hand and Bosnian Muslims and Bosnian Croats on the other. Not only did the Accused call for the dismissal of non-Serbs from their jobs but he also publicly advocated that the non-Serb population should leave the Bosnian Krajina. Moreover, the Accused spoke openly against mixed marriages and publicly suggested a campaign of retaliatory ethnicity-base murder.

The Trial Chamber is satisfied beyond reasonable doubt that, although the Accused's public statements may have been motivated in part by his drive towards self-advancement, they were intentional and had a disastrous impact on people of all ethnicities. They incited Bosnian Serbs to commit crimes and contributed to creating a climate where people were prepared to tolerate the commission of crimes as well as to

commit crimes, and where well-meaning Bosnian Serbs felt dissuaded from extending any kind of assistance to non-Serbs. The non-Serb population of the Bosnian Krajina understood the Accused's public statements as direct threats to leave the areas under Bosnian Serb occupation, and many of them did so in fear for their lives. A number of witnesses gave evidence that the Accused's public statements constituted the main reason why they left the area.

The Trial Chamber is additionally satisfied that the Accused had detailed knowledge that, during the time and in the area relevant to the Indictment, crimes were being committed in the execution of the Strategic Plan.

In relation to each of the modes of liability presented in the Indictment, I am going to underline the following general findings of the Trial Chamber:

- In order to hold the Accused criminally responsible under the institute of joint criminal enterprise, the Prosecution needs to establish a common plan amounting to or involving an agreement between the Accused and the physical perpetrators of the crimes in question to commit a crime envisaged in the Statute. The physical perpetrators of the crimes in question are members of the police, the army and paramilitary organisations. As the Prosecution did not plead a joint criminal enterprise between the Accused and the police, the Trial Chamber examined whether there was a joint criminal enterprise between the Accused and members of the army and paramilitary organisations. In doing so, the Trial Chamber made reference to the Strategic Plan.

As already stated, the Trial Chamber has found that the Accused espoused the Strategic Plan. Moreover, it is satisfied that many of the relevant physical perpetrators of the crimes in question equally did so and acted towards its implementation. However, the Trial Chamber is of the view that the mere espousal of the Strategic Plan by the Accused on the one hand and many of the relevant physical perpetrators on the other hand is not equivalent to an arrangement between them to commit a concrete crime. Indeed, the Accused and the relevant physical perpetrators could espouse the Strategic Plan and form a criminal intent to commit crimes with the aim of implementing the Strategic Plan *independently from each other* and without having an understanding or entering into any agreement between them to commit a crime. The Trial Chamber further examined whether an understanding or agreement to that effect between the Accused and the relevant physical perpetrators could be inferred from the fact that they acted in unison to implement the Strategic Plan. Given the physical and structural remoteness between the Accused and the relevant physical perpetrators and the fact that the relevant physical perpetrators in most of the cases have not even been personally identified, the Trial Chamber is not satisfied that the only reasonable conclusion that may be drawn from the Accused's and the relevant physical perpetrators' concerted action aimed towards the implementation of the Strategic Plan is that the Accused entered into an agreement with the relevant physical perpetrators to commit a crime. Indeed, the Trial Chamber is satisfied that the evidence allows for other reasonable inferences to be drawn.

The Trial Chamber is of the view that joint criminal enterprise is not an appropriate mode of liability to describe the individual criminal responsibility of the Accused, given the extraordinarily broad nature of this case, when the Prosecution seeks to include within a joint criminal enterprise a person as remote from the commission of the crimes charged in the Indictment as the Accused. The Trial Chamber therefore dismissed joint criminal enterprise as a mode of liability in this case.

- Planning is also dismissed as a mode of liability under Article 7(1) of the Statute as the Trial Chamber found that, taking into consideration the individual responsibility of the Accused that has been established and which will soon be dealt with here, there is insufficient evidence to conclude that the Accused was involved in the immediate preparation of the concrete crimes.

- Regarding criminal responsibility under Article 7(3), the Trial Chamber found that although the ARK Crisis Staff had *de facto* authority over the municipal authorities and the police and influence over the army and paramilitary organisations, the Accused, as President of the ARK Crisis Staff or in any of his other positions between April and December 1992, did not have effective control over members of the municipal authorities, the police, the army or paramilitary organisations which would entail his material ability to prevent or punish the commission of crimes by these individuals. Thus, the Trial Chamber dismisses superior criminal responsibility under Article 7(3) of the Statute as a possible mode of liability.

The remaining modes of liability under Article 7(1) of the Statute were examined successively for each of the crimes charged in the Indictment and the Trial Chamber reached the following conclusions:

- Regarding wilful killing, the Trial Chamber is satisfied that the ARK Crisis Staff decisions on disarmament between 9 and 18 May 1992 constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and areas, and that these decisions are attributable to the Accused. The Trial Chamber is further satisfied that the Accused was aware that during these armed attacks the Bosnian Serb forces would commit a number of crimes including the crime of wilful killing of a number of non-Serbs and that the members of the Bosnian Serb forces carrying out the killings in question had the required intent to kill. Through the ARK Crisis Staff decisions on disarmament, the Accused had a substantial effect on the commission of these killings. Therefore, the Trial Chamber is satisfied that the Accused aided and abetted in the killing committed by the Bosnian Serb forces in the context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and areas after 9 May 1992. The Trial Chamber is not satisfied that it has been sufficiently proved that the same ARK Crisis Staff decisions, or any of the acts of the Accused, render him criminally responsible for other killings mentioned in the Indictment.

- The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that the Accused was aware that by issuing ARK Crisis Staff decisions on disarmament he would be assisting in the killings on a massive scale such as to amount to the crime of extermination. Nor has it been established beyond reasonable doubt that the Accused knew that the members of the Bosnian Serb forces intended to commit killings on a massive scale such as to amount to the crime of extermination.

- Applying the same reasoning for the acts of torture charged in the Indictment as for the acts of wilful killing, the Trial Chamber found that the Accused aided and abetted the torture committed by Bosnian Serb forces in the context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and areas after 9 May 1992, the date when the ARK Crisis Staff issued its first decision on disarmament. In addition, the Trial Chamber is satisfied the Accused aided and abetted the commission of the underlying acts of torture in camps and other detention facilities throughout the ARK by Bosnian Serb forces. It has been established beyond reasonable doubt that, with the exception of the Jasenica and the Petar Kocic Elementary Schools, all the camps and detention facilities mentioned in the evidence came into being once the ARK Crisis Staff had been established. There is ample evidence that the establishment of these camps and detention facilities formed an integral part of the Strategic Plan, that the

Accused was fully aware of the nature of these camps and detention facilities and that detainees were tortured therein. During his mandate as President of the ARK Crisis Staff, not only did the Accused not take a stand in public or during ARK Crisis Staff meetings against them but he adopted a *laissez-faire* attitude and spoke in public about them in a way which sent the wrong message to those who were committing crimes inside these camps and detentions facilities. Therefore, the Trial Chamber is satisfied that his inactivity as well as his public attitude with respect to the camps and detention facilities constituted moral encouragement and support to the members of the Bosnian Serb army and police to continue running these camps and detention facilities in the way described to the Trial Chamber throughout the trial.

- Turning to the crimes of deportation and forcible transfer, the Trial Chamber is satisfied that the ARK Crisis Staff decisions of 28 and 29 May 1992, advocating the resettlement of the non-Serb population, prompted the municipal authorities and the police who implemented them to commit the crimes of deportation and forcible transfer. The Trial Chamber is also of the view that the only reasonable conclusion that may be drawn when the terms of these decisions are considered in the light of the Accused's unambiguous statements, made repeatedly from early April 1992 onwards, calling upon the non-Serb population to leave the Bosnian Krajina and stating that only a small percentage of non-Serbs would be allowed to stay, is that the decisions could only have been meant as a direct incitement to deport or forcibly transfer non-Serbs from the territory of the ARK. The Trial Chamber is satisfied that, with the exception of the failed attempt at displacing the Bosnian Muslim population of Gornji Agici, Donji Agici and Crna Rijeka in Bosanski Novi on 24 May 1992, the deportations to Karlovac and forcible transfers to Travnik originating in the ARK, and described in detail in the Judgement, all took place after the adoption of the ARK Crisis Staff decisions previously mentioned. Furthermore, the Accused's espousal of the Strategic Plan, of which the crimes of deportation and forcible transfer formed an integral part, and the implementation of which he coordinated in his position as President of the ARK Crisis Staff demonstrated that he intended to induce the commission of the crimes of deportation and forcible transfer. On this basis, the Trial Chamber found that the Accused instigated these forcible transfers and deportations. In addition, the Trial Chamber is also satisfied that the Accused aided and abetted the execution of these crimes through his inflammatory and discriminatory public statements, the decisions on disarmament previously mentioned and finally through the ARK Crisis Staff decision of 12 June 1992 setting up the Agency for the Movement of People and Exchange in Banja Luka.

- The Trial Chamber reiterates the reasoning used for the crime of wilful killing for the crime of destruction, namely that the ARK Crisis Staff decisions on disarmament constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and areas and that the Accused was aware that crimes including the crime of wanton destruction of cities, towns and villages or devastation not justified by military necessity would be committed. The Trial Chamber is thus satisfied that the Accused aided and abetted in the wanton destruction of cities, towns and villages or devastation not justified by military necessity committed by the Bosnian Serb forces on non-Serb towns, villages and areas in Bosanski Novi, Bosanski Petrovac, Celinac, Donji Vakuf, Kljuc, Kotor Varos, Prijedor, Sanski Most, Sipovo and Teslic after 9 May 1992. With the same reasoning and having examined the evidence carefully, the Trial Chamber is satisfied that the Accused aided and abetted the destruction or wilful damage done to institutions dedicated to religion committed by the Bosnian Serb forces in the context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and areas in Bosanski Novi, Bosanski Petrovac, Celinac, Donji Vakuf,

Kljuc, Kotor Varos, Prijedor, Prnjavor, Sanski Most, Sipovo and Teslic after 9 May 1992.

- Finally, regarding the crime of persecution, the Trial Chamber has previously established the responsibility of the Accused for aiding and abetting certain crimes of wilful killing, torture, destruction and devastation of cities, towns, villages and institutions dedicated to religion as well as deportation and forcible transfer. The Accused has also been found responsible for instigating certain incidents of deportation and forcible transfer. The Trial Chamber is further satisfied that the Accused aided and abetted persecution with respect to physical violence, rapes, sexual assaults, constant humiliation and degradation, as well as appropriation of property. Furthermore, the Trial Chamber is satisfied that the Accused ordered the denial of the fundamental right to employment through a decision of the ARK Crisis Staff of 22 June 1992, providing for the dismissal of virtually all non-Serbs in the ARK, an act which amounted to persecution. Moreover, the Accused aided and abetted persecution with respect to denying the right to freedom of movement and the right to proper judicial process. However, the Trial Chamber found that the evidence before it is insufficient to establish the responsibility of the Accused for the denial of the right to proper medical care. In relation to all these underlying acts, the Trial Chamber is satisfied that not only the physical perpetrators but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.

V. Sentencing

The Trial Chamber assessed the factors relevant to an appraisal of the gravity of the crimes of which the Accused has been found guilty.

The Prosecution in this case, considering the gravity of the crimes charged in the Indictment, the aggravating factors submitted and the alleged absence of any significant mitigating factor, claimed that the criminal responsibility of the Accused could only be adequately punished with a sentence of life imprisonment.

The Defence put forward a preliminary objection to the absence from the proceedings of a separate and *ad hoc* sentencing hearing after conviction and submitted that because of this he could not make adequate submissions on sentencing. The Trial Chamber does not agree with this submission and the reasons are given in the Judgement. The Defence did, however, make several submissions for the purpose of sentencing which are dealt with comprehensively in the Judgement and which I shall now mention.

The Trial Chamber found that the following were relevant aggravating circumstances to which appropriate weight, as indicated in the Judgement, was attached when determining the sentence: the position of leadership of the Accused, the status and vulnerability of the victims and the impact of the crimes on the victims, the willingness of the Accused's participation, the duration of the criminal conduct to a lesser extent and the educational background of the Accused.

However, the Trial Chamber found that the following were relevant mitigating circumstances to which the appropriate weight indicated in the Judgement was attached when determining the sentence: contributing to the decision to provide shelter to Bosnian Muslims from Celinac, treating all citizens equally, voicing concern about paramilitaries, participating in the decision to arrest members of the Mice group, the family status and age of the Accused, his speeches against profiteering from the armed conflict, his respectful conduct during the course of the proceedings and with witnesses testifying against him, and finally his remorse in individualised instances.

Finally, in accordance with the Statute and the Rules, the Trial Chamber took into consideration the general sentencing practice of the courts of the former Yugoslavia but acknowledged that it is was not bound by this practice. The Trial Chamber noted that under the SFRY Criminal Code, the range of penalties existing in 1992 was a fine, confiscation of property, imprisonment, and capital punishment. The maximum term of imprisonment was 15 years, except for offences punishable with the death penalty, committed under "particularly aggravating circumstances," or causing "especially grave consequences," in which cases the maximum term of imprisonment was 20 years.

The Trial Chamber pursuant to Rule 87(C) decided to impose a single sentence in this case, as it reflects better the criminal conduct of the Accused which shows a constant pattern of criminal behaviour occurring within a closed temporal context.

VI. Disposition

Radoslav Brdjanin, please rise.

For the reasons I summarised above, this Trial Chamber, having heard all the evidence presented by the Prosecution and the Defence, finds you not guilty of:

- Count 1: Genocide
- Count 2: Complicity of genocide
- Count 4: Extermination as a crime against humanity
- Count 10: Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the 1949 Geneva Conventions.

The Trial Chamber finds you guilty of:

- Count 3: Persecutions as a crime against humanity (incorporating Count 6 (torture), Count 8 (deportation) and Count 9 (forcible transfer as an inhumane act).
- Count 5: Wilful killing as a grave breach of the 1949 Geneva Conventions
- Count 7: Torture as a grave breach of the 1949 Geneva Conventions
- Count 11: Wanton destruction of cities, towns and villages or devastation not justified by military necessity as a violation of the laws and customs of war
- Count 12: Destruction or wilful damage done to institutions dedicated to religion as a violation of the laws and customs of war.

We sentence you, Radoslav Brdjanin, to a single sentence of 32 years of imprisonment and state that you are entitled to credit for 5 years, 1 month and 26 days, as of the date of this Judgement, calculated from the date of your deprivation of liberty, that is the 6 July 1999, together with such additional time as 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 the finalisation of arrangements for your transfer to the State where this sentence will be served.

The court stands adjourned.

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 of the Tribunal