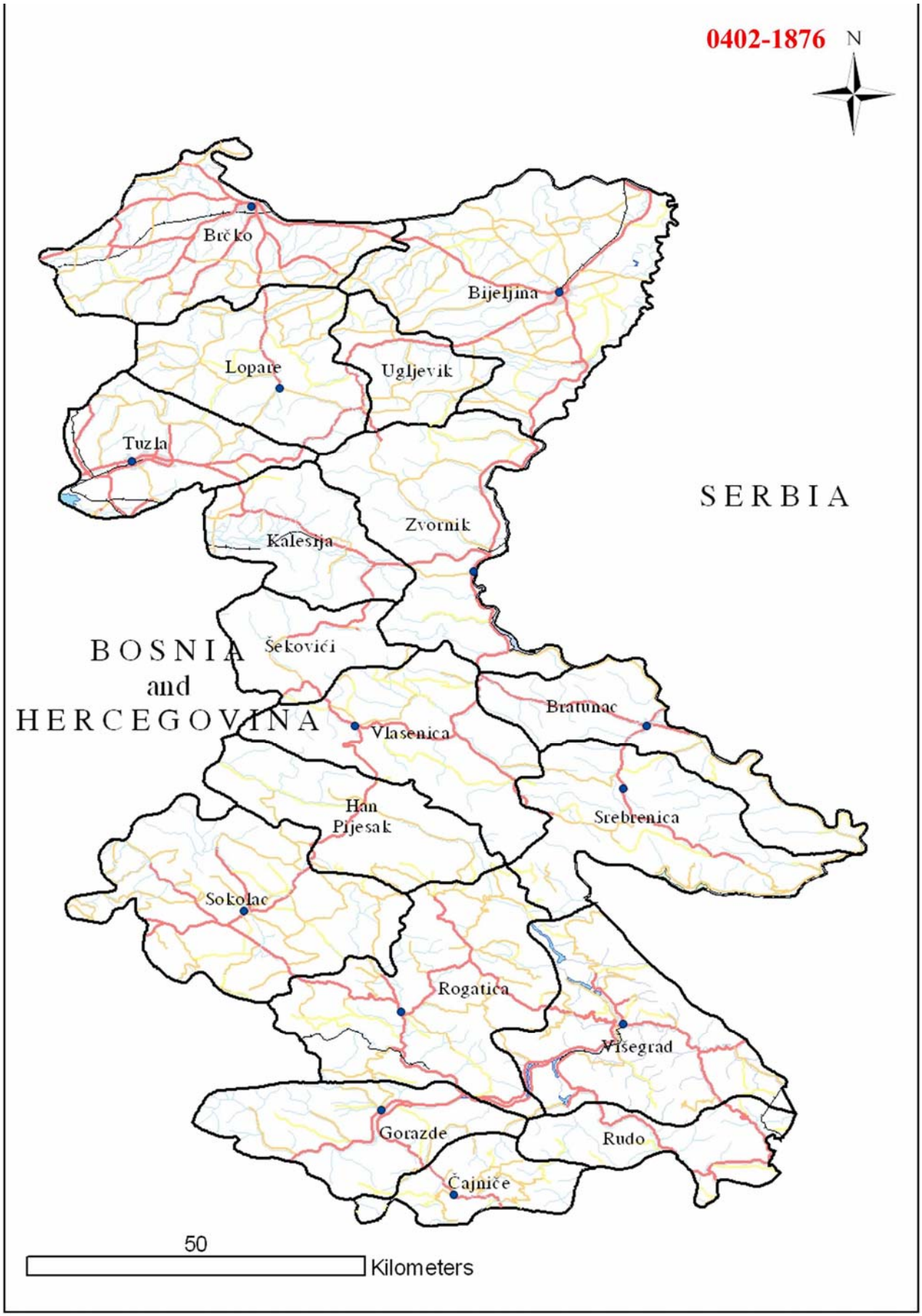
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UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-02-61-S
		Date:	30 March 2004
		Original:	English

IN TRIAL CHAMBER II

Before: **Judge Wolfgang Schomburg, Presiding**
Judge Carmel A. Agius
Judge Florence Ndepele Mwachande Mumba

Registrar: **Mr. Hans Holthuis**

Judgement of: **30 March 2004**

PROSECUTOR

v.

MIROSLAV DERONJIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Mr. Mark B. Harmon

Counsel for the Accused:

Mr. Slobodan Cvijetić
Mr. Slobodan Zečević

CONTENTS

I. INTRODUCTION

1. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter "Tribunal") was created by United Nations Security Council Resolution 827 (1993) under Chapter VII of the Charter of the United Nations. Article 39 of Chapter VII reads as follows:

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security". [1]

2. Miroslav Deronjić (hereinafter "Accused") was indicted by the Tribunal on 3 July 2002. The Trial Chamber wishes to emphasize that it is seized only with Miroslav Deronjić's individual criminal responsibility for Persecutions committed on 9 May 1992 and only in the village of Glogova in the Municipality of Bratunac in Eastern Bosnia, based on the Second Amended Indictment of 30 September 2003.

3. In confessing his individual guilt and admitting all factual details contained in the Second Amended Indictment and in an additional Factual Basis in open court on 30 September 2003, Miroslav Deronjić has guided the international community closer to the truth on crimes committed in the area of Glogova, truth being one prerequisite for peace. He has helped, to a certain extent, to protect against any kind of revisionism.

4. It is now for this Trial Chamber to balance the extreme gravity of the crimes, for which the Accused accepted full responsibility, against this contribution to peace and security. In doing so, it is for this Trial Chamber to come as close as possible to justice for both victims and their relatives and the Accused, justice being of paramount importance for the restoration and maintenance of peace.

[1] Emphasis added. Chapter VII is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression".

II. THE ACCUSED

5. The Accused, Miroslav Deronjić, was born on 6 June 1954 in Magašići in the Municipality of Bratunac, the youngest child of Milovan and Jelika Deronjić. He has three older sisters.[2]

6. The Accused attended elementary school in Glogova and Bratunac.[3] After completing secondary school in Srebrenica, he enrolled for History of Yugoslav Literature and Serbo-Croatian or Croato-Serbian Language[4] at the faculty of Philosophy in Sarajevo, from where he graduated in 1977[5]. He was an eager and successful student.[6] After his graduation, he worked for a few months as a sub-editor for the newspaper *Oslobodjenje* and also as a journalist for Radio Sarajevo. Later, he worked as a teacher in a secondary school in Sarajevo.[7]

7. The Accused served in the military from 1979 to 1980 at the aviation monitoring command in Novi Sad. After his return to Bratunac, he was gainfully employed in the secondary school in Srebrenica.[8]

8. After the death of his mother in 1983, he went to France to work as a teacher for guest worker families for two years.[9] He lived together with Ranka Stevanović, whom he married in 1984. Their first son, Neven, was born in the same year.[10] In 1985, the Accused returned with his family to Bratunac, where his second son, Stefan, was born.[11] He started working as a language teacher at the secondary school in Srebrenica and stayed in employment there until 1990.[12]

9. In 1990, the Accused decided to actively participate in political life. He joined the Serbian Democratic Party of Bosnia and Herzegovina (hereinafter "SDS"),[13] feeling a strong desire to participate in political discourse and to take a public position on communism.[14] The professional activity of the Accused, particularly his political career between 1990 and 1997, will be discussed in the section outlining the facts of the present case.[15]

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[2] *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-S, Psychological Report on Miroslav Deronjić, son of Milovan, born 6 June 1954, 16 December 2003 (hereinafter "Najman Report") , Exh. JS-16a, p. 4.
[3] *Ibid*., p. 5.
[4] Defence Closing Statement, T. 216.
[5] Najman Report, pp. 5-6.
[6] *Ibid*.
[7] *Ibid.*, p. 6.
[8] *Ibid*.
[9] *Ibid*.
[10] Najman Report, p. 7; Birth Certificate No. 01 for 1985, Exh. DS-13/5.
[11] *Ibid.*; Birth Certificate No. 307 for 1986, Exh. DS-13/6.
[12] Najman Report, p. 7.
[13] Defence Closing Statement, T. 216.
[14] Najman Report, p. 7.
[15] See *infra* subsection V.A., para. 48.

10. After 1997, the Accused was not gainfully employed. Attempts to start a private business failed. His last investment, in a joint venture with a man from Bratunac in 2001, also proved to be unsuccessful.[16]

11. The Accused was arrested on 6 July 2002. On 8 July 2002 he was transferred to the United Nations' Detention Unit (hereinafter "UNDU"), where he remains until today.[17]

12. The Accused enjoys the support of his family.[18] After the death of his first wife, Ranka, in 1992, he married his present wife, Dana Stević, in 1996.[19] He had two more children: a son, Vuk, born in 1996[20] and a daughter, Lola, born in 2001[21].[22]

13. The Accused has no criminal record.[23]

[16] Najman Report, p. 8.
[17] Defence Sentencing Brief, para. 87.
[18] Najman Report, p. 9.
[19] Marriage Certificate No. 86 for 1996, Exh. DS-13/7
[20] Birth Certificate No. 1164 for 1996, Exh. DS-13/8
[21] Birth Certificate No. 572 for 2001, Exh. DS-13/9
[22] Najman Report, p. 8.
[23] Defence Sentencing Brief, para. 77.

III. PROCEDURAL HISTORY

A. Overview of the Proceedings

14. A first indictment against Miroslav Deronjić was issued on 3 July 2002[24] and confirmed on 4 July 2002;[25] it initially contained six counts.[26] It has been amended twice.[27] The latest version, filed on 30 September 2003,[28] forms the basis of these proceedings.[29]

15. On 6 July 2002, Miroslav Deronjić was arrested in Bratunac, Bosnia and Herzegovina, and was transferred to the UNDU on 8 July 2002. At his initial appearance on 10 July 2002, Miroslav Deronjić pleaded not guilty to all the counts of the initial indictment.[30]

16. On 2 August 2002, the Accused filed a motion requesting that the indictment be formulated more precisely.[31]

17. On 25 October 2002, the Trial Chamber granted the motion in part.[32] Accordingly, on 29 November 2002, changes specifically concerning the Accused's individual criminal responsibility pursuant to Articles 7 (1) and 7 (3) of the Statute, as well as his overall role in the criminal offences, were submitted by the Prosecution.[33] Especially, the distinction between the acts of the subordinates, for which the Accused was allegedly responsible as a superior, were clarified. Moreover, the Prosecution sought to amend the indictment with the identity of the murder victims in each incident for which the Accused was individually charged.

18. On 29 September 2003, the Parties agreed on the proposed Second Amended Indictment (hereinafter "Indictment"), which was reduced to only one charge, that of Persecutions pursuant to Article 5 (h), incorporating the attack on the village of Glogova, killings, destruction of property in Glogova and forcible displacement, and the Accused's individual criminal responsibility pursuant

[24] *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61, Indictment, 3 July 2002.
[25] *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61, Warrant of Arrest Order for Surrender, 4 July 2002.
[26] Including Crimes against Humanity, punishable under Articles 5 (a), 5 (h), 7 (1) and 7 (3) of the Statute as well as Violations of the Laws or Customs of War, punishable under Articles 3, 7 (1) and 7 (3) of the Statute.
[27] See *infra* paras 16-18.
[28] *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61, Prosecution's Second Amended Indictment, 30 September 2003.
[29] See *infra* para. 18; Sentencing Hearing, T. 135.
[30] Initial Hearing, T. 17-18.
[31] Preliminary Motion on the Form of the Indictment, *Prosecutor v. Deronjić,* Case No.IT-02-61, Defence Preliminary Motion, 2 August 2002.
[32] *Prosecutor v. Deronjić,* Case No. IT-02-61, Decision on Form of the Indictment, 25 October 2002, resulting in the Prosecution's Amended Indictment Submission, 29 November 2002.
[33] *Prosecutor v. Deronjić*, Case No. IT-02-61, Prosecution's Amended Indictment Submission, 29 November 2002; Prosecution's General Reorganisation Table Submission for the Amended Indictment, 29 November 2002.

to Article 7 (1) of the Statute. The Indictment was accepted by the Trial Chamber at the Status Conference held on 30 September 2003 (hereinafter "Plea Hearing").[34]

19. At the Plea Hearing, the Accused pleaded guilty to the Indictment forming part of a plea agreement (hereinafter "Plea Agreement") which was submitted jointly by the Parties and is based on the Indictment and a separate factual basis (hereinafter "Factual Basis").[35]

20. The Trial Chamber requested the Registrar to appoint an expert in psychology to submit a report on the Accused's socialisation, which should provide, *inter alia,* details on the Accused's childhood, conditions under which he grew up, his school and work career, as well as relations with friends and family (until today). The Registrar appointed Mrs. Ana Najman (Belgrade) as consultant, from 18 November 2003 to 18 December 2003, and the report that she prepared and submitted (hereinafter "Najman Report"), based on the consent of the Parties, was admitted into evidence without summoning her.[36]

21. On 5 December 2003, the Trial Chamber issued an order for the Prosecution to produce additional evidence in the form of a detailed description and assessment of the Accused's co-operation. Moreover, the Trial Chamber asked for all transcripts of the Accused's testimonies given in other cases before the Tribunal (hereinafter "Deronjić Testimonies") until that point.[37]

22. On 17 December 2003, the Trial Chamber invited the Parties to indicate whether they accepted the expert report prepared by Prof. Dr. Ulrich Sieber, Director of Max Planck Institute for foreign and international criminal law in Freiburg/Germany, in the *Dragan Nikolić* case[38] (hereinafter "Sentencing Report"), which focused on sentencing practice and ranges relating to crimes that included those to which the Accused pleaded guilty.[39] Because the Parties accepted the Sentencing Report and the testimony of Prof. Sieber in the *Dragan Nikolić* case[40] (hereinafter

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[34] Plea Hearing, T. 47.
[35] *Prosecutor v. Deronjić*, Case No. IT-02-61, Plea Agreement, 29 September 2003.
[36] *Prosecutor v. Deronjić,* Case No. IT-02-61, Scheduling Order for Sentencing Hearing, 16 January 2004. The Psychological Report was admitted into evidence as Exh. JS-16 in B/C/S and JS-16a in English. The Supplement to the Physiological Report on Miroslav Deronjić submitted by Ana Najman on 19 January 2004 was admitted into evidence as Exh. JS-16/1 in B/C/S and JS-16/1a in English.
[37] *Prosecutor v. Deronjić,* Case No. IT-02-61, Order on Production of Additional Evidence Pursuant to Rule 98, 5 December 2003; Exhs.: DS-9, DS-10, DS-11, PS-12.
[38] *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-S, Scheduling Order, 25 September 2003; Prof. Dr. Ulrich Sieber, *The Punishment of Serious Crimes* – A comparative analysis of sentencing law and practice -, Final Version filed on 12 November 2003.
[39] *Prosecutor v. Deronjić,* Case No. IT-02-61, Order on Admission into Evidence of Testimony of Expert Witness Prof. Dr. Ulrich Sieber, 17 December 2003.
[40] Transcript of Prof. Dr. Ulrich Sieber's testimony on the Sentencing Report during the sentencing hearing in the *Dragan Nikolić* case on 5 November 2003.

"Sieber Testimony") in its entirety, the Sentencing Report and the Sieber Testimony were admitted into evidence[41] without summoning Prof. Sieber.

23. The Parties submitted their Sentencing Briefs on 18 December 2003.[42] The Defence informed the Trial Chamber that it would not object to the admission into evidence of the Prosecution witnesses' statements[43] nor did it intend to cross-examine any of these witnesses.[44]

24. Following the Trial Chamber's order of 5 December 2003,[45] the Prosecution produced three Annexes[46] of all Deronjić Testimonies in other proceedings before this Tribunal until that date.[47]

B. Plea Agreement

25. The documents filed by the Prosecution in preparation for the Plea Hearing pursuant to Rule 62 *ter* consisted of the Plea Agreement, the Indictment and the Factual Basis.

26. The terms of the Plea Agreement are as follows:

> […] Miroslav Deronjić agrees to plead guilty to persecutions on political, racial and religious grounds, a Crime against Humanity[...], punishable under Articles 5 (h) and 7(1) of the Statute of the Tribunal [...], as alleged in the Second Amended Indictment.[48]
>
> […] A written factual basis supporting the crime of Persecutions, punishable under Article 5 (h) of the Statute and Miroslav Deronjić's participation in it has been prepared and filed with the Trial Chamber (hereinafter "Factual Basis"). Miroslav Deronjić has reviewed with his attorneys the Factual Basis. Miroslav Deronjić adopts the Factual Basis and agrees that he is pleading guilty to the charge of Persecutions contained in the Second Amended Indictment because he is in fact guilty and acknowledges full responsibility for his actions that are described therein.[49]

27. The Factual Basis and the entire Indictment[50] were read out to the Accused paragraph by paragraph at the Plea Hearing. The Accused pleaded guilty to the single charge of Persecutions in the Indictment, admitting at the same time that the entire Factual Basis reflects correctly the events described therein.[51]

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[41] *Prosecutor v. Deronjić,* Case No. IT-02-61, Scheduling Order for Sentencing Hearing, 16 January 2004; Exhs. JS-17 (Sentencing Report), JS-17A (Sieber Testimony).
[42] Including Prosecution's confidential Annex I and Defence's confidential Appendixes A to D.
[43] See *Prosecutor v. Deronjić,* Case No. IT-02-61, Prosecution Witnesses' Statements, filed on 18 December 2003 and the "Annex to Prosecution's Sentencing Brief Statements relating to Impact on Victims".
[44] *Prosecutor v. Deronjić,* Case No. IT-02-61, Defence's Submission Regarding Prosecutor's Sentencing Witnesses, 22 December 2003.
[45] *Prosecutor v. Deronjić,* Case No. IT-02-61, Order on Production of Additional Evidence Pursuant to Rule 98.
[46] Annexes to the "Prosecution's Filing Pursuant to Order on Production of Additional Evidence Pursuant to Rule 98", filed confidentially on 5 January 2004; and the "Prosecution's Submission of Further Parts of Testimony of Miroslav Deronjić", filed confidentially on 7 January 2004.
[47] See *supra* para. 21.
[48] Plea Agreement, para 3.
[49] *Ibid.*, para 4.
[50] The "General Allegations" paras 13-16, 2-12 and 17- end.
[51] Plea Hearing, T. 48-83.

28. However, the Trial Chamber drew to the Parties' attention several times that in attempts to merge the Indictment with the Factual Basis, several discrepancies could be identified.[52] Therefore, during the Plea Hearing the Trial Chamber could solely ascertain that the Accused entered the Plea Agreement voluntarily, that the Plea Agreement was read to him in a language he understood and that he also understood, the terms of the Plea Agreement.[53] Moreover, it was explained to the Accused one more time that under Rule 62 *ter* (B) of the Rules, the Trial Chamber is not bound by any agreement; and that the maximum sentence that could be imposed is a term of imprisonment up to and including the remainder of his life as stated in Rule 101 (A) of the Rules.[54]

C. Testimony of the Accused

29. In order to reconcile the aforementioned discrepancies, the Parties were invited to provide further clarifications. This was primarily done during the Accused's witness testimony on 27 January 2004 (hereinafter "Deronjić Testimony"). The Trial Chamber held that now there is a sufficient Factual Basis to establish the crime and the Accused's participation in it.[55] Therefore, the Trial Chamber entered a finding of guilt in relation to the charge of Persecutions as described in the Indictment.[56]

D. Sentencing Hearing

30. On 16 January 2004, Deronjić Testimonies,[57] the Prosecution Witnesses' Statements[58] and the Defence Witnesses' Statements[59] were admitted into evidence, and the transcripts of any further testimony by the Accused were ordered to be produced by the Prosecution.[60] The Sentencing Hearing, designed to provide the Trial Chamber with "any relevant information that may assist in determining an appropriate sentence" pursuant to Rule 100 (A) of the Rules, commenced on 27 January 2004 and concluded on 28 January 2004.

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[52] Sentencing Hearing, T. 177.
[53] Plea Hearing, T. 43-44.
[54] *Ibid.*, T. 44.
[55] Sentencing Hearing, T. 177.
[56] *Ibid.*, T. 177-78.
[57] The transcripts of the Accused's testimony given in *Prosecutor v. Momir Nikolić,* Case No.: IT-02-60/1-S on 28 October 2003, Exh. DS-9; *Prosecutor v. Krstić,* Case No.: IT-98-33-A, on 21 November 2003, Exh. DS-10; *Prosecutor v. Milosević,* Case No.: IT-02-54-T, on 26 and 27 November 2003, Exh. DS-11.
[58] Annex to the Prosecution Sentencing Brief admitted into evidence as Exhs.: PS-19/1 to PS-19/7.
[59] Annex I: Witness List to the Defence Sentencing Brief admitted into evidence as Exhs.: DS-18/1 to DS-18/8 in B/C/S and DS-18/1a to DS-18/8a in English respectively; upon agreement of the Parties, the confidentiality of Exhs. DS-18/2, DS-18/4, DS-18/5, DS-18/7, DS-18/8 were lifted, Sentencing Hearing, T. 242.
[60] Pursuant to the Scheduling Order from 16 January 2004 (*Prosecutor v. Deronjić,* Case No. IT-02-61, Scheduling Order for Sentencing Hearing, 16 January 2004), the Prosecution in its "Submission of Further Testimony of Miroslav Deronjić" produced on 23 January 2004 the transcripts of the Accused's testimony under seal given in *Prosecutor v. Blagojević et al.*, Case No.: IT-02-60-T, on 19-22 January, which were admitted into evidence as Exh. PS-12.

31. Already in the beginning of the Sentencing Hearing, the Trial Chamber emphasized that it was only seized of the events in Glogova on 9 May 1992. Especially in relation to Paragraph 11 (d) of the Plea Agreement, it was stressed that the application of the principle of *ne bis in idem* in this concrete case is limited only to crimes committed during the attack in Glogova. Therefore the Trial Chamber reminded the Parties that the Accused can still be indicted for all other possible crimes in which he might have been involved, including e.g. Srebrenica, before this Tribunal or in other countries which have jurisdiction as well. As it was pointed out by the Trial Chamber, contrary to some other legal systems, all matters concerning prosecution and investigation before this Tribunal remain in the sole responsibility of the Prosecutors policy.[61]

32. In relation to Paragraph 11 (f) of the Plea Agreement and Rule 62 *ter* (C) of the Rules, the Trial Chamber also inquired whether the Plea Agreement submitted by the Parties was the full plea agreement, or whether specifically a document titled the "Understanding of the Parties"[62], having never been mentioned before, also formed part of the Plea Agreement.[63] The Prosecution submitted that the "Understanding of the Parties" stems from a time when the Accused was generally reluctant to provide a full statement to the Prosecution, unless he was provided by the Prosecution, in writing, with certain understandings concerning his statements.[64] It was argued that the Accused would have been reluctant to assist and provide the Prosecution with important information without this promise at a time when the Accused was under no legal obligation to talk to representatives of the Prosecution.[65] However, the Prosecution and the Defence stated that the "Understanding of the Parties" did not form part of the Plea Agreement.[66]

33. Additionally, a number of exhibits were admitted into evidence.[67] Furthermore, the Parties agreed to delete from the Indictment the charge that he had ordered the events.[68] It was emphasized

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[61] Sentencing Hearing, T. 97.
[62] Dated 18 June 2003 and admitted into evidence as Exh. JS-15 (formerly Exh. D-96/1 in the case of *Prosecutor v. Blagojević et al.*, dated 18 June 2003).
[63] Sentencing Hearing, T. 99 and T. 102.
[64] *Ibid.*, T. 103.
[65] *Ibid.*, T. 103-105.
[66] *Ibid.*, T. 103.
[67] Six interviews of the Accused with the Prosecution between 16 December 1997 and 9 April 2002 (confidential Appendix A to the Defence Sentencing Brief, admitted into evidence as Exhs. DS-1, DS-2, DS-3, DS-4, DS-5 and DS-6); eleven interviews of the Accused with the Prosecution during June and July 2003 (confidential Appendix B to the Defence Sentencing Brief, admitted into evidence as Exhs. DS-7/1 to DS-7/11); witness statement of the Accused 25 November 2003 (Exh. DS-8. After Deronjić's Testimony in the Sentencing Hearing, the Prosecution tendered an English version of this statement, which was not signed by the Accused; it was admitted into evidence as Exh. DS-8a, T. 180-82); eleven documents supporting the personal and family circumstances of the Accused (Appendix D to the Defence Sentencing Brief, admitted into evidence as Exhs. DS-13/1 to DS-13/11, English version of the Exhs. DS-13/1 to DS-13/9 were admitted into evidence as Exhs. DS-13/1a to DS-13/9a accordingly); a number of documents on the question of the substantial co-operation by the Accused and its impact on the fulfilment of the mandate of this Tribunal (Exhs. PS-23, PS-24 (B/C/S) and PS-24a (English), PS-25 (B/C/S) and PS-25a (English), PS-25/1 (B/C/S) and PS-25/1a (English), PS-25/2 (B/C/S) and PS-25/2a (English), PS-25/3 (B/C/S) and PS-25/3a (English).); see supra paras 23-24.
[68] i.e. para. 40.

that this deletion concerns the use of the word "order" only in its strict legal sense, hence not in the descriptive part of the Indictment and the Factual Basis.[69]

34. The Accused was given the final word.[70] He used this to express remorse and he accepted without any reservation full responsibility for the crimes contained in the Indictment.[71]

E. Continued Sentencing Hearing

35. Immediately after the Sentencing Hearing, the Trial Chamber revisited Miroslav Deronjić's Testimony and compared it with the Indictment and the Factual Basis. As a result of this comparison, the Trial Chamber identified discrepancies that prompted the Trial Chamber to again examine all previous statements of the Accused. After reviewing in greater detail the Indictment, the Factual Basis, the Deronjić Testimony, all of his prior testimonies and statements, and in particular his witness statement of 25 November 2003, the Trial Chamber came to the conclusion that on a *prima facie* basis there were substantial material discrepancies.

36. These discrepancies made it incumbent on the Trial Chamber to verify that the guilty plea of the Accused could still fulfil the prerequisites of Rule 62 *bis* of the Rules. Therefore the Trial Chamber ordered a continuation of the sentencing hearing to be held on 5 March 2004 (hereinafter "Continued Sentencing Hearing").[72] At the same time the Trial Chamber ordered the Prosecution to produce the transcripts of the Accused's testimony given from 12 to 19 February 2004, i.e. after the Sentencing Hearing, in *Prosecutor v. Krajišnik*. Finally, the Trial Chamber requested the Prosecution to produce a number of exhibits tendered in *Prosecutor v. Krajišnik* and in *Prosecutor v. Milošević* in as far as these could be relevant to the present case.[73]

37. The Continued Sentencing Hearing took place on 5 March 2004. The Trial Chamber sought in particular clarification on the following two issues:

- the *mens rea* of the Accused in relation to killings and the destruction of the mosque as acts of Persecutions;

[69] Sentencing Hearing, T. 182.
[70] Compare, *inter alia, Krnojelac* Appeal proceedings, T. 327, line: "The Chamber, according to the principles and standards of international law […] must listen to what Mr. Milorad Krnojelac would like to say to us […]"; *Kunarac* Appeal proceedings, T. 343-44; Kr*stić* Appeal proceedings, T. 447; *Vasiljević* Appeal proceedings, T. 164-65; *Simić et al.,* Trial proceedings, T. 20721; *Stakić* Trial proceedings, T. 15331-32; *Mrda* Sentencing Proceedings, T. 194.
[71] Sentencing Hearing, specifically T. 246-47.
[72] *Prosecutor v. Deronjić,* Case No. IT-02-61, Scheduling Order, 19 February 2004.
[73] *Prosecutor v. Deronjić,* Case No. IT-02-61, Urgent Order on the Production of Evidence, 25 February 2004.

- the role of the Accused, Mr. Reljić, and Mr. Zekić, and their interrelationship during the events the Indictment is based on, in order to determine precisely the individual criminal responsibility of the Accused.[74]

38. The Trial Chamber noted that the underlying facts not only have to be discussed in the light of the prerequisites of Rule 62 *bis* of the Rules, but they might also be relevant as factors for determining an appropriate sentence.[75]

39. The Parties were given an opportunity to resolve the material discrepancies identified by the Trial Chamber. In relation to the first issue concerning the *mens rea* of the Accused, the Parties once again stressed that the Accused would stand by his guilty plea and that for both Parties there is nothing equivocal in the Accused's statements.[76] Additionally, the Parties resolved all the existing material discrepancies, thus eliminating any possibility for the guilty plea by the Accused to be considered as not fulfilling the prerequisites of Rule 62 *bis* of the Rules. The Trial Chamber admitted into evidence most of the exhibits produced by the Prosecution pursuant to the orders of 19 and 25 February 2004.[77]

[74] Continued Sentencing Hearing, T. 268; see also *Prosecutor v. Deronjić,* Case No. IT-02-61, Letter to the Parties, 27 February 2004.
[75] Continued Sentencing Hearing, T. 250.
[76] *Ibid.*, T. 316.
[77] Exhs. JS-26 through JS-39 and PS-40 were admitted into evidence.

IV. GUILTY PLEA AND PLEA AGREEMENT

40. The Statute does not directly address the issue of a guilty plea. Article 20 (3) of the Statute simply provides:

> The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for a trial.

Additionally, Rules *62 (VI)* and *62 bis* of the Rules, which govern the taking of a guilty plea, set out the criteria to be applied[78] in such a case. The Rules provide as follows:

> Rule 62 *bis*
>
> Guilty Pleas
>
> If an accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty and the Trial Chamber is satisfied that:
>
> (i) the guilty plea has been made voluntarily;
>
> (ii) the guilty plea is informed;
>
> (iii) the guilty plea is not equivocal; and
>
> (iv) there is sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case,
>
> the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.

41. After having accepted a guilty plea on the basis of a plea agreement, a tribunal in party-driven systems, such as the ICTY and the ICTR, is limited to any legal and/or factual assessment contained in, or annexed to the plea agreement.[79] However, the Trial Chamber is not bound by a sentence recommendation contained in a plea agreement.

[78] These criteria were first established by the Appeals Chamber in *Erdemović* case; See *Erdemović* Appeal Judgement.
[79] *Dragan Nikolić* Sentencing Judgement, para. 48.

42. The Rule providing for the procedure for plea agreements between the Prosecution and the Defence states as follows:

> Rule 62 *ter*
>
> Plea Agreement Procedure
>
> (A) The Prosecutor and the defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor shall do one or more of the following before the Trial Chamber:
>
> (i) apply to amend the indictment accordingly;
>
> (ii) submit that a specific sentence or sentencing range is appropriate;
>
> (iii) not oppose a request by the accused for a particular sentence or sentencing range.
>
> (B) The Trial Chamber shall not be bound by any agreement specified in paragraph (A).
>
> (C) If a plea agreement has been reached by the parties, the Trial Chamber shall require the disclosure of the agreement in open session or, on a showing of good cause, in closed session, at the time the accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty.

43. Having satisfied itself as to the matters set out in Rule 62 *bis* of the Rules, the Trial Chamber entered a finding of guilt against the Accused on a single count of Persecutions as a crime against humanity punishable under Article 5 (h) of the Statute.[80]

[80] Sentencing Hearing, T. 177-78.

V. THE FACTS

44. On 30 September 2003, Miroslav Deronjić pleaded guilty to the crime of Persecutions of non-Serb civilians in the village of Glogova[81], committed through the following underlying acts: ordering to attack the village of Glogova on 9 May 1992, burning it down in part, and forcibly displacing of Bosnian Muslim residents from the village.[82] As a result, 64 Muslim civilians from the village were killed, Bosnian Muslim homes, private property, and the mosque were destroyed, and a substantial part of Glogova was razed to the ground.[83]

45. The Prosecution submitted a Factual Basis supporting the factual allegations contained in the Indictment, to which the Accused agreed before this Trial Chamber.[84] The Trial Chamber will review below the facts as agreed by the Parties and list also any additional facts and further clarifications that resulted from the Sentencing Hearing and the Continued Sentencing Hearing.

46. However, since the Trial Chamber was solely seized of the events in Glogova on 9 May 1992, the Trial Chamber considers it necessary to stress once more that the Accused's criminal responsibility and the respective sentence in the present Judgement is solely based on the Accused's criminal conduct in relation to 9 May 1992. Accordingly, any references stated below, dealing with the Accused's conduct *prior* to the preparatory meeting in Sarajevo on 19 December 1991 as well as *after* the events in Glogova on 9 May 1992, are to be considered only as additional background information.

47. Moreover, as it was clarified during the Sentencing Hearing, wherever there are any discrepancies between the Indictment and the Factual Basis, it shall be the Indictment itself that is controlling, and forms the fundament in the present case. Accordingly, the Factual Basis is to be regarded as a mere support to the guilty plea.[85] The Trial Chamber would also like to stress that the apparent discrepancies, relevant to the events in Glogova, between the Indictment, the Factual Basis, the Deronjić Testimony and all of his prior statements to the Prosecution as well as his testimonies in other proceedings before this Tribunal were resolved by the Parties during the Continued Sentencing Hearing primarily on the basis of agreed facts.[86]

[81] See *supra* para. 27.
[82] Indictment, para. 25.
[83] Indictment, para 26; Plea Agreement, paras 3-4.
[84] Plea Hearing, T. 48-83.
[85] Sentencing Hearing, T. 135.
[86] See *supra* para. 39.

A. The Political Career of the Accused

48. From September 1990 to the end of April 1992, Miroslav Deronjić was President of the Bratunac Municipal Board of the Serbian Democratic Party of Bosnia and Herzegovina.[87] He was appointed a member of the SDS party Commission on Personnel and Organisation by the Executive Board on 6 September 1991.[88] Miroslav Deronjić was President of three crisis staffs which existed in the Municipality of Bratunac in the period from the end of October 1991 till June 1992. The first was the Crisis Staff of the Serbian People, which was set up after the meeting of 18 October 1991 and existed at least until 19 December 1991;[89] the second was the SDS Crisis Staff, which was set up after the meeting of 19 December 1991, and was in force until the end of April 1992, when the Municipality of Bratunac Crisis Staff was formed.[90] The third crisis staff, the Bratunac Crisis Staff, came into existence towards the end of April 1992 when it assumed authority from the Executive Committee of the Municipality and the organs of the Municipal Assembly, and existed until the time of its transformation to a War Commission, established by the Presidency of the Serb Republic of Bosnia and Herzegovina in June 1992.[91] Miroslav Deronjić was appointed a member of the War Commission of the Municipality of Bratunac,[92] and in the summer of 1993 he became a member of the Main Board of the SDS.[93] On 11 July 1995, Miroslav Deronjić was appointed a Civilian Commissioner for Srebrenica municipality.[94] In 1996, he became vice-president of the SDS under President Karadžić until Miroslav Deronjić's resignation in 1997.[95]

B. Political Background

49. Prior to 9 May 1992, Glogova[96] was a village located in the Municipality of Bratunac, in the eastern part of the Republic of Bosnia and Herzegovina, a few kilometres away from the city of Bratunac and Konjević Polje.[97] The Municipality of Bratunac was of major strategic significance to

[87] Indictment, para. 1; Factual Basis, para. 2.
[88] *Ibid.*; *Ibid.*, para. 3. See also Exh. JS-28.
[89] This fact was clarified during the Continued Sentencing Hearing, T. 275-76. See also Exh. JS-31/a – Minutes from the second meeting of the Bratunac SDS Municipal Board held on 25 October 1991, where "[a]ppointment of the Crisis Staff in the Bratunac Municipality with the purpose of implementing protective measures for the Serbian people" consisting of 11 members was decided and the Accused signed this document as President. See *infra* para. 56.
[90] This fact was clarified during the Continued Sentencing Hearing, T. 276-77. See also Exh. JS-32/a – Minutes from the meeting of the Bratunac SDS Municipal Board held on 23 December 1991, where "[a] decision was reached to form the Crisis Staff that should commence with work immediately" and the Accused signed this document as President of the Board. See *infra* paras 60 and 62.
[91] Indictment, para. 1; Factual Basis, para. 4. This fact was accepted as an agreed fact during the Continued Sentencing Hearing, T. 278-89. See also *infra* para. 70.
[92] Indictment, para. 1; Factual Basis, para. 5. This fact was accepted as an agreed fact during the Continued Sentencing Hearing, T. 330.
[93] Indictment, para. 1; Factual Basis, para. 6. This fact was accepted as an agreed fact during the Continued Sentencing Hearing, T. 282-85.
[94] *Blagojević* Trial, Exh. PS-12, T. 6136-37.
[95] Defence Closing Statement, T. 217; Exh. DS-8a, para. 233.
[96] The term "Glogova" refers to the Bosnian Muslim part of the village of Glogova. Indictment, para. 21.
[97] Indictment, paras 17, 21; Factual Basis, para. 17.

the Bosnian Serbs as it formed part of the land linking the Serbian population of Bosnia and Herzegovina to a contiguous Serbian state.[98]

50. The majority of the population in the Municipality of Bratunac, including the village of Glogova, was Bosnian Muslims. According to the 1991 census, the Municipality of Bratunac consisted of 33,619 inhabitants, of which 21,535 were Bosnian Muslims, 11,475 were Bosnian Serbs, 223 identified themselves as Yugoslavs, 40 were Bosnian Croats, and 346 of other ethnic groups.[99]

51. According to the same census, the population of Glogova in 1991 consisted of 1,913 residents, of whom 1,901 were Bosnian Muslims, 6 were Bosnian Serbs, 4 identified themselves as Yugoslavs, 1 as Bosnian Croat, and 1 as belonging to another unspecified ethnic group.[100]

52. In 1991, an atmosphere of increasing inter-ethnic tension existed in Bosnia and Herzegovina. In April 1991 a plenary meeting was held in Sarajevo by the Main Board comprising also all the presidents of the SDS municipal boards and the Serb deputies in the assembly, the joint assembly of Bosnia and Herzegovina and the top leadership of the SDS, including President Karadžić[101]. The topic of the meeting referred to the political security situation in the context of the events and general political circumstances in Croatia[102] and in Bosnia and Herzegovina[103] at that time.[104] In the course of that meeting, it was stated by Radovan Karadžić that if there was no longer a Socialist Federal Republic of Yugoslavia (hereinafter "SFRY"), Serbs would only have one option left, and that is "Greater Serbia".[105] After that official meeting, a more informal meeting in a smaller circle[106] took place in the National Restaurant in Sarajevo, where it was stated by Radovan Karadžić that it was agreed that Bosnia and Herzegovina would be divided up.[107]

53. Later on in April 1991, the Accused and Goran Zekić, a member of the Bosnian Serb Republic Assembly from the adjacent Municipality of Srebrenica and a member of the SDS Main Board,[108] met with Rajko Djukić, who was connected to the leadership of the SDS and also believed

[98] Indictment, para. 17.
[99] *Ibid.*
[100] Indictment, para. 21; Factual Basis, para. 17.
[101] Who at that time was the President of the SDS.
[102] That is, the decision of the government of the previously formed Serbian Autonomous region of the Krajina on joining the Krajina to the Republic of Serbia. This was the declaratory act of secession of the Serbian people in Croatia and their annexation to the Republic of Serbia; Deronjić Testimony, T. 112.
[103] That is, the SDA submitting in the Joint Assembly, the Assembly of Bosnia and Herzegovina, a declaration on the independence of Bosnia and Herzegovina and its secession from Yugoslavia, which was regarded as being an unconstitutional attempt for the breakaway of Bosnia and Herzegovina; Deronjić Testimony, T. 113-14.
[104] Deronjić Testimony, T. 111-12.
[105] *Ibid.*, T. 113.
[106] Comprising, *inter alia,* Mr. Zekić, Mrs. Slobodanka Hrvačanin, Mr. Velibor Ostojić and Miroslav Deronjić, T. 114.
[107] Deronjić Testimony, T. 115.
[108] Factual Basis, para. 12.

to be one of the founders and the first financiers of the SDS, in Milići.[109] At this meeting, Rajko Djukić said that the SDS political leadership in Bosnia and Herzegovina decided that Serbs in Bosnia and Herzegovina should arm themselves. He conveyed further that Radovan Karadžić personally convinced Slobodan Milošević, the President of SFRY at the time, to arm the Serbs in Bosnia and Herzegovina.[110] Djukić told Deronjić and Zekić that they would be tasked with the area of Srebrenica and Bratunac.[111]

54. In early May 1991, Miroslav Deronjić and Goran Zekić met Mihalj Kertes in Belgrade where the first arms delivery to Bratunac was agreed upon. Miroslav Deronjić participated personally in this arms delivery. At that meeting Kertes said that the decision of the political and state leadership of SFRY was that an area of 50 kilometres from the Drina would be Serb and Zekić and Miroslav Deronjić accepted this.[112] In autumn or at the end of the summer of 1991 a centre to carry out a further distribution of weapons was formed in Milići. This fact confirmed the existence and implementation of a strategy.[113]

55. On 14-15 October 1991, the Assembly of Bosnia and Herzegovina, without the participation of SDS Deputies, passed a Memorandum supporting the creation of a sovereign Bosnia and Herzegovina. The Bosnian Serbs were committed to the goal that all Serbs in the former Yugoslavia would live in a common state.[114]

56. Following the decision of the Assembly of Bosnia and Herzegovina to support sovereignty, the Bosnian Serb leadership, including Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, and Nikola Koljević undertook steps to establish Serbian ethnic territories in Bosnia and Herzegovina.[115] On 18 October 1991 the presidents of the municipal boards in Bosnia and Herzegovina, including Miroslav Deronjić, attended a plenary meeting of the Main Board held in Sarajevo. They were given a set of documents dealing with the principles of organisation of the Serbian People in the newly-arisen political circumstances that were to be implemented on the ground in the local areas.[116] The aforementioned instructions comprised, *inter alia*, the preparation for a plebiscite of the Serbian People in Bosnia and Herzegovina in November 1991, asking whether or not the Serbs were in favour of remaining in Yugoslavia.[117] Moreover, the presidents of the municipal boards were given the political instruction to form crisis staffs in the municipalities.

[109] Deronjić Testimony, T. 118-19.
[110] *Ibid.*, T. 119.
[111] *Ibid.*, T. 124.
[112] *Ibid.*, T. 120-21.
[113] *Ibid.*, T. 123.
[114] Factual Basis, para. 7.
[115] *Ibid*.
[116] Deronjić Testimony, T. 124-25.
[117] *Ibid.*, T. 125.

Another obligation given was to organise public fora in the respective local communities to inform the population of key political events, especially those of 15 October 1991[118], and to explain this to the people.[119] Moreover, the presidents of the municipal boards were given precise instructions as to what they were supposed to explain, i.e. that the decision was unconstitutional, that they were deeply opposed to it and that they were now self-organising. Miroslav Deronjić implemented these instructions in Bratunac.[120] Apart from preparing the required public forum, the Accused established the first crisis staff, called the Crisis Staff of the Serbian People, in Bratunac and became its president.[121]

57. The Bosnian Serb leadership, including Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, and Nikola Koljević, understood and intended that the creation of Serbian ethnic territories included the division of Bosnia and Herzegovina and the separation and the permanent removal of ethnic populations from municipalities designated as Serbian, either by agreement or by force. The Bosnian Serb leadership knew that any forcible removal of non-Serbs from Serbian-claimed territories would involve a discriminatory campaign of persecution.[122]

58. In order to ensure the creation of Serbian ethnic territories, the Bosnian Serb leadership, in collaboration with members of the government of the SFRY, including Mihalj Kertes, and with units of the Yugoslav People's Army (hereinafter "JNA") and units of the Ministry of Internal Affairs of SFRY, armed large segments of the Bosnian Serb population. The Bosnian Serb leadership co-ordinated with Serbian military, police and paramilitary units within and outside Bosnia and Herzegovina to achieve their objectives of establishing Serbian ethnic territories in Bosnia and Herzegovina.[123]

59. At a meeting convened in Sarajevo on or about 19 December 1991, presided over by Radovan Karadžić and attended by, among others, deputies of the Bosnian Serb Assembly and by presidents of the municipal boards[124], including Miroslav Deronjić, "strictly confidential" written instructions were disseminated to the attendees relating to the establishment of Bosnian Serb municipal governmental bodies in diverse municipalities in Bosnia and Herzegovina. The instructions, entitled "Instructions for the organization and activities of the organs of the Serb people in Bosnia and Herzegovina in a state of emergency" and dated 19 December 1991, were

[118] See *supra* para.55.
[119] Deronjić Testimony, T. 126.
[120] *Ibid*.
[121] *Ibid.*, T. 127.
[122] Factual Basis, para. 8.
[123] *Ibid.*, para. 9.
[124] Such as Mr. Goran Zekić, the President of the Municipal Board in Srebrenica, Mr. Milenko Stanić, the President of the Vlasenica Municipal Board, Mr. Rajko Djukić, Mr. Brano Grujić, the President of the Zvornik Municipality, Mr.

directed to municipalities where Bosnian Serbs constituted either a majority of the population (Variant A) or a minority of the population (Variant B). The contents of these instructions were explained to the participants of the meeting by Radovan Karadžić. Additionally, Karadžić warned the participants that the instructions should be taken very seriously and be absolutely implemented on the ground, "explaining that the political crisis had reached a high point, that armed conflict could break out".[125] Moreover, it was explained that a state would be formed, a Serb Republic of Bosnia and Herzegovina.[126]

60. The instructions identified precise steps to be taken within the respective municipalities in order to establish Bosnian Serb control. The instructions described two distinct phases of action:[127] the first stage, which was introduced immediately, and the second stage, which would be introduced later on depending on the circumstances.[128] In the first stage of organisation in the field, certain measures were to be taken, the first of which was to establish SDS crisis staffs. According to an automatic procedure provided for in these documents, minority municipalities in which Serbs held less than 50 per cent of the power in the local government bodies, the president of the municipal board was to be the president of the crisis staff. In majority municipalities, this was to be the president of the municipality.

C. Preparations for Persecutions in Glogova

61. The Municipality of Bratunac was a Variant B municipality. The steps described in the instructions for Variant B municipalities included in total 10 objectives for the first and 7 objectives for the second stage.[129] They comprised, *inter alia*, the formation of crisis staffs of the Serbian people in the municipality, the formation of Serb Assemblies, the mobilisation of all Serbian police forces, as well as of JNA reserve forces and Territorial Defence (hereinafter "TO") units. Moreover, secret patrols and information systems were envisaged in order to focus on all possible dangers for the Serbian population. Hereby, the crisis staff was responsible for the defence organisation on the territory of the municipalities where Serbs were not the majority population. The Crisis Staff was also obliged to monitor the situation within the municipality, as well as the broader political, military and security developments.[130]

Vlasić, the President of the Sekovici Municipal Board, as well as several deputies like Dr. Novaković from Bijeljina; Deronjić Testimony, T. 129.
[125] Deronjić Testimony, T. 130.
[126] *Ibid.*, T. 132.
[127] Factual Basis, para. 10.
[128] Deronjić Testimony, T. 131.
[129] Exh. PS-22, PS-22a, pp. 6-8.
[130] *Ibid*.

62. Upon receiving the aforementioned confidential written instructions in December 1991, Miroslav Deronjić returned to the Municipality of Bratunac where, under his leadership and direction, the Municipal Board immediately adopted and implemented the instructions. An SDS Crisis Staff was formed and Miroslav Deronjić was elected president. A Serb Assembly was established and Ljubisav Simić was elected president of that organ.[131] Due to the fact that in Bratunac they were understaffed, the same crisis staff that they had earlier established as the Crisis Staff of the Serbian People was transformed into the SDS Crisis Staff.[132] According to the instructions, the Accused became the president of the SDS Crisis Staff.[133]

63. On an unspecified day in late February 1992, Goran Zekić conveyed the order to implement the second phase of these instructions in the Municipality of Bratunac and Miroslav Deronjić took positive and concrete actions to do so, including affirmative actions in the Bratunac Municipal Assembly.[134] These affirmative actions included measures of separation and institutional division of all organs of authority in the municipalities. This was particularly problematic in communities where the Serbs were a minority, as there was no way to resolve this in an institutional way. But there were suggestions made that this should be done unilaterally and that parallel Serb organs of authority should be formed in minority municipalities.[135] Miroslav Deronjić implemented these measures, in particular the division of the police in Bratunac, in the local joint assembly together with the representatives of the SDA.[136] Those measures were a continuity of the SDS' policy from the spring of 1991, aimed at creating Serb ethnic territories in Bosnia and Herzegovina.[137]

64. In a conversation with Mr. Zekić on 5 May 1992,[138] the Accused found out that for the common purpose, even the use of force had been planned and had already been implemented in neighbouring municipalities. Moreover, some violent methods were already used in Bratunac and Srebrenica. The Accused was aware that those methods were a component part of the plans for creating the Serb Republic of Bosnia and Herzegovina.[139] The Accused unequivocally knew that the

[131] Factual Basis, para. 11.
[132] This was the second crisis staff – SDS Crisis Staff. Deronjić Testimony, T. 127.
[133] Deronjić Testimony, T. 131.
[134] Factual Basis, para. 12.
[135] Deronjić Testimony, T. 133.
[136] *Ibid.*, T. 136. See also Exh. JS-33/a – Minutes from the meeting of the Municipal Board held on 24 February 1992, where it was decided to implement the second level of the instructions – State of emergency and the Accused stated that "the contact with the army was established". The document is signed by the Accused as President of the Board.
[137] Deronjić Testimony, T. 133.
[138] As the Prosecution clarified during the Continued Sentencing Hearing, at that time Zekić was a member of the Bosnian-Serb Assembly and a member of the SDS Main Board. "He was the link to Mr. Deronjić, who was a leader in the Municipality of Bratunac. That is the relationship between the two." T. 319.
[139] Deronjić Testimony, T. 134.

use of force was also one of the methods in order to implement these objectives and he acted accordingly in Glogova.[140]

65. Hereby, the term "use of force" included violent transfer of the population from those territories as well as the conduct of the "volunteer" units which had already arrived in the area, the conduct of the JNA in those events, and the conduct of the crisis staffs and individuals on the Serb side during that period. Moreover, the term "use of force" also included the use of arms and the use of tanks, and finally even the killing of Bosnian Muslims.[141]

66. Miroslav Deronjić subscribed unequivocally to the policy of creating Serb ethnic territories within Bosnia and Herzegovina, and later to the use of force to remove non-Serbs from Serb designated territories. In his leadership capacity in the Municipality of Bratunac, Miroslav Deronjić actively participated in efforts to transform the Municipality of Bratunac into Serb ethnic territory and achieve the objective set forth by the Bosnian Serb leadership.[142]

67. In spring of 1992, an armed conflict between Serbs and non-Serbs broke out in the Republic of Bosnia and Herzegovina, including the Municipality of Bratunac.[143] As part of the conflict, Bosnian Serb, JNA, and paramilitary forces carried out widespread and systematic attacks on the civilian population of this region.[144] The Municipality of Bratunac was taken over by Bosnian Serb forces on 17 April 1992 and a systematic effort was launched to disarm the Bosnian Muslim population of the municipality, which was completed by the end of April 1992.[145]

68. The Accused drew certain conclusions about the use of force in Bijeljina and Zvornik,[146] and in some other municipalities. His main conclusion was that those paramilitary units were units known as Arkan's Guard, White Eagles, or other "volunteers" from Serbia.[147] These units were sent to these regions from Serbia and they used force against the Muslim population in that area. The final or ultimate objective of such conduct was to expel the non-Serb population from those municipalities. Due to the fact that the Accused had the opportunity to monitor these events in Eastern Bosnia and Podrinje, which were municipalities close to and with a similar population

[140] *Ibid.*, T. 136.
[141] *Ibid.*, T. 137.
[142] Factual Basis, para. 13.
[143] Indictment, para. 18.
[144] *Ibid.*. 19.
[145] *Ibid.*. 20.
[146] See map on the inner cover page at the beginning of this document.
[147] The Accused held that Mr. Jović was the organiser of the units known as the White Eagles, a small "opposition" party in Serbia; Deronjić Testimony, T. 139.

make-up as Bratunac, he was able to conclude that the operative part – that is the actual implementation of the use of force - was directed from Belgrade.[148]

69. As part of the process of ensuring that the Municipality of Bratunac would become ethnic Serb territory, "volunteers" from the SFRY, with the co-operation of the SFRY authorities, crossed the Drina River on 14 or 15 April 1992 and entered the village of Skelani in Srebrenica Municipality. Their purpose for entering Bosnia and Herzegovina was to assist the Bosnian Serbs in taking over power and forcibly removing Muslims from the area.[149]

70. On 17 April 1992, "volunteers" from the SFRY, who were brought to Bratunac by Mr. Zekić[150], entered Bratunac and at the Hotel Fontana their commander met with and issued an ultimatum to the leaders of the Srebrenica and Bratunac Muslim communities to surrender weapons and legal authority to Bosnian Serbs. Otherwise they were to suffer from destruction at the hands of thousands of Serb soldiers who were amassed across the Drina River in Serbia.[151] Following the acquiescence to the ultimatum by the representatives of the Muslim community, the Crisis Staff assumed political power in the Municipality of Bratunac, presided over by Miroslav Deronjić.[152]

71. Thereafter, efforts to expel the Bosnian Muslim population from the Municipality of Bratunac were undertaken. This ethnic cleansing included the intimidation and random killings of Bosnian Muslims by "volunteers" and others, and the looting of Muslim homes and businesses. This activity resulted in an unknown number of Bosnian Muslims fleeing from the Municipality of Bratunac.[153] The Accused had accepted the arrival of the "volunteers" as well as their involvement in the use of force.[154]

72. Between 21 and 23 April 1992, a small JNA formation consisting of approximately 20-30 men, arrived in the Municipality of Bratunac. It was under the command of a JNA Captain Reljić. The unit was part of an armoured mechanised brigade that was located in Šekovici.[155] Reljić introduced a military government in Bratunac and he informed the population about it by putting up posters announcing that he was the commander of Bratunac and he was taking responsibility for events in Bratunac.[156]

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[148] Deronjić Testimony, T. 139.
[149] Factual Basis, para. 14.
[150] Deronjić Testimony, T. 140.
[151] Factual Basis, para. 15.
[152] *Ibid.* This was the third crisis staff – Bratunac Crisis Staff as clarified during the Continued Sentencing Hearing, T. 278-79.
[153] Factual Basis, para. 16.
[154] Deronjić Testimony, T. 141.
[155] Factual Basis, para. 21.
[156] Deronjić Testimony, T. 143.

73. Between the end of April and early May 1992, Miroslav Deronjić, exercising *de facto* and *de jure* control as President of the Bratunac Crisis Staff over the TO and *de facto* control over the Bratunac police forces authorised the TO and the Bratunac police forces to disarm the Bosnian Muslim population in the village of Glogova.[157] On at least three occasions during that period, Bratunac police forces and the TO, working in concert with members of the JNA, went through Glogova and secured weapons from the Bosnian Muslim population.[158]

74. On or about 25 April 1992, armoured personnel carriers (APCs), military trucks and police cars arrived in Glogova. Soldiers who were part of that convoy declared themselves to be members of the Novi Sad Corps from Serbia, who had arrived in order to gather weapons. Najdan Mladenović of the TO was present with the group, as well as the following Bratunac policemen: Milutin Milošević, Chief of the Bratunac police forces (also known as the Secretariat of Internal Affairs, hereinafter "SUP"), Miladin Jokić, Vidoje Radović, Dragan Ilić, Dragan Vasiljević, Sredoje Stević, Vuković, and Tešić. This group looked for weapons in Glogova and issued an ultimatum to the villagers that the weapons were to be handed in two days later.[159]

75. On an unknown date near the end of April 1992, the Bosnian Muslim population of Glogova was directed to appear at a meeting at the community building in Glogova where they were told to turn in their weapons.[160]

76. On or about 27 April 1992, the aforementioned group returned to Glogova in order to collect weapons. Milutin Milošević, Chief of the Serb SUP, told the villagers that Glogova would not be attacked because they had turned over their weapons.[161] The fact that Milutin Milošević added that he was speaking on behalf of Miroslav Deronjić[162] is not disputed by the Accused. Moreover, the Accused accepted and agreed to all of those aforementioned actions.[163] From then on, Glogova was to be regarded as a disarmed and undefended village.[164]

77. Captain Reljić planned and assisted in the disarming of Muslim villages in the Municipality of Bratunac. Captain Reljić's JNA unit, the TO, and the police would jointly participate in the disarming of the Muslim villages. Following the disarming of a Muslim village, the JNA and the police announced that the army would guarantee the safety of the residents.[165]

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[157] The notion of "authorizing" will be discussed below in context. See *infra* para. 78.
[158] Indictment, paras 8 (a), 22; Factual Basis, para. 18.
[159] Indictment, paras 8 (c), 23.
[160] Indictment, paras 8 (b), 22; Factual Basis, para. 19.
[161] Indictment, paras 8 (d), 24; Factual Basis, para. 19.
[162] Indictment, paras 8 (d), 24.
[163] Deronjić Testimony, T. 159.
[164] *Ibid.*, T. 143.
[165] Factual Basis, para. 22.

78. As President of the Bratunac Crisis Staff, Miroslav Deronjić was aware of and agreed to the plan to disarm the population of Glogova.[166] As it was clarified during the Sentencing Hearing, the Accused did not order the disarmament of Glogova by the end of April/beginning of May 1992.[167] The decision on the disarming of the Muslims in the villages of the Municipality of Bratunac as such was taken by Reljić after the JNA had arrived in Bratunac.[168] During this period, Reljić brought this decision to the Crisis Staff at one of its meetings and asked its members to confirm his action.[169] Miroslav Deronjić, as the President of the Crisis Staff, and the Crisis Staff accepted it and gave their confirmation.[170] However, the decision by the Crisis Staff to approve this operation was only reached later when the disarming of the Glogova village was completed.[171] In that sense he "authorised" the disarmament.[172] The Accused joined this mission to disarm the population of Glogova by not only accepting it, but also by participating in it.[173]

79. The disarming of the Bosnian Muslims in Glogova and in other Muslim villages was an important element in ensuring and facilitating the permanent removal of Bosnian Muslims from Glogova, the town of Bratunac, Suha and Voljavica and achieving the objectives set forth by the Bosnian Serb leadership.[174] The disarming of the Muslim villages continued until 6 May 1992.[175]

80. A second group of "volunteers" from Serbia also arrived in Bratunac. The commander of this group of "volunteers" was a man nicknamed "Peki". As soon as they entered Bratunac, they committed several murders of Muslims, including the owners of a restaurant in Bratunac and several Muslims from the suburban neighbourhood called Žljevice. They also engaged in widespread looting of Muslim property. The activities of the "volunteers" were known to the Bosnian Serb leadership in Bratunac, including the authorities of the Crisis Staff, the Bratunac police, and the TO. These activities created panic amongst the local population and resulted in an unknown number of Muslim residents fleeing from the Municipality of Bratunac.[176]

81. The arrival of the JNA unit under the command of Captain Reljić and the arrival of the "volunteers" from Serbia was agreed upon by the top leadership of the Republika Srpska and the SFRY.[177]

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[166] Indictment, paras 8 (b), 22.
[167] Deronjić Testimony, T. 142.
[168] *Ibid.*, T. 142-43.
[169] *Ibid.*, T. 143, 158.
[170] *Ibid.*, T. 144, 158.
[171] *Ibid.*, T. 144.
[172] *Ibid.*, T.159.
[173] *Ibid.*, T. 143, 158.
[174] Factual Basis, para. 20.
[175] *Ibid.*, para. 22.
[176] *Ibid.*, para. 23.
[177] *Ibid.*, para. 24.

82. On 6 or 7 May 1992, and in furtherance of a plan to attack the village of Glogova, Miroslav Deronjić and Captain Reljić travelled to the village of Magašići from which point they were able to view the entire village of Glogova. The purpose of this visit was to reconnoitre Glogova in preparation of the attack on the village.[178]

83. On 7 May 1992, the preparations for the attack on Glogova began and it was agreed between the Accused and Captain Reljić that the attack would commence within 48 to 72 hours.[179]

84. In the afternoon of 8 May 1992, Goran Zekić, a Serbian well-known and popular political figure in Bratunac was killed near Srebrenica and his body was brought to the town of Bratunac.[180]

85. Later the same day, at 2200 hours, the Bratunac Crisis Staff met principally about the events surrounding the death of Goran Zekić and the operation to attack Glogova. Miroslav Deronjić presided over this meeting. The portion of the meeting dealing with the attack on Glogova was attended only by members of the Crisis Staff, Captain Reljić, Raša Milošević, Commander of the Kravica Detachment of the TO, and another person who was a member of the State Security of Serbia.[181] None of the "volunteers" attended the Crisis Staff meeting.[182]

86. At this session of the Crisis Staff, Miroslav Deronjić made introductory remarks that included an announcement that the operation against Glogova would be carried out the following day. He explained the strategic significance of taking Glogova and said that the plan to create Serbian ethnic territory could not be implemented in the Municipality of Bratunac without taking Glogova first and transferring the entire Bosnian Muslim population from Glogova to non-Serb territory within Central Bosnia. He said that if there was no resistance from the Muslim residents of Glogova, they should all be brought to the centre of the village and transported by bus and truck to Kladanj, outside the Municipality of Bratunac. Miroslav Deronjić also stated that if everything went well with the Glogova operation, the operation to permanently remove Bosnian Muslims would continue in the following days in the town of Bratunac and the communities of Voljavica and Suha. Following the introductory remarks by Miroslav Deronjić, and a discussion about the Glogova plan, the Bratunac Crisis Staff adopted the plan.[183]

87. On the evening of 8 May 1992 at the session of the Crisis Staff, Miroslav Deronjić, in his capacity as President of the Crisis Staff of Bratunac, gave the order to the Bratunac TO, including

[178] *Ibid.*, para. 25.
[179] *Ibid.*, para. 26; Deronjić Testimony, T. 146.
[180] Factual Basis, para. 27.
[181] *Ibid.*, para. 28.
[182] Deronjić Testimony, T. 145. This fact was again confirmed during the Continued Sentencing Hearing, T. 318.
[183] Factual Basis, para. 29.

the police forces in Bratunac,[184] to attack the village of Glogova, burn part of it down, and forcibly displace its Bosnian Muslim residents. Miroslav Deronjić was aware on 8 May 1992 that he was ordering the attack on an undefended and disarmed village.[185] However, since the Accused was unable to command the JNA units, he only asked them whether they would participate in this.[186] He asked Reljić to take an active role rather than simply observing the attack.[187] Captain Reljić informed the Crisis Staff that the JNA unit would also participate in the operation.[188] Additionally, one of the deputies who was present there said: "Yes, the army will participate, Mr. Deronjić".[189]

88. Furthermore, the Bratunac Crisis Staff debated the issue of burning Glogova. Miroslav Deronjić said that while it was impossible to forecast the events in Glogova, some houses should be set on fire as a warning to the Muslims in order to spread panic and fear among them and part of the houses should be preserved for refugees. Miroslav Deronjić also said that if fighting erupted, he did not care what happened to the houses.[190]

89. As stated in the Factual Basis, which the Accused accepted in writing and orally, Miroslav Deronjić *urged* Captain Reljić to fire a tank shell into a house at the initial stage of the attack in order to sow panic amongst the Muslim residents of Glogova.[191] However, during the Sentencing Hearing this was modified by the Accused that he in fact did not issue an "*order*", but rather made a *recommendation* to fire a shell. The Accused claimed to having been of the opinion that the JNA officer also had to take care about the manner in which that shell would be used in order not to jeopardise human lives. The firing could have been directed against e.g. a stable or barn or some other kind of auxiliary building and not necessarily a house. However, following the Accused's testimony, in the end the officer did not accept the Accused's proposal and the grenade shell was eventually not fired.[192] The Trial Chamber did not deem it necessary to go into details of these discrepancies between testimony and prior confession because it will have no impact on the final assessment of this case.

[184] Deronjić Testimony, T. 144.
[185] Indictment, paras 29.
[186] Deronjić Testimony, T. 144.
[187] *Ibid.*, T. 146, 148.
[188] Factual Basis, para. 35; Deronjić Testimony, T. 144.
[189] Deronjić Testimony, T. 148.
[190] Factual Basis, para. 34.
[191] *Ibid.*, para. 35 (emphasis added).
[192] Deronjić Testimony, T. 147 (emphasis added).

D. Acts of Persecutions

1. Attack on the Village of Glogova

90. The attack on Glogova was a joint operation. The attacking forces were comprised of members of the JNA (Reljić's unit), the Bratunac TO, the Bratunac police, and paramilitary "volunteers" from Serbia (hereinafter "attacking forces"). Miroslav Deronjić confessed that he co-ordinated and monitored the attack on Glogova.[193] However, during the Sentencing Hearing, he claimed that he did not know that the "volunteers" would participate in this action in Glogova.[194]

91. Miroslav Deronjić participated in the military operation against Glogova as a member of the TO unit.[195] On the evening of 8 May 1992, Miroslav Deronjić and other Bosnian Serbs took positions on an elevated ridge above Glogova[196] and remained there until the operation against Glogova commenced at 0600 hours on the morning of 9 May 1992. The role of Miroslav Deronjić and members of his TO unit was to hinder Bosnian Muslims fleeing from Glogova in the direction of Srebrenica, and to prevent Bosnian Muslims from Srebrenica from coming to assist the residents of Glogova.[197] They were located at a safe distance from the village but it was possible to have a good view of the whole of Glogova from that elevation.[198] Miroslav Deronjić and the others remained at their positions until about 1000 hours on 9 May 1992.[199]

92. In the early morning hours of 9 May 1992, in particular members of the Bratunac TO, the Bratunac police, the JNA and paramilitaries, working in concert together, surrounded the village of Glogova. Thereafter, in accordance with what was agreed with the Accused, the attacking forces entered the village on foot and took control of it.[200] The Bosnian Muslim villagers, who previously had been disarmed, offered no resistance.[201] Miroslav Deronjić was present during the attack on Glogova and entered the village after the assault.[202]

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[193] Factual Basis, para. 36; Deronjić Testimony, T. 159-60.
[194] Deronjić Testimony, T. 145.
[195] Factual Basis, para. 37; Deronjić Testimony, T. 150.
[196] As was submitted by the Defence, and accepted as an agreed fact, the distance between the elevated spot where the Accused was positioned is only one kilometre away from Glogova, if one counts the distance as the crow flies, Continued Sentencing Hearing, T. 321-22. However, the Trial Chamber notes that the Accused himself stated in *Blagojević et al.* trial that "[he] was several kilometres away from Glogova fulfilling a specific task", Exh. PS-12, T. 6366.
[197] Factual Basis, para. 37.
[198] Deronjić Testimony, T. 151.
[199] Factual Basis, para. 37.
[200] Indictment, paras 9, 30; Deronjić Testimony, T. 151.
[201] Indictment, paras 9, 30; Factual Basis, para. 41.
[202] Indictment, paras 9, 30.

2. Killing of Bosnian Muslim Civilians in Glogova

(a) Killing of Medo Delić, Šećo Ibišević, Zlatija Ibišević and Adem Junuzović

93. During the gathering of the Bosnian Muslim villagers of Glogova from their homes, members of the attacking forces shot and killed the Bosnian Muslim villagers Medo Delić, Šećo Ibišević, his wife Zlatija, and Adem Junuzović outside their homes.[203]

(b) First Mass Killing

94. During the course of the attack, members of the attacking forces executed a group of approximately nineteen (19) Bosnian Muslim men on the main road near the centre of the village where the Glogova villagers were gathered. This first group of executed men included Đafo (or Džafo) Delić, Hamed Delić, Šaban Gerović, Šerif Golić, Avdo Golić, Rifat Golić, Ismail Ibišević, Salih Junuzović, Alija Milačević, Hajro (or Hajrudin) Memišević, Samir Omerović, Fejzo Omerović, Nezir Omerović, Nevzet Omerović, Ćamil Rizanović, Jasmin Rizanović, Mensur Rizanović, Nurija Rizanović and Uzeir Talović.[204]

(c) Second Mass Killing

95. After the execution of the group of Bosnian Muslims referred to in paragraph 94, members of the attacking forces ordered other Muslim villagers to carry these and other bodies to the river. After all of the bodies were dumped into the river, those Bosnian Muslim villagers who had been ordered to carry the bodies were lined up by the river and executed. This group included Ramiz Ćosić, Selmo (or Selman) Omerović, and Mehmed Ibišević.[205]

(d) Third Mass Killing

96. Later during the attack on Glogova, members of the attacking forces gathered a group of approximately twenty (20) Bosnian Muslim men by the market in Glogova. These Bosnian Muslim men were ordered to walk to the river where they were executed by members of the attacking forces on the order of Najdan Mlađenović, a member of the Bratunac TO. This group included Šećo Delić, Redo (or Redžo) Delić, Meho Delić, Gusiš (first name unknown), Hasibović (first name unknown), Dževad (or Đevad) Ibišević, Ilijaz Ibišević, Kemal Ibišević, Muharem Ibišević, Mujo Ibišević,

[203] *Ibid.*, para. 31.
[204] *Ibid.*, para. 32.
[205] *Ibid.*, para. 33.

Mustafa Ibišević, Ramo Ibišević, Sabrija Ibišević, Abid Junuzović, Huso Junuzović, Mirzet Omerović, Selmo Omerović and Mensur Omerović.[206]

97. A total of 64 unarmed Bosnian Muslim residents from Glogova were executed by members of the attacking forces during the 9 May 1992 attack.[207] The murdered individuals are those listed in Section XII of this Judgement.[208]

98. Miroslav Deronjić did not physically commit any of the murders of the 64 civilians identified in Section XII. However, at the time he ordered the attack, given the purpose and objective of the attack, the existing political climate, his previous experiences in other municipalities, and the units that were to participate in it, these murders were foreseeable to him, he took them into account, he was prepared to take the risk and he accepted that unarmed innocent Muslim residents of the undefended village of Glogova would be murdered.[209]

3. Forcible Displacement of Civilians from Glogova

99. On 8 and 9 May 1992, Miroslav Deronjić ordered and committed the forcible removal and displacement of the Bosnian Muslims of Glogova from the Municipality of Bratunac.[210]

100. On 9 May 1992, during and immediately after the attack on Glogova, and in fulfilment of the operational objective of the plan to permanently displace Bosnian Muslims from the Municipality of Bratunac, members of the attacking forces forced the Bosnian Muslim civilians from their homes and forcibly displaced them from the village of Glogova to other parts of the Republic of Bosnia and Herzegovina. Specifically, the women and children who *survived* the attack were placed on buses and forcibly displaced to Muslim held territory outside the Municipality of Bratunac.[211] Neither the Indictment nor the Factual Basis specify what happened to the villagers on and after their transport. This question remains especially important because several names of villagers originating from Glogova can be found on the list of survivors that were taken from the hangar in Bratunac to Pale.[212] The Trial Chamber also does not know what the fate of these persons was.

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[206] *Ibid.*, para. 34.
[207] Indictment, para. 35; Factual Basis, paras 41, 44. During the Continued Sentencing Hearing it was accepted by the Parties as an agreed fact, that para. 4 of the Indictment should also contain a reference to para. 35 of the Indictment. T. 252.
[208] See Indictment, Schedule A.
[209] Factual Basis, para. 42; Deronjić Testimony, T. 156-57.
[210] Indictment, para. 38.
[211] Indictment, paras 26, 39; Factual Basis, para. 43 (emphasis added).
[212] See Exh. JS-39, JS-39a.

101. As it was stated by the Accused during the Sentencing Hearing, he passed through the village of Glogova and noticed a large number of people gathered in the centre of Glogova. He also observed the buses, the presence of the army and the Bratunac police. However, according to his testimony, he did not notice anything that would indicate that things were happening beyond what they had agreed beforehand at the Crisis Staff meeting, i.e. that all residents of Glogova without exception should be collected together and taken off in the direction of Kladanj.[213]

4. Destruction of an Institution Dedicated to Religion (the Mosque) and Other Muslim Property

102. The Accused pleaded guilty to the fact that during the 9 May 1992 attack on Glogova, the attacking forces systematically set fire to the mosque, Bosnian Muslim houses, buildings, fields and haystacks, causing the wanton and extensive destruction of Bosnian Muslim dwellings, businesses and personal property in the village of Glogova. The Accused pleaded guilty to the fact that he was present during the attack on Glogova while members of the attacking forces wantonly destroyed Bosnian Muslim homes, businesses, and personal property.[214] He stood at an elevated post observing the development of the attack and preventing Bosnian Muslims from Srebrenica to come to the assistance of the residents of Glogova.[215] He could hear shooting because he was only one kilometre away from the village.[216] He was informed, via a hand-held radio, that there was no combat or resistance and that everything was going according to plan.

103. However, during the Sentencing Hearing, the Accused again slightly varied his version of the events underlying the prior guilty plea by testifying that the destruction of the mosque was neither planned nor discussed beforehand. He now claims that when he passed through the village the mosque was allegedly not yet destroyed. According to his "opinion", the mosque was blown up with dynamite by the "volunteers" in the evening of 9 May 1992. However, the Accused admitted that in the context of the developments starting in the beginning of April, this event was foreseeable for him.[217]

104. At approximately 1000 hours on 9 May 1992, Miroslav Deronjić and other members of the military unit left their positions and descended in the direction of Glogova.[218] The order for the Accused and his TO unit was to take the old macadam road leading from Bratunac to Kravica via Glogova. When they reached the area of Avdagina Njiva, on the outskirts of Glogova, they

[213] Deronjić Testimony, T. 154-55.
[214] Indictment, paras 9, 26, 36, 37; Factual Basis, para. 44.
[215] Factual Basis, para. 37.
[216] Deronjić Testimony, T. 152.
[217] *Ibid.*, T. 156.
[218] Factual Basis, para. 39.

encountered another unit from Kravica, including the commander of the unit Raso Milošević, and Jovan Nikolić who was a member of the municipal board of the SDS.[219]

105. When Miroslav Deronjić and the others arrived at the edge of Glogova, they came upon five to ten Muslim houses. After having checked the houses to determine if any Muslims remained in them, and having found none, Miroslav Deronjić "approved" and "agreed"[220] that soldiers burn the houses and they were burned.[221] Thereafter, Miroslav Deronjić and his companions saw another five to six other Muslim houses from which the occupants had fled. At that location were members of the Kravica Detachment, including a person called Nedo, nicknamed "Đedura". Miroslav Deronjić encouraged him and his companions to set fire to these Bosnian Muslim houses.[222] He in fact ordered Nedo to torch several houses in that area.[223]

106. At the end of the attack ordered by Miroslav Deronjić, a substantial part of Glogova was razed to the ground and no Muslims were left in the village.[224]

E. Events Following the Attack on Glogova

107. On 10 May 1992 the operation, further implementing the plan of 8 May 1992,[225] continued by ordering the Muslim population, which remained in Bratunac at the time, to come to designated places. At one point the Accused was informed that at the stadium in Bratunac, which was one of the locations where the people were ordered to come, there were separations of men and women taking place in the group of Muslims who had come to the stadium. Together with the president of the executive board, Rodoljub Djukanović, the Accused went to the stadium to check the situation. According to Deronjić Testimony, this was for him the first indication of such acts. He saw a group of Muslims who were separated, and men were standing along the wall of the stadium.[226] The Accused testified that he was told that this was done pursuant to an order of the army and that these people would be exchanged for some Serbs.[227]

108. The Accused was aware that these acts were a continuation of the forcible displacement of people from Bratunac and the surrounding suburbs. Moreover, he was aware that those people were separated at the stadium during the night, and then taken to a hangar close to the Vuk Karadžić

[219] Deronjić Testimony, T. 153.
[220] *Ibid.*, T. 154.
[221] Factual Basis, para. 39.
[222] *Ibid.*, para. 40.
[223] Deronjić Testimony, T. 154.
[224] Indictment, paras 9, 37; Factual Basis, para. 44.
[225] Factual Basis, para. 29; see also *supra* para. 86.
[226] Deronjić Testimony, T. 161.
[227] *Ibid.*, T. 162.

school.[228] Later that day the Accused found out that about 500 people had been placed in the hangar.[229]

109. The day after a meeting in Pale,[230] the Accused was informed that these people who were separated at the hangar were abused by the "volunteers" and some local citizens.[231] Moreover, he was told that people were taken out of the hangar, in an unknown direction, and never came back.[232]

110. According to the Deronjić Testimony, the next day, 12 May 1992, the Accused received information that somebody saw some killed people who had been thrown into the Drina River. He saw several corpses in the river. When he returned to the Crisis Staff, they continued to discuss what they should do. In the evening of 12 May 1992, between the 12th and the 13th, they held a meeting of the Crisis Staff, where they agreed on some measures, i.e. they decided to release all the people who had remained alive from the hangar and to transport them to Pale where the Serbian leadership was at the time. After midnight, with the help of the local police, the released people were boarded on trucks, transported and transferred to Pale. They made a list of all the survivors from that hangar,[233] some of whom were inhabitants of Glogova and surrounding villages.[234] The fate of these people remains unclear to the Trial Chamber.

111. On 13 May 1992, the Crisis Staff adopted a second decision related to the "volunteers" who were blamed for the majority of the killings at the hangar. It was decided to expel all the "volunteers" from Bratunac, as well as to expel Reljić[235], who was blamed for the separation of people, placing them in the hangar, which thus made it possible for all of the killings to take place.[236]

112. In total, between 8 May 1992 and 12 May 1992, according to the Accused, at least over a hundred people were killed in the Municipality of Bratunac. The Accused "clarified" that the number of 200 killed people given by him in one of his previous interviews was not correct as he stated it without verifying this information.[237]

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[228] *Ibid*.
[229] *Ibid.*, T. 163.
[230] See *infra* subsection V.F. The Accused allegedly went to Pale on 10 May 1992, meaning that he found out about the people being abused in the hangar the next day, i.e. 11 May 1992. Deronjić Testimony, T. 163.
[231] The Accused mentioned, *inter alia*, Drago Zekić, a father of the deceased Goran Zekić. Deronjić Testimony, T. 163.
[232] Deronjić Testimony, T. 163.
[233] *Ibid.*, T. 164.
[234] See Exh. JS-39, JS-39a.
[235] As was stated by the Defence it was not possible to implement the second decision, to expel Reljić, because he escaped. Continued Sentencing Hearing, T. 330. The Trial Chamber recalls that in the Accused's interview to the Prosecution the Accused stated that Reljić escaped from Bratunac. Interview of 24 June 2003, Exh. DS-7/5, p. 19.
[236] Deronjić Testimony, T. 164-65.
[237] *Ibid.*, T. 166.

113. The Trial Chamber stresses that all facts described in the above paragraphs 107 through 112 can and will not be considered as constituting new crimes not included in the Indictment.

F. Meeting in Pale

114. On 10 or 11 May 1992[238], Miroslav Deronjić was invited to Pale to report about the events in Glogova and/or in the Municipality of Bratunac.[239] Present at the meeting in Pale, held supposedly in the Panorama Hotel,[240] were Radovan Karadžić, Velibor Ostojić, and Ratko Mladić, as well as some 50 other participants, including the presidents of the crisis staffs from different municipalities. When the Accused went in to the conference room, he concluded that the aim of the meeting was for the presidents of the crisis staffs from various municipalities to report about the security and military situation on the ground.[241] On the wall behind them were maps that identified the ethnic composition of portions of Bosnia and Herzegovina in various colours. Serb areas were designated in blue.[242] Miroslav Deronjić showed his Municipality on the map. He reported that they had attacked the village of Glogova pursuant to his order, that Glogova had been partly destroyed and torched to a large extent and that the Bosnian Muslim population had been forcibly removed. After having given his report, those assembled in the conference room applauded him and Velibor Ostojić commented "*now we can colour Bratunac* [*sic*!] *blue*". This meant that they had taken control of Bratunac and that the Serbs were the force controlling Bratunac. Miroslav Deronjić assumed that this also meant that Bratunac had, in fact, acquired the possibility of forming part of the Serbian Republic of Bosnia and Herzegovina.[243]

[238] At least *after* the events in Glogova and Bratunac; Deronjić Testimony, T. 168. However, in his witness statement of 25 November 2003, the Accused stated that "[…] during the meeting held on 12 May in Pale, when I explained the events in Glogova." Exh. DS-8a, para. 67. This fact was additionally discussed during the Continued Sentencing Hearing where the exact date could not be determined, but it was stated by the Parties that this point is not of dispute between them, T. 328-29.
[239] Factual Basis, para. 45; Deronjić Testimony, T. 168-69. It remains unclear whether the report was on Glogova alone or on the entire Municipality of Bratunac.
[240] Deronjić Testimony, T. 168.
[241] *Ibid.*, T. 169.
[242] Factual Basis, para. 46.
[243] *Ibid.*, para. 47; Deronjić Testimony, T. 169-70.

VI. THE LAW

A. Legal Basis

115. In the terms of the Plea Agreement filed by the Prosecution in preparation of the Status Conference on 30 September 2003, by pleading guilty the Accused acknowledged that the Prosecutor would have had the onus to prove the following elements beyond reasonable doubt.[244]

116. Concerning the nature of the offence to which the Accused pleaded guilty, the elements required for the crime of Persecutions are set out in paragraph 5 of the Plea Agreement. Herein it is stated that:

> 5. Miroslav Deronjić understands that the Prosecution would have had to prove each of the following elements beyond a reasonable doubt for him to be found guilty of Persecutions:
>
> (a) the existence of an armed conflict;
>
> (b) the existence of a widespread and systematic attack directed against a civilian population;
>
> (c) the accused's conduct was related to the widespread and systematic attack directed against a civilian population;[245]
>
> (d) the accused had knowledge of the wider context in which his conduct occurred;
>
> (e) the accused committed acts or omissions against a victim or victim population violating a basic or fundamental human right;
>
> (f) the accused intended to commit the violation;
>
> (g) the accused's conduct was committed on political, racial or religious grounds; and
>
> (h) the accused's conduct was committed with a conscious intent to discriminate.

B. Trial Chamber's Findings

117. The Accused pleaded guilty to having committed Persecutions through the following acts: ordering the attack on the village of Glogova, the killing of Bosnian Muslim civilians in Glogova, the forcible displacement of Bosnian Muslim civilians of Glogova from the Municipality of Bratunac, the destruction of the mosque in Glogova, and the destruction of Bosnian Muslim civilian

[244] Plea Agreement, para. 5

[245] The original text of the paragraph 5 (b) and (c) of the Plea Agreement makes reference to the existence of a widespread or systematic attack, however due to the fact that the paragraph 14 of the Indictment contains reference to the existence of a widespread and systematic attack, the Parties agreed that the paragraph 14 of the Indictment supersedes paragraph 5 (b) and (c) of the Plea Agreement. Sentencing Hearing, T. 172.

property in Glogova.[246] The Trial Chamber has to decide whether all these underlying acts constitute acts of Persecutions.

118. As it was held in the *Vasiljević* Trial Judgement[247] and in the *Stakić* Trial Judgement[248], due to the fact that there is no comprehensive list of acts that may amount to Persecutions, acts that are not explicitly mentioned in the Statute can also constitute persecutory acts. However, the common denominator of all persecutory acts must be that the acts are committed on the basis of one of the listed discriminatory grounds and must be of an equal gravity as other acts enumerated under Article 5 of the Statute.

119. Although the term "killing" as such is not mentioned in the list of crimes punishable under Article 5 of the Statute, it is used interchangeably with the term "murder",[249] which is a crime punishable pursuant to Article 5 (a) of the Statute.

120. The term "forcible displacement" is not enumerated in the list of crimes in Article 5 of the Statute; however, as was held by the Appeals Chamber in *Krnojelac*, forcible displacement, if committed with the requisite discriminatory intent, constitutes the crime of Persecutions.[250]

121. An attack on a village is not listed under Article 5 of the Statute. The Trial Chamber in *Kordić and Čerkez*, when assessing the level of gravity of this crime, held that the unlawful attack on cities, towns and villages, "is akin to an 'attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings', a violation of the laws or customs of war enumerated under Article 3 (c) of the Statute" and therefore when committed on discriminatory grounds constitutes the act of Persecutions.[251]

122. The destruction of an institution dedicated to religion is not listed under Article 5 of the Statute, but it was held in *Stakić* that "the seizure of, 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 crime punishable under Article 3 (d) of the Statute, when perpetrated with the requisite discriminatory intent, amounts to Persecutions.[252]

123. Although the wanton destruction of property is not a crime listed under Article 5 of the Statute, it was held in *Stakić* that "[w]hen the cumulative effect of such property destruction is

[246] Indictment, paras 29-35, 37, 39, 40.
[247] *Vasiljević* Trial Judgement, paras 246-247.
[248] *Stakić* Trial Judgement, paras 735-736.
[249] *Ibid.*, paras 585-586.
[250] *Krnojelac* Appeal Judgement, paras 221-222; Cf. Judge Schomburg Dissenting Opinion, paras 4, 12, 17.
[251] *Kordić and Čerkez* Trial Judgement, para. 203.
[252] *Stakić* Trial Judgement, paras 765-768.

removal of civilians from their homes on discriminatory grounds, the 'wanton and extensive destruction […] of Bosnian Muslim civilian dwellings, buildings, business, and civilian personal property and livestock' may constitute the crime of persecution."[253]

124. The Trial Chamber finds, for the reasons outlined above, that the aforementioned acts fulfil the legal requirements of Article 5 (h) of the Statute, i.e. are of an equal gravity as the other crimes listed under Article 5 of the Statute.

[253] *Stakić* Trial Judgement, para. 763.

VII. INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED

125. Miroslav Deronjić is individually criminally responsible pursuant to Article 7 (1) of the Statute for the crime of Persecutions punishable under Article 5 (h) of the Statute as alleged in the Indictment to which he pleaded guilty. Using the word "committed" does not mean that the Accused physically committed any of the crimes charged personally. It refers to a substantial participation in a joint criminal enterprise, well organised for months.[254]

126. The objective of the joint criminal enterprise was the permanent removal, by force or other means, of Bosnian Muslim inhabitants from the village of Glogova in the Municipality of Bratunac through commission of crime of Persecutions which is punishable under Article 5 (h) of the Statute. Miroslav Deronjić participated as a co-perpetrator.[255]

127. On the level of the Municipality of Bratunac, Miroslav Deronjić worked in concert with others, including members of the TO of the Municipality of Bratunac, *inter alia*, Momir Nikolić, Najdan Mlađenović, Nenad Deronjić, Dragutin Takać, Dušan Živanović, Gojko (or Živojin) Radić, Zoran Mlađenović, Milo a.k.a. "Riba" and Milan Zarić, members of elements of the JNA, i.e. members of the Novi Sad Corps from Serbia, who were under the command of Captain Reljić, members of the Bratunac police forces, *inter alia*, Milutin Milošević, Chief of the Serbian SUP, Miladin Jokić, Vidoje Radović, Dragan Ilić, Dragan Vasiljević, Sredoje Stević, Vuksić and Tešić, and members of paramilitary forces, whose identity is unknown.[256]

128. From the end of April to 9 May 1992, Miroslav Deronjić, individually as President of the Crisis Staff of the Municipality of Bratunac and in concert with other members of the joint criminal enterprise, committed Persecutions of Bosnian Muslims on political, racial or religious grounds, in the village of Glogova in the Municipality of Bratunac.[257] These Persecutions resulted in the killings of 64 Bosnian Muslims, the forcible displacement of the Bosnian Muslim population from Glogova and the destruction of the village of Glogova.[258]

129. Miroslav Deronjić committed the aforementioned acts with the specific intent to discriminate against the Bosnian Muslim residents of Glogova and the Municipality of Bratunac on political and religious grounds.[259]

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[254] Indictment, para. 2.
[255] *Ibid.,* para. 3; see also *Ojdanić* Decision on Joint Criminal Enterprise, para. 20.
[256] Indictment, paras 6-7.
[257] *Ibid.*, para. 27.
[258] *Ibid.*, para. 40.
[259] Factual Basis, para. 30.

130. Miroslav Deronjić knew that the attack on Glogova and the forcible displacement of the Bosnian Muslim population formed part of a widespread and systematic attack directed against the Bosnian Muslim civilian population within parts of Bosnia and Herzegovina designated as the Republika Srpska.[260]

131. The attack on Glogova occurred within the context of an armed conflict between Serb and Muslim forces within Bosnia and Herzegovina.[261]

132. The decision to attack Glogova and to displace permanently its Muslim residents was taken in order to further the plan to create Serb ethnic territories within Bosnia and Herzegovina.[262]

[260] *Ibid.*, para. 31.
[261] *Ibid.*, para. 32.
[262] *Ibid.*, para. 33.

VIII. SENTENCING LAW

133. Acting under Chapter VII of the Charter of the United Nations, this Tribunal[263] is not only mandated to search for and record, as far as possible, the truth of what happened in the former Yugoslavia, but also to bring justice to both victims and their relatives and to perpetrators. Truth and justice should also foster a sense of reconciliation between different ethnic groups within the countries and between the new States on the territory of the former Yugoslavia.

134. A guilty plea indicates that an accused is admitting the veracity of the charges contained in an indictment. This also means that the accused acknowledges responsibility for his actions. Undoubtedly this tends to further a process of reconciliation. A guilty plea protects victims from having to relive their experiences and re-open old wounds. As a side-effect, albeit not really a significant mitigating factor, it also saves the Tribunal's resources.

135. As opposed to a pure guilty plea (Rule 62 *bis* of the Rules), a plea agreement (Rule 62 *ter* of the Rules), while having its own merits as an incentive to plead guilty, has two negative side effects. First, the admitted facts are limited to those in the agreement, which might not always reflect the entire available factual and legal basis. Second, it may be thought that an accused is confessing only because of the principle "*do ut des*" (give and take). Therefore, the reason why an accused entered a plea of guilty needs to be analysed: were charges withdrawn, or was a sentence recommendation given? In any event, a plea agreement pursuant to Rule 62 *ter* and 62 *bis* of the Rules does not allow the Trial Chamber to depart from the mandate of this Tribunal, which is to bring the truth to light and justice to the people of the former Yugoslavia. Neither the public, nor the judges themselves come closer to know the truth beyond what is accepted in the plea agreement.[264] This might create an unfortunate gap in the public and historical record of the concrete case, although, when coupled with an accused's substantial co-operation with the prosecution, an agreement grants more insights into previously undiscovered areas. However, while treating plea agreements with appropriate caution,[265] it should be recalled that this Tribunal is not the final arbiter of historical facts. That is for historians. For the judiciary focusing on core issues of a criminal case before this International Tribunal, it is important that justice be done and be seen to be done, within the ambit of the Indictment presented by the Prosecutor.

[263] See *supra* Introduction.
[264] In the present case, the Parties merely agreed on the factual basis of the Indictment as the agreed facts in the Plea Agreement.
[265] For a detailed discussion on the appropriateness of plea agreements in cases involving serious violations of international humanitarian law, see *Momir Nikolić* Sentencing Judgement, paras 57–73.

A. The Individual Guilt of an Accused and the Principle of Proportionality

136. The individual guilt of an accused limits the range of the sentence. Other goals and functions of a sentence can only influence the range within the limits defined by individual guilt.[266]

137. In *Stakić*, this Trial Chamber recalled that:

> [T]he International Tribunal was set up to counteract impunity and to ensure a fair trial for the alleged perpetrators of crimes falling within its jurisdiction. […] The Tribunal is mandated to determine the appropriate penalty, often in respect of persons who would never have expected to stand trial. While one goal of sentencing is the implementation of the principle of equality before the law, another is to prevent persons who find themselves in similar situations in the future from committing crimes.[267]

138. The Statute explicitly vests the judges with discretion to determine the appropriate punishment for each accused and each act charged.[268] Thus, when the Trial Chamber evaluates the different sentencing factors, it does so in the interest of the nature and gravity of the crimes committed, the circumstances surrounding the acts themselves, the degree of responsibility of an accused for the act, and the personality of the accused.

139. Finally, the fundamental principle of proportionality[269] has to be taken into account.

B. Principles and Purposes

1. Submissions of the Parties

140. The Prosecution submits that the primary principles for the Trial Chamber to consider are retribution and deterrence.[270] It submits that "[a]lthough the principle of retribution stems from the

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[266] *Stakić* Trial Judgement, para. 899.
[267] *Ibid.*, para. 901.
[268] R. *v. Bloomfield* [1999] NTCCA 137, para. 17: "Individualised justice is the touchstone of judicial sentencing, tailoring the sentence in each case to the circumstances of the offence and of the offender."
[269] In the Canadian Supreme Court decision of *R. v. Martineau*, the Court stated:

> [The] punishment must be proportionate to the moral blameworthiness of the offender, or as Professor Hart puts it in Punishment and Responsibility (1968), at p. 162, the fundamental principle of a morally based system of law [is] that those causing harm intentionally be punished more severely than those causing harm unintentionally. (*R. v. Martineau*, [1990] 2 S.C.R. 633, p. 645).

This position was applied and further expanded in the subsequent decision of *R. v. Arkell* in which the Court declared:

> [W]here a murder is committed by someone already abusing his power by illegally dominating another, the murder should be treated as an exceptionally serious crime. [… The] decision to treat more seriously murders that have been committed while the offender is exploiting a position of power through illegal domination of the victim accords with the principle that there must be a proportionality between a sentence and the moral blameworthiness of the offender and other considerations such as deterrence and societal condemnation of the acts of the offender. (*R. v. Arkell*, [1990] 2 S.C.R. 695, p. 704).

[270] Prosecution Sentencing Brief, para. 7.

ancient theory of revenge, its modern usage refers to a requirement that the punishment be proportionate to the crime."[271] Furthermore, the Prosecution argues that while "retribution focuses on the circumstances of the case itself, deterrence looks outside the case to potential offenders."[272] The Prosecution submits that the penalty should have "sufficient deterrent value to ensure that those who would consider committing similar crimes will be dissuaded from doing so".[273] The Prosecution notes the "general importance of deterrence as a consideration in sentencing for international crimes" endorsed by the Appeals Chamber.[274]

141. The Defence submits that "[r]etribution – interpreted as punishment of an offender for his specific criminal conduct – and general deterrence form the backdrop against which sentence should be determined."[275] However, as Defence further submits, the Trial Chamber has to "ensure that the deterrence principle is not accorded undue prominence".[276]

2. Discussion

142. Fundamental principles taken into consideration when imposing a sentence are deterrence and retribution. The Appeals Chamber in "*Čelebići*" held, *inter alia*, that:

> [T]he Appeals Chamber (and Trial Chambers of both the Tribunal and the ICTR) have consistently pointed out that two of the main purposes of sentencing for these crimes are deterrence and retribution.[277]

143. Regarding rehabilitation, the Appeals Chamber in "*Čelebići*" held that:

> [A]lthough rehabilitation (in accordance with international human rights standards) should be considered as a relevant factor, it is not one which should be given undue weight.[278]

Retribution is not revenge "[…]but to express the outrage of the international community at heinous crimes […]."[279]

(a) Deterrence

144. Individual and general deterrence has an important function in principle and serves as an important goal of sentencing.[280]

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[271] *Ibid.*
[272] *Ibid.*, para. 8.
[273] *Todorović* Sentencing Judgement, para. 30 as quoted in Prosecution Sentencing Brief, para. 8.
[274] *Aleksovski* Appeal Judgement, para. 185 as quoted in Prosecution Sentencing Brief, para. 8.
[275] Defence Sentencing Brief, para. 23 (footnotes omitted).
[276] *Banović* Sentencing Judgement, para. 34 as quoted in Defence Sentencing Brief, para. 24.
[277] *Čelebići* Appeal Judgement, para. 806 (footnotes omitted).
[278] *Ibid*.
[279] *Stakić* Trial Judgement, para. 900.
[280] *Ibid*.

145. Individual deterrence refers to the specific effect of the sentence upon the accused which should be adequate to discourage him from re-offending once the sentence has been served and he has been released. The Trial Chamber finds, however, that this factor should not attract more than average importance.

146. The sentence imposed must also be sufficient in order to dissuade others from committing the same crime; in other words, it must have a general deterrent effect. The Trial Chamber in the *Todorović* sentencing judgement stated:

> The Appeals Chamber has held that deterrence "is a consideration that may legitimately be considered in sentencing" and has further recognised the "general importance of deterrence as a consideration in sentencing for international crimes". The Chamber understands this to mean that deterrence is one of the principles underlying the determination of sentences, in that the penalties imposed by the International Tribunal must, in general, have sufficient deterrent value to ensure that those who would consider committing similar crimes will be dissuaded from doing so.[281]

147. In *Stakić*, the Trial Chamber stated that:

> [i]n the context of combating international crimes, deterrence refers to the attempt to integrate or to reintegrate those persons who believe themselves to be beyond the reach of international criminal law. Such persons must be warned that they have to respect the fundamental global norms of substantive criminal law or face not only prosecution but also sanctions imposed by international tribunals. In modern criminal law this approach to general deterrence is more accurately described as deterrence aiming at reintegrating potential perpetrators into the global society.[282]

148. It is important to note that courts in various national jurisdictions recognise the principle of deterrence. An example can be found in the Court of Appeal of the Northern Territory of Australia decision *R. v. Bloomfield*, which ruled that:

> [t]he greater the harm, the greater its weight in the balance of conflicting interests against the offender by way of punishment as a general deterrent. It must be made clear, both to the offender and others with similar impulses, that if they yield to them they will meet with severe punishment: "in all civilized countries, in all ages, that has been the main purpose of punishment and continues to be so"[283]

149. One of the main purposes of a sentence imposed by an international tribunal is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody. "All persons shall be equal before the courts and

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[281] *Todorović* Sentencing Judgement, para. 30 (footnotes omitted).
[282] *Stakić* Trial Judgement, para. 902; see *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 806; for *Integrationsprävention* see German Constitutional Court, BVerfGE 90, 145 (173); BVerfGE 45, 187 (255f). *See also Radke* in Münchener Kommentar, Strafgesetzbuch, Vol. 1, §§1-51 (München, 2003).
[283] *R. v. Bloomfield* [1999] NTCCA 137 para. 19 (footnotes omitted).

tribunals."[284] This fundamental rule fosters the internalisation of these laws and rules in the minds of legislators and the general public.

(b) Retribution

150. "An equally important factor is retribution. This is not to be understood as fulfilling a desire for revenge but as duly expressing the outrage of the international community at these crimes."[285] The principle or theory of retribution has long been confused with the notion of vengeance as submitted by both the Prosecution and Defence. By contrast, this Trial Chamber agrees that retribution should solely be seen as:

> an objective, reasoned and measured determination of an appropriate punishment which properly reflects the […] culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offenders conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.[286]

C. Article 24 of the Statute and Rule 101 of the Rules

151. Neither the Statute nor the Rules specify a concrete range of penalties for offences under the Tribunal's jurisdiction. Determination of the appropriate sentence is left to the discretion of each Trial Chamber,[287] although guidance as to which factors should be taken into account is provided by both the Statute and the Rules.

152. Article 24 of the Statute provides a non-exhaustive list of the factors to be taken into account by the Trial Chamber in determining the sentence and reads in its relevant parts:

> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
>
> 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. […]

153. Rule 101 of the Rules further states in its relevant parts:

> (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:
>
> (i) any aggravating circumstances;

[284] Article 14 paragraph 1, sentence 1 of the ICCPR.
[285] *Aleksovski* Appeal Judgement, para. 185.
[286] *R. v. M.(C.A.)* [1996] 1 S.C.R. 500, para. 80 (emphasis in original).
[287] See *supra* para. 4.

(ii) any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; […]

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

D. Gravity of the Crime, Aggravating and Mitigating Factors

154. The gravity of the offence is a factor of primary importance, and "may be regarded as the litmus test" in the imposition of an appropriate sentence.[288] It is necessary to consider the nature of the crime and "the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime" in order to determine the gravity of the crime.[289] "A sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender."[290]

155. In determining sentence, the Trial Chamber is obliged to take into account any aggravating and mitigating circumstances, but the weight to be given to the aggravating and mitigating circumstances is within the discretion of the Trial Chamber.[291] The aggravating circumstances should be proven beyond reasonable doubt,[292] while "the standard to be met for mitigating factors is the balance of probabilities"[293] and "mitigating circumstances may also include those not directly related to the offence".[294]

156. The Rules specify only "substantial co-operation with the Prosecutor" as a mitigating factor, other factors often taken into account by this Tribunal in mitigating a sentence are, *inter alia*, a plea of guilty,[295] acceptance of a certain degree of guilt,[296] expression of genuine remorse,[297] compassion

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[288] *Čelebići* Trial Judgement, para. 1225 endorsed in *Aleksovski* Appeal Judgement, para. 182, *Čelebići* Appeal Judgement, para. 731 and *Jelisić* Appeal Judgement, para. 101. See also *Furundžija* Appeal Judgement, para. 249.
[289] *Kupreškić et al.* Trial Judgement, para. 852 endorsed in *Aleksovski* Appeal Judgement, para. 182, *Čelebići* Appeal Judgement, para. 731 and *Jelisić* Appeal Judgement, para. 101. In *Stakić* this Trial Chamber stated that "The sentence must reflect the gravity of the criminal conduct of the accused. This requires consideration of the underlying crimes as well as the form and degree of the participation of the individual accused" and "The Trial Chamber recalls that if a particular circumstance is included as an element of the offence under consideration, it cannot be regarded also as an aggravating factor since each circumstance may only justly be considered once", *Stakić* Trial Judgement, paras 903-904.
[290] *Akayesu* Trial Judgement, para. 40 endorsed in *Akayesu* Appeal Judgement, para. 414.
[291] *Čelebići* Appeal Judgement, para. 777.
[292] *Ibid.,* para. 763.
[293] *Stakić* Trial Judgement, para. 920 cited from *Kunarac et al.* Trial Judgement, para. 847 and *Sikirica et al.* Sentencing Judgement, para. 110.
[294] *Stakić* Trial Judgement, para. 920.
[295] This factor is considered in more details in sub-section IX. B. 1. (b).
[296] *Kupreškić et al.* Appeal Judgement, para. 464.
[297] *Čelebići* Appeal Judgement, para. 788, *Erdemović* 1998 Sentencing Judgement, para. 16.

by an accused and any assistance given to the victims by an accused,[298] limited participation in alleged acts of violence,[299] voluntary surrender,[300] the age of the accused,[301] absence of previous criminal record and the accused's family and social situations.[302]

E. Sentencing Ranges

157. Rule 101 (A) of the Rules, which grants the power to sentence a convicted person for a term up to and including the remainder of the convicted person's life, shows that "a Trial Chamber's discretion in imposing sentence is not bound by any maximum term of imprisonment applied in a national system."[303]

158. Pursuant to Article 24 (1) of the Statute and Rule 101 (B) (iii) of the Rules, in determining the sentence, the Trial Chambers shall have recourse to the "general practice regarding prison sentences in the courts of the former Yugoslavia." However, it is settled jurisprudence of this Tribunal that Trial Chambers are not bound by this "general practice". The Trial Chamber notes that it is difficult to identify such "general practice" in the absence of a functioning judiciary during the period in question, especially in relation to those crimes heard before this Tribunal. Rather, Trial Chambers should take into account the applicable written law and today's practice – if any – of courts of the States in the territory of the former Yugoslavia in relation to serious violations of International Humanitarian Law.[304]

159. For this purpose and to seek guidance based on comparative research in this terrain, the Trial Chamber admitted into evidence the Sentencing Report by Prof. Sieber prepared in the *Dragan Nikolić* case and the transcripts of his testimony in that case.[305]

1. Former Yugoslavia

160. The section of the Sentencing Report relating to the former Yugoslavia comprises both a normative and an empirical section, the latter being based on semi-standardized interviews with 17 judges from different parts of the former Yugoslavia[306] on questions relevant to the punishment of

[298] *Čelebići* Appeal Judgement, paras 775-76, *Serushago* Appeal Judgement, para. 24.
[299] *Aleksovski* Trial Judgement, para. 236.
[300] *Serushago* Appeal Judgment, para. 24, *Plavšić* Sentencing Judgement, para. 84.
[301] *Jelisić* Appeal Judgement, para. 131, *Erdemović* 1998 Sentencing Judgement, para. 16.
[302] *Kunarac et al.* Appeal Judgement, para. 408, *Erdemović* 1998 Sentencing Judgement, para. 16.
[303] *Kunarac et al.* Appeal Judgement, para 377.
[304] *Tadić* Judgement in Sentencing Appeals, para. 21, *Kupreškić et al.* Appeal Judgement, para 418, *Jelisić* Appeal Judgement, para 117, *Čelebići* Appeal Judgement, para 813.
[305] See *supra* para. 22.
[306] Of the 17 judges interviewed, 6 were from BiH (3 from the Federation of Bosnia and Herzegovina and 3 from the Republika Srpska), 5 judges from Croatia, 3 judges from the Former Yugoslav Republic of Macedonia, and 3 judges from Montenegro, Sieber Testimony, T. 368.

the crimes encompassing the acts alleged in the Indictment.[307] With respect to the legal significance of the empirical data, Prof. Sieber stated that "this study can give you some indication, but definitely […] it's not a sample where you can do analysis, especially based on the various republics."[308] The Trial Chamber shares this view.

161. The crimes to which the Accused pleaded guilty occurred in the Municipality of Bratunac, which is today part of BiH, *in concreto*: its entity Republika Srpska. The Trial Chamber is therefore particularly interested in the sentencing laws and practices in this region.

162. The Trial Chamber will begin with a brief chronology of the applicable law in the territory of the former Yugoslavia, starting in 1992 when the crimes to which the Accused has pleaded guilty were committed, until the present day.

163. The sentencing law in BiH was regulated in 1992 by the Criminal Code of the SFRY, adopted by the Federal Assembly on 28 September 1976, and in force since 1 July 1977 (hereinafter the "Federal Criminal Code of 1976/77"), and by the Criminal Code of the Socialist Republic of Bosnia and Herzegovina of 10 June 1977 (hereinafter the "Criminal Code of BiH of 1977"). The Federal Criminal Code of 1976/77 regulated the general aspects of criminal law and a few specific offences, such as crimes against the security of the SFRY, genocide, and war crimes, while the Criminal Code of BiH of 1977 regulated primarily specific offences, and some general matters not addressed by the Federal Criminal Code of 1976/77.[309] Both criminal codes initially remained in force after BiH declared its independence in 1992.[310]

164. In 1998 BiH's constituent entity of the Federation of Bosnia and Herzegovina adopted its own criminal code, consisting of its own general and special parts. The Republika Srpska entity and the Brčko District followed suit shortly thereafter, adopting their own criminal codes in 2000.[311] In March 2003 the Office of the High Representative enacted a new Criminal Code for both entities within the State of BiH and the Brčko District (hereinafter "OHR Criminal Code of 2003").[312] In August 2003 the Federation of Bosnia and Herzegovina and Republika Srpska adopted new Criminal Codes (hereinafter "FedBiH Criminal Code of 2003" and "RS Criminal Code of 2003" respectively). The OHR Criminal Code of 2003 and the Criminal Codes of the two entities within

[307] Sentencing Report, pp. 17-20.
[308] Sieber Testimony, T. 413.
[309] Sentencing Report, pp. 27, 29.
[310] *Ibid.*, p. 27, citing Presidential Decree of 8 April 1992 on the state of war, Presidential Decree of 11 August 1992 on the application of traditional laws, and Law of 1 June 1994 on the Retroactive Confirmation of the later Presidential Decree. The independence of BiH was recognized by the European Community on 6 April 1992. On 22 May 1992, BiH was admitted as a member state of the United Nations.
[311] *Ibid.*, p. 35.
[312] *Ibid*.

BiH of 2003 each contain their own general and special parts. While the OHR Criminal Code of 2003 does not regulate "ordinary" crimes such as murder or rape in its special part, it contains criminal provisions that are relevant to – and applicable in – the whole state, such as, *inter alia*, war crimes and crimes against humanity.[313]

165. The Trial Chamber will now turn to consider the range of sentences available under the aforementioned laws in BiH in 1992 when the crimes to which the Accused has pleaded guilty were committed. Under the Federal Criminal Code of 1976/77, the range of penalties existing in 1992 consisted of a fine, the 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.[314]

166. Punishment for the specific offences in 1992 was regulated by the Criminal Code of BiH of 1977. Murder was punishable with imprisonment of not less than five years, and in aggravated cases – which included murder committed in a cruel way, carried out violently, by endangering the life of others, or by motive of greed – with imprisonment of not less than ten years or the death penalty.[315] If murder was committed in "time of war, armed conflict or occupation," under the Federal Criminal Code of 1976/77 this offence was qualified as a war crime and was punishable with imprisonment of a minimum of five years or, alternatively, the death penalty.[316]

2. The Applicability of the Principle of *lex mitior*

167. The principle of *lex mitior*[317] forms part, *inter alia*, of the criminal law applicable in BiH throughout the relevant period. Article 4 of the Federal Criminal Code of 1976/77 stated:

> (1) The law that was in force at the time when a criminal act was committed shall be applied to the person who has committed the criminal act.
>
> (2) If the law has been amended one or more times after the criminal act was committed, the law which is less severe in relation to the offender should be applied.

The principle is also contained in the present national criminal codes of BiH, the Republika Srpska, and the Federation of Bosnia and Herzegovina.[318]

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[313] Sieber Testimony, T. 373.
[314] Article 38 of the Federal Criminal Code of 1976/77; Sentencing Report, p. 30. In this context, the Trial Chamber wishes to emphasize that it does not share the view that a sentence of life imprisonment is the harsher sentence in comparison to capital punishment, cf. John R.W.D. Jones/Steven Powles, International Criminal Practice, 3rd ed., Oxford (2003), 9.119.
[315] Article 36 of the Criminal Code of BiH of 1977; Sentencing Report, pp. 32-33.
[316] Article 142 (war crime against the civilian population), Article 143 (war crime against the wounded and sick) and Article 144 (war crime against prisoners of war) of the Federal Criminal Code of 1976/77; Sentencing Report, p. 34.

168. However, upon closer examination of the content of the principle of *lex mitior*, the Trial Chamber is satisfied that the principle applies only to cases in which the commission of a criminal offence and the subsequent imposition of a penalty took place within one and the same jurisdiction.

169. The Trial Chamber notes that the provisions mentioned above do not state that the principle of *lex mitior* also applies in cases where the offence was committed in a jurisdiction different from the one under which the offender receives his punishment. In the event of concurrent jurisdictions, no state is generally bound under international law to apply the sentencing range or sentencing law of another state where the offence was committed. With respect to the concurrent jurisdiction of the Tribunal and the jurisdictions in the former Yugoslavia,[319] the Appeals Chamber adopted without further explanation the same approach when it stated that the principle, that Trial Chambers are not bound in sentencing by the practice of the courts in the former Yugoslavia,

> applies to offences committed both before and after the Tribunal's establishment. The Appeals Chamber can therefore see no reason why it should constitute a retrospective increase in sentence to impose a sentence greater than what may have been the maximum sentence available under domestic law in the former Yugoslavia at the time the offences were committed.[320]

170. In conclusion, the Tribunal, having primacy *vis à vis* national jurisdictions in the former Yugoslavia, is not bound to apply a more lenient penalty – if any – under these jurisdictions. However, such penalties shall be taken into consideration, but as only one factor among others when determining a sentence.

3. Other Countries

171. In addition to the section relating to sentencing law and practice in the former Yugoslavia, the Sentencing Report provides an overview of the law relating to sentencing in 23 other countries. The Sentencing Report focused on the sentencing law of serious crimes, including murder, but without going into the specifics of any particular case. The Sentencing Report identifies the penalties applicable in 1992, the year the crimes were committed, as well as penalties in 2003. Generally speaking, the close analysis shows that in almost all national legal systems under survey, murder attracts rather severe penalties. In particular, a large number of these legal systems prescribe a mandatory sentence of life imprisonment in the case of murder by participation in shooting. A comparison between the law in effect in the year 1992 and the current law shows that only a few countries have changed the sentencing range applicable for these crimes during this period. Most of

[317] For a detailed discussion on the applicability of this principle see *Dragan Nikolić* Sentencing Judgement, paras 157-65.
[318] See also: Article 4 (2) of the OHR Criminal Code of 2003; Article 5 (2) of the FedBiH Criminal Code of 2003; Article 4 (2) of the RS Criminal Code of 2003; Sentencing Report, pp. 35-36, 38-39 and 42.
[319] Article 9 (1) of the Statute provides that the Tribunal and national courts have concurrent jurisdiction to prosecute persons for the statutory crimes.

these changes relate to a replacement of the death penalty by life imprisonment as the maximum punishment.[321]

172. From a general perspective, the minimum penalty to be imposed for one act of murder committed by participation in shooting and/or motivated by ethnic bias (hereinafter "Aggravated Murder") ranges from a fixed term of imprisonment up to life imprisonment in countries such as Argentina, Austria, Canada, Chile, England, Finland, France, Germany, Greece, Poland, South Africa, Sweden, and Turkey.

173. The maximum penalties for such one act of Aggravated Murder in the various countries range from a prison sentence of 25 years to the death penalty.[322]

174. In Argentina,[323] Belgium,[324] Canada,[325] Germany,[326] England,[327] Finland,[328] Italy,[329] and South Africa,[330] one act of Aggravated Murder attracts a mandatory life sentence.

175. The sentence of life imprisonment or, in the alternative, a maximum fixed term of years is envisaged by the relevant statutory provisions of the following countries: Austria,[331] Poland,[332] and Sweden.[333] In Chile and France, Aggravated Murder attracts sentences from a minimum of five years' imprisonment – Chile – and 2 years' imprisonment – France[334] – up to life imprisonment.

176. Finally, it appears that Brazil, Mexico, Spain, and Portugal[335] limit sentencing to a fixed term of imprisonment, even in the most serious cases. The Trial Chamber notes, however, that the abolition of life imprisonment does not necessarily mean that the sentence to be finally served is less than in States providing for life imprisonment with an optional or mandatory review after 15 or 20 years.

177. The overview shows that in most countries a single act of Aggravated Murder attracts life imprisonment or the death penalty, as either an optional or a mandatory sanction. When adopting

[320] *Čelebići* Appeal Judgement, para. 816.
[321] For example, Country Report Greece, p. 3; Country Report Poland, p. 2; Country Report South Africa, p.2; Country Report Turkey, p. 2.
[322] Sentencing Report, p. 93.
[323] Country Report Argentina, pp. 5, 11.
[324] Country Report Belgium, p. 17.
[325] Country Report Canada, p. 2.
[326] Country Report Germany, p. 2.
[327] Country Report England, pp. 8, 14.
[328] Country Report Finland, p. 2.
[329] Country Report Italy, pp. 9, 18.
[330] Country Report South Africa, p. 9.
[331] Country Report Austria, pp. 8, 14.
[332] Country Report Poland, p. 14.
[333] Country Report Sweden, pp. 10, 17.
[334] Country Report Chile, pp. 8, 15; Country Report France, p. 10.
[335] See already *Stakić* Trial Judgement, para. 932 (footnote 1660).

the Statute in 1993, the Security Council was apparently cognisant of this practice and decided to vest broad discretion to the judges in determining sentences, instead of giving concrete sentencing ranges for each specific offence. In line with the general UN policy on the abolition of the death penalty, the Security Council limited the applicable sentences to imprisonment.[336] Acting pursuant to Article 15 of the Statute, the Plenary of this Tribunal specified Article 24 (1) of the Statute by phrasing Rule 101 of the Rules in its relevant part:

> (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.

[336] Article 24 (1) of the Statute; see also Second Optional Protocol to the ICCPR of 15 December 1989, aiming at the abolition of the death penalty, and already Protocol No. 6 to the ECHR of 28 April 1983, concerning the abolition of the death penalty; see also *Stakić* Trial Judgement, para. 932.

IX. FACTS RELATED TO THE INDIVIDUAL CONDUCT OF THE ACCUSED

A. Gravity of the Offence and Aggravating Circumstances

1. Submissions of the Parties

178. The Prosecution argues that the gravity of the crime is a primary consideration for the Trial Chamber.[337]

179. The Prosecution submits that "the crime for which Miroslav Deronjić is to be sentenced is precisely the type of crime about which the Security Council expressed its grave alarm in Resolution 808. The events in Glogova on the 9th of May 1992 are a classical case of ethnic cleansing, and precisely the reason why the Security Council established this Tribunal. The attack on Glogova was not an isolated or random event, but a critical element in a larger scheme to divide Bosnia and Herzegovina and create Serb-ethnic territories."[338]

180. It further submits that the crime to which the Accused has pleaded guilty, the crime of Persecutions, is "inherently very serious". Due to its distinctive feature, a discriminatory intent, this crime "justifies a more severe penalty".[339]

181. The Prosecution submits that the aggravating circumstances set out below are exclusively based on the Factual Basis: (i) Miroslav Deronjić's superior position as a political leader in the Municipality of Bratunac, his role in ordering the attack on Glogova, and the (ii) vulnerable and helpless situation of the victims of the 9 May 1992 attack on Glogova.

182. The Defence submits that the Trial Chamber has an "overriding obligation" to "individualize a penalty to fit the individual circumstances of the accused and the gravity of the crime"[340] and that "[t]he determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime."[341] The Defence submits that all aggravating circumstances of the crime are already subsumed in the offence of Persecutions.[342] The Defence continues by stating that "only

[337] Prosecution Sentencing Brief, para. 9.
[338] Prosecution Closing Statement, T. 188.
[339] Prosecution Sentencing Brief, para. 11.
[340] Defence Sentencing Brief, para. 25 referring to *Čelebići* Trial Judgement, para. 1225.
[341] *Ibid*., para. 26 quoting *Kupreškić et al.* Trial Judgement, para. 852.
[342] Defence Closing Statement, T. 230.

those circumstances directly related to the commission of the offence charged and to the offender himself when he committed the offence […] may be considered in aggravation."[343]

183. Regarding Miroslav Deronjić's superior position, the Defence states:

> A high rank in the political field does not, in itself, lead to a harsher sentence. But, a person who abuses or wrongly exercises power deserves a harsher sentence than an individual acting on his or her own. The direct participation of a high level superior in a crime under Article 7(1) – planning, ordering, instigating – is an aggravating circumstance, although to what degree depends on the actual level of authority and the form of participation.[344]

2. Discussion

184. Trial Chambers are required pursuant to Article 24 (2) of the Statute to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. This Trial Chamber reiterates that the gravity of the crime is of primary importance in determining the sentence.[345]

185. Furthermore, Rule 101 (B) (i) of the Rules requires the Trial Chamber to examine any aggravating circumstances in relation to the crimes of which the Accused stands convicted. In this regard, it has been established that only those circumstances directly related to the commission of the offence charged may be seen as aggravating.[346]

(a) Large Number of Victims

186. As a result of the persecutory acts to which the Accused pleaded guilty, 64 identified Bosnian Muslim civilians were killed. In addition, an unspecified number of Bosnian Muslim civilians were forcibly displaced and deprived of their property. The Accused was aware of the substantial likelihood that such crimes could occur as an accepted result of his criminal conduct.

(b) Deronjić's Superior Position as a Political Leader in the Municipality of Bratunac

187. The Accused is individually criminally responsible pursuant to Article 7 (1) of the Statute for committing acts of Persecutions in Glogova. His position as a political leader aggravates the offence. It was confirmed by the Appeals Chamber in *Kupreškić et al*.[347] that:

> […] a Trial Chamber has the discretion to find that direct responsibility, under Article 7 (1) of the Statute, is aggravated by a perpetrator's position of authority. [348]

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[343] *Kunarac* Trial Judgement, para. 850 as quoted in Defence Sentencing Brief, para. 34.
[344] Defence Sentencing Brief, para. 36 referring to *Krstić* Trial Judgement, paras 708-709.
[345] See *supra* para. 154.
[346] *Kunarac* Trial Judgement, para. 850.
[347] *Kupreškić et al*. Appeal Judgement, para. 451.

188. The Accused held several positions of authority in his municipality. He was President of the Municipality of Bratunac Board of the SDS from September 1990 to the end of April 1992. On 6 September 1991, he was appointed member of the SDS party Commission on Personnel and Organisation by the Executive Board. The Accused was President of the Bratunac Crisis Staff from the time it assumed authority from the Executive Committee of the Municipality and the organs of the Municipal Assembly from the end of April 1992 to the time of its transformation to a War Commission established by the Presidency of the Serb Republic of Bosnia and Herzegovina in June 1992. He was also appointed a member of the War Commission of the Municipality of Bratunac.[349]

189. Due to his aforedescribed insight in the SDS' political strategies, the Accused became already in 1991 aware of the Bosnian Serb leadership's objective to establish a Serbian state.[350] In April 1991, the Accused learned of the planned arming of the Serbs and was told by Rajko Djukić that he himself and Goran Zekić would be tasked with the arming of their municipalities.[351] Only a few weeks later, in early May 1991, the Accused personally participated in organising a weapon delivery to Serbs in Bratunac.[352] On this occasion, he also found out about the position of the political and state leadership to create an exclusively Serb area 50 kilometres from the Drina, which would include the Municipality of Bratunac.[353]

190. The Accused unequivocally subscribed to this policy of the Bosnian Serb leadership and implemented it in his aforementioned leading capacities. In particular, he actively participated in achieving the objective to transform the Municipality of Bratunac into a Serb ethnic territory.[354] In October 1991, the Accused received a set of documents on an extended Main Board meeting from the Presidency of the SDS for the organisation of the Serb people. He followed these instructions, organised public fora to promote the political positions of the SDS and established the Crisis Staff of the Serbian People, of which he became president.[355]

191. Upon receiving the confidential written instructions from the SDS, dated 19 December 1991, he immediately started to adopt and to implement the directives outlined by the Main Board of the SDS. He established the SDS Crisis Staff, which replaced the two-month-old Crisis Staff of the Serbian People, and was also elected as its president.[356] Towards the end of April 1992, he became President of the just-formed Crisis Staff of the Municipality, which lasted until the creation

[348] See also *Krstić* Trial Judgement, para. 708.
[349] Indictment, para. 1; see *supra* para. 48.
[350] Deronjić Testimony, T. 113, 127.
[351] *Ibid.,* T. 118, 124.
[352] *Ibid.,* T. 120-21.
[353] *Ibid.,* T. 121.
[354] Factual Basis, para. 13.
[355] Deronjić Testimony, T. 124-27.
[356] *Ibid.,* T. 127.

of the War Presidency in June 1992.[357] The Accused also implemented other measures to establish Bosnian Serb control, such as the division of the police in Bratunac, as far as was possible for him, given the specific nature of the situation in Bratunac.[358]

192. His political offices gave him *de facto* and *de jure* control over the TO and *de facto* control over the police forces in the Municipality of Bratunac.[359] The Accused used this authority to execute and to further the idea of transforming the Municipality of Bratunac into a purely Serb-ethnic area. The attack on the predominantly Muslim village of Glogova constituted an important part of this support. It was a critical element in the larger scheme to divide Bosnia and Herzegovina and create Serb-ethnic territories.[360] The Trial Chamber accepts the submission of the Prosecution and agrees that it was the Accused's plan to ethnically cleanse Glogova[361] and that the events of 9 May 1992 in Glogova were indeed "a classical case of ethnic cleansing".[362]

193. The Accused, in his authority to control police and TO forces, was ready to use violent means to achieve this objective. Observing the events in neighbouring municipalities during April 1992, the Accused concluded for himself that the use of force was one element in the strategy to create a Serb Republic.[363] This assumption was unequivocally confirmed to him in a conversation with Goran Zekić on the 5th of May 1992.[364] Realizing that the violent methods were part of the political plans, the Accused decided to attack Glogova.[365] The applicable use of force included in his view the violent transfer of the population, the conduct of "volunteers" units and the JNA, the use of a tank and also the killing of people.[366]

194. His position of authority as an influential civilian leader, due to his status as President of the Crisis Staff and of the Municipal Board, gave the Accused a particular responsibility towards the population in his municipality.[367] However, he abused this authority vested to him. As the Trial Chamber in *Stakić* and *Dragan Nikolić* has expressed:

> The commission of offences by a person in such a prominent position aggravates the sentence substantially.[368]

The Appeals Chamber endorsed that:

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[357] As clarified in Continued Sentencing Hearing, T. 276.
[358] Deronjić Testimony, T. 136.
[359] Indictment, para. 8 (a).
[360] Prosecution Closing Statement, T. 188.
[361] *Ibid.,* T. 190.
[362] *Ibid.,* T. 188.
[363] Deronjić Testimony, T. 138.
[364] *Ibid.,* T. 134.
[365] *Ibid.,* T. 136, 145.
[366] *Ibid.,* T. 137.
[367] See *Simić et. al*. Trial Judgement, para. 1082.
[368] *Stakić* Trial Judgement, para. 913; *Dragan Nikolić* Sentencing Judgement, para. 183.

> […] the Accused's seniority or position of authority [may be considered as] aggravating his direct responsibility under Article 7(1).[369]

195. The Trial Chamber accepts that the mere fact that the Accused held a high political rank at the time of the attack does not as such constitute an aggravating factor.[370] In this case however, the Accused indeed abused his political power to commit the crimes he is charged with.

(c) Miroslav Deronjić's Role in the Disarmament of the Citizens of Glogova

196. Prior to the attack, the population, *inter alia*, of Glogova was ordered to hand over their weapons by soldiers and through an ultimatum.[371] By 27 April 1992, Glogova became a disarmed and undefended village.[372]

197. The Accused did not order the disarmament of Glogova. The disarming of the Bosnian Muslim population of the Municipality of Bratunac was initiated by the JNA. However, in a meeting of the Crisis Staff the Accused was informed about this by Mr. Reljić, the captain of the JNA unit in Bratunac, and asked to confirm ("authorize")[373] the decision. The Crisis Staff and the Accused, in his position as its president, gave this confirmation. The Accused approved of the disarming action, regarded it as justified and accepted the decision as his own.[374] Moreover, the Accused personally participated as a member of the TO in the disarming of the village of Podčaus in the Municipality of Bratunac.[375]

198. In supporting the disarmament this way, the Accused is directly responsible for leaving the population of Glogova at the disposal of the armed forces in the attack of 9 May 1992. The Trial Chamber accepts the submission of the Prosecution and agrees that the fact that the population of Glogova was disarmed well before the attack and offered no resistance during the attack aggravates the crime[376].

(d) Deronjić's Role in Ordering the Attack on Glogova

199. In the evening of 8 May 1992, the Accused, in his capacity as the President of the Crisis Staff of the Municipality of Bratunac, ordered the attack on Glogova.[377] He had made this decision in order to forcibly displace the Bosnian Muslim population from that area.[378] The Accused

[369] *Čelebići* Appeal Judgement, para. 745; see also *Aleksovski* Appeal Judgement, para. 183.
[370] See also *Krstić* Trial Judgement, para. 709.
[371] Indictment, para. 22.
[372] Deronjić Testimony, T. 143.
[373] Factual Basis, para. 18.
[374] Deronjić Testimony, T. 143-44, 158-59.
[375] *Ibid.,* T. 143.
[376] Prosecution Closing Statement, T. 191.
[377] Indictment, para. 8 (e).
[378] *Krajišnik* Trial, Exh. JS-26, T. 1056.

intended to secure purely Serb control over the village, because of Glogova's strategic importance halfway along the key road between Bratunac and the Serb region of Kravica.[379] He used his *de facto* and *de jure* control over the TO and his *de facto* power over the police in the Municipality of Bratunac to order the attack on the village, burn part of it down, and forcibly displace its Bosnian Muslim residents.[380]

200. Lacking the authority to command the JNA units, the Accused "only asked them whether they would participate in this"[381] and "that the army take an active role rather than simply observing".[382] According to the Accused, "Mr. Reljić, the commander of this unit, told me they would participate in this action",[383] and "one of his [Reljić's] deputies who was present […] said at a certain point, 'Yes, the army will participate, Mr. Deronjić'".[384] According to the Factual Basis agreed among the Parties, Deronjić urged to fire a shell at a building in Glogova to sow fear and panic among the Muslim population and break down potential resistance.[385]

201. The own words and acts of the Accused illustrate his leading position in the operation.

(e) Deronjić's Role during the Attack on Glogova

202. The Trial Chamber considers the fact that the Accused personally planned and ordered in the attack to be an additional aggravating factor. It has been endorsed by the Appeals Chamber in *Kupreškić et al.* that a commander's participation in the attack that he himself ordered and planned can aggravate his criminal liability.[386]

203. The Accused coordinated and monitored the attack on the village of Glogova.[387] He was present while the operation was carried out. He joined a TO unit. That unit's objective was to prevent any attempt of escape from Glogova and to block off any possible surprise attack of Muslims coming from the direction of Srebrenica.[388]

204. The Accused held a post on an elevated spot about one kilometre away from Glogova[389] from where he could observe the events in the village. From that location, he was able to see that the Serb forces moved into Glogova from all directions, that the vehicles for the deportation of the

[379] *Ibid.,* T. 1055-56.
[380] Deronjić Testimony, T. 144.
[381] *Ibid.*
[382] *Ibid.,* T. 146.
[383] *Ibid.,* T. 144.
[384] *Ibid.,* T. 148.
[385] *Ibid.,* T. 146-47, 149. See however *supra* para. 89.
[386] *Kupreškić et al.* Appeal Judgement, para. 454; see *Kupreškić et al.* Trial Judgement, para. 862.
[387] Deronjić Testimony, T. 159-60.
[388] *Ibid.,* T. 150-51.
[389] See Continued Sentencing Hearing, T. 321-22 and *supra* footnote 196.

villagers arrived, that the first buildings were being torched, and he was able to hear shootings.[390] During the attack, the Accused had radio contact with an officer in Glogova who stated that the attack was going well.[391]

205. After the village was taken and the attacking forces started to forcibly remove the population, the Accused left his post and entered the village.[392] The soldiers accompanying him searched some of the remaining houses along the road for Muslims. When asked what was to be done with the abandoned homes, the Accused gave an order to burn them down. Later on, he ordered the commander of a platoon to torch several more buildings.[393]

206. The Accused pleaded guilty to having committed the killings of 64 Bosnian Muslims.[394] The Trial Chamber recalls that the Accused did not physically commit these murders. However, the Accused accepted his individual criminal responsibility for the death of these 64 human beings.

(f) Vulnerability and Helplessness of the Victims of the 9 May 1992 Attack on Glogova

207. The Trial Chamber in *Banović* accepted that "the position of inferiority and the vulnerability of the victims as well as the context in which the offences were committed are relevant factors in assessing the gravity of the offence."[395] The Trial Chamber recognises that the inhabitants of Glogova were subjected to a position of special vulnerability.

208. Prior to the attack, the village of Glogova had been deliberately disarmed, rendering the Muslim residents vulnerable and defenceless[396]. Subsequently, the unarmed population offered no resistance against the attacking forces.

209. Moreover, at the end of April 1992, the villagers of Glogova had been told that they would not be attacked because they had turned over their weapons. This statement was made by Milutin Milošević, Chief of the Serb SUP, who declared that he was speaking on behalf of Miroslav Deronjić. The Accused was not present during that statement, but he agreed with it and accepted the actions of Mr. Milošević.[397] The given assertion created the false feeling of safety to the Muslim population and made them stay in Glogova. Without this presentation, in fact amounting to an ambush, in all likelihood far more of them might have fled in time. The Trial Chamber finds that this has to be considered in aggravation of the sentence.

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[390] Deronjić Testimony, T.151-52.
[391] *Ibid.,* T. 152, 158.
[392] *Ibid.,* T. 153.
[393] *Ibid.,* T. 154.
[394] Plea Hearing, T. 71.
[395] *Banović* Sentencing Judgement, para. 50; see also *Kunarac et al.* Appeal Judgement, para. 352.
[396] Deronjić Testimony, T. 143.
[397] *Ibid.,* T. 159.

(g) Long-term Effects of the 9 May 1992 Attack on Glogova on the Victims

210. The consequences of the crime for the victims are relevant to the sentencing of the offender.[398] Within this aspect, the extent of the long-term physical, psychological, and emotional suffering of the immediate victims is a relevant factor in determining the gravity of the offence.[399]

211. Many of the former residents of Glogova suffer to this day from the lasting effects of the horrors of the attack on their village.

212. A victim stated that:

> It is getting from bad to worse every day.[400]

213. Another victim even stated that:

> Sometimes it is so difficult that you wish that you had not survived.[401]

214. As a result of the attack, several victims lost numerous family members. One of them lost 14 members of her extended family,[402] others 9 members.[403]

215. Others still have problems sleeping and suffer from recurring nightmares,[404] for example, one victim states:

> I wish that I could go to sleep at night. I have pain all over my body and I have to keep the windows open as I feel that I would suffocate otherwise. When I do go to sleep, I wake up often because of nightmares about the Chetniks who are chasing us. Only a few nights ago I woke up screaming after seeing such a nightmare and could not explain to my children what I had seen.[405]

216. A victim reports having flashback of the events of 9 May 1992:

> I have flash backs during some nights and I do not have sound sleep. I wake up and think that the war is still on and run for shelter. Some times I run out of the house. That is the reason that I sleep only on the ground floor.[406]

217. Two victims state that they still need tranquilizers to manage their lives.[407] Another victim is still suffering from the physical effects of the mistreatment to which he was subjected during the attack:

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[398] *Kunarac* Trial Judgement, para. 852.
[399] *Krnojelac* Trial Judgement, para. 512.
[400] Exh. PS-19/6, para. 2.
[401] Exh. PS-19/1, para. 7.
[402] Exh. PS-19/4, para. 2; see *infra* Section XII.
[403] Exhs. PS-19/2, para. 4; PS-19/5, para. 8; see *infra* Section XII.
[404] Exhs. PS-19/1, para. 3; PS-19/6, para. 3; PS-19/7, para. 5.
[405] Exh. PS-19/7, para. 5.
[406] Exh. PS-19/1, para. 3.
[407] *Ibid*., para. 3; Exh. PS-19/6, para. 3.

> I had excellent health before the attack on Glogova. Afterwards I have had pain in my lungs. The doctors say that this may have been caused by my standing submerged in the water for a long time. Recently I have also not feeling very well and lost consciousness a couple of times. I have not been able to see the doctor as yet. As I was beaten severely on the head during the attack on Glogova I fear that this may be the reason for my recent problem. [408]

218. One victim states that also her son, who had to witness the horrible events as a child, still suffers from lasting psychological effects:

> My youngest son who is about 23 years old now is also suffering and has health problems. I had managed to hide him in my clothes in the day Glogova was attacked while the men were being killed. He has been very badly affected by this. He can not go to sleep and his legs go numb. I am afraid that he might loose his mind. He often has nightmares and after he wakes up from them he runs to the window to get some fresh air. He sometimes can not dare to go back and try to sleep on his own.[409]

219. Moreover, the scope and impact of the crime did not only affect specific individuals, but also the entire Bosnian Muslim community.[410] The victims report unanimously that the Muslim community of Glogova completely disappeared after the attack.[411] Muslim families are only slowly returning to the village, because they still have difficulties to overcome the fear and the terrifying memories of what happened to them.[412] Many of them do not dare to go back[413] or still have strong reactions of fear and panic when they visit the village, for example one victim states:

> I have myself gone to Glogova for about 10 times and each time when I come back from that place, I feel that I am dead.
>
> […] I can not help remembering that my daughter who was just 13 was taken away by soldiers when I pass that spot. There is fear inside me and I do not dare to be alone when I am in Glogova. I feel as if someone would come from behind the houses or the wood and hurt me.[414]

220. A number of victims are still forced to live in refugee centres in very poor and confined conditions.[415] One victim explains:

> There are about 180 families living in this centre. About 8 families would share a unit compromising of 8 rooms and only two toilets.[416]

221. All these results of the persecutory acts to which Miroslav Deronjić pleaded guilty are attributable to him, because he was aware of the substantial likelihood that such crimes would occur as an accepted result of his criminal conduct.

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[408] Exh. PS-19/4, para. 9.
[409] Exh. PS-19/7, para. 6.
[410] See also *Momir Nikolić* Sentencing Judgement, para. 107.
[411] Exhs. PS-19/1, para. 7; PS-19/3, para. 12; PS-19/5, para. 12.
[412] Exh. PS-19/1, paras 8, 11.
[413] Exhs. PS-19/4, para. 7; PS-19/6, para. 8.
[414] Exh. PS-19/7, para. 9 (emphasis added).
[415] Exhs. PS-19/3, para. 5; PS-19/6, paras 4-5.
[416] Exh. PS-19/3, para. 11.

3. Conclusion

222. In conclusion, evaluating the abovementioned circumstances, the Trial Chamber accepts the following factors as aggravating:

(i) The large number of civilians who were killed, subjected to the risk of being killed, forcibly displaced, and deprived of their property.

(ii) The Accused launched a meticulously planned attack on Glogova in order to facilitate the scheme of creating Serb-ethnic territories by forcefully displacing Bosnian Muslim population from the entire Municipality of Bratunac that was designed by the Bosnian Serb leadership already in 1991.

(iii) The Accused abused his capacity as President of the Crisis Staff of the Municipality of Bratunac when he ordered the attack of the village of Glogova.

(iv) The Accused ordered additional torching of houses immediately after the attack.

(v) The Accused accepted a statement given by Milutin Milošević on his behalf that deceivingly suggested safety to the Muslim population of Glogova prior to the attack. This exacerbated the vulnerability and defencelessness of the victims, who had been disarmed well before the attack, had offered no resistance and were not informed about their fate.

223. In conclusion, taking into consideration only the gravity of the crime and all the accepted aggravating circumstances, the Trial Chamber unanimously finds that only an extremely serious punishment could be imposed. There are, however, mitigating circumstances to which the Trial Chamber will now turn.

B. Mitigating Circumstances

224. The Prosecution submits that "mitigating circumstances relate to the assessment of a penalty but do not derogate the gravity of the crime" and that "it is more a matter of grace than a defence."[417]

225. The Defence submits that "[m]itigating circumstances need only be proven on the balance of probabilities and not beyond reasonable doubt" and that the Trial Chamber has a discretion "to consider any factors which it considers to be of a mitigating nature."[418]

[417] Prosecution Sentencing Brief, para. 41 quoting *Kambanda* Judgement, para. 56.

226. The Trial Chamber will give consideration to all mitigating factors presented by the Parties, but will focus mainly on (i) the guilty plea of the Accused and (ii) the substantial co-operation by the Accused.

1. Guilty Plea

(a) Submissions of the Parties

227. The Prosecution submits that the Accused's early guilty plea, i.e. before commencement of trial, is a mitigating factor because: "[o]ne, it obviates the need for victims to give evidence and saves considerable time and resource of this *ad hoc* Tribunal; two, it is important in establishing the truth about what happened; and three, it is a fundamental step in contributing to reconciliation."[419]

228. The Defence reiterates what has been stated by the Prosecution in respect of the early guilty plea by the Accused and adds that "Mr. Deronjić's admission of guilt demonstrates his sincerity and acceptance of responsibility for the criminal offences committed in Glogova on the 9th of May 1992". It continues by stating that the admission of guilt is important for the Tribunal in order to encourage people to tell the truth and that the "acceptance of responsibility for these crimes and his personal responsibility will contribute to rendering justice for the victims, to deterring others from committing similar crimes, and will provide the basis for reconciliation in a very sensitive area of Bosnia and Herzegovina."[420]

(b) Discussion

229. In order to make an assessment of the mitigating effect of the guilty plea, the Trial Chamber turns first to a discussion of the concept of a guilty plea or confession in different legal jurisdictions as well as plea bargaining, basing its analysis on the country reports tendered into evidence as part of the Sentencing Report prepared by Prof. Sieber and the Max Planck Institute.[421] Thereafter, the Trial Chamber will analyse the relevant jurisprudence of the Tribunal and the ICTR.

(i) Analysis of the country reports submitted by the Max Planck Institute

230. In those countries where a guilty plea is regulated by law or exists in practice, it is accepted as a mitigating factor leading to a reduction of the sentence to different degrees: in Canada, within

[418] Defence Sentencing Brief, para. 37 quoting *Simić* Sentencing Judgement, para. 40-41.
[419] Prosecution Closing Statement, T. 192; Prosecution Sentencing Brief, para. 47 quoting *Obrenović* Sentencing Judgement, para. 177.
[420] Defence Closing Statement, T. 231; Defence Sentencing Brief, paras 40-42.
[421] Exh. JS-17; see *supra* para. 22.

the sentencing range of each offence;[422] in China, either within the lower part of the prescribed sentencing range or even under this range;[423] in England, up to one-third of a sentence;[424] in Poland, up to the level agreed between the parties, but applicable only for misdemeanors when the penalty does not exceed ten years of imprisonment;[425] in Russia, by one-third, but only for crimes for which the punishment does not exceed ten years of imprisonment;[426] in the United States, a decrease of the offense level by two levels for the acceptance of responsibility, and additionally by one level for timely provision of complete information to the government about the offender's involvement in the offense or timely notification to the authorities of the intention to enter a plea of guilty.[427] However, in the majority of the countries covered by the study a guilty plea does not affect the maximum statutory penalty and does not apply to serious cases, e.g. first degree murder.[428]

231. There are primarily pragmatic grounds for reducing the sentence if a guilty plea results from the willingness of an offender to co-operate in the administration of justice.[429] Additional justifications for a reduction are remorse, acknowledgment of responsibility, and sparing the victims from testifying and being cross-examined.[430] In considering the reduction of a sentence, the relevant factor is the stage of proceedings at which the offender pleads guilty[431] and the circumstances in which the plea is tendered[432].

232. Similar provisions on guilty pleas or plea bargaining exist in other countries under survey, e.g., Argentina,[433] Brazil,[434] Chile,[435] and Italy.[436] However, these provisions are usually applicable

[422] Assuming the facts were not so horrific as to demand the maximum punishment. The sentence may be reduced as a result of a plea bargain, i.e. when the accused is convicted of a lesser charge than murder, Country Report Canada, pp. 4-5.
[423] The Procedure, which functionally resembles a guilty plea, is called a voluntary surrender and applies only for minor offenses. It means that a perpetrator after having committed an offense voluntarily tells the truth about his own offense and therefore helps the judicial organs to find the truth about the offense. Prior to 1997 the punishment varied only within the originally regulated range of sentences for this offense, e.g. within the lowest third of that range, Country Report China, pp. 3-4.
[424] Country Report England, p. 4. In Australia, up to 35% in Western Australia and between 10-25% in New South Wales, Country Report Australia, p. 4.
[425] A plea bargain became available only under the new Polish Criminal Code, Country Report Poland, p. 4.
[426] Country Report Russia, p. 3.
[427] Sentencing Guidelines 1997 Federal Sentencing Guideline Manual, Chapter 3, Part E, p. 280; see also Country Report U.S.A.: The judge may impose a sentence more or less severe than the guideline range, i.e. "depart" from the guideline sentencing range. A departure is justified by the existence of an aggravating or mitigating circumstance which is not adequately taken into consideration in the guidelines, p. 5.
[428] See also Country Report Australia, p. 6; Country Report Canada, p. 4; Country Report England, p. 9.
[429] Country Report Australia, p. 4.
[430] Country Report Canada, p. 5.
[431] Country Report Australia, p. 4; Country Report England, p. 4.
[432] Country Report England, p. 4.
[433] If there is an agreement between the prosecutor and the accused with regard to offences with a sentence inferior to six years and by which the suspect/accused recognizes the existence of the conduct and his/her participation in it, the sentence finally imposed by the Tribunal *must* not exceed the one demanded by the Prosecutor (and accepted by the accused), Country Report Argentina, p. 3.
[434] The procedure similar to plea bargaining is called a criminal transaction, which was introduced in 1995. It is admitted, however, only in less serious offenses, in which the maximum possible imprisonment does not exceed two years, Country Report Brazil, p. 3.

for minor crimes and therefore cannot be taken into account in the present case. In Germany, a "consensual solution" (*Verständigung im Strafverfahren*) takes place only under the control of the Judge(s) in order to avoid any abuse or unsupported confession.[437]

233. In some countries under survey, the mere confession – as opposed to a guilty plea that enables the Trial Chamber immediately to enter a finding of guilt and to instruct the Registrar to set a date for the sentencing hearing without any further trial proceedings – is regarded as a mitigating factor. In Belgium, a voluntary confession, if accepted by the court, leads to a mandatory reduction of the sentencing range.[438] In Chile, a confession is a mitigating factor if the responsibility of the accused could only be established through his spontaneous confession *or* because he collaborated in the interests of justice.[439] In Finland, any effort of the accused to cooperate with the judicial organs in order to help solving the crime itself and/or its consequences might be taken into account as a mitigating factor.[440] In Germany, a credible confession, even if not made out of genuine feelings of remorse and guilt, but supplied for tactical reasons at trial, must be considered as mitigating in every case, although not necessarily "significantly mitigating".[441] In Spain, a confession by the perpetrator prior to knowing that legal proceedings are being taken against him, or attempts at restitution before or during the procedure are regarded as mitigating factors.[442] In Sweden, a confession after apprehension can only attract mitigation if there is another factor requiring a milder sentence.[443] In Greece, a confession as such is not recognized as a mitigating factor, although it may be indirectly taken into account in the court's assessment of the Accused's showing of remorse and willingness for reparation.[444]

(ii) Jurisprudence of the International Tribunals

[435] The newly introduced (on 12 October 2000) procedure of *procedimiento abreviado* (abbreviated trial) has a system with bargaining elements. The defendant agrees to have his case put on trial under the abbreviated procedure and accepts the facts as established in the indictment. In the event that his guilt is established through this procedure he receives a sentence fixed previously by the public prosecutor. Nevertheless this procedure is limited only to those cases where the previously fixed final sentence is below 5 years; therefore this procedure only applies to cases where the minimum sentencing range is lower than 5 years, Country Report Chile, p. 4.
[436] The procedure of so-called "*patteggiamento*" involves a defendant and a public prosecutor applying to the judge for a sentence which they agree upon amongst themselves. A sentence reduced by up to one-third may be imposed if this sentence does not exceed five years imprisonment, Country Report Italy, p. 5; Cf. Italian Code of Penal Procedure, Article 444 as amended by the Law of 12 June 2003, No 134.
[437] BGH, BGHSt 43, p. 195 (198).
[438] Life imprisonment will be commuted to fixed-term imprisonment, Country Report Belgium, pp. 3-4.
[439] Since 2002 the substantive collaboration of the accused to the clarification of the facts is now a specific mitigating factor, Country Report Chile, p. 3.
[440] Country Report Finland, p. 3.
[441] Mitigation for confession is not applied if a mandatory sentence of life imprisonment is provided, Country Report Germany, pp. 2-3 and 5.
[442] Country Report Spain, p. 3.
[443] The fact of a voluntary surrender may lead to a less severe sentence than the sentence set out for that offence, Country Report Sweden, p. 5.
[444] Country Report Greece, pp. 6-7.

234. In the jurisprudence of the Tribunal and the ICTR, several reasons have been given for the mitigating effect of a guilty plea, such as the showing of remorse[445] and repentance,[446] the contribution to reconciliation[447] and establishing the truth,[448] the encouragement of other perpetrators to come forth,[449] and the fact that witnesses are relieved from giving evidence in court.[450] Furthermore, Trial Chambers took into account that a guilty plea saves the Tribunal the "effort of a lengthy investigation and trial",[451] and special importance was attached to the timing of the guilty plea.[452]

(c) Conclusion

235. The Trial Chamber accepts this jurisprudence when considering the appropriate sentence.

236. The Trial Chamber finds that, in contrast to national legal systems where the reasons for mitigating a punishment on the basis of a guilty plea are of a more pragmatic nature,[453] the rationale behind the mitigating effect of a guilty plea in this Tribunal is much broader, including the fact that the accused contributes to establishing the truth about the conflict in the former Yugoslavia and contributes to reconciliation in the affected communities. The Trial Chamber recalls that the Tribunal has the task to contribute to the "restoration and maintenance of peace" and to ensure that serious violations of international humanitarian law are "halted and effectively redressed".[454]

237. In the present case the Trial Chamber recognises the importance of Miroslav Deronjić's guilty plea as his acceptance of individual criminal responsibility. The Trial Chamber recalls the final word of Miroslav Deronjić at the Sentencing Hearing, where he stated:

> I accepted responsibility for Glogova, and I did not accuse anyone of the things that I am guilty of. I did not understand my guilt only in the legal sense, but in a broader, human sense. Even the things that I did not understand in the best way at the time or the things that I did not know, I was obliged to know and understand. Because I know, Your Honours, that I am capable of it.
>
> That is why my guilt is greater and more profound. I am aware of it completely, and that is why I admitted it. When I realised what really happened in Glogova, and I understood that for the first time completely when I was here listening to certain testimonies of survivors in other cases, I decided without much thinking to admit my guilt because what is my life in relation to the lives of those innocent victims? What is its value? And what can we measure it by? I did not calculate in

[445] *Plavšić* Sentencing Judgement, para. 70.
[446] *Ruggiu* Judgement and Sentence, para. 55. See also *Jelisić* Trial Judgement, para. 127: "[A]lthough the Trial Chamber considered the accused's guilty plea out of principle, it must point out that the accused demonstrated no remorse before it for the crimes he committed."
[447] *Plavšić* Sentencing Judgement, para. 70; *Obrenović* Sentencing Judgement, para. 111.
[448] *Momir Nikolić* Sentencing Judgement, para. 149.
[449] *Erdemović* 1998 Sentencing Judgement, para. 16.
[450] *Momir Nikolić* Sentencing Judgement, para. 150; *Todorović* Sentencing Judgement, para. 80.
[451] *Erdemović* 1998 Sentencing Judgement, para. 16; *Todorović* Sentencing Judgement, para. 81.
[452] *Sikirica et al*. Sentencing Judgement, para. 150. In the *Simić* Sentencing Judgement, "some credit" was given for the guilty plea despite its lateness, para. 87.
[453] *See supra* subsection IX. B. 1. (b) (i)
[454] Security Council Resolution 827 (1993), S/3217, 25 May 1993.

> any sense, particularly not in relation to a sentence which may be passed down. I did not think at that time, nor am I thinking about the sentence today. I have too many years and too much guilt to permit myself to think about that.
>
> I will accept my punishment in the same way that I accepted my guilt, aware that it cannot in any way be greater than the one I passed on myself, having permitted myself to be in the position that I am in and of which I am ashamed, aware that no punishment can [...] settle my debts to the living and the dead.[455]

238. The Trial Chamber accepts that his guilty plea tends to contribute to the process of reconciliation in Bratunac in particular and in Bosnia and Herzegovina in general. The Trial Chamber, in particular, refers to the Prosecution witnesses who have expressed their opinion regarding Miroslav Deronjić's guilty plea. One of the witnesses stated:

> I saw Miroslav Deronjić plead guilty on the television. The Bosnian Muslims in the community that I have spoken to, felt relieved because he admitted his guilt. This is a positive thing and can heal the wounds of the community provided that he is punished adequately. A mild punishment however would not serve any purpose; he does not deserve any compassion as he did not show any, not only to people of Glogova but also to the other Muslim Bosnians of Bratunac and Srebrenica.[456]

239. Another witness stated that:

> I saw Miroslav Deronjić plead guilty and I felt glad that he admitted his guilt. I do not however understand how is it possible to give him any lenient term of imprisonment after what he himself has confessed.[457]

240. The Trial Chamber in this respect accepts the submission by the Defence on the importance of the admission of guilt and that the "most important is to prove that a crime was committed, and therefore to unmask the policy on any of the three sides which led to this crime. In this sense, a sentence is a relative category because [...] there is no sentence that can give the victims full satisfaction for their losses."[458]

241. Finally, the Trial Chamber concludes that Miroslav Deronjić's guilty plea and his readiness to testify in other trials assists the Tribunal in its search for the truth and prevents historical revisionism. It also spares the victims and witnesses from being required to come and testify about painful and traumatic events. The Trial Chamber agrees that the Accused's early guilty plea contributes to the public advantage and saves the Tribunal's costs, however, the latter having not a significant mitigating effect.

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[455] Final word of the Accused at the Sentencing Hearing, T. 246.
[456] Exh. PS-19/1, para. 14.
[457] Exh. PS-19/4, para. 10.
[458] The Defence presents here the common standpoint which was expressed by victims at a conference on admission of guilt before the Tribunal and its influence on the victims which was held in Sarajevo on 5 and 6 December 2003 and was organised by the Sarajevo Human Rights Centre and the Outreach Program of this Tribunal. Defence Closing Statement, T. 233.

2. Substantial Co-operation by the Accused

(a) Submissions of the Parties

242. The Prosecution submits that "substantial co-operation depends on the extent and quality of the information provided by the accused, and can include the prior giving of evidence on behalf of the Prosecution, the provision of new information replete with identities and names of perpetrators, substantiation and corroboration of existing information, and future cooperation, including testifying on behalf of the Prosecution."[459] The Prosecution further submits that the co-operation provided by Miroslav Deronjić to the Prosecutor has been "substantial within the meaning and the intent of [the Rule 101(B) (ii) of the Rules]."[460] A term of ten years imprisonment was conditionally recommended by the Prosecution based on Deronjić's "full and substantial co-operation"[461] and "precisely because of the level and the extent of Mr. Deronjić's co-operation".[462] According to the Prosecution, from 1997 through 2002, Deronjić provided his statements "without any promises of reward or benefit."[463]

243. The Defence reiterates the Prosecution's submissions in respect of the co-operation by the Accused and adds that the Accused has passed all the stages of the co-operation process, starting as a potential witness, then as a suspect, and finally as an accused.[464] The Defence submits that the Accused provided information "under substantial risk for his own safety and the safety of his family", and that "the extent, quality, and sincerity of the Accused's co-operation […] transcends anything yet seen before the Tribunal."[465] Finally, the Defence concludes that "[p]ractically Miroslav Deronjić is a crown witness."[466]

(b) Discussion

244. The Trial Chamber reiterates the conclusions reached by another Trial Chamber in the recent sentencing judgement of Ranko Češić, where it was held that "[t]he extent and quality of the information provided to the Prosecution are factors to take into account when determining whether the co-operation has been substantial."[467] Thereby, the Trial Chamber, "in the absence of any information to the contrary", relied on the Prosecution's assessment of Češić's degree of co-

[459] Prosecution Closing Statement, T. 194; Prosecution Sentencing Brief, para. 48.
[460] *Ibid.; Ibid*., para. 50.
[461] Prosecution Sentencing Brief, para. 49 quoting the Plea Agreement, para. 11(a)
[462] Prosecution Closing Statement, T. 195.
[463] *Ibid.*, T. 195-96; see however *supra* para. 32.
[464] Defence Closing Statement, T. 236; Defence Sentencing Brief, paras 64, 66, 69.
[465] *Ibid.; Ibid*., para. 68.
[466] Defence Closing Statement, T. 237.
[467] *Češić* Sentencing Judgement, para. 62.

operation as well as on his commitment to testify if called by the Prosecution. It concluded that this substantial co-operation would be taken into account in determining the sentence.[468]

245. The Trial Chamber in the present case follows a similar approach and notes that the facts supporting the submission on the Accused's co-operation, which are laid down in the now following subsections (i) through (iv) of the Judgement, are based on the Prosecution's assessment of the Accused's testimonies and his provision of any additional information. The Trial Chamber stresses again that it is not seized of the entire evidence emanating from the Accused's co-operation and it is not for this Trial Chamber to assess the general and forensic value of the Accused's testimonies as a witness in other proceedings before this Tribunal. However, the Trial Chamber finds that the early readiness and commitment by the Accused to provide such co-operation has to be taken seriously into consideration. In conclusion, taking all above mentioned factors into account, the Trial Chamber accepts the submissions of both Parties that the co-operation by the Accused was substantial and therefore regards it as a mitigating factor in determining the Accused's sentence.

(i) Provision of unique and corroborative information to the Prosecution

246. Both Parties in this case submit – and the Trial Chamber fully accepts and seriously takes into consideration when determining the appropriate sentence – that Miroslav Deronjić provided unique information to the Prosecution, including information which corroborates evidence that is already in the Prosecution's possession. Miroslav Deronjić started his co-operation with the Prosecution as early as 1997 as a potential witness. From December 1997 to April 2002 the Accused held six interviews with the Prosecution.[469] While in detention the Accused conducted 11 interviews with the Prosecution in June and July 2003.[470] The latter were conducted, *inter alia*, in preparation of the guilty plea by the Accused and under the conditions of the document titled "Understanding of the Parties".[471]

(ii) Testimony of Miroslav Deronjić in other proceedings before the Tribunal

247. The Trial Chamber takes into consideration the fact that the Accused has testified in other proceedings before this Tribunal, namely as a court witness in the *Momir Nikolić* sentencing hearing, the *Krstić* appeal and the *Blagojević et al.* trial, and as a Prosecution witness in the *Milošević* and *Krajišnik* trials.

[468] *Češić* Sentencing Judgement, para. 62.
[469] Exhs. DS-1 through DS-6; see *supra* para. 33 and footnote 68.
[470] Exhs. DS-7/1 through DS-7/11; see *supra* para. 33 and footnote 68.
[471] Exh. JS-15; see *supra* para. 32.

248. In preparation for his testimony in other proceedings, the Accused provided an extensive and lengthy witness statement of 71 pages on 25 November 2003, in which he described events ranging over a period of almost five years, from 1990 until 1995.[472]

249. As part of the Plea Agreement, the Accused "agrees to testify truthfully in any trials, hearings and proceedings before the Tribunal where the Prosecutor deems his evidence may be relevant, whether those matters are presently before the Tribunal or may be in the future."[473]

250. The Trial Chamber takes into consideration the Prosecution submission that Miroslav Deronjić agreed to testify "in other cases pending before this Tribunal as well as cases where persons [...] are fugitives".[474] The Trial Chamber relies upon the evaluation given by the Prosecution and acknowledges that, in the view of the Prosecution, Miroslav Deronjić has co-operated substantially.

251. However, the Trial Chamber has also to take into account the view of another Trial Chamber in the *Momir Nikolić* case, stating:

> [...] it is for the Trial Chamber to make an assessment of the credibility of Momir Nikolić, which ultimately impacts upon the value of such co-operation. Of primary importance to the Trial Chamber is the truthfulness and veracity of the testimony of Momir Nikolić in the *Blagojević* Trial, as well as how forthcoming the information was.[475]

252. In this respect the Trial Chamber opines that it is not for it to assess evidence in other proceedings before this Tribunal where Miroslav Deronjić acted as a witness, and some testimonies in other proceedings are without any context to the case before this Trial Chamber, which makes it impossible to assess his credibility as a witness in general. However, the Trial Chamber recalls that the Accused himself acknowledged that he had provided partly untruthful statements in his prior interviews with the Prosecution.[476]

253. As opposed to his testimonies in other proceedings, in the present case all material discrepancies and inconsistencies, which, according to the Accused's own admission, occurred "due to my mistake" [477], were clarified and resolved during his own testimony in this case on 27 January 2004 and by the Parties during the Continued Sentencing Hearing primarily based on agreed facts.

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[472] Exh. DS-8 and DS-8a; see *supra* para. 35 and footnote 68.
[473] Plea Agreement, para. 12.
[474] Prosecution Closing Statement, T. 211-12.
[475] *Momir Nikolić* Sentencing Judgement, para. 156.
[476] *Blagojević et al.* Trial, Exh. PS-12, T. 6182-83, 6190-91, 6327, 6407; See also Sentencing Hearing, T. 106-107.
[477] Continued Sentencing Hearing, T. 339.

(iii) Provision of original documentation to the Prosecution

254. The Trial Chamber takes into account the fact that the Accused has provided the Prosecution with two volumes of "important original documentation in the form of minutes of meetings that took place in Bratunac in the SDS from 1990 to 1995".[478] Extracts were admitted into evidence in this case.[479] The Trial Chamber accepts the Prosecution submission, that these documents are important because "they provide us with insight into the manner in which the Crisis Staff and the SDS in Bratunac implemented, for example, the variant A and variant B instructions, the manner in which the Crisis Staff operated in general."[480] In addition to that, the Accused provided the Prosecution "with four original documents" relating to "war commissions and the creation of war commissions", some of them signed by Radovan Karadžić.[481] The Trial Chamber accepts this fact and takes it into account for sentencing purposes.

(iv) Identification of new crimes and perpetrators unknown to the Prosecution

255. The Trial Chamber accepts the Prosecution submission that Miroslav Deronjić has provided the Prosecution "with specifics about a crime that was committed in Bratunac in 1992; specifically, the arrest of Bosnian Muslims from Srebrenica in Montenegro", including identification of people associated with that.[482] The Accused has also provided the Prosecution with the identities of perpetrators who were unknown to the Prosecution.[483] The Trial Chamber takes this factor into account for sentencing considerations.

3. Contribution to Prevention of Revisionism of Crimes Committed in Srebrenica

(a) Submissions of the Parties

256. The Prosecution submits that "acknowledging [that] these massacres occurred [in Srebrenica in 1995] remains very difficult for many people in the Republika Srpska and remains a significant impediment to reconciliation."[484] The Prosecution states that the guilty pleas by Dragan Obrenović and Momir Nikolić and their public acknowledgement that the massacres occurred have contributed to the process of reconciliation as well did the public acknowledgement by Miroslav Deronjić, because he provided information "about those same events [which] can only contribute to the

[478] Prosecution Closing Statement, T. 212.
[479] Exhs. JS-29 and JS-29/a through JS-33 and JS-33/a, respectively.
[480] Prosecution Closing Statement, T. 212.
[481] *Ibid*.
[482] *Ibid.*
[483] *Ibid*.
[484] *Ibid.*, T. 204.

process of establishing the truth and advancing reconciliation."[485] The Prosecution submits that "in the Republika Srpska, there is still a considerable effort to deny these events at Srebrenica."[486]

(b) Discussion

257. The Trial Chamber admitted into evidence a document which represents one of the worst examples of revisionism in relation to the mass executions of Bosnian Muslims committed in Srebrenica in July 1995. This document, titled "Report about Case Srebrenica (the First Part)" was prepared by the Documentation Centre of Republika Srpska, Bureau of Government of Republika Srpska for Relation with ICTY on 1 September 2002.[487] Throughout this report reference is made to the "alleged massacre"[488] and this misrepresentation of the historical events culminates in the final conclusion of this report, which reads:

> […] the number of Muslim soldiers who were executed by Bosnian Serb forces for personal revenge or for simple ignorance of international law […] would probably stand less than 100.[489]

258. Another example of revisionism is the "Declaration of the Republika Srpska Civilian Affairs Committee for Srebrenica" No. 07-27/95, dated 17 July 1995,[490] which was signed by the Accused in this case, Miroslav Deronjić, Civil Affairs Commissioner for Srebrenica, Nesib Mandžić, Representative of the Civilian Authorities of the Enclave of Srebrenica, and Major Franken, an UPROFOR Representative, Dutch Battalion Commander, at the time. This document in its operative part states that

> - The civilian population can remain in the enclave or evacuate, dependant upon the wish of each individual;
> - in the event that we wish to evacuate it is possible for us to choose the direction of our movement and have decided that the entire population is to evacuate to the territory of the County of Kladanj;
> - It has been agreed that the evacuation is to be carried out by the Army and Police of the Republic of Srpska, supervised and escorted by UNPROFOR.
> […]
> During the evacuation there were no incidents on either of the sides and the Serb side has adhered to all the regulations of Geneva Conventions and the international war law, as far as convoys actually escorted by UN forces are concerned.[491]

259. The Trial Chamber accepts the submission by the Prosecution that Miroslav Deronjić with the encouragement of Radovan Karadžić prepared this document, whose "contents [according to the Accused] did not correspond with the truth" and that it was done in order "to mislead the

[485] *Ibid*.
[486] *Ibid*.
[487] Exh. PS-23.
[488] *Ibid.,* see e.g. p. 27.
[489] *Ibid.,* p. 34.
[490] Exh. PS-24 for B/C/S and PS-24a for the English version.
[491] Exh. PS-24a.

international community".[492] Consequently, the Trial Chamber agrees that the Accused's admission is important for two reasons: 1) "[it is] important to diffuse any suggestion in trials that are ongoing or will be coming up in the future about Srebrenica that the Bosnian Muslims left the enclave because of their own free will" and 2) "[it is] important to negate the arguments of future revisionists that might use this document for the proposition that the forcible displacement of the Bosniaks from Srebrenica was a mere humanitarian evacuation conducted in accordance with the principles of international law."[493]

260. In conclusion, the Trial Chamber accepts the importance of the Accused's statement about details of the mass execution of Bosnian Muslims committed in Srebrenica in July 1995 and about individual persons' roles in it, and that he prepared the aforementioned document,[494] leaving, however, the final assessment to those Chambers seized of these crimes. The Trial Chamber agrees that the Accused's and others' acknowledgement of these crimes serves two purposes: it establishes the truth and it undercuts the ability of future revisionists to distort historically what happened.[495] Therefore, the Trial Chamber attributes significant weight to this factor in mitigating Miroslav Deronjić's sentence.

4. Remorse

(a) Submissions of the Parties

261. Both Parties agree that a genuine and sincere expression of remorse is a relevant mitigating factor to be taken into account in determining an appropriate sentence.[496] The Prosecution submits that it is not aware of "any public expressions of remorse by the accused for the crimes for which he is responsible"[497], however, it acknowledges that "Deronjić has made expressions of remorse to investigators from the International Tribunal."[498]

262. In referring to the sentencing judgement in *Banović*, where it was held that "the statements made by the Accused, both during the interviews with the Prosecution and at the Sentencing Hearing, are expressions of sincere remorse"[499], the Defence submits that Deronjić "expressed his deepest remorse" during the interviews with the Prosecution.[500]

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[492] Prosecution Closing Statement, T. 210.
[493] *Ibid.,* T. 210-11.
[494] *Ibid.,* T. 205.
[495] *Ibid.*
[496] Prosecution Sentencing Brief, para. 52; Defence Closing Statement, T. 234; Defence Sentencing Brief, para. 43.
[497] Prosecution Sentencing Brief, para. 52.
[498] *Ibid.*, footnote 54.
[499] Defence Sentencing Brief, para. 44 quoting *Banović* Sentencing Judgement, para. 72.
[500] Defence Closing Statement, T. 234.

(b) Discussion

263. The Trial Chamber accepts that the Accused expressed his remorse publicly during the Sentencing Hearing. The Trial Chamber, in particular, recalls the following statement by the Accused:

> Your Honours, I bow to the spirit of innocent victims in Glogova. Everything that I did in this Tribunal, for whatever it's worth, I dedicate to them in the hope that it will at least somewhat alleviate the pain of their dear ones. I am familiar with that pain because I also carry that pain. I regret the expulsion that I committed, and I express my remorse about all the victims of this war, no matter in which graveyards they lie. I apologise to all those […] to whom I caused sorrow and whom I let down.[501]

264. Additionally, the Trial Chamber accepts the submission by the Defence that Deronjić's remorse resulted in his admission of guilt, his substantial co-operation with the Prosecution and his public expression of remorse,[502] both during the Sentencing Hearing and in the interviews with the Prosecution as reflected in the records of these interviews.[503] Therefore, the Trial Chamber takes it into consideration as a mitigating factor in determining the Accused's sentence.

5. No Opportunity for Voluntary Surrender

(a) Submissions of the Parties

265. The Defence submits that voluntary surrender is a mitigating factor that "may inspire other indictees to similarly surrender themselves, thus enhancing the effectiveness of the work of the Tribunal."[504] The Defence maintains that "Deronjić was arrested in front of his home in Bratunac on 6 July 2002 less than 72 hours from the moment the Indictment against him had been issued and before he was even aware that the Indictment against him existed."[505] Thus, he was deprived of the opportunity to voluntarily surrender and thereby receive credit for it.[506] The Defence further argues that in his interview with the Prosecution given as a suspect, "Deronjić expressed his willingness and readiness to come voluntarily to the Hague and face charges against him."[507] The Defence asserts that Deronjić not only complied with the summons of the Prosecution to be interviewed by the investigators[508] but also expressed his willingness to appear voluntarily whenever so

[501] Deronjić Final Word, Sentencing Hearing, T. 247.
[502] Defence Closing Statement, T. 234.
[503] See also Exh. DS-4, p. 6-7 and Exh. DS-7/11, pp. 16-17.
[504] Defence Sentencing Brief, para. 47 quoting *Kunarac et al.* Trial Judgement, para. 868.
[505] Defence Sentencing Brief, para. 48 (footnotes omitted).
[506] *Ibid.*, para. 54; Defence Closing Statement, T. 235.
[507] Defence Sentencing Brief, para. 49 referring to an interview of 1 July 1998, pp. 3-4, Exh. DS-3.
[508] *Ibid.,* para. 51 referring to an interview of 12 March 2001, p. 1, Exh. DS-5.

requested.[509] The Defence submits that the Accused's willingness to surrender voluntarily has been clearly demonstrated and should therefore be considered as a mitigating factor.[510]

(b) Discussion

266. The jurisprudence of both Tribunals recognises the fact of voluntary surrender as a mitigating factor.[511] The Trial Chamber accepts that Miroslav Deronjić was arrested even though he had offered to surrender voluntarily already the first time when he was informed of his status as a suspect. The Trial Chamber considers the Accused's willingness to surrender voluntarily, as expressed in the records of an interview with the Prosecution investigators,[512] to be a factor in mitigation of his sentence.

267. However, as for the significance of this factor for the sentencing considerations, the Trial Chamber reiterates the conclusions reached by the Trial Chamber in *Obrenović*, where it stated:

> […] since the Trial Chamber would have to speculate in order to determine whether Dragan Obrenović *would* in fact have voluntarily surrendered if given the opportunity, the Trial Chamber attached little weight to this factor.[513]

The Trial Chamber concurs with this conclusion.

6. The Accused's Character, Behaviour and Possibility for Rehabilitation

(a) Submissions of the Parties

268. The Defence submits that until the time of the offence, the Accused led an honest and honourable, professional and social life. He displayed no prior criminal, aggressive or discriminatory behaviour, had no criminal record and was under no criminal investigation.[514] He praised democracy and tolerance.[515] The Defence states that Deronjić is a family man, being a father of four children, three of whom are minors.[516]

[509] *Ibid.,* referring to an interview of 8 April 2002, p. 2, Exh. DS-6.
[510] *Ibid.,* para. 56; Defence Closing Statement. T. 235.
[511] *Serushago* Appeal Judgement, para. 24, *Plavšić* Sentencing Judgement, para. 84. *Kupreškić* Appeal Judgement, para. 430.
[512] This willingness to come voluntarily, if indicted, to the Tribunal was again conveyed by the Accused to Dr. Najman. Najman Report, Exh. JS-16a, p. 11.
[513] *Obrenović* Sentencing Judgement, para. 136 (emphasis in the original).
[514] Defence Sentencing Brief, para. 77; Defence Closing Statement, T. 217-18, 237.
[515] *Ibid.; Ibid*., T. 218, 220, 237.
[516] *Ibid.,* paras 78, 80; *Ibid*., T. 237.

269. The Defence further asserts that "[f]rom the moment of Deronjic's arrest, he has always shown co-operation and respect for the Trial Chamber and the Prosecutor" and "[w]hile at the UNDU he has fully complied with the terms and conditions imposed upon him."[517]

270. The Defence submits that "[t]he overall behaviour of Mr. Deronjić since 1997 to this day, indicates that the rehabilitation process is well underway"[518] and "[i]f additional conditions are provided ... this process will be speeded up ... bearing in mind the positive character features of the accused."[519] The Defence further asserts that the same standard as applied in the *Obrenović* case, i.e. "affirmative steps toward rehabilitation are a factor in mitigation of sentence"[520], should be applicable to Miroslav Deronjic, "bearing in mind his genuine remorse expressed on numerous occasions during his contacts with OTP Investigators".[521]

(b) Discussion

271. The Trial Chamber finds that while at the beginning of his political career in 1990, Miroslav Deronjić praised democracy and called for a multicultural and tolerant society,[522] he later, already in 1991, chose to subscribe to the discriminatory policy promulgated by the Bosnian Serb leadership, which resulted in ethnic cleansing not only in his own Municipality of Bratunac, where he was born and lived until his arrest in 2002. One culmination of his criminal conduct was the commission of the long-planned crime of Persecutions on 9 May 1992 in Glogova. Miroslav Deronjić, however, accepted these allegations in public knowing about the consequences for him and his family.

272. Further, the Trial Chamber notes that, according to his own testimony, Miroslav Deronjić, on one hand, immediately took steps to prevent further violent criminal behaviour of the "volunteers" in Bratunac by issuing a decision at the Bratunac Crisis Staff on 13 May 1993, which ordered the expulsion of "volunteers" from Bratunac.[523] On the other hand, the night prior to that decision, Miroslav Deronjić took part in the transfer of 400 civilians,[524] who were detained in the hangar and were meant to be forcibly displaced out of Bratunac pursuant to the plan adopted at the

[517] Defence Sentencing Brief, para. 82.
[518] *Ibid.,* para. 85.
[519] Defence Closing Statement, T. 238.
[520] Defence Sentencing Brief, para. 83 quoting *Obrenović* Sentencing Judgement, para. 146.
[521] Defence Sentencing Brief, para. 85.
[522] The Trial Chamber here refers to the speech held by Miroslav Deronjić on 1 September 1990 at the inaugurating session of the SDA in Bratunac. Exhs. DS-13/11 and DS-13/11-A.
[523] This document, which the Accused stated was in his possession in *Milošević* trial: "[…] I have a document dated the 13th of May that testifies that I expelled volunteers from Bratunac. I have a document about this. The JNA refused to do it, so I did it myself." (Exh. DS-11, T.29759), was not tendered into evidence and the existence of this document was accepted by the Trial Chamber as an agreed fact. Continued Sentencing Hearing, T. 329-30. See *supra* para. 111. See also Exhs. JS-37/a and JS-38/a.
[524] JS-39/a. List of 400 persons who were driven from Bratunac to Pale. See *supra* para. 110.

Crisis Staff meeting on 8 May 1992.[525] Indeed, the Accused pleaded guilty to the fact that at the Crisis Staff meeting on 8 May 1992, chaired by him, the Accused stated himself that "if everything went well with the Glogova operation, the operation to permanently remove Bosnian Muslims would continue in the following days in the town of Bratunac and the communities of Voljavica and Suha", and that this decision was adopted.[526] The 400 civilians were transferred during the night of 12 and 13 May 1992 from Bratunac to Pale, the headquarters of the Bosnian Serb leadership at the time,[527] and their fate remains unclear until the present day.

273. The Trial Chamber also takes into account the behaviour and demeanour of Miroslav Deronjić at the UNDU, which was described in the McFadden Report:

> During this period [Deronjić] has shown respect for the Rules of Detention, management and staff alike. He has integrated well with his fellow detainees and his presence has a positive effect on the group. He is intelligent and well understands his position as a detainee.[528]

However, the Trial Chamber agrees and follows the conclusions reached by the Trial Chamber in *Momir Nikolić*, where it was stated that:

> While [comportment in the UNDU] has been recognised as a mitigating factor in numerous cases before this Tribunal, the Trial Chamber recalls that all accused are expected to comport themselves appropriately while at the UNDU; failure to do so may constitute an aggravating factor. Accordingly, this Trial Chamber will not accord significant weight to this factor.[529]

274. In *Češić,* the Trial Chamber came to the following conclusion when discussing good character of the accused as a mitigating factor:

> The evidence and the Factual Basis show that Ranko Češić was capable of both benevolent and criminal behaviour at the same time. On the balance of probabilities, the Trial Chamber cannot conclude from the evidence presented that Ranko Češić was of a genuine good character, so as to allow this good character to be taken into consideration as a mitigating factor.[530]

275. For all the above mentioned reasons, this Trial Chamber comes to the conclusion that, on the balance of probabilities, the facts presented above on character and behaviour can be seen neither as mitigation nor as aggravating factors.

7. General Conclusion

276. Considering all the above-mentioned mitigating circumstances together and giving particular importance to such factors as the guilty plea and the substantial co-operation by the Accused, the Trial Chamber is convinced that a substantial reduction of the sentence deserved for the crimes as such is warranted.

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[525] See *supra* paras 86, 107-108.
[526] Factual Basis, para. 29; see also *supra* para. 86.
[527] Deronjić Testimony, T. 164; see also *supra* para. 110.
[528] Exh. DS-13/10.

X. DETERMINATION OF SENTENCE

A. Submissions of the Parties

277. The Prosecution stated that, considering the nature of the crime and the victims' indescribable suffering, the acts for which the Accused bears responsibility merit the severest of sentence. However, based on the existence of significant mitigating circumstances, the Prosecution asks for the imposition of a sentence of lesser magnitude.[531] Consequently, the Prosecution recommended a term of imprisonment of ten years,[532] with the caveat that the recommendation was contingent on the Accused's "full and substantial co-operation with the Office of the Prosecutor".[533] This submission forms part of the Plea Agreement between the Parties. The Prosecution has later acknowledged that the Accused has indeed co-operated in a substantial manner.[534] Additionally, the Prosecution took into account the guilty plea of the Accused[535] and his acceptance of responsibility,[536] when recommending the sentence.

278. The Defence submits that a sentence of not more than six years of imprisonment is an appropriate sentence for the Accused. In this, the Defence refers to acts in mitigation[537], relying above all on the Accused's co-operation with the Prosecution as an especially mitigating circumstance[538]. The Defence argues that:

> 1) by substantial co-operation he is contributing to the discovery of the truth. […]
>
> 2) Mr. Deronjić's co-operation will lead to the establishment of the guilt of the actual perpetrators and by doing so, will, at least in part, repair the damage resulting from the crime, and
>
> 3) his acknowledgement of the facts and admission of guilt support the Tribunal in achieving its fundamental goals: establishing the truth, rendering justice to victims, deterring further crimes, (re)affirming the rule of law and contributing to peace, stability and reconciliation in the region.[539]

279. Furthermore, the Defence adds that the Accused's personality and character should be taken into account as well as his progressing rehabilitation process.[540]

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[529] *Momir Nikolić* Sentencing Judgement, para. 168; see also *Češić* Sentencing Judgement, para. 86.
[530] *Češić* Sentencing Judgement, para. 87.
[531] Prosecution Closing Statement, T. 191-92.
[532] Prosecution Sentencing Brief, para. 61.
[533] Plea Agreement, para. 11 (a).
[534] Prosecution Sentencing Brief, para. 50; Prosecution Closing Statement, T. 194-213.
[535] *Ibid*., paras 42-47; *Ibid*., T. 192.
[536] Prosecution Closing Statement, T. 192.
[537] Defence Sentencing Brief, paras 88-89.
[538] Defence Closing Statement, T. 237; Continued Sentencing Hearing, T. 338.
[539] Defence Sentencing Brief, para. 89.
[540] Defence Closing Statement, T. 238.

B. Discussion and Conclusion

280. Having balanced the gravity of the crimes and aggravating factors against the substantial mitigating factors as presented by the Parties and taken into account the aforementioned goals of sentencing, the Trial Chamber, by majority, accepts the recommendation given by the Prosecution.

C. Credit for Time Served Since Arrest

281. Pursuant to Rule 101(C) of the Rules, "credit shall be given to the convicted person for the period […] during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal."

282. The Trial Chamber regards 06 July 2002, the date of the factual deprivation of liberty of the Accused, as the decisive date and recognizes that the Accused is entitled to credit for all the days since that date.

XI. DISPOSITION

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments of the Parties, the Trial Chamber

HAVING HEARD the guilty plea of Miroslav Deronjić, and

HAVING ENTERED A FINDING OF GUILT for the crimes contained in the charge of Persecutions in the Second Amended Indictment,

HEREBY ENTERS A SINGLE CONVICTION against Miroslav Deronjić for **Persecutions**, a Crime against Humanity,

incorporating:

the attack on the village of Glogova,

the killing of Bosnian Muslim civilians in Glogova,

the forcible displacement of Bosnian Muslim civilians of Glogova from the Municipality of Bratunac,

the destruction of an institution dedicated to religion (the mosque in Glogova), and

the destruction of Muslim civilian property in Glogova, and

SENTENCES by majority, Judge Schomburg dissenting, **Miroslav Deronjić to 10 years of imprisonment** and

STATES that, pursuant to Rule 101 (C) of the Rules, Miroslav Deronjić is entitled to credit for the period during which he is detained in custody, calculated from the date of his deprivation of liberty, i.e. the sixth of July 2002, including any additional time he may serve pending the determination of an appeal, if any.

Pursuant to Rule 103 (C) of the Rules, Miroslav Deronjić shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where his sentence will be served.

Done in English and French, the English text being authoritative.

_____
Judge Wolfgang Schomburg, Presiding

_____ _____
Judge Carmel A. Agius Judge Florence Ndepele Mwachande Mumba

Judge Wolfgang Schomburg appends a dissenting opinion to this Sentencing Judgement.

Judge Florence Ndepele Mwachande Mumba appends a separate opinion to this Sentencing Judgement.

Dated this thirtieth day of March 2004

At The Hague

The Netherlands

[Seal of the Tribunal]

XII. LIST OF KNOWN MURDERED PERSONS

Number	Surname	Given Name
1.	ALIHROMIĆ	Hajdar
2.	BEGANOVIĆ	Vahid
3.	ĆOSIĆ	Ramiz
4.	DELIĆ	Šećo
5.	DELIĆ	Bego
6.	DELIĆ	Medo
7.	DELIĆ	Ređo or Redžo
8.	DELIĆ	Đafo or Džafo
9.	DELIĆ	Hamed
10.	DELIĆ	Meho
11.	DELIĆ	Meva
12.	GEROVIĆ	Šaban
13.	GEROVIĆ	Ramiz
14.	GEROVIĆ	Ramo
15.	GOLIĆ	Šerif
16.	GOLIĆ	Avdo
17.	GOLIĆ	Ramo
18.	GOLIĆ	Rifat
19.	GOLIĆ	first name unknown
20.	GUSIŠ	first name unknown
21.	HASIBOVIĆ	First name unknown
22.	HUSEJNOVIĆ	Nezir
23.	IBIŠEVIĆ	Dževad or Đevad
24.	IBIŠEVIĆ	Ilijaz
25.	IBIŠEVIĆ	Jusuf

26.	IBIŠEVIĆ	Kemal
27.	IBIŠEVIĆ	Mehmed
28.	IBIŠEVIĆ	Muharem
29.	IBIŠEVIĆ	Mujo
30.	IBIŠEVIĆ	Mustafa
31.	IBIŠEVIĆ	Osman
32.	IBIŠEVIĆ	Ramo
33.	IBIŠEVIĆ	Refik
34.	IBIŠEVIĆ	Sabrija
35.	IBIŠEVIĆ	Ismail
36.	IBIŠEVIĆ	Šećo
37.	IBIŠEVIĆ	Zlatija (wife of Šećo)
38.	JUNUZOVIĆ	Abid
39.	JUNUZOVIĆ	Huso
40.	JUNUZOVIĆ	Adem
41.	JUNUZOVIĆ	Banovka
42.	JUNUZOVIĆ	Salih
43.	MILAČEVIĆ	Halid
44.	MILAČEVIĆ	Alija
45.	MUŠIĆ	Šaban
46.	MEMIŠEVIĆ	Hajro or Hajrudin
47.	OMEROVIĆ	Mirzet
48.	OMEROVIĆ	Samir
49.	OMEROVIĆ	Selmo
50.	OMEROVIĆ	Selmo (Selman)
51.	OMEROVIĆ	Fejzo
52.	OMEROVIĆ	Nezir

53.	OMEROVIĆ	Mensur
54.	OMEROVIĆ	Nevzet
55.	OMEROVIĆ	Nermin
56.	OMEROVIĆ	Elvis (son of NEZIR)
57.	RIZVANOVIĆ	Ćamil
58.	RIZVANOVIĆ	Jasmin
59.	RIZVANOVIĆ	Mensur
60.	RIZVANOVIĆ	Mustafa
61.	RIZVANOVIĆ	Nurija
62.	ŠAČIROVIĆ	Mujo
63.	SELIMIĆ	First name unknown
64.	TALOVIĆ	Uzeir

UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-02-61-S

Date: 30 March 2004

Original: English

IN TRIAL CHAMBER II

Before: **Judge Wolfgang Schomburg, Presiding**
Judge Carmel A. Agius
Judge Florence Ndepele Mwachande Mumba

Registrar: **Mr. Hans Holthuis**

Judgement of: **30 March 2004**

PROSECUTOR

v.

MIROSLAV DERONJIĆ

DISSENTING OPINION OF JUDGE WOLFGANG SCHOMBURG

The Office of the Prosecutor:

Mr. Mark B. Harmon

Counsel for the Accused:

Mr. Slobodan Cvijetić
Mr. Slobodan Zečević

DISSENTING OPINION OF JUDGE SCHOMBURG

A. Introduction

1. I have authenticated this Judgement as Presiding Judge. I regret that as a member of the bench, for fundamental reasons, I am not able to support the sentence.

2. The sentence is not proportional to the crimes it is based on and amounts to a singing from the wrong hymn sheet. The Accused deserves a sentence of no less than twenty years of imprisonment.

3. There are two main reasons leading me to the conclusion that the imposed sentence, recommended by the Prosecutor is not within mandate and spirit of this Tribunal.

4. First, already the series of indictments, including the Second Amended Indictment, arbitrarily present facts, selected from the context of a larger criminal plan and, for unknown reasons, limited to one day and to the village of Glogova only.

5. Second, even based on these fragments of facts, the heinous and long planned crimes committed by a high ranking perpetrator do not allow for a sentence of only ten years, which may possibly even be a *de facto* deprivation of liberty of only six years and eight months, taking into account the possibility of an early release.

B. Discussion

1. The Duty of the Prosecutor

6. "*Da mihi factum, dabo tibi jus*" – give me (all) the facts and I will present you the applicable law (and a just decision). This wise Roman principle[541] unfortunately is not part of our Rules. However, under the mandate of this *ad hoc* Tribunal the Prosecutor, being part of the Tribunal, is in principle duty bound to present all the evidence available. The fundament of our Tribunal is the Statute based on Chapter VII of the Charter of the United Nations established as a measure to maintain or restore international peace and security.[542] However, there is no peace without justice; there is no justice without truth, meaning the entire truth and nothing but the truth.

[541] Dekretalen 2, 1, 6 (Alexander III.) quoted i.a. in *Liebs,* Lateinische Rechtsregeln und Rechtssprichwörter, 6th Ed., C.H. Beck, Muenchen, 1998.
[542] Report of the Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 (1993), approved in Security Council Resolution 827 (1993) under 1 of its operational part.

7. The International Prosecutor is not controlled *de jure* or *de facto* by independent judges or a government in the selection of suspects to be indicted and in determining the scope of an indictment, as it would be on a domestic level. The state's and the international community's monopoly over the right to exercise force, however, urges the Prosecutor to act in a way that makes victims of crimes and their relatives understand that the Prosecutor is acting on their behalf. When it comes to prosecuting crimes against individuals, a Prosecutor acts with the goal to stop a never-ending circle of "private justice", meaning mutual violence and vengeance. This goal can only be achieved if the entire picture of a crime is presented to the judges.

8. I accept and appreciate that judicial economy and, *in concreto*, the limited resources of this Tribunal call for a limitation of charges, if only a just judgement remains possible. The test should be, whether individual separable parts of an offense or several violations of law committed as a result of the same offence are not particularly significant for the penalty to be imposed. In those cases the prosecution may be limited to the other parts of the offense or violations of law.

9. However this test has not been met when conducting investigations, prosecution and indicting Miroslav Deronjić.

a) With respect to the events in the Municipality of Bratunac, there was clearly a plan to ethnically cleanse the entire Municipalty, not only Glogova on the 9th of May 1992, with all the accompanying crimes committed in the usual pattern of conduct, observed in other Variant B municipalities. These crimes are of a far more serious nature than those committed in Glogova, if one compares the Second Amended Indictment with what the Accused himself has admitted about events on the following days in the rest of his Municipality.

b) With respect to the Killing/Murder of 64 (?) persons known by name in Glogova, it should be noted that the Prosecutor dropped two charges of murder and deleted the supporting facts from the indictment, already confirmed by an independent judge of this Tribunal. In particular, the deletion of the allegation that Miroslav Deronjić was even present when some of these killings happened[543] (direct intent!), created doubts whether at all he had the *dolus eventualis* as already accepted by him. This made it incumbent on the Trial Chamber to continue with the Sentencing Hearing. Miroslav Deronjić stated, *inter alia,*

- in *Blagojević et al.*, on 21 January 2004:

[543] See, *inter alia*, indictment of 3 July 2002, para 23.

> […] that I did not order, that I did not kill, that I was not present, that I did not know of those events […].[544]

- in *Krajišnik*, on 18 February 2004:

> […] I never agreed to that […].[545]

c) Moreover, the Indictment remains silent about the fate of the other Muslims of Glogova. What about other acts of violence, sexual assaults, or other killings in Glogova[546]? A Trial Chamber can not enter into speculation or order the production of evidence it is not aware of, even if it is in the possession of the Office of the Prosecutor. The result is that, in the concrete case before us, the Judges have to determine a sentence based on a clinically clean compilation of selected facts by the Prosecution.

d) Finally, having carefully read all the Accused's statements and testimonies, it remains extremely questionable to me, why Miroslav Deronjić was not indicted as a co-perpetrator in the joint criminal enterprise leading to the horrific massacre at Srebrenica in 1995. It transpires on a *prima facie* basis that there should be enough reason to indict Miroslav Deronjić for his participation in that massacre, based only on his own confession, and leave it finally to a Trial Chamber to decide whether a criminal responsibility can be established beyond reasonable doubt. Apparently Miroslav Deronjić was not afraid that this could happen, as he stated himself:

> […] I was told after all the investigations were completed, that indictments in relation to Srebrenica were being dropped against me. […] [T]he Prosecution stated that […] they have no intention of prosecuting me further for the events in Srebrenica.[547]

10. One might say, under the Rules of this Tribunal, that it is for the Prosecutor alone to decide whom, and under which charges, to indict. In principle, this is correct.[548] However, it is also for the Prosecutor to safeguard that justice is seen to be done and to convince, in particular, those people on whose behalf this Tribunal is working that there is no arbitrary selection of persons to be indicted and no arbitrary selection of charges or facts in case of an indictment. I am afraid that such an unjustified premature procedure has been applied in the proceedings against Miroslav Deronjić.

11. I accept that, in order to break up a circle of silence among perpetrators, some promises can be made by the Prosecutor *vis à vis* credible and reliable perpetrators. However, these promises shall, *proprio motu*, be disclosed to the bench by the Prosecutor.

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[544] *Blagojević et al.* Trial, Exh. PS-12, T. 6370.
[545] *Krajišnik* Trial, Exh. JS-26, T. 1106.
[546] See e.g. *supra* para. 219 of the Judgement.
[547] *Blagojević et al.* Trial, Exh. PS-12, T. 6166 (testimony of 19 January 2004).
[548] Sentencing Hearing, T. 97-98.

a) Promises, furthermore, can not result in *de facto* granting partial amnesty/impunity by the Prosecutor, particularly not in an institution established to avoid impunity.

b) Amnesty can only be granted after an appropriate sentence has been determined.

c) A limited amnesty or early release, if at all, can only be granted by those to whom this power is or will be vested, based on a sentenced person's entire post-crime conduct, or in order to restore peace.

12. There is no legal basis in the Statute or the Rules for the Prosecutor to promise in the beginning of each statement that information provided by the Accused would never be used against him. Such promise has been made in this case by the Prosecutor, formulated in the "Understanding of the Parties", paragraph 7 of which states: "The Prosecutor agrees that anything said by Mr. Deronjić during the interview will not be used as evidence in legal proceedings against him before the Tribunal."[549] This "Understanding of the Parties"[550], for unknown reasons, did not form part of the Plea Agreement presented to this Trial Chamber, even though this should have been the case according to the Prosecutor's own statement[551]. I believe that this promise has also been a prerequisite for the Accused's guilty plea, contrary to the submissions given by the Prosecutor[552]. Furthermore, it was a misleading promise, amounting to unfairness to the Accused, as this understanding can not be binding upon other courts also having jurisdiction over these crimes. Additionally, it was not combined with a warning that the Accused has to tell the truth when called as a witness before this Tribunal (consequences otherwise to be read in Rule 91 and being not under the control of the Prosecutor[553]).

2. <u>The Appropriate Sentence for the Crimes to which the Accused has Pleaded Guilty</u>

13. The gravity of the crime before us can not be better defined than by the words of the Prosecutor:

> […] the crime for which Miroslav Deronjić is to be sentenced is precisely the type of crime about which the Security Council expressed its grave alarm in Resolution 808. The events in Glogova on the 9th of May 1992 are a classical case of ethnic cleansing, and precisely the reason why the Security Council established this Tribunal. The attack on Glogova was not an isolated or random event, but a critical element in a larger scheme to divide Bosnia and Herzegovina and create Serb-ethnic territories.[554]

[549] Exh. JS-15, para. 7.
[550] Sentencing Hearing, T. 102-3.
[551] *Ibid*, T. 102.
[552] *Ibid*, T. 104-5.
[553] *Ibid*. T. 107.
[554] Prosecution Closing Statement, T. 188.

14. A perpetrator deserves a proportional sanction for his crime, primarily defined by its gravity. The mitigating weight of any post-crime conduct in general is, if at all, limited. In particular, in this concrete case the mitigating factors are extraordinarily limited.

(a) Guilty Plea

a) An analysis[555] of various national legal systems shows that a guilty plea is generally accepted as a mitigating factor leading to a reduction of the sentence. Reasons justifying such mitigation include the willingness of an offender to co-operate in the administration of justice,[556] the showing of remorse, acknowledgment of responsibility, sparing the victims from testifying and being cross-examined,[557] the stage of proceedings at which the offender pleads guilty,[558] and the circumstances in which the plea is tendered.[559]

b) It becomes evident from the analysis, however, that in the majority of the countries under survey a guilty plea is given only little – if any – weight in relation to serious crimes. In Australia,[560] Canada,[561] China,[562] England,[563] and Germany,[564] first degree murder attracts a mandatory sentence of life imprisonment that can not be altered by the acceptance of the guilty plea or confession of the accused. In Poland, a plea bargain is only possible in relation to misdemeanours, but not crimes.[565] Similar provisions on guilty pleas or plea bargaining exist in other countries, e.g. Argentina,[566] Brazil,[567] and Chile.[568]

c) In the light of this analysis, and taking into consideration that a guilty plea can not derogate from the gravity of a crime, I believe that the guilty plea of Miroslav Deronjić only warrants little weight in sentencing.

(b) Co-operation with the Tribunal

15. The forensic value of his statements and testimonies is extremely limited, until the Accused is prepared to clarify which details are true and which are not. The Accused himself admitted:

[555] Ulrich Sieber (ed.), "The Punishment of Serious Crimes – A comparative analysis of sentencing law and practice", Vol. 1 (Expert Report) and Vol. 2 (Country Reports), Freiburg i.Br. 2004.
[556] *Ibid*., Country Report Australia, p. 4.
[557] *Ibid*., Country Report Canada, p. 5.
[558] *Ibid*., Country Report Australia, p. 4; Country Report England, p. 4.
[559] *Ibid*., Country Report England, p. 4.
[560] *Ibid*., Country Report Australia, p. 6.
[561] *Ibid*., Country Report Canada, p. 4.
[562] *Ibid.*, Country Report China, pp. 3-4.
[563] *Ibid.*, Country Report England, p. 7.
[564] *Ibid.*, Country Report Germany, pp. 7-8.
[565] *Ibid.*, Country Report Poland, p. 4. See also Country Report Russia, p. 3.
[566] *Ibid*., Country Report Argentina, p. 3.
[567] *Ibid*., Country Report Brazil, p. 3.
[568] *Ibid*., Country Report Chile, p. 4.

> So I did not give an entirely truthful statement […]. But I do not agree that those statements are completely untrue. They are partially untrue […].[569]

16. I can not attach any mitigating weight to such an unsound mixture of truth and lies, creating more confusion than assistance in the Tribunal's search for the truth.

(c) Remorse

17. The remorse shown by the Accused is hardly credible, *inter alia*, because from testimony to testimony given after his guilty plea, he wants to minimize his guilt.

a) On his responsibility for the killings, on 18 February 2004, he testified:

> […] I agreed to certain things, which I did, but I never agreed to that, nor did I ever order or wish that people are killed.[570]

On the 19 February 2004 in the same testimony, he stated:

> Later, after that period, different information reached me about the events in Glogova.[571]

- he continued that:

> […] I had the opportunity to read a book whose author is a man from Bratunac, and he mentioned in this book that a certain number of people had been killed in Glogova.[572]

- then he stated that:

> Some inquiry was done by my lawyers […].[573]

- and finally he concluded:

> […] I accepted the allegation of the Prosecutor […].[574]

b) On his responsibility for triggering the attack, on 30 September 2003, he pleaded guilty to the fact that:

> Miroslav Deronjić urged Captain Reljić to fire a tank shell into a house at the initial stage of the attack in order to sow panic among the Muslim residents of Glogova.[575]

- then he confirmed it in his testimony on 27 January 2004:

[569] *Blagojević et al.* Trial, Exh. PS-12, T. 6407 (testimony of 22 January 2004).
[570] *Krajišnik* Trial, Exh. JS-26, T. 1106.
[571] *Ibid.,* T. 1243, lines 15-16.
[572] *Ibid.,* lines 19-21.
[573] *Ibid.,* line 25.
[574] *Ibid.,* T. 1244, lines 5-6.
[575] Factual Basis, para. 35; Plea Hearing, T. 60.

> Judge Schomburg: […] you yourself urged Captain Reljić to fire a tank shell into a house at the initial stage of the attack in order to sow panic amongst the residents of Glogova.[…]
>
> A.: Yes, Your Honour.[576]

- in *Blagojević et al.*, on 21 January 2004, he testified:

> I told them to shoot at the roof using, if possible, a lighter weapon. I didn't say they had necessarily to shoot at the house itself. I said they could shoot at an auxiliary structure.[577]

- finally, out of the blue, he stated:

> This grenade shell was not fired.[578]

If this were the truth, why would he not mention this in all his prior testimonies?

18. I need not repeat the aforementioned advantages Miroslav Deronjić has already received.

C. Conclusion

19. The crime before us, limited as it is described, has, however, all of the ingredients of one of the most heinous crimes against humanity. Therefore, the appropriate sentence can only be found in twenty years of imprisonment or higher, thereby adequately acknowledging the fate of the victims and their relatives. Everything else could be seen as an incentive for politicians, who might in future find themselves in a similar situation as Miroslav Deronjić was as of December 1991, to act in the same manner. Even if this person were brought before criminal court he/she would believe that he/she could buy him/herself more or less free by admitting some guilt and giving some information to the then competent prosecutor.

20. As no victim or relative of a victim has been given the opportunity to address this Trial Chamber in person, I should like to give the last word to one of them:

> I saw Miroslav Deronjić plead guilty on the television. The Bosnian Muslims in the community that I have spoken to, felt relieved because he admitted his guilt. This is a positive thing and can heal the wounds of the community provided that he is punished adequately. A mild punishment however would not serve any purpose; he does not deserve any compassion as he did not show any, not only to people of Glogova but also to the other Muslim Bosnians of Bratunac and Srebrenica.[579]

[576] Sentencing Hearing, T. 145.
[577] *Blagojević et al.* Trial, Exh. PS-12, T. 6366.
[578] Sentencing Hearing, T. 147.
[579] Exh. PS-19/1, para. 14.

Done in English and French, the English text being authoritative.

_____

Judge Wolfgang Schomburg

Dated this thirtieth day of March 2004

At The Hague

The Netherlands

[Seal of the Tribunal]

UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-02-61-S

Date: 30 March 2004

Original: English

IN TRIAL CHAMBER II

Before: **Judge Wolfgang Schomburg, Presiding**
Judge Carmel A. Agius
Judge Florence Ndepele Mwachande Mumba

Registrar: **Mr. Hans Holthuis**

Judgement of: **30 March 2004**

PROSECUTOR

v.

MIROSLAV DERONJIĆ

SEPARATE OPINION OF JUDGE MUMBA

The Office of the Prosecutor:

Mr. Mark B. Harmon

Counsel for the Accused:

Mr. Slobodan Cvijetić
Mr. Slobodan Zečević

SEPARATE OPINION OF JUDGE MUMBA

1. I agree with the decision of the Trial Chamber on the sentencing of Miroslav Deronjić. In support, I propose to offer some further remarks on considerations of sentencing principles.

2. The Accused brought before the Tribunal has entered a guilty plea and has signed a Plea Agreement with the Office of the Prosecutor. The Trial Chamber accepted the plea in accordance with the provisions of the Statute and the Rules. The guilty plea is within the ambit of the Indictment. In determining this sentence, I have been mindful of the objectives of international criminal justice and the principle that punishment shall be proportionate to the crime's gravity and the moral guilt of the perpetrator. In addition to the objectives of prevention and deterrence, in imposing a sentence, another key consideration, is the rehabilitation of the convicted person. A guilty plea is accepted as a first step to rehabilitation of the offender and a positive factor towards reconciliation of the offended community.

3. International justice in cases similar to these, in this Tribunal, is not about unfair retribution; if that were the case, humanity should forget about reconciliation and its off-shoot, peace. It is my humble view that this Tribunal is not about vengeance, using the pen as the firearm, much as the victims' plight has been acknowledged; that would be erroneous, such a practice would amount to accepting the erroneous view that you can conquer hatred with hatred. This, in my view, does not work. Vengeance may be manifested in terms of a harsh sentence for an accused person who has pleaded guilty. In my humble opinion, rehabilitation, after turmoil, may serve to reduce the incidence of political instability and conflict.

Done in English and French, the English text being authoritative.

Judge Florence Ndepele Mwachande Mumba

Dated this thirtieth day of March 2004

At The Hague

The Netherlands

[Seal of the Tribunal]

ANNEXES

A. List of Cited Court Decisions

1. ICTY

ALEKSOVSKI
Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-T, Judgement, 25 June 1999 ("*Aleksovski* Trial Judgement").

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 March 2000 ("*Aleksovski* Appeal Judgement").

BANOVIĆ
Prosecutor v. Predrag Banović, Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003 ("*Banović* Sentencing Judgement").

BLAŠKIĆ
Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement").

"ČELEBIĆI"
Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić and Esad Landžo, a.k.a. "Zenga", Case No. IT-96-21-T, Judgement, 16 November 1998 ("*Čelebići* Trial Judgement").

Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić and Esad Landžo, a.k.a. "Zenga", Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Čelebići* Appeal Judgement").

ČEŠIĆ
Prosecutor v. Ranko Češić, Case No. IT-95-10/1, Sentencing Judgement, 11 March 2004 ("*Češić* Sentencing Judgement")

ERDEMOVIĆ
Prosecutor v. Dražen Erdemović, Case No. IT-96-22-A, Judgement, 7 October 1997 ("*Erdemović* Appeal Judgement").

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Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgement, 21 July 2000 ("*Furundžija* Appeal Judgement").

JELISIĆ
Prosecutor v. Goran Jelisić, Case No. IT-95-10-T, Judgement, 14 December 1999 ("*Jelisić* Trial Judgement").

Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement, 5 July 2001 ("*Jelisić* Appeal Judgement").

KORDIĆ AND ČERKEZ
Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, Judgement, 26 February 2001 ("*Kordić and Čerkez* Trial Judgement").

KRNOJELAC
Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement, 15 March 2002 ("*Krnojelac* Trial Judgement").

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement, 17 September 2003 ("*Krnojelac* Appeal Judgement").

KRSTIĆ
Prosecutor v. Radislav Krstić, Case No. IT-98-33-T, Judgement, 2 August 2001 ("*Krstić* Trial Judgement").

KUNARAC, KOVAČ AND VUKOVIĆ
Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-T, Judgement, 22 February 2001 ("*Kunarac et al.* Trial Judgement").

Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002 ("*Kunarac et al.* Appeal Judgement").

Z. KUPREŠKIĆ, M. KUPREŠKIĆ, V. KUPREŠKIĆ, JOSIPOVIĆ, (PAPIĆ) AND SANTIĆ
Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Santić, a.k.a. "Vlado", Case No. IT-95-16-T, Judgement, 14 January 2000 ("*Kupreškić et al.* Trial Judgement").

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KVOČKA, KOS, RADIĆ, ŽIGIĆ AND PRCAĆ
Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-T, Judgement, 2 November 2001 ("*Kvočka et al.* Trial Judgement").

MILUTINOVIĆ, ŠAINOVIĆ AND OJDANIĆ
Prosecutor v .Milan Milutinović, Nikola Šainović and Dragolijub Ojdanić (Interlucotory), Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion challenging Jurisdiction – *Joint Criminal Enterprise*, 21 May 2003 ("*Ojdanić* Decision on Joint Criminal Enterprise")

NALETILIĆ AND MARTINOVIĆ
Prosecutor v. Mladen Naletilić and Vinko Martinović, Case No. IT-98-34-T, Judgement, 31 March 2003 ("*Naletilić and Martinović* Trial Judgement")

D. NIKOLIĆ
Prosecutor v. Dragan Nikolić, Case No. IT-94-02-S, Sentencing Judgement, 18 December 2003 ("*Dragan Nikolić* Sentencing Judgement").

M. NIKOLIĆ
Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003 ("*Momir Nikolić* Sentencing Judgement").

OBRENOVIĆ
Prosecutor v. Dragan Obrenović, Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003 ("*Obrenović* Sentencing Judgement").

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Prosecutor v. Biljana Plavšić, Case No. IT-00-39&40/1, Sentencing Judgement, 27 February 2003 ("*Plavšić* Sentencing Judgement").

SIKIRICA, DOŠEN AND KOLUNDŽIJA
Prosecutor v. Duško Sikirica, Damir Došen, Dragan Kolundžija, Case No. IT-95-8-S, Sentencing Judgement, 13 November 2001 ("*Sikirica et al.* Sentencing Judgement").

B. SIMIĆ, M. TADIĆ, S. ZARIĆ
Prosecutor v. Blagoje Simić, Miroslav Tadić, Simo Zarić, Case No. IT-95-9-T, Judgement, 17 October 2003 ("*Simić et al.* Trial Judgement").

M. SIMIĆ
Prosecutor v. Milan Simić, Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002 ("*Simić* Sentencing Judgement").

STAKIĆ
Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, Judgement, 31 July 2003 ("*Stakić* Trial Judgement").

D. TADIĆ
Prosecutor v. Duško Tadić, Case No. IT-94-1-A and IT-94-1-A*bis*, Judgement in Sentencing Appeals, 26 January 2000 ("*Tadić* Judgement in Sentencing Appeals").

TODOROVIĆ
Prosecutor v. Stevan Todorović, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 ("*Todorović* Sentencing Judgement").

VASILJEVIĆ
Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-T, Judgement, 29 November 2002 ("*Vasiljević* Trial Judgement").

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement, 25 February 2004 ("*Vasiljević* Appeal Judgement").

2. ICTR

AKAYESU
Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("*Akayesu* Trial Judgement").

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Prosecutor v. Georges Ruggiu, Case No. ICTR-97-32-I, Judgement and Sentence, 1 June 2000 ("*Ruggiu* Judgement and Sentence").

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R. v. Arkell, [1990] 2 S.C.R. 695.

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R. v. Bloomfield, [1999] NTCCA 137.

R. v. MARTINEAU
R. v. Martineau, [1990] 2 S.C.R. 633.

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R. v. M. (C.A.), [1996] 1 S.C.R. 500.

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B. List of Other Legal Authorities

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C. List of Abbreviations

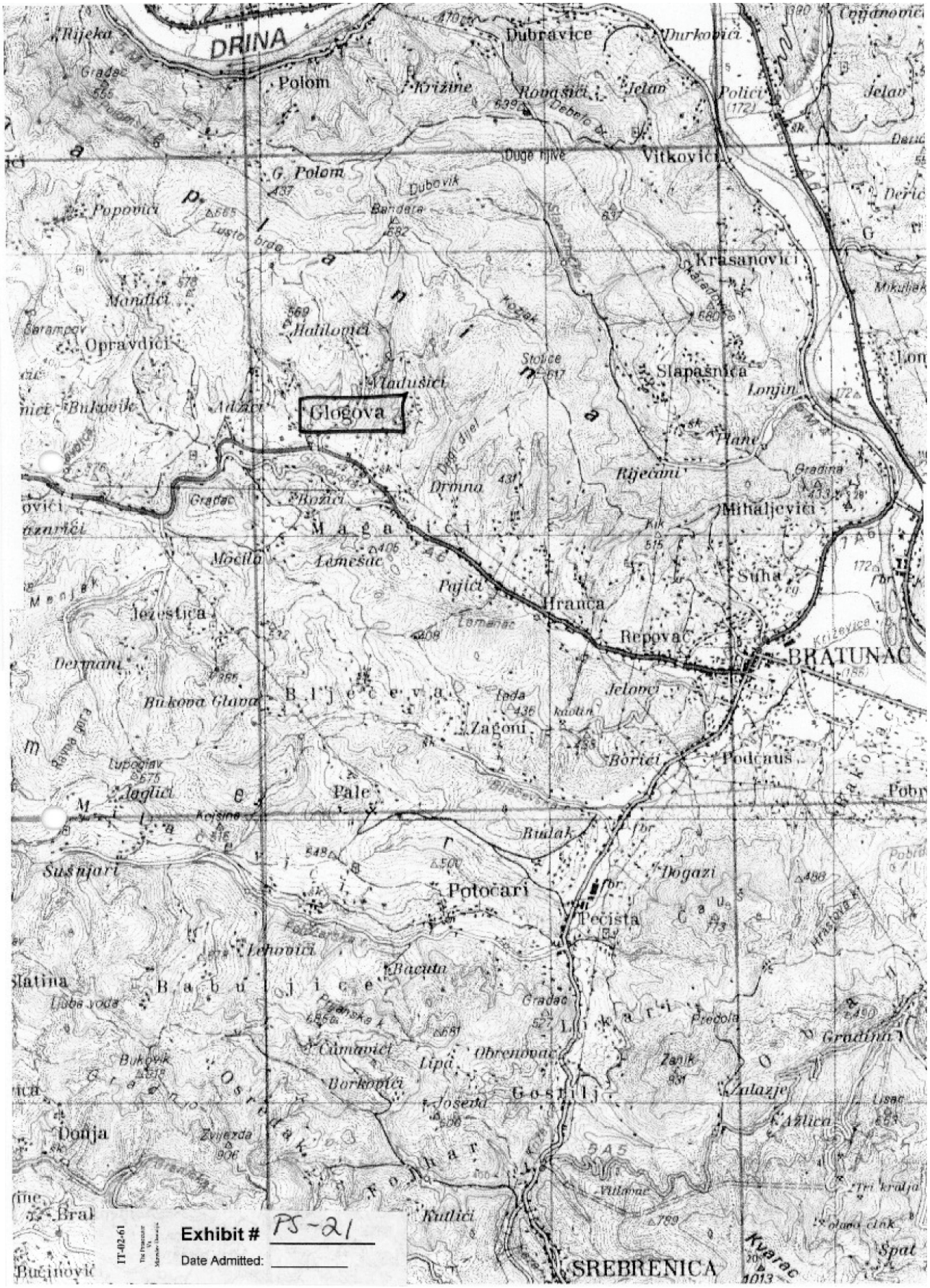
According to Rule 2 (B), of the Rules of Procedure and Evidence, the masculine shall include the feminine and the singular the plural, and vice-versa.

Accused	Miroslav Deronjić
APCs	Armoured personnel carriers
Continued Sentencing Hearing	Hearing held on 5 March 2004 to assist the Trial Chamber in determining an appropriate sentence.
a.k.a.	Also known as
BGH	Bundesgerichtshof (German Federal Supreme Court)

BGHSt	Entscheidungen des Bundesgerichtshofs in Strafsachen (Decisions of the German Federal Supreme Court in criminal matters) <accessible through website: http://www.bundesgerichtshof.de>
BiH	Bosnia and Herzegovina (consisting of two entities: the Republika Srpska and the Federation of Bosnia and Herzegovina, and the Brčko District)
BVerfG	Bundesverfassungsgericht (German Federal Constitutional Court)
BVerfGE	Bundesverfassungsgerichtsentscheidung (Decisions of the German Federal Constitutional Court) <accessible through website: http://www.bverfg.de>
cf.	[Latin: *confer*] (Compare)
Criminal Code of BiH of 1977	Criminal Code of the Socialist Republic of Bosnia and Herzegovina adopted on 10 June 1977
DS.	Defence Exhibit
Defence	The Accused, and/or the Accused's counsel
Deronjić Testimony	The Testimony of the Accused given in *Prosecutor v. Deronjić*, Case No. IT-02-61, on the 27 January 2004.
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (European Convention of Human Rights)
Exh.	Exhibit
Exhs.	Exhibits
Factual Basis	*Prosecutor v. Deronjić*, Case No. IT-02-61, Factual Basis filed on 30 September 2003 as part of the Plea Agreement, supporting the facts in the Indictment.
FedBiH Criminal Code of 2003	Criminal Code of the Federation of Bosnia and Herzegovina adopted on 1 August 2003
Federal Criminal Code of 1976/77	Criminal Code of the Socialist Federal Republic of Yugoslavia adopted on 28 of September 1976 and entered into force on 1 July 1977
Federation of Bosnia and Herzegovina	Entity of BiH
Najman Report	Psychological Report on Miroslav Deronjić, by Ana Najman, specialist in Clinical-Medical Psychology, Court appointed expert, dated 18 December 2003
ICCPR	International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966. Entry into force on 23 March 1976
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994

ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Indictment	Prosecution's Second Amended Indictment, 30 September 2003
inter alia	Among other things
JS.	Trial Chamber Exhibit
JNA	Yugoslav Peoples' Army (Army of the Socialist Federal Republic of Yugoslavia)
Max Planck Institute	"Max-Planck-Institut für ausländisches und internationales Strafrecht", Günterstalstraße 73, D-79100 Freiburg i. Br., Germany, <www.iuscrim.mpg.de>
OHR	Office of the High Representative (BiH)
OHR Criminal Code of 2003	The Criminal Code of Bosnia and Herzegovina enacted by the OHR on 1 March 2003
PS.	Prosecution Exhibit
p.	Page
pp.	Pages
para.	Paragraph
paras	Paragraphs
Plea Agreement	*Prosecutor v. Deronjić*, Case No. IT-02-61, Plea Agreement, dated 29 September 2003
Plea Hearing	Status Conference held on 30 September 2003 at which the Accused pleaded guilty
Principle of *lex mitior*	Principle according to which an accused has the right to benefit from the most lenient penalty in cases where the law has changed between the time of the criminal conduct and the date of sentencing
Prof.	Full Professor
Prosecution	Office of the Prosecutor
Republika Srpska	Entity of BiH
RS Criminal Code of 2003	Criminal Code of Republika Srpska adopted on 1 August 2003
Rules	Rules of Procedure and Evidence of the ICTY
SDS	Serbian Democratic Party of Bosnia and Herzegovina
Sentencing Hearing	Hearing held from 27 to 28 January 2004 to assist the Trial Chamber in determining an appropriate sentence

Sentencing Report	"The Punishment of Serious Crimes: a comparative analysis of sentencing law and practice" provided by Prof. Dr. Ulrich Sieber from the Max Planck Institute, filed on 12 November 2003, in its final version including Country Reports (the latter on CD-Rom)
SFRY	*Former*: Socialist Federal Republic of Yugoslavia
SUP	Secretariat of Internal Affairs
Statute	Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827 (1993)
T.	Transcript page from hearings. All transcript page numbers referred to are from the unofficial, uncorrected version of the transcript, unless not specified otherwise. Minor differences may therefore exist between the pagination therein and that of the final transcripts released to the public. The Trial Chamber accepts no responsibility for the corrections of or mistakes in these transcripts. In doubt the video-tape of a hearing is to be revisited.
TO	Territorial Defence
Tribunal	See: ICTY
UN	United Nations
UNDU	United Nations Detention Unit for persons awaiting trial or appeal before the ICTY


DRINA
Glogova
SREBRENICA
BRATUNAC
Exhibit # P5-21
Date Admitted:
IT-02-61