



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

Case No. IT-02-60/2-S  
Date: 12 December 2003  
Original: English

**IN TRIAL CHAMBER I, SECTION A**

**Before:** Judge Liu Daqun, Presiding  
Judge Volodymyr Vassilenko  
Judge Carmen Maria Argibay

**Registrar:** Mr. Hans Holthuis

**Decision of:** 12 December 2003

**PROSECUTOR**

v.

**DRAGAN OBRENOVIĆ**

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**ORDER LIFTING CONFIDENTIALITY**

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**The Office of the Prosecutor:**

Mr. Peter McCloskey

**Counsel for the Accused:**

Mr. David Wilson and Mr. Dušan Slijepčević for Dragan Obrenović

**TRIAL CHAMBER I, SECTION A** ("Trial Chamber") of 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 ("Tribunal"),


**NOTING** "Dragan Obrenović's Supplemental Sentencing Brief Relating to Co-operation" filed confidentially on 23 October 2003 ("Supplemental Brief") by the Defence for Dragan Obrenović,

**CONSIDERING** that it is in the interests of justice that the Supplemental Brief be made public, to the extent possible,

**PURSUANT TO** Rule 54 of the Rules,

**HEREBY LIFTS** the confidentiality, in part, of the Supplemental Brief, and annexes a redacted version of the Supplemental Brief hereto, as Annex I.

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

  
Judge Liu Daqun  
Presiding

Dated this twelfth day of December 2003,  
At The Hague  
The Netherlands

[Seal of the Tribunal]

ANNEX I

IT-02-60/2-S  
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**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-02-60/2S**

**IN TRIAL CHAMBER I**

**Before: Judge Liu Daqun, Presiding  
Judge Volodymyr Vassilenko  
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**Date Filed:**

*Confidential*

**THE PROSECUTOR**

**v.**

**DRAGAN OBRENOVIC**

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**DRAGAN OBRENOVIC'S SUPPLEMENTAL SENTENCING BRIEF  
RELATING TO COOPERATION**

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**The Office of The Prosecutor**

**Mr. Peter McCloskey  
Senior Trial Attorney**

**Counsel for the Accused**

**Mr. David Eugene Wilson  
Mr. Dusan Slijepcevic**

IT-02-60/2 S

**DRAGAN OBRENOVIC'S SUPPLEMENTAL SENTENCING BRIEF  
RELATING TO COOPERATION**

**Introduction**

1. On 30 July 2003, the Office of the Prosecutor ("OTP") and the Accused Dragan Obrenovic filed their respective sentencing briefs in this case. In those briefs, each side requested permission to supplement their filings on the issue of cooperation. In a status conference on 10 September 2003, the Trial Chamber granted those requests. In its Scheduling Order of October 10, 2003 ("Scheduling Order"), the Trial Chamber ordered that such briefs should be filed not later than 23 October 2003. This brief is filed pursuant to the directions of the Scheduling Order.

2. Because of the subject matter of the brief and the sensitivity of the information set out herein, we respectfully request that the filing be made under a "**Confidential**" category.

**Argument**

3. The importance of cooperation with the Tribunal by those suspected and accused of crimes is underscored by Rule 101(B)(ii), which directs the sentencing trial chamber to "[take into account] any mitigating Circumstances "including the substantial cooperation with the Prosecutor by the convicted person before or after conviction" (emphasis supplied).

“Substantial cooperation” thus enjoys a unique status as the only “mitigating circumstance” specifically recognized by the drafters of the Rules. We submit that this unique status represents the clear recognition by the Rules that “substantial cooperation” by those accused of crimes is vital to the core mission of the Tribunal. As the sentencing trial chamber noted in Prosecution v. Erdemovic, IT 96-22 T-bis, *Sentencing Judgment*, 5 March 1998, p.21:

Understanding of the situation of those who surrender to the jurisdiction of the International Tribunal and who confess their guilt is important for encouraging other suspects or unknown perpetrators to come forward. The International Tribunal, in addition to its mandate to investigate, prosecute and punish serious violations of international humanitarian law, has a duty, through its judicial functions, to contribute to the settlement of the wider issues of accountability, reconciliation, and establishing the truth behind the evils perpetrated in the former Yugoslavia. Discovering the truth is a cornerstone of the rule of law and a fundamental step on the way to reconciliation: for it is the truth that cleanses the ethnic and religious hatreds and begins the healing process. The International Tribunal must demonstrate that those who have the honesty to confess are treated fairly as part of a process underpinned by principles of Justice, fair trial and protection of the fundamental rights of the individual.

We wish to set forth Mr. Obrenovic's cooperation before his arrest, after his arrest, and after his plea of guilty.

### **Pre-Arrest Cooperation**

4. We have attempted to demonstrate to the Trial Chamber through the witness statements offered under Rule 92bis that the Accused Obrenovic is not a man who has gone through life demonstrating hatred and lack of

respect for other people, whatever their religious or ethnic backgrounds. To the contrary, before these events, it appears that no one would have made any such accusations. We will submit further evidence of that through the live witnesses who will testify at the sentencing hearing. Nor has he ever demonstrated any hostility or lack of cooperation to the international authorities assigned the tasks of peace keeping and investigating crimes in the former Yugoslavia.

5. Following his assumption of command of his Brigade in 1998, he worked with SFOR authorities in constructive ways to maintain the peace imposed by the Dayton Accords. (Attachment 1, Copy of Award Plaque from LTC Richard A. Tottleben, Jr., United States Army, Commander, Task Force I-5 CAV, for the period "20 March-20 September 1999"). The accused was given this plaque by the SFOR officer identified thereon. (The OTP has informed us that they have no objection to the admission of the attachment into evidence.)

6. On 6 March 1998, the accused met with OTP prosecutors and investigators for the purpose of permitting them to conduct a search of his brigade's property. A report of that meeting, which includes a description of his conduct during the meeting, is attached as Attachment 2. (This report was received from the OTP as part of the discovery materials.) Thereafter, we are certain that the OTP will confirm that the accused made available to them a substantial number of his brigade's weapons for ballistic testing. It is our understanding that all such testing was negative in that it did not establish any link between the firearms in question and criminal activity.

We believe that the prosecution will confirm that on all of these occasions the accused treated them politely and with respect.

7. As set out in our sentencing brief (Sentencing Brief of Dragan Obrenovic, 30 July 2003, page 9), the accused voluntarily responded to summonses from the OTP on three occasions. While he did not admit criminal responsibility during those interviews, we believe that the Prosecution will agree that he was polite and respectful in his conduct toward them and that the information otherwise provided to them was of assistance. As we have also noted, on the occasion of his third summons, he offered to surrender to them if notified of the filing of charges and provided information as to how he could be contacted. He was arrested without incident near his home some five months later.

#### **Post-Arrest Cooperation (Prior to Plea of Guilty)**


8. Following his arrest and detention at the United Nations Detention Unit in April, 2001, the OTP requested that the Accused submit to an interview concerning their investigations into alleged war crimes committed by Muslim military forces against Serbian military and civilian personnel in the Zvornik area during 1991-92. Those crimes include the mass execution of more than eighty (80) soldiers of his brigade by Muslim forces on one occasion during that period. As an indicted accused, awaiting trial, the Accused and his counsel voluntarily met with OTP personnel for an entire day in which he answered all of their questions. In order to do so, he voluntarily waived his right to remain silent and spoke with the

investigators, without receiving any assurances that the meeting would benefit him in any way, and fully realizing that anything he said could be used not only against the targets of that investigation, but against himself. A letter attesting to his day-long meeting with the prosecutors in that separate investigation is attached to our sentencing brief as "Tab B".

9. The Accused has been in custody at the United Nations Detention Unit since April 15, 2001. During that time he has completely complied with the Rules of Detention and the instructions of the guards, and has "at all times had cordial relations with his fellow detainees". (Internal Memorandum, Tim McFadden, Commanding Officer, UNDU, to Hans Holthuis, Registrar, ICTY, 1 October 2003)(Attachment 3).

#### **Cooperation After Plea of Guilty**

10. On or about May 21, 2003, the Accused entered a plea of guilty to the charge of Persecution in the Amended Joinder Indictment (Count 5). As part of his guilty plea, he agreed to cooperate with the OTP in the investigation and prosecution of others involved in the crimes committed in connection with the fall of Srebrenica in 1995. Included in the anticipated cooperation was a provision requiring that he meet with the prosecutors and investigators at any time they felt such a meeting was needed, and testifying at any Srebrenica-related trials undertaken at the Tribunal.





[REDACTED]

11. Following the entry of his guilty plea, the accused met on a number of occasions with the prosecutors and their investigators for debriefing as to his knowledge of the events surrounding "Srebrenica". We are confident that the OTP will confirm that he has fully cooperated in this regard, answering all questions put to him and providing information of direct and substantial assistance to their efforts.

[REDACTED]

[REDACTED]

13. As a result of his guilty plea, the Accused anticipates that he will be required to testify in the trials and/or appeals of the following named individuals who he has reason to believe have been indicted in connection with "Srebrenica 1995":

1. Radovan Karadzic (President, Republic of Srpska in July 1995)
2. General Ratko Mladic (Military Head of the VRS in July 1995)
3. Colonel Ljubisa Beara (Head of Security for the VRS in July 1995)
4. Lt. Col. Vujadin Popovic (Drina Corps Security in July 1995)
5. Colonel Vinko Pandurevic (Commander Zvornik Brigade, July 1995)
6. Lt. Drago Nickolic (Security for the Zvornik Brigade in July 1995)
7. Colonel Ljubisa Borovcanin (MUP Special Police, July 1995)
8. General Radislav Krstic (Commander of the Drina Corps) ( Appeal).

(The Accused recognizes that there may be other individuals secretly indicted, of whom he is unaware. By the terms of his plea agreement, he has promised to testify truthfully against any such unknown individuals, also.)

**Sentencing and Conclusion**

[REDACTED]

[REDACTED]

15. The Accused had the option of becoming a fugitive, along with all of the other names the Trial Chamber now knows. That option would have included material support of him and his family, and in the eyes of many of his countrymen, he would have continued to enjoy an honored role in society. Instead, he stayed to face the charges against him. When arrested, he examined the evidence and made his decision to plead guilty, admit his misconduct, and cooperate with the authorities in investigating and prosecuting the crimes of Srebrenica.

16. We respectfully submit that the record here demonstrates more than "substantial assistance" to the Prosecutor by the Accused. The Accused has done all required of him by the plea agreement and more. He has fulfilled his promises without reservation, and he has done so in the eyes of the world. His plea of guilty and cooperation have marked a turning point in the tragic story of Srebrenica, and he has helped make it possible for the prosecution to move forward in a meaningful way against the perpetrators of "Srebrenica". He has also made made it impossible for those denying even the occurrence of those crimes to maintain credibility. (See, "Revisiting

Srebrenica”, editorial, *The Wall Street Journal Europe*, 14 October 2003)(Attachment 5).

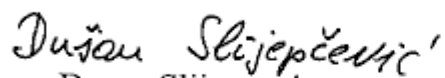
17. Clearly, the Accused by his acts of cooperation has aided the Tribunal in its “duty, through its judicial functions, to contribute to the settlement of the wider issues of accountability, reconciliation, and establishing the truth behind the evils perpetrated in the former Yugoslavia”. Prosecution v. Erdemovic, IT-96-22 T-bis, *Sentencing Judgment*, 5 March 1998, p.21. Having committed himself without reservation to assisting the Tribunal in its work, and having demonstrated unstintingly that commitment publicly before the Trial Chamber, we respectfully submit that the Tribunal may appropriately “demonstrate that those who have the honesty to confess are treated fairly as part of a process underpinned by principles of justice, fair trial and protection of the fundamental rights of the individual” (Id.).

18. Given the extent of the accused’s cooperation and the value of that cooperation to the prosecution and to the mission of the Tribunal, and incorporating herein the arguments submitted in our Sentencing Brief of 30 July 2003, we respectfully submit that an appropriate sentence on the entire record of this case would be in the range of eight to twelve (8-12 years). This sentence would appropriately impose a severe penalty upon the Accused for his role in the criminal activity, while at the same time appropriately providing recognition of his very substantial assistance to the Tribunal,

Respectfully submitted:



David E. Wilson



Dusan Slijepcevic

Counsel for Dragan Obrenovic

**ATTACHMENT "1"**

**Copy of Plaque Given to "LTC Dragan Obrenovic"  
by "LTC Richard A. Tottleben, Jr."**

# Task Force 1-5 Cavalry



Camp Dobol, Bosnia  
1999

728  
IT-02-60/26  
602



From LTC Richard A. Tottleben, Jr.  
Commander, Task Force 1-5 CAV



**Presented to LTC Dragan Obrenovic  
CDR, 503rd IN BDE (VRS)**

In appreciation for your efforts towards a continued and lasting  
Peace in Bosnia-Herzegovina.



SFOR 5  
20 March - 20 September  
1999





ATTACHMENT "2"



**ATTACHMENT "3"**

**Internal Memorandum**

**"Report on the Behavior of Dragan Obrenovic Whilst in Custody"**

United Nations  
Nations UniesInternational  
Criminal Tribunal  
for the Former  
YugoslaviaTribunal Pénal  
International pour  
l'ex-Yougoslavie

## INTERNAL MEMORANDUM - MEMORANDUM INTERIEUR

Date: 01 October 2003

Ref: OBRD.5

To: Hans HOLTHUIS  
A: Registrar  
ICTYCopy: Monica MARTINEZ  
Copie: Acting Chief  
OLADFrom: Tim McFADDEN  
De: Commanding Officer  
UNDUSubject: Report On The Behaviour Of Dragan OBRENOVIĆ Whilst In Custody  
Objet:

Mr. Dragan Obrenović has been in custody at the UN Detention Unit from 15 April 2001 to the present day.

During his time in custody, he has shown good respect for the management and staff of the unit and has complied with both the Rules of Detention and the instructions of the guards. He has at all times had cordial relations with his fellow detainees.

Regards

Tim Mc Fadden

ATTACHMENT "4"



**ATTACHMENT "5"**

**Editorial, *Wall Street Journal Europe*, 14 October 2003  
"Revisiting Srebrenica"**

Oct. 14, 2003

## REVIEW &amp; OUTLOOK

We

## Revisiting Srebrenica

By Anwar Ibrahim

The Balkan wars are, thank goodness, yesterday's news. But the trials at The Hague addressing war crimes committed during that era have again popped back into the consciousness of a world preoccupied with Iraq and Afghanistan.

The cases before the tribunal these days show that trying leaders responsible for past horrors, in a court established specifically to address those crimes, may yet be able to exact a measure of justice. The recent revelations before the court at least help set the historical record straight for people struggling to build stable societies.

The tribunal was founded in 1993 and suffered through serious growing pains. But the tribunal has scored a few recent victories. It took time and patience. Conflicts don't end when the fighting stops. Success sometimes is not measured in weeks or months, but years. This little lesson from the Balkans might bear repeating with regard to Iraq or Afghanistan.

The mesmerizing testimony in recent days concerns Srebrenica. On July 11, 1995, Gen. Ratko Mladic's Bosnian Serb forces overran this isolated Muslim "safe area" protected by a light force of Dutch U.N. peacekeepers. The women and children were separated from the men. On July 14, and for the next four days, the Bosnian Serbs murdered about 7,500 Muslim men. The massacre was the worst in Europe since World War II.

Satellite photographs, exhumations and testimony confirmed the facts of the slaughter. But the court has now helped establish that the massacre was planned beforehand and executed with precision. The immediate responsibility falls on Gen. Mladic, an indicted war criminal who, incredibly, is still at large. But fresh information might help convict former Serbian President Slobodan Milosevic, who's the first head of state ever put on trial for war crimes. The prosecutors have 42 trial days left to present their case.

In the separate Srebrenica trial, the testimony came about when a former Bosnian Serb intelligence chief and a brigade commander agreed to stand witness against two comrades as part of a plea bargain. In itself, that was a success. Prosecutors are finally succeeding in finding strong witnesses. Since May, eight peo-

ple have made a plea bargain, compared with eight in the decade before then.

The testimony from Momir Nikolic and Dragan Obrenovic, as reported in press accounts, was chilling. Mr. Nikolic, the intelligence officer, recounted that Gen. Mladic decided the men would be killed and directed a precise operation. In an attempt to conceal this mass slaughter, Mr. Nikolic said he told local commanders to avoid using telephones. Mr. Obrenovic, the brigade commander, said the prisoners were moved around to avoid detection by the Red Cross or the U.N.

Questioned by the defense attorney why he ignored Geneva Conventions regarding the treatment of prisoners of war, Mr. Nikolic shot back: "Do you really think that in an operation where 7,000 people were killed that somebody was adhering to the Geneva Conventions?"

This testimony sets the dreadful record straight. Some Serbian politicians contended this massacre never took place. Now two credible Bosnian Serb witnesses explain how it happened. Some Bosnian Muslims worried that they would never know the details or see justice triumph. Justice aside, at least they now know what took place.

The intriguing detail of the testimony in the Srebrenica case was that the massacre was carried out by Bosnian Serb army and police, some of whom were on Belgrade's payroll. This fact alone would strengthen the already strong link between the Serbian leadership, principally Mr. Milosevic, and the thugs committing the crimes on the ground in Bosnia, where 200,000 people perished between 1992-95.

In the separate Milosevic case on Thursday, former British Gen. Rupert Smith recounted a meeting on the day the men of Srebrenica were being murdered between him and Mr. Milosevic. At that meeting, Gen. Mladic turned up. "It was clear that Milosevic was Mladic's superior," Gen. Smith said. Former Gen. Wesley Clark and Richard Holbrooke, who negotiated the Dayton peace agreement, have also asserted that Mr. Milosevic was personally directing the Bosnia campaign.

The wheels of justice have turned very slowly in addressing Balkan crimes. But they are now turning faster and we are finally getting clearer testimony defining who was to blame. The next question is whether Serbia's new leaders will accept their responsibility to help round up the suspects still at large and deliver them to The Hague.



Slobodan Milosevic

Affirmations of brevity over the elusiveness of the crime. It seems that no one is worthy of the national sentiments were some of the 10th summit of the Conference (OIC) to be held from Oct. 16-18, w

Few will be surprised that the conference venue is a sorry display of ideas on how to improve poor governance, the political situation, the bad press received. Sure, the condemnation of terrorism is a disgrace with the U.S. And they will launch the Trade Organization, the national Monetary Fund and the concerns of

No doubt, these are some way, but ranting and raving and issuing superiority of the Islamic state for a workable Islamic state of the Muslim audiences living under

The Palestinian issue is the dominant issue in state terrorism must be any effective and retaliatory action against Palestinians the U.S. stance in the outrage has been the of Afghanistan

But concerned Muslim outrage was the Islamic traditions in their destiny Buddha at Barniyah in silence for decades Hussein's atrocities against Arabs and Shiites against Iran and when the body count that more of their butchers by their claims. Even now, Mended little or no and peaceful resolution, Kashmir and

Thus one can see the cynicism among ordinary people. They see it as a Muslim causes an

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By Pia de Sole