

**THE PROSECUTOR
v.
DRAGAN OBRENOVIC**

ANNEX A

**TO THE JOINT MOTION FOR CONSIDERATION OF PLEA AGREEMENT BETWEEN
DRAGAN OBRENOVIC AND THE OFFICE OF THE PROSECUTOR PLEA AGREEMENT**

Introduction

1. This constitutes the Plea Agreement, pursuant to Rule 62*bis* of the Rules of Procedure and Evidence ("the Rules"), between the Accused, Dragan Obrenovic, through his Counsel David Eugene Wilson, and the Office of the Prosecutor (OTP). The purpose of this Agreement is to clarify the understanding of the parties as to the nature and consequences of Mr. Obrenovic's guilty plea and to assist the parties and the Trial Chamber in ensuring that the plea is valid, according to the Rules set forth by this Tribunal. The terms of the agreement are as follows:

Plea to Count 5 of the Indictment, Persecutions, A Crime Against Humanity

2. Dragan Obrenovic agrees to plead guilty to Count 5 of the Second Amended Joinder Indictment dated 27 May 2002, alleging Persecutions, a Crime Against Humanity, punishable under Article 5(h) of the Statute of the Tribunal, which states the following in relevant part:

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

- b. persecutions on political, racial and religious grounds
3. Dragan Obrenovic agrees that he is pleading guilty to Count 5 because he is in fact guilty and acknowledges full responsibility for his actions that are the subject of the Indictment.

Consideration for Dragan Obrenovic's Plea and Co-operation

5. In exchange for Dragan Obrenovic's plea of guilty to Count 5, Persecutions, a Crime Against Humanity, his complete co-operation with the OTP as set forth in paragraphs 9 – 11 of this Agreement, and the fulfilment of all his obligations under this Agreement, the Office of the Prosecutor agrees to the following:
 - a. That the Prosecutor will recommend to the Trial Chamber that they impose a sentence within the range of 15 to 20 years and that the Accused be given credit for the time he has served in ICTY custody. The Accused will make his sentencing recommendation upon the filing of his pre-sentence memorandum.
 - b. That, at the time of the acceptance of the plea by the Trial Chamber, the Prosecutor will move to dismiss without prejudice to either party the remaining charges against Dragan Obrenovic set out in the Indictment.

Nature of the Charges

6. Dragan Obrenovic understands that he is pleading guilty to Count 5 of the Indictment, Persecutions, a Crime Against Humanity, specifically acknowledging and admitting his conduct as set forth in paragraphs 4-8, 15-27, 29-33, 36, 45, 46, 46.6 - 46.12, 47, 47.6 – 47.8, 48, 50, 51, 58 and 59 of the Indictment and further described in this agreement. However, Dragan Obrenovic and the Prosecution agree that the following corrections are to be made to the Indictment:
- a. *Paragraph 46.9, fourth sentence:* Replace "under the direction of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade" with "under the authority of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade".
 - b. *Paragraph 46.10, fourth sentence:* Replace "under the direction of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade and DRAGAN JOKIC" with "under the authority of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade and the direction of DRAGAN JOKIC".
 - c. *Paragraph 46.11, third sentence:* Replace "under the direction of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade" with "under the authority of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade".
 - d. *Paragraph 46.11, fourth sentence:* Replace "under the direction of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade and DRAGAN JOKIC" with "under the authority of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade and the direction of DRAGAN JOKIC".
 - e. *Paragraph 46.12, third sentence:* Replace "under the direction of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade and DRAGAN JOKIC" with "under the authority of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade and the direction of DRAGAN JOKIC".
 - f. *Paragraph 47.7, first sentence:* Remove "under the direction of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade".
 - g. *Paragraph 47.7, last sub-paragraph:* Add sentence to end of paragraph to read "DRAGAN OBRENOVIC, in his capacity as Chief of Staff of the Zvornik Brigade, had knowledge of and acquiesced to the capture, interrogation and execution of these four prisoners".
 - h. *Paragraph 47.8, second sentence:* Remove "under the direction of DRAGAN OBRENOVIC in his capacity as Chief of Staff of the Zvornik Brigade".
 - i. *Paragraph 47.8:* Add sentence to end of paragraph to read "DRAGAN OBRENOVIC, in his capacity as Chief of Staff of the Zvornik Brigade, had knowledge of and acquiesced to the capture, interrogation and execution of this prisoner".
7. Dragan Obrenovic understands that if a trial were held, the Prosecutor would be required to prove the following elements of Article 5 beyond a reasonable doubt:

Persecutions

- a. an armed conflict existed during the time frame of the Indictment

It is understood and agreed by Dragan Obrenovic and the OTP that the armed conflict alleged in paragraph 15 of the Indictment is the armed conflict that began on 6 April 1992 and ended with the Dayton Peace Agreement, signed on 14 December 1995.

- b. there was a widespread or systematic attack directed against a civilian population and, in a manner related to that attack, Dragan Obrenovic committed acts against the civilian population that violated fundamental human rights

It is understood and agreed that the widespread or systematic attack on the civilian population of Srebrenica as alleged in paragraph 17 of the indictment and described in paragraphs 18 through 26 of the Indictment includes:

(1) the murder of over 7000 Bosnian Muslim men ages 16-60, including some women, children and elderly men, from the period beginning 14 July through 1 November 1995; (2) the cruel and inhuman treatment of Bosnian Muslim civilians, including beatings of civilians in schools and other detention centres in the Zvornik area on 13 through to 16 July 1995; (3) the terrorisation of Bosnian Muslim civilians from Srebrenica and Potocari from 13 to 16 July 1995; and (4) the destruction of personal property and effects of Bosnian Muslim civilians from Srebrenica who were detained and murdered in the Zvornik area.

- c. Dragan Obrenovic's conduct was committed on political, racial or religious grounds and was committed with discriminatory intent.

It is understood and agreed that one of the reasons Mr. Obrenovic committed the conduct described in the Indictment and herein was because the victims were Bosnian Muslims.

- d. Dragan Obrenovic was aware of the wider context in which his conduct occurred.

It is understood and agreed that Mr. Obrenovic was aware of the widespread or systematic abuses described in the Indictment and in this agreement and of their effect on the entire population of Bosnian Muslims from the Srebrenica enclave.

Factual Basis

7. Dragan Obrenovic and the Prosecution agree that if the Prosecution were to proceed with evidence, the facts and allegations as set out in paragraphs 4-8, 15-27, 29-33, 36, 45, 46, 46.6 - 46.12, 47, 47.6 - 47.8, 48, 50, 51, 58 and 59, Annex A, Annex B, and Attachments A-E of the Amended Joinder Indictment dated 27 May 2002, would be proven beyond a reasonable doubt, and that those facts are true and correct and not disputed by Dragan Obrenovic (with the corrections to the Indictment made in paragraph 5 above). Specifically, Dragan Obrenovic acknowledges the facts set forth in the "Statement of Facts as set out by Dragan Obrenovic" attached to this Agreement at Tab A.
8. The Prosecution and Dragan Obrenovic agree that the evidence supports a finding of guilt on Count 5, Persecutions, of the Indictment.

Co-operation by Dragan Obrenovic

9. This Agreement is contingent upon Dragan Obrenovic's voluntary decision to accept responsibility for his actions and to co-operate with and to provide truthful and complete information to the Office of the Prosecutor whenever requested. Mr. Obrenovic agrees to provide information in accordance with a previously negotiated written proffer agreement and to provide additional information beyond that detailed in the proffer agreement. In accordance with such co-operation, Dragan Obrenovic agrees to meet as often as necessary with members of the Office of the Prosecutor in order to provide them with full and complete information and evidence that is known to him regarding the events surrounding the attack and fall of the Srebrenica enclave July 1995. Mr. Obrenovic agrees to be truthful and candid, and to freely answer all questions put to him by members of the Office of the Prosecutor. Mr. Obrenovic agrees to testify truthfully in the trial of the co-Accused in this case before the International Criminal Tribunal for the Former Yugoslavia (ICTY) and in any other trials, hearings or other proceedings before this Tribunal for accused charged with offences relating to the fall of Srebrenica in July 1995 and its aftermath, as requested by the OTP.
10. The Prosecution and Mr. Obrenovic also agree that they will jointly recommend to the Trial Chamber that sentencing of Mr. Obrenovic in this matter not be set until after Mr. Obrenovic has testified in the trial of the co-Accused in this case, in order that the full nature and scope of Mr. Obrenovic's co-operation may be seen and evaluated by the Trial Chamber prior to sentencing.
11. It is understood and agreed by Dragan Obrenovic and the Prosecution that all information and testimony provided by Mr. Obrenovic must be absolutely truthful. This means that Dragan Obrenovic must neither minimise his own actions nor fabricate someone else's involvement.

Maximum Possible Penalty and Sentencing

12. Dragan Obrenovic understands that, pursuant to Rule 101 of the Rules, he could face a sentence, if convicted after trial, of a term of imprisonment up to and including the remainder of his life.
13. Dragan Obrenovic understands that the Prosecution's recommendation of 15 to 20 years is not binding on the Trial Chamber and that the Trial Chamber is free to sentence the Accused as it sees fit.
14. Dragan Obrenovic agrees that he will not appeal the sentence imposed by the Trial Chamber unless the sentence imposed is above the range recommended by the Prosecutor.
15. Dragan Obrenovic agrees that he will not move to withdraw his guilty plea or appeal his conviction pursuant to his guilty plea.
16. Dragan Obrenovic understands that, pursuant to Article 24 of the Statute and Rule 101 of the Rules, the Trial Chamber should take into account in determining the appropriate sentence such factors as the gravity of the offence and the individual circumstances of the convicted person. In addition, the Trial Chamber should take into account such factors as: any aggravating circumstances, any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction, the general practice regarding prison sentences in the courts of the former Yugoslavia, and the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.

Waiver of Rights

17. By pleading guilty, Dragan Obrenovic understands he will be giving up the following rights:
 - a. the right to plead not guilty and require the Prosecution to prove the charges in the Indictment beyond a reasonable doubt at a fair and impartial public trial;
 - b. the right to prepare and put forward a defence to the charges at such public trial;
 - c. the right to be tried without undue delay;
 - d. the right to be tried in his presence, and to defend himself in person at trial or through legal assistance of his own choosing at trial;
 - e. the right to examine at his trial, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf at a trial under the same conditions as witnesses against him;
 - f. the right not to be compelled to testify against himself or to confess guilt;
 - g. the right to testify or to remain silent at trial; and
 - h. the right to appeal a finding of guilty or to appeal any pre-trial rulings.
18. It is understood that by pleading guilty the Accused does not waive his right to be represented by Counsel at all stages of the proceedings.

Voluntariness of the Plea

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

Other Agreements

20. Except as expressly referenced at paragraph 9 hereto, there are no additional promises, understandings or agreements between the Office of the Prosecutor and Dragan Obrenovic or his Counsel, David Eugene Wilson.

Declaration of Dragan Obrenovic

21. I, Dragan Obrenovic, have read this Plea Agreement in a language which I understand and have carefully reviewed every part of it with my Counsel, David Eugene Wilson. Mr. Wilson has advised me of my rights, or possible defences, and of the consequences of entering into this Agreement. No other promises or inducements have been made to me, other than those contained in this Agreement. Furthermore, no one has threatened me or forced me in any way to enter into this Agreement. I have entered into this Agreement freely and voluntarily, and am of sound mind. I understand the terms of this Agreement, and I voluntarily agree to each of the terms.

Dragan Obrenovic

Declaration of Counsel

18. I, David Eugene Wilson, am Dragan Obrenovic's Counsel. I have carefully reviewed every part of this Agreement with my client. Further, I have fully advised my client of his rights, and possible defences, of the maximum possible sentence and the consequences of entering into this Agreement. To my knowledge, my client is of sound mind and his decision to enter into this Agreement is an informed and voluntary one.

David Eugene Wilson
Counsel for Dragan Obrenovic

On this 20th day of May 2003 the undersigned parties fully agree to each and every term and condition of this Plea Agreement:

Dragan Obrenovic

David Eugene Wilson
Counsel for Dragan Obrenovic

Carla Del Ponte
Prosecutor

Dusan Slijepcevic
Co-Counsel for Dragan Obrenovic

Peter McCloskey
Senior Trial Attorney
Office of the Prosecutor