



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-94-1-T
Date: 14 July 1997
Original: English

IN THE TRIAL CHAMBER

Before: Judge Gabrielle Kirk McDonald, Presiding
Judge Ninian Stephen
Judge Lal Chand Vohrah

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijh

Judgment of: 14 July 1997

PROSECUTOR

v.

DUŠKO TADIĆ a/k/a/ "DULE"

SENTENCING JUDGMENT

The Office of the Prosecutor:

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Mr. William Fenrick

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Mr. Michael Keegan

Mr. Alan Tieger

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I. INTRODUCTION

A. Opinion and Judgment of 7 May 1997

1. On 7 May 1997 Trial Chamber II 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 (“International Tribunal”), following the indictment and trial of Duško Tadić, a citizen of the former Yugoslavia, of Serb ethnic descent, and a resident of the Republic of Bosnia and Herzegovina at the time of the alleged crimes, rendered its Opinion and Judgment (*Prosecutor v Duško Tadić a/k/a/ “Dule”*, Case No. IT-94-1-T, T. Ch. II, Opinion and Judgment, 7 May 1997)(“Opinion and Judgment”).

2. In its Opinion and Judgment, the Trial Chamber found Duško Tadić guilty of crimes against humanity pursuant to Article 5 of the Statute of the International Tribunal (“Statute”), namely “persecution” in Count 1 of the Indictment and “inhumane acts” in Counts 11, 14, 17, 23 and 34, and violations of the laws or customs of war pursuant to Article 3 of the Statute, namely “cruel treatment” of civilians contrary to Article 3 common to the Geneva Conventions of 12 August 1949 (“Common Article 3”) in Counts 10, 13, 16, 22 and 33. The crimes consisted of killings, beatings and forced transfers by Duško Tadić as principal or as an accessory, as well as his participation in the attack on the town of Kozarac in opština Prijedor, in north-western Bosnia and Herzegovina.

B. Pre-Sentencing Hearing

3. Pursuant to Rule 100 of the Rules of Procedure and Evidence (“Rules”), on 30 June 1997 and 1, 2, 3 and 4 July 1997, the Trial Chamber conducted a Pre-Sentencing Hearing at which the Prosecution and the Defence tendered exhibits, and the Defence called a number of witnesses, including Dr. Norbert Nedopil, a forensic psychiatrist based in Munich who examined Duško Tadić in 1994. Duško Tadić also made a statement at the Pre-Sentencing Hearing which the Trial Chamber has considered.

4. Both parties also tendered written submissions. In particular, the Prosecution offered a number of “victim impact statements” which detailed the physical and psychological injuries suffered as a result of the offences committed by Duško Tadić. The statements also contained averments as to economic losses of the victims, evidence of which the Defence sought to counter, as well as other harm which they suffered in the conflict. The Trial Chamber was careful to isolate the harm which flowed directly from the acts of Duško Tadić, while other economic and non-economic harm which these victims suffered from the conflict as a whole was considered solely in the light of the role of Duško Tadić in that conflict. In doing so, the Trial Chamber did not consider the alleged amount of economic loss, however, it did consider the fact of that loss.

5. At the Pre-Sentencing Hearing the parties also made oral submissions regarding the sentencing of Duško Tadić. The Prosecution recommended a sentence of life imprisonment while the Defence submitted that the sentence should not be in excess of 15 years’ imprisonment. The Trial Chamber has considered each of these submissions.

II. SENTENCING GUIDELINES

6. The Statute and the Rules provide as follows regarding penalties that may be imposed on persons convicted by a Trial Chamber. Article 24 of the Statute provides:

Article 24 Penalties

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.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Rule 101 provides:

Rule 101 Penalties

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of his life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24(2) of the Statute, as well as such factors as:
 - (i) any aggravating circumstances;
 - (ii) any mitigating circumstances including the substantial cooperation 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;
 - (iv) 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, as referred to in Article 10(3) of the Statute.
- (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
- (D) The sentence shall be pronounced in public and in the presence of the convicted person, subject to Sub-rule 102(B).

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

7. In view of the reference in both Article 24 and Rule 101 to “the general practice regarding prison sentences in the courts of the former Yugoslavia” the Trial Chamber has had recourse to the statutory provisions governing sentencing in the former Yugoslavia and to the sentencing practice of its courts. At all material times capital punishment existed under the Penal Code of the Socialist Federal Republic of Yugoslavia (“SFRY Penal Code”) although it has been abolished by constitutional amendment in certain former Yugoslav Republics other than Bosnia and Herzegovina. Imprisonment as a form of punishment was limited to a term of 15 years or, in cases for which the death penalty was prescribed as an alternative to imprisonment, to a term of 20 years.

8. The most directly applicable statutory provisions of the former Yugoslavia are those found in Chapter XVI of the SFRY Penal Code, entitled “Crimes Against Peace and International Law”. Article 142 of that Code specifies a number of criminal acts, including killings, tortures or inhumane treatment of the civilian population, causing great suffering or serious bodily injury to body and health, unlawful forced transfer, use of measures of intimidation and terror and the unlawful taking to concentration camps and other unlawful confinements. It provides that all of those crimes “shall be punished by no less than five years strict imprisonment or by the death penalty”. This Article gives effect in the former Yugoslavia to the provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and its Protocols, which is incorporated into the jurisdiction of the International Tribunal by Article 2 of the Statute. Duško Tadić has not been convicted on any counts under that Article of the Statute since the Trial Chamber found by majority, with the Presiding Judge dissenting, that the victims were not protected persons under the provisions of the Geneva Conventions. However, the offences of which he has been convicted under Article 3 of the Statute, under Common Article 3 - itself an extension in those Conventions to armed conflicts not of an international character of the fundamental provisions of the grave breaches regime - are generally very similar to those covered by Article 142 of the SFRY Penal Code. There appear to be no provisions of the SFRY Penal

Code which give specific effect to those crimes against humanity referred to in Article 5 of the International Tribunal's Statute. However, genocide, itself a specific form of crime against humanity, is dealt with in Article 141 of the SFRY Penal Code which prescribes a similar range of penalties. Accordingly, the Trial Chamber has treated the law of the former Yugoslavia as prescribing in the case of each of the offences of which Duško Tadić has been convicted sentences ranging from five years' imprisonment to the death penalty. Consideration has also been given to the sentencing practice of courts in the former Yugoslavia pursuant to these provisions and other relevant laws.

9. The practice of courts in the former Yugoslavia does not delimit the sources upon which the Trial Chamber may rely in reaching its determination of the appropriate sentence for a convicted person. Rather, the Trial Chamber has had recourse to the sentencing practice of the courts of the former Yugoslavia except where the Statute, international law, or special considerations including the special nature and purpose of the International Tribunal require otherwise. Article 24(1) of the Statute limits the International Tribunal to penalties of imprisonment or confiscation of wrongfully acquired property. Consequently, for crimes which, in the courts of the former Yugoslavia, would receive the death penalty, the International Tribunal may only impose imprisonment but it may impose a maximum penalty of life imprisonment in its stead, consistent with the practice of States which have abolished the death penalty and with the commitment by States progressively to abolish the death penalty under the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (G.A. res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207 U.N. Doc. A/44/49 (1989); entered into force July 11, 1991). This is the understanding given to the Statute both by the members of the Security Council (*see* statement by Mrs. Madeleine Albright to the Security Council, *Provisional Verbatim Record of the Three Thousand Two Hundred and Seventeenth Meeting*, 25 May 1993, U.N. Doc. S/PV. 3217, p. 17) and Rule 101(A) of the Rules. There is thus no violation of the *nullum crimen sine lege, nulla poena sine lege* principle. Consequently, the sentencing practice of courts of the former Yugoslavia at the date of the commission of the offences for which Duško Tadić was found guilty, the practices in effect as of the date of the adoption of the Statute by the Security Council on 25 May 1993, as well as changes in those sentencing practices which would necessitate the imposition of a less severe punishment consistent with

internationally recognised human rights standards, and the effect of the Statute and international law more generally, have been considered.

10. In respect of the sentencing practice of the courts of the former Yugoslavia, Article 41(1) of the SFRY Penal Code sets out the various factors to be taken into account in determining sentence:

The court shall weigh the punishment to be imposed on the perpetrator of a criminal offence within the legal limits of punishment for that offence, keeping in mind the purpose of punishment and taking into consideration all the circumstances which influence the severity of punishment, and particularly: the degree of criminal responsibility; motives for the commission of the offence; the intensity of threat or injury to the protected object; circumstances of the commission of the offence; the perpetrator's past life; the perpetrator's personal circumstances and his behaviour after the commission of the offence; as well as other circumstances relating to the perpetrator.

Articles 42 and 43 also deal with and limit instances in which special mitigation of penalties may be applied. Beyond the SFRY Penal Code, pursuant to Article 24(2) of the Statute, the Trial Chamber is equally to take into account "such factors as the gravity of the offence and the individual circumstances of the convicted person." Consequently, the Trial Chamber has taken into account the foregoing provisions of the SFRY Penal Code in determining the sentencing of Duško Tadić, together with such other matters of mitigation and aggravation, used in courts around the world, as have appeared to the Trial Chamber to be appropriate, as well as the individual circumstances of Duško Tadić. The Trial Chamber has also considered penalties imposed for crimes against humanity by international and national military tribunals and under national laws. These are all reflected in the sentences imposed. The Trial Chamber turns now to each of the counts of the Indictment of which Duško Tadić has been found guilty.

III. CIRCUMSTANCES RELEVANT TO SENTENCING FOR EACH OF THE CRIMES

A. Paragraph 6 of the Indictment: Counts 10 and 11

11. Under Counts 10 ('cruel treatment') and 11 ('inhumane treatment'), the Trial Chamber found Duško Tadić guilty for his part in the beatings and other violence inflicted on **Emir Beganović, Senad Muslimović, Emir Karabašić, Jasmin Hrnić, Enver Alić and Fikret Harambašić** on the floor of the hangar building in the Omarska camp on 18 June 1992. Each of these victims will be dealt with in turn.

1. Beating of Emir Beganović

(a) The circumstances of the offence

12. The first part of the evidence presented at trial under this paragraph of the Indictment related to the beating of Emir Beganović. According to the evidence presented:

After the Serb assumption of power in Prijedor [Emir Beganović] had been arrested and taken to the Omarska prison camp where, after some 10 days outdoors on the pista and two days in the white house, he was placed in a room in the hangar. Apart from what he describes as routine beatings and maltreatment, he was three times beaten individually. The third of these occasions is that referred to in paragraph 6 of the Indictment. Emir Beganović was called out from an upstairs room in the hangar, made to go onto the hangar floor, being beaten as he went, and there for up to half an hour was kicked and beaten by a group of soldiers armed with metal rods and metal cables. Then he was suspended upside down from an overhead gantry for some minutes until his feet slid free and he fell to the floor; he was then beaten again and told to return to his room, where he fainted. As a result of this and his earlier beatings Emir Beganović suffered head fractures, a wasted hand which he cannot use, an injured spine and damage to one leg and to his kidneys.

Opinion and Judgment, para. 200.

13. Further, according to the evidence presented:

The witness was already severely injured when he was called out, suffering, amongst other injuries, from wounds to his head which were roughly bandaged but he insists that he was quite capable of clear recognition of the accused.

Opinion and Judgment, para. 207.

Given the state of the victim at the time of the beating, which would have been apparent to the group of men who beat him, the beating could only have inflicted severe pain and suffering. The beatings of the victim on the floor of the hangar building on 18 June 1992 were particularly severe, and must have contributed significantly to the considerable permanent injuries which the victim now suffers.

(b) The role of Duško Tadić

14. According to the evidence of the victim, accepted at trial:

. . . he was called out by a man known to him as Dragan, who had previously beaten him and who began to beat him again, taking him onto the hangar floor where a group of men in a variety of military uniforms were waiting. They began to beat and kick him and he recognized the accused as one of that group who took an active part in hitting him. He was positive in his recognition of the accused whom he had known in the past, although he was no friend of his.

Opinion and Judgment, para. 207.

Clearly then, Duško Tadić was an active and willing participant in the crime.

2. Beating of Senad Muslimović

(a) The circumstances of the offence

15. The second body of evidence presented under this paragraph of the Indictment related to the beating of Senad Muslimović. According to the evidence presented:

[Senad Muslimović] had already been much beaten and on the same day as these other incidents he was called out of his room in the hangar, beaten as he went down the stairs to the hangar floor and met by a group who beat him severely, tied him to a large tyre bigger than himself and there beat and kicked him into unconsciousness. When he regained consciousness he was on his knees and a man was holding a knife to his throat and threatening to cut it but was told to “leave him for the end”. That man then made to cut off his ear but instead stabbed him twice in his shoulder. He was then beaten again into unconsciousness and when he came to found himself hanging upside down suspended from the hangar roof, in which position he was again beaten and kicked until he fainted. When he came to again he was lying on the floor, was beaten again, fainted yet again, came to once more and this time found himself lying in an inspection pit let into the hangar floor. He was taken out of the pit and allowed to return to his room in the hangar. He had suffered knife wounds to his right shoulder, knife cuts along his arms and feet, bruising, head pains and a broken jaw.

Opinion and Judgment, para. 201.

(b) The role of Duško Tadić

16. According to the findings at trial, the Trial Chamber was satisfied beyond reasonable doubt

that the accused was one of a group of men who severely beat Emir Beganović and also Senad Muslimović. It accepts their evidence of having been brutally beaten and kicked on the hangar floor by that group and of their identification of the accused as taking an active part in that kicking and beating and, in the case of Senad Muslimović, of the accused threatening him with a knife and then stabbing him.

Opinion and Judgment, para. 235.

Of concern here is the terrorising of the victim, the severity of the physical attack upon him such that he fell unconscious, the repetition of the beatings and the sadistic way in which they were carried out by the group. Of particular concern is the use by Duško Tadić of a deadly weapon to inflict great harm and suffering on Senad Muslimović.

3. Beating of Emir Karabašić, Jasmin Hrnčić and Enver Alić

(a) The circumstances of the offence

i. Emir Karabašić

17. The third body of evidence presented at trial under this paragraph of the Indictment related to the beating, again in the hangar building at the Omarska camp, of three detainees: Emir Karabašić, Jasmin Hrnčić and Enver Alić. In relation to Emir Karabašić:

Many former prisoners gave evidence of these three men being called out and of sounds of beating and of cries of pain afterwards coming from the open area of the hangar. Emir Karabašić was seen there by Mehmed Alić, who testified that he saw him sitting bleeding on a table having been slashed with knives and having water poured over him. A little later Witness H saw the body of Emir Karabašić lying on the hangar floor.

Opinion and Judgment, para. 203.

That was the last time that, according to the witnesses, Emir Karabašić was seen alive. He had already suffered a severe beating prior to this event and his body was badly bruised even before this attack on him began. *Opinion and Judgment*, para. 202.

ii. Jasmin Hrnčić

18. In relation to Jasmin Hrnić, according to the evidence presented by Senad Muslimović, which the Trial Chamber accepted:

Later, in the course of the violent attack on him described earlier and which occurred on the same afternoon as the other attacks dealt with in this paragraph of the Indictment, the witness, while on the hangar floor, heard another prisoner being addressed by an unseen questioner as Jasko and being asked what he had been doing at Benkovac. To that the prisoner replied: "I do not know, I have done nothing, Dule, cross my heart, I know nothing." The witness then saw that same prisoner being cut by the accused with a knife, "sliced as if once one slices chops", and having black liquid, probably oil, poured over him. At that point this witness then lost consciousness.

Opinion and Judgment, para. 225.

Not only was 'Jasko' the nickname of the detainee Jasmin Hrnić, whom Duško Tadić knew quite well, but after the attack on Kozarac Jasmin Hrnić had been apprehended in the mountains at Benkovac. Duško Tadić was known to his friends and family as 'Dule'. After this attack on Jasmin Hrnić, and when he was lying on the hangar floor, one of the guards, according to the evidence presented:

. . . put his foot on Jasmin Hrnić's neck, turned Jasmin Hrnić's head to and fro and ordered G and Witness H to take a foot each and pull the inert body of Jasmin Hrnić about the hangar floor. This they were made to repeat a number of times, being made to do press-ups in between.

Opinion and Judgment, para. 205.

That was the last time that, according to the evidence, Jasmin Hrnić was seen alive. He had also already suffered severe beatings prior to this event. *Opinion and Judgment*, para. 202.

iii. Enver Alić

19. In relation to Enver Alić, there was no eyewitness to the actual mistreatment of the victim. However, as with the others, he was called out onto the hangar floor and the Trial Chamber accepted that he was beaten by the group of men present, and was last seen alive lying on the hangar floor beside the body of Jasmin Hrnić. *Opinion and Judgment*, para. 205. As with the other two victims, Enver Alić had been much beaten prior to this event. *Opinion and Judgment*, para. 202.

(b) The role of Duško Tadić

20. The Trial Chamber found beyond reasonable doubt that Duško Tadić was present on the hangar floor when the three victims, Emir Karabašić, Jasmin Hrnić and Enver Alić, were called out and attacked, that Duško Tadić took part in the beating of Jasmin Hrnić and attacked him with a knife on the hangar floor and severely cut him, and that Duško Tadić took part in the attack upon and beating of Emir Karabašić. *Opinion and Judgment*, para. 236. Of concern here are the number of victims, each of whom was severely beaten by the group of men, and again the use by Duško Tadić of a deadly weapon to inflict grievous harm and great suffering on one of the detainees.

4. Beating of Fikret Harambašić

(a) The circumstances of the offence

21. The fourth and last body of evidence presented under this paragraph of the Indictment related to one of the worst of the offences in which Duško Tadić was involved, namely the attack on Fikret Harambašić shortly after the attack on the above three victims. According to the evidence of Witness H, accepted at trial:

After G and Witness H had been forced to pull Jasmin Hrnić's body about the hangar floor they were ordered to jump down into the

inspection pit, then Fikret Harambašić, who was naked and bloody from beating, was made to jump into the pit with them and Witness H was ordered to lick his naked bottom and G to suck his penis and then to bite his testicles. Meanwhile a group of men in uniform stood around the inspection pit watching and shouting to bite harder. All three were then made to get out of the pit onto the hangar floor and Witness H was threatened with a knife that both his eyes would be cut out if he did not hold Fikret Harambašić's mouth closed to prevent him from screaming; G was then made to lie between the naked Fikret Harambašić's legs and, while the latter struggled, hit and bite his genitals. G then bit off one of Fikret Harambašić's testicles and spat it out and was told he was free to leave. Witness H was ordered to drag Fikret Harambašić to a nearby table, where he then stood beside him and was then ordered to return to his room, which he did.

Opinion and Judgment, para. 206.

This was the last time that, according to the evidence, Fikret Harambašić was seen alive.

(b) The role of Duško Tadić

22. The Trial Chamber found beyond reasonable doubt that Duško Tadić was present on the hangar floor at the time of the assault upon and sexual mutilation of Fikret Harambašić, and that, through his presence, Duško Tadić aided and encouraged the group of men actively taking part in the assault. *Opinion and Judgment*, paras. 237, 726, 730. Of particular concern here is the cruelty and humiliation inflicted on the victim and the other detainees involved.

B. Paragraph 7 of the Indictment: Counts 13 and 14

23. Under Counts 13 ('cruel treatment') and 14 ('inhumane treatment'), the Trial Chamber found Duško Tadić guilty for his part in the beating of **Šefik Sivac** at the notorious white house in the grounds of the Omarska camp, as related to the Trial Chamber by Hase Ičić and Husein Hodzić.

(a) The circumstances of the offence

24. According to the evidence, on the night of 8, 9 or 10 July 1992, Hase Ičić, whom the Trial Chamber considered reliable and trustworthy

heard the sound of beatings coming from in front of the white house. As he was lying on the floor of a room in the white house, on his back with his head and shoulders off the ground leaning against another prisoner, he heard people cursing as they approached his room. He recognized one of the voices. He then saw a person who was wearing a camouflage uniform, and another person, as they threw a badly beaten prisoner into the room. As the prisoner was thrown into the room, the person said: "You will remember, Sivac, that you cannot touch a Serb or say anything to a Serb." The next morning, Hase Ičić recognized this prisoner as being Šefik Sivac, a Muslim. When the commander of the guard shift, Krkan, later came into the room and asked for the names of the people who were either dead or could not move, Hase Ičić identified Šefik Sivac.

Opinion and Judgment, para. 264.

(b) The role of Duško Tadić

25. The testimony as to the involvement of Duško Tadić also came from Hase Ičić. According to his evidence

. . . it was the accused's voice that he recognized as people were approaching his room after he heard the sound of beatings coming from in front of the white house. He recognized the accused as being one of the persons who threw the badly beaten prisoner into his room. As the prisoner was thrown into his room, the accused said: "You will remember, Sivac, that you cannot touch a Serb or say anything to a Serb."

Opinion and Judgment, para. 266.

The Trial Chamber found beyond reasonable doubt that:

. . . the accused was part of the group that threw Šefik Sivac onto the floor of a room in the white house after he had been beaten and that Šefik Sivac later died from these injuries.

Opinion and Judgment, para. 279.

Of particular concern here is the severity of the beating inflicted: according to the testimony of Husein Hodžić, when he saw the dead body of Šefik Sivac the next day “ ‘it looked like anything but a body’, his clothes were torn and the body was bloodied.” *Opinion and Judgment*, para. 265.

C. Paragraph 8 of the Indictment: Counts 16 and 17

26. Under Counts 16 (‘cruel treatment’) and 17 (‘inhumane treatment’), the Trial Chamber found Duško Tadić guilty for his part in the beatings inflicted on **Hakija Elezović** who appeared as a witness, on his son **Salih Elezović** and on **Sejad Sivac**, all of which occurred behind the white house in the Omarska camp in the afternoon of 27 July 1992.

(a) The circumstances of the offence

27. According to the evidence of Hakija Elezović accepted at trial:

While in Omarska he was assaulted; he was made to kneel and bark like a dog, a gun-barrel was pushed into his mouth and the front teeth of his bottom jaw were broken in the process. Then he was taken for interrogation and on the way was beaten and had his front upper teeth kicked out. After his first interrogation he was called back again an hour later, on the way was hit and knocked down and then, instead of a second interrogation, was sent back in the direction of the white house. However, instead of entering the white house he was taken behind it where he says that some 10 soldiers were beating some 50 to 60 prisoners amongst tall grass. There was already a heap of bodies there and he saw his son, Salih, being beaten. He began to be kicked and his son cried out: “Let my old man go”, and the son was then struck with a pistol; then he himself was struck a very severe blow on the neck and fell unconscious. When he came to, there were very many dead lying

there, including his son and the veterinarian Sejad Sivac and others he recognized and named, including one Zuhdija Turkanović, their bodies lying one on top of the other; he himself was lying near the bodies of his son and Sejad Sivac. The witness had a knife stab wound in his leg.

Opinion and Judgment, para. 287.

28. The other witness, Samir Hodžić, saw four bodies, including those of Salih Elezović and Sejad Sivac, stacked one on top of the other at the rear of the white house.

(b) The role of Duško Tadić

29. There was no evidence of the killing of Salih Elezović or Sejad Sivac by Duško Tadić but there was evidence which was accepted that he beat and kicked Hakija Elezović and struck his son Salih. In addition to the above extract, Hakija Elezović's testimony included his being taken

to the back of the white house after his interrogation. The accused said to him: "Now you have come to the right place", and kicked him in the stomach and beat him, and also struck his son with a pistol. The accused was wearing a military camouflage uniform, had a baton and along with the soldiers was beating prisoners.

Opinion and Judgment, para. 292.

There was also the evidence that when Duško Tadić beat Salih Elezović he also beat various other prisoners and participated in the events leading to the death of Salih Elezović. *Opinion and Judgment*, paras. 299, 302. While Duško Tadić was not found guilty of having killed any of the prisoners, his participation in the beating of prisoners encouraged the beating of other prisoners by camp guards and visitors in such circumstances that death could and in fact did result, which aggravates the nature of his crime.

D. Paragraph 10 of the Indictment: Counts 22 and 23

30. Under Counts 22 ('cruel treatment') and 23 ('inhumane treatment'), the Trial Chamber found Duško Tadić guilty for his part in the beatings inflicted on or about 8 July 1992 on a number of prisoners including **Hase Ičić**, who appeared as a witness.

(a) The circumstances of the offence

31. According to the evidence accepted at trial, after a day of savage beatings and violence, the names of Hase Ičić and other prisoners in the white house appeared on a list taken by the shift commander, Mladjo Radić, whose nickname was 'Krkan'. According to that evidence:

Krkan took the list and later that evening, as Hase Ičić stated, a "group of Serbs from outside the camp" came to the white house. Hase Ičić heard prisoners in the adjacent room say: "Here, the executioners are coming." The group arrived in the evening at about 10 p.m. and set up lighting in the hallway. After the lighting system was set up, Krkan came to the door of Hase Ičić's room and began calling prisoners out from the list in the order that their names appeared. Hase Ičić testified that prisoners were called out and taken to a small room at the end of the corridor and beaten. After 10 to 15 prisoners had been called out and beaten, the group took a break and went to an area in front of the white house and began drinking, making toasts and discussing what each would do next. Hase Ičić was finally called out and taken to that same small room at the end of the corridor. As he left, he saw two guards standing at the entrance to the white house. Hase Ičić was taken into the small room, which he described as the "beating room". He was told to greet the group of Serbs there by saying: "God be with you, heroes." A noose was put around his neck and it was pulled tight. Seconds later, one of the group struck a heavy blow on his back and he fell. He was then beaten with a whip made of cable, with iron balls, an iron rod, a wooden bat and rubber truncheons. The noose was repeatedly tightened and loosened as he was beaten, and he lost consciousness. When he regained consciousness in the morning, he was lying among battered prisoners in the room in which he had been placed upon his arrival. Guards entered the room, walking among the prisoners to see who among them were dead. One of them placed his foot on Hase Ičić and when he let out a cry of pain, the guard responded: "He's alive, but not for long." The prisoners who were dead were carried out of the white house by other prisoners.

Opinion and Judgment, para. 248.

According to his testimony, Hase Ičić suffered broken ribs from the beating. He was kept in the white house for a few more days without food. He described the white house as “a very messy slaughterhouse, stench and blood, urine and beaten up people, blood sprayed on the walls, horror”, the smell being so bad that the prisoners were taken out of the white house for a period of time because the guards could not tolerate the stench. *Opinion and Judgment*, para. 249.

(b) The role of Duško Tadić

32. Hase Ičić had known Duško Tadić since his school days. According to Hase Ičić, whose testimony the Trial Chamber accepted, Duško Tadić was present during the beatings of that evening. In particular, he testified that

. . . when he was taken to the room at the end of the corridor in the white house, he stood face to face with the accused who was standing near Simo Kević and three other members of the group of Serbs. It was then that a noose was placed around his neck and he was beaten and kicked by the group until he lapsed into unconsciousness.

Opinion and Judgment, para. 252.

Of particular concern here is the use of whips, iron bars and other instruments to inflict great suffering on the victim, as well as his terrorising and near suffocation through the use of a noose. Once again, the cruelty of the attack weighs heavily in any consideration of the appropriate sentence.

E. Paragraph 12 of the Indictment: Counts 33 and 34

33. Under Counts 33 (‘cruel treatment’) and 34 (‘inhumane treatment’), the Trial Chamber found Duško Tadić guilty for his part in the beatings inflicted on a number of men during their forced transfer from the villages of Jaskići and Sivci in the vicinity of Kozarac

on or about 14 June 1992. This part of the Sentencing Judgment is concerned with the treatment inflicted on those persons during the rounding up process.

(a) The circumstances of the offence

34. According to the evidence accepted at trial, more than 350 men were taken from Sivci village, in the process of which they were beaten and stripped of their valuables. *Opinion and Judgment*, para. 346. Similar scenes occurred in Jaskići, where a number of villagers were killed by unidentified Serb soldiers. The soldiers kicked the men and beat them with sticks. *See Opinion and Judgment*, paras. 351-358. Most of the men marched away were never heard from again. *Opinion and Judgment*, para. 348. The villages continued to be looted after that date. Eventually Jaskići was destroyed by fire. *Opinion and Judgment*, para. 350.

(b) The role of Duško Tadić

35. No accusation was made, nor any testimony given, of Duško Tadić having attacked any of the villagers during the attack on Sivci. *Opinion and Judgment*, para. 376. In Jaskići, according to the testimony of Draguna Jaskić, who had known Duško Tadić and members of his family by sight for many years and whose evidence the Trial Chamber accepted, after her house in the village of Jaskići was searched and as she was returning inside

she saw the accused, 20 metres away, bearded and wearing a camouflage uniform, together with another soldier, driving men of the village down the street towards her house and hitting them with a stick, one of the villagers with blood covering his face.

Opinion and Judgment, para. 352.

Later, looking through the window of her house, she saw

the accused and others beating the men of her family as they lay on the street and pouring water over those who had fainted. She saw the accused strike her father with a stick behind the neck as he tried to stand up. Her son then pulled her down onto the floor. She got up

again later, looked through the window and saw that all the men were now running down the road with the accused, whose face she could see, beating a man; she was then some 12 metres away from him.

Opinion and Judgment, para. 353.

Her sister, Subha Mujić, when she returned inside, also saw Duško Tadić beating the men. In her evidence, which the Trial Chamber accepted:

She described the arrival of soldiers in Jaskići on 14 June 1992, the ordering out of everyone in her sister's house, the separation of men and women and the beating of the men from her sister's house by the accused, whom she recognized. The accused was bearded, wearing a camouflage uniform. When she went back inside she saw the accused still continuing to beat the men with a rifle and to kick them. They were lying on the street while being beaten and the accused ordered water to be poured over them and they were then led off down the street.

Opinion and Judgment, para. 356.

This testimony was confirmed by other witnesses. The Trial Chamber accordingly found Duško Tadić guilty of having beaten the subjects of this testimony; namely Beido Balić, Šefik Balić, Ismet Jaskić, and Salko Jaskić. None of the witnesses have seen the men removed from the village since that day.

F. Paragraph 4 of the Indictment: Count 1

36. Under Count 1 ('persecution'), the Trial Chamber found Duško Tadić guilty for his part in a series of acts including active participation in beatings, forced transfers and killings representing Duško Tadić's persecution of Muslims in opština Prijedor during the Bosnian Serb takeover in May and June 1992. This persecution must also be understood, and has been considered by the Trial Chamber, as part of the attack by Bosnian Serb forces, in particular by the 1st Krajina Corps of the Army of the Republika Srpska and the forces subject to the direct control of the Crisis Staffs in opština Prijedor, on the non-Serb population of the opština during that takeover. Of all this, Duško Tadić was well aware and was an enthusiastic supporter.

37. The crimes of Duško Tadić under paragraph 4.1 of the Indictment relate to the attack on Kozarac and on the villages of Jaskići and Sivci and events in the Prijedor military barracks. The crimes under paragraph 4.2 relate to Duško Tadić's acts at the three detention camps, Omarska, Keraterm and Trnopolje, as well as those acts under paragraphs 6, 7, 8 and 10 of the Indictment.

1. Participation of Duško Tadić in the attack on Kozarac and surrounding areas

(a) The circumstances of the offences

38. The attack on the town of Kozarac is described in considerable detail in the course of the Opinion and Judgment. It suffices to note that, as a consequence of the attack, which included two days of artillery barrage and an assault by a mechanised brigade of troops, some 800 civilians were killed out of a population of around 4,000. When the town had been captured, the Bosnian Serb forces proceeded to round up and drive out of the area on foot the entire non-Serb population. During the course of the ethnic cleansing of Kozarac, many more civilians were beaten, robbed and murdered by Bosnian Serb paramilitary and military forces. The terrified population were then taken to the camps of Omarska, Keraterm and Trnopolje, where their ordeal continued. Some civilians, after their forced removal from Kozarac, were sent to Prijedor military barracks before being sent to the camps.

39. Numerous civilians were killed during the attacks on the undefended villages of Sivci and Jaskići and the forced removal of their male inhabitants. None of them were seen or heard from again.

(b) The role of Duško Tadić

i. Attack on Kozarac and surrounding villages

40. As the leading member of the Serb Democratic Party (“SDS”) in the predominantly Muslim town of Kozarac, Duško Tadić played an active part in all phases of the attack on Kozarac. Witness Q, whose testimony was accepted by the Trial Chamber, gave evidence that

he saw the accused in Kozarac between 8 and 9 p.m. on the day the attack started [i.e., the artillery attack], 24 May 1992. He had been at home eating lunch when the attack started, quickly changed clothes and then went to the hospital to try and prepare it for attack. As he was leaving the hospital in the evening to check on his family he saw the accused and one Boško Dragičević jump over a fence and head toward some nearby gardens. Soon thereafter a flare was fired from the garden area in the direction of the hospital and shelling followed which greatly damaged the hospital.

Opinion and Judgment, para. 380.

Duško Tadić, who was armed and wearing a camouflage uniform, was later seen by various witnesses at several different locations in Kozarac after the town was captured, serving as a member of the paramilitary forces that aided the regular units from the 1st Krajina Corps in the assault.

ii. Collection and forced transfer

41. During the occupation of Kozarac, Duško Tadić participated in the collection and forced transfer of civilians. As the refugees were herded down the old Prijedor-Banja Luka road in the direction of Kozarusa, many of them were singled out and, once removed from the column, were shot by members of the Bosnian Serb forces. According to Nasiha Klipić’s testimony:

When the convoy arrived at the Kozarusa bus station by the tavern, males aged 15 to 65 were separated from women and children and the men were divided into three groups destined respectively, as she later found out, for the Omarska, Trnopolje and Keraterm camps. She recognized several of the Serbs who were engaged in separating the people and these Serbs included the accused and Goran Borovnica. At that time she was about three to four metres away from the accused and her view was unobstructed. She also heard the accused ask a

policeman named Miloš Preradović: “Where do I take these?” referring to those being rounded up.

Opinion and Judgment, para. 385.

42. Duško Tadić’s role in the attack on the villages of Sivci and Jaskići has already been considered in part under paragraph 12. It should also be noted that, in the course of the takeover of Sivci, Duško Tadić assisted in the forced transfer of the male villagers. In Jaskići, the group of which Duško Tadić was a member forcibly removed from the village Beido Balić, Šefik Balić, Munib Bešić, Ilijas Elkašović, Nijas Elkašović, Hassan Jakupović, Ismet Jaskić, Salko Jaskić, Senad Majdanac, Alija Nureski, Iso Nureski, Mirsad Nureski, Jasmin Šahbaz and Fehim Turkanović. *Opinion and Judgment*, para. 389.

iii. Beatings and killings

43. As previously noted, during the attack on Jaskići Duško Tadić beat Beido Balić, Šefik Balić, Ismet Jaskić and Salko Jaskić. Duško Tadić was also seen in Kozarac, on 26 May 1992, by Witness Q, beating, with the aid of another man, a Muslim policeman named Alić who was among a group of 10 Muslim policemen, Duško Tadić inflicting a “karate blow” on the victim. *Opinion and Judgment*, para. 390. In the Prijedor military barracks, Duško Tadić kicked Uzeir Bešić and was present for part of, and took part in, the beating of Sead Halvadžić. According to Uzeir Bešić, after his capture:

On 3 June 1992 he was eventually taken with two other young men to the Prijedor military barracks where they entered a building and were placed in the hallway facing the wall with Uzeir Bešić farthest to the right. Soldiers then began to curse them and beat them on their backs and shoulders with batons, making him fall on his knees with his head facing to the right toward some offices down the hall. While he was on his knees he saw the accused come out of a room to his right and approach him as he headed towards the exit. As he passed, the accused kicked Uzeir Bešić several times and then continued on his way out of the building. Uzeir Bešić has known the accused since boyhood.

Opinion and Judgment, para. 391.

Similarly, Sead Halvadžić, who was transferred to the Prijedor military barracks sometime after noon on 9 June 1992

was taken to the first floor and left with another man while one of the guards went to get the Commander. Another guard came along and asked: "What are you Ustaša doing here?" He forced them to raise three fingers in a Serb salute and lined them up against the wall with their faces against the wall. Then another guard asked, "Tadić, do you see Ustaša", and then two military policemen entered, both dressed in camouflage uniforms with "white slings", one of whom was the man the guard had addressed as Tadić. Thereupon he was struck by a very hard "karate blow". The two men then proceeded to kick and beat him with batons and other items whilst he and the other men had to lean with three fingers against the wall. He was able for a short while to see the faces of the men who were beating him. The Commander then told them to stop the beating, saying: "Tadić, let those people alone", and one of the two replied, "They all have to, all their throats should be cut, that is the only way". They were then taken to a cell in the barracks where they were beaten again by a different group of soldiers and the next day they were taken to the Omarska camp. He had not known any man named Tadić prior to that day.

Opinion and Judgment, para. 392.

44. The most serious offence which Duško Tadić individually committed was the killing of two Muslim policemen in Kozarac. On the afternoon of 26 May 1992 Nihad Seferović, whose evidence was accepted at trial, while on his way back home from the hills in Bešići

stopped at the orchard of a house across from the Serbian Orthodox church. In front of the church he saw approximately six Muslim policemen from Kozarac, including Edin Bešić, Ekrem Bešić, Emir Karabašić and one Osman with their hands behind their necks standing in line. In front of them were the accused, Goran Borovnica, "Dule" and about 15 other Serb paramilitaries who had weapons pointed at the Muslim policemen. He saw the accused pull two of the policemen, Osman and Edin Bešić, out of the line and kill them by slitting their throats and stabbing each one several times.

Opinion and Judgment, para. 393.

It is clear that the killings were intentional. They represent a major demonstration of a pattern of conduct consisting of extreme violence against non-Serbs and a flagrant disregard for human life and the suffering of others. Duško Tadić bears full responsibility for the deaths and the extremely violent and cruel manner in which they were caused.

(c) Other factors

45. In considering the various aggravating and mitigating factors relevant to the most serious offence, the killing of the two Muslim policemen, it is useful to refer briefly to the indications given by the relevant codes of the former Yugoslavia as to other homicide crimes, in particular murder. The maximum sentence, namely the death penalty, under the SFRY Penal Code could be imposed in a murder case under the codes of the former Yugoslav republics, where the crime is aggravated by any of a number of factors, including where the convicted person: (a) kills another in a cruel manner (such as, here, cutting the throats of and stabbing the two men); (b) kills out of a base or low motive, which the Trial Chamber considers to include religious, ethnic or political persecution; or commits a multiple homicide. *See* Article 36, Penal Code of the Republic of Bosnia and Herzegovina; Article 35 Penal Code of the Republic of Croatia; Article 47, Penal Code of Serbia. These factors have been taken into account in determining the appropriate sentence.

2. Participation in beating of prisoners at the Omarska camp

46. The Trial Chamber now turns to its findings in relation to paragraph 4.2 of the Indictment. Enough has been said about the crimes of Duško Tadić under paragraphs 6, 7, 8 and 10 of the Indictment. The Trial Chamber turns now to its findings in relation to events at the Omarska camp not otherwise dealt with in this Sentencing Judgment, namely the attacks on Senad Muslimović in the hangar building and Edin Mrkalj in the administration building, each of whose testimony was found credible by the Trial Chamber. *Opinion and Judgment*, paras. 428-429.

(a) Beating of Senad Muslimović

47. Senad Muslimović testified that Duško Tadić beat him on two separate occasions. The second occasion was dealt with in relation to paragraph 6 of the Indictment. The first beating occurred after Senad Muslimović had been interrogated at the Omarska camp. According to his testimony:

After leaving the interrogation, during which he was beaten, Senad Muslimović was on his way back to room 15 in the hangar building from a room above the kitchen. As he walked toward the hangar, he stole a look and saw men on the grass near the white house. Some of these men began to follow him and he sped up in a futile attempt to elude them. As he reached the door to the staircase, he felt a blow that made him fall on his hands and knees in the direction of the stairs. The accused came from behind and grabbed his hair, pulling left and right as if shaking him, turning him. He then saw a man who told him to kiss a beret that he was holding with a kokarda on it. Senad Muslimović refused until the man hit him, causing him to fall against the kokarda and cut his lips. This was followed by a series of blows. He was hit on his head so strongly that he stumbled forward and then he was severely hit from several sides. At one point an object was thrown that hit him in the back. He somehow got up and managed to escape up the stairs.

Opinion and Judgment, para. 403.

This beating of the victim was severe and contained the common factors of humiliation, ethnic persecution and physical violence.

(b) Beating of Edin Mrkalj

48. Edin Mrkalj, a Prijedor policeman, was taken to the Omarska camp on 2 June 1992 and remained there until the camp was disbanded in August 1992. He had known Duško Tadić since 1991. The findings of the Trial Chamber, based on the testimony of Edin Mrkalj, are as follows:

On 16 June 1992, at approximately 2 p.m., Edin Mrkalj and another inmate were taken to the first floor of the administration building for the purpose of transporting a dead body. When they got to the top of the stairs, they stopped with their heads down as was customary practice. He heard laughter, but could not see how many people were around him. The man standing next to him received a blow and fell down. Someone then put a rubber baton under Edin Mrkalj's throat in such a way that his head was forced up and he looked into the face of the accused, who was holding the baton. The accused then turned and hit him on his head. Edin Mrkalj testified that the accused asked him why he was there and what his occupation was, despite knowing that he had been a police officer. He answered and was told to stretch out

his arms and hands. The accused then asked him which hand he used to write with, then began hitting him on that hand with the rubber baton. When the baton fell at one point, the accused told him to “pick up the baton and say, 'Here you are, sir' and 'Serb, Serb’”. Edin Mrkalj stated that the accused then stuck the barrel of an automatic rifle in his mouth and began beating him on the head with a metal spring:

The barrel was in my mouth and I was receiving double blows with a rubber baton and with the metal spring. Now, rubber baton, one can still survive, somehow manage it, but not a metal spring. My head was bursting, blood was bursting. It was awful. My teeth were breaking. Everything was breaking. I cannot remember exactly which blow was the last one. The last one was really terrible. I have a feeling that Duško Tadić at that moment had stepped backward. I do not know whether the barrel was out of my mouth at that moment or before that, but I received a terrible blow there and everything burst. I fell. I fainted.

While the accused hit him with the metal spring, another person hit Edin Mrkalj with a rubber baton. He lost consciousness for a period of time. He testified that, when he came to, the accused ordered him to hit a man who was lying down with a crushed head. “You could not identify a nose or eyes or any part of his body only blood, blood, blood.” After he hit the man, two civilians with a camera arrived and walked toward them. Edin Mrkalj stated that the accused then told him to run downstairs and he somehow managed to return to his group.

Opinion and Judgment, paras. 406-407.

49. As a result of these incidents, Edin Mrkalj also testified that he has had three operations on his gums and mouth and he suffered damage to his hand from which he had just recovered in March or April 1996.

3. Events at the Keraterm and Trnopolje camps

50. The Trial Chamber now turns to its findings in relation to events at the Keraterm and Trnopolje camps not otherwise dealt with in this Sentencing Judgment, in particular, the attacks on Šefik Kesić and other prisoners, and the attack on Hakija Elezović by Duško Tadić during his interrogation at the Keraterm camp.

(a) Beating of Šefik Kesić

51. Šefik Kesić, a Muslim from Kamičani, who had known Duško Tadić in Kozarac, arrived at the Keraterm camp around 15 June 1992 and was held in Room 2 at the camp. According to his testimony, which the Trial Chamber accepted:

At some point during his first 10 days, he was called out of the room at approximately 9 p.m. A group of uniformed men came to the door and one of them asked if anyone wanted to get revenge on him or the other soldiers for all the beatings. None of the prisoners volunteered, so the guard pointed to two men and called for the first ten after those two to come out of the room. They walked outside and were put into a line and one guard, whom Šefik Kesić recognized as the accused, went from prisoner to prisoner asking questions and beating them. This guard reached Šefik Kesić, who looked at his face, and asked him his name, where he came from, and whether he had any weapons. When Šefik Kesić responded that he did not have any weapons, the accused said: "They all say that", and struck him in his chest. Šefik Kesić fell and the accused continued down the line of prisoners. After all of the prisoners had been beaten, they were taken back to the room.

Opinion and Judgment, para. 437.

The relatively minor nature of the beating has been taken into account in determining sentence, as has, however, the fact that Duško Tadić attacked other prisoners after Šefik Kesić.

(b) Beating of Hakija Elezović

52. Hakija Elezović was assaulted at the Keraterm camp by Duško Tadić. According to Hakija Elezović's testimony, during an interrogation he saw Duško Tadić, "who was acting as bodyguard for the interrogator, and who kicked him to the floor with a karate kick in the chest and then kicked him on the back and chest as he lay there." *Opinion and Judgment*, para. 291. *See also* para. 438. As a consequence of this and other beatings administered at the camps, his ribs were broken, his kidneys were injured and as a consequence of the beating, he suffers headaches and has difficulty breathing. *Opinion and Judgment*, para. 438.

(c) Other factors

53. Duško Tadić's involvement at the Trnopolje camp was limited to his presence on several occasions, which Duško Tadić did not deny. Aside from his acts in assisting in the forced transfer of civilians to the camp, Duško Tadić played no active role in the continued confinement of non-Serbs in the camp as charged in paragraph 4.3 of the Indictment. *Opinion and Judgment*, para. 455.

4. Other events in Count 1

54. The role of Duško Tadić in the events relevant to Count 1 alleged in paragraph 4.4 of the Indictment, namely the seizure and selection of individuals for detention in the camps and the transportation of Muslims and Croats to those camps, has been dealt with in the course of this Sentencing Judgement. No evidence was led at trial by the Prosecution as to the acts alleged in paragraph 4.5 of the Indictment, and accordingly Duško Tadić was found not guilty of those acts.

5. General concerns relevant to sentencing for Count 1

55. In considering the sentence to be imposed, the Trial Chamber has taken into account the willing participation of Duško Tadić in the persecution of non-Serbs in opština Prijedor generally, including his membership of the SDS, his espousal of ethnic and religious discrimination and nationalist sentiments and his participation in the crimes for which he has been found guilty under Count 1 of the Indictment. The Trial Chamber finds no general mitigating factors relevant solely to Count 1. Each of these factors is discussed in greater detail in the following section.

IV. ADDITIONAL FACTORS CONSIDERED IN SENTENCING

A. General aggravating factors

56. Each of the offences was committed in circumstances that could not but aggravate the crimes and the suffering of its victims. The victims of Duško Tadić's acts in Kozarac had already suffered the horrors of a two-day artillery bombardment and a military assault on the town, which had left some 800 people dead. The shock and terror which they must have suffered was only exacerbated by the acts of Duško Tadić and other members of the Bosnian Serb forces in the way in which they wantonly killed and beat civilians in the course of the ethnic cleansing of the town. So too when Duško Tadić assisted in the violent cleansing of Sivci and Jaskići. The horrific conditions at the camps established by Bosnian Serb authorities in opština Prijedor and the inhuman treatment of the detainees in the camps, of which Duško Tadić was well aware, were discussed in detail in the Opinion and Judgment. To have willingly participated in the brutal treatment and exacerbated these conditions, serves only to increase the harm which Duško Tadić inflicted on his victims and accordingly to aggravate his crimes.

57. Indeed, consideration must also be given to the willingness of Duško Tadić to perpetrate the crimes and to contribute to the attack on the non-Serb civilian population of opština Prijedor which formed the basis of the crimes against humanity which Duško Tadić committed. In the course of the Opinion and Judgment, the Trial Chamber discussed the increasing role of Duško Tadić in the SDS, committed as it was to extreme principles of Serb nationalism, his direct participation in the attack on Kozarac and its surrounding area and its consequences, his conscious desire to contribute to the elimination of non-Serb elements from opština Prijedor and the continuous involvement of Duško Tadić in the persecution of non-Serbs at least from the time of the attack on Kozarac and extending through June 1992 in the attack on Jaskići and Sivci and his later visits to the detention camps. Consequently, the Trial Chamber has taken into consideration in the imposition of an appropriate sentence Duško Tadić's awareness of, and enthusiastic support for, the attack on the non-Serb civilian population of opština Prijedor by Bosnian Serb forces and the Republika Srpska authorities

operating in that area. This awareness and support, manifested in his actions, gave rise to Duško Tadić's liability for crimes against humanity rather than just war crimes, and is a factor in the imposition of sentence by the Trial Chamber.

58. Finally, it must be noted that Duško Tadić has in no relevant way cooperated with the Prosecutor or the International Tribunal. Indeed, he has at all times denied his guilt for the crimes of which he has been convicted. Consequently, he is not entitled to any mitigation pursuant to the terms of Rule 101(B)(ii).

B. General mitigating factors

59. Various factors were raised by the Defence in the course of the Pre-Sentencing Hearing. At the outset it may be noted that, prior to the conflict, Duško Tadić was a law-abiding citizen and seemingly enjoyed the respect of his community. However, his course of conduct from May to October 1992 displays a pattern of cruel and brutal conduct and a callous disregard for his fellow citizens, including former friends and neighbours. As the Defence portrays him, Duško Tadić is an intelligent, responsible and mature adult raised by his parents in a spirit of ethnic and religious tolerance and capable of compassion towards and sensitivity for his fellows. However this, if anything, aggravates more than it mitigates: for such a man to have committed these crimes requires an even greater evil will on his part than that for lesser men.

60. Defence counsel made the point that the acts of Duško Tadić must be seen in the light of the events at the time and that, while his crimes were severe, they were less than the crimes committed by many others. Despite his support for the Bosnian Serb cause, including his role in the SDS in Kozarac, Duško Tadić cannot be considered to have played an important leadership or organisational role in the events in opština Prijedor in the middle of 1992. While Duško Tadić could be considered to have been a man of some importance to the SDS cause in Kozarac, and while the capture and cleansing of Kozarac, as a mainly Muslim town lying on the supply route between the Federal Republic of Yugoslavia (Serbia and Montenegro) and the front lines of the conflict in the Republic of Croatia, could be considered a target of considerable importance to the Serb cause as a whole, he had no major

role in the overall campaign in opština Prijedor. His relative unimportance is made clear by the steps taken by the local Bosnian Serb authorities to call him up as an ordinary soldier in the ongoing conflict, and his eventual flight from opština Prijedor and the territory of the former Yugoslavia as a whole.

C. Personal circumstances of Duško Tadić

61. In the course of this Sentencing Judgment, the Trial Chamber has referred to portions of the record of the trial, which bear on the gravity of the offences and the intensity of the injury to the victims as well as the role and degree of criminal responsibility of Duško Tadić. His personal circumstances, however, must also be considered for the Trial Chamber should determine the “appropriate punishment in relation to the individual as well as the crime”. See Commentary to Article 46 ‘Sentencing’, Draft Statute for an International Criminal Court, *Report of the International Law Commission on the work of its forty-sixth session*, UN Doc A/51/10 (1994), p 123 (Article 46, Commentary, para. 1). Further, while the purpose of criminal law sanctions include such aims as just punishment, deterrence, incapacitation of the dangerous and rehabilitation, the Trial Chamber accepts that the “modern philosophy of penology [is] that the punishment should fit the offender and not merely the crime”. Lafave & Israel, *Criminal Procedure* (2 ed, 1991), p. 1102.

62. In determining the appropriate sentence, in accordance with Article 24(2) of the Statute, the Trial Chamber has taken into account Duško Tadić’s indigence and the effect of the length of sentence on his family. The Trial Chamber has also taken into consideration Duško Tadić’s age both now and at the conclusion of any sentence to be served.

63. In assessing the information provided during the Pre-Sentencing Hearing, as it relates to the personal circumstances of Duško Tadić, the Trial Chamber focused on his personality, character and family and social background, as well as his age at the time of the commission of the criminal offences. The Trial Chamber also considered Duško Tadić’s work record and the fact that he had no prior criminal record. However, the Trial Chamber looked to the events during and preceding the armed conflict as they bore on the criminal offences committed by Duško Tadić.

64. Duško Tadić, born in October 1955, committed the crimes for which he has been found guilty during an armed conflict of horrific consequences that was ongoing in Bosnia and Herzegovina and, in particular, in opština Prijedor. A consideration of Duško Tadić's personal circumstances necessarily required a recognition of the context in which his acts were committed, not only to reach a conclusion as to whether a legal nexus existed between the acts and the armed conflict, a question determined at trial, but to determine Duško Tadić's relationship to that conflict insofar as it may relate to sentencing.

65. It is only Duško Tadić who stands before the Trial Chamber convicted of serious violations of international humanitarian law. However, the Trial Chamber heard much evidence that related not directly to his actions, but to the climate in which these acts were committed. The Trial Chamber considered it important in its Opinion and Judgment to make preliminary factual findings regarding the context of the conflict throughout Bosnia and Herzegovina generally and in opština Prijedor particularly as they related to the criminal culpability of Duško Tadić. In determining the appropriate sentence, the Trial Chamber likewise should consider the totality of the circumstances.

66. In his closing submissions at the Pre-Sentencing Hearing, Defence counsel made reference to provocative statements made in the region advocating ethnic hatred. In the Opinion and Judgment, the Trial Chamber noted that, prior to the outbreak of the war, opština Prijedor was, ethnically speaking, a relatively mixed area in which the ethnic groups lived harmoniously together, with only limited signs of division. Such tension as existed was exacerbated by the use of propaganda and political manoeuvres. *Opinion and Judgment*, paras. 129-130.

67. The Trial Chamber also noted that propaganda in opština Prijedor portrayed non-Serbs as enemies and less than human; Muslims were known as 'Baliijas', while Croats were described as 'Ustaša' who had threatened to make a wreath from the fingers of Serbian children. The media also reported the extreme views of the Serbian-led Crisis Staff which advocated that the largest percentage of non-Serbs acceptable on the territory designated as Greater Serbia was 2 percent. Another major leader presented in the media his decision not

to allow any non-Serb women to give birth at the Banja Luka Hospital and asserted that children of mixed marriages “were good only for making soap”. Efforts, such as the peace rallies held in the city of Banja Luka to counter both these appeals to ethnic hatred and also the call to arms for the killing or expulsion of non-Serbs, were halted by means of a blockade utilising checkpoints manned by a Bosnian Serb paramilitary unit. *See Opinion and Judgment*, paras. 130, 147, 153.

68. The media in the area focused only on SDS policy and reports from Belgrade became more prominent, including the presentation of extremist views and promotion of the concept of a Greater Serbia, just as in other parts of Bosnia and Herzegovina the concept of a Greater Croatia was openly advocated. *Opinion and Judgment*, para. 84. On 30 April 1992, the SDS took over the town of Prijedor with the aid of the military and the police force. This was a prelude to assuming control of the entire opština Prijedor. Whereas before the conflict opština Prijedor contained approximately 50,000 Muslims and 6,000 Croats, only some 6,000 Muslims and 3,000 Croats remained after the cleansing and they endured very harsh conditions. *Opinion and Judgment*, paras. 137, 152.

69. Duško Tadić came from a prominent family of Serb ethnicity in the town of Kozarac, in opština Prijedor, the population of which prior to the conflict was 90 percent Muslim. During the Second World War, his mother had been confined to the notorious Jasenovac prison camp, which was operated by pro-German Croatian forces. Kozarac was strategically located near the highway which passed through opština Prijedor, a corridor that linked the Serb-dominated area in the Croatian Krajina to the west with Serbia and Montenegro to the east and south. Duško Tadić played a major political role in Kozarac with the SDS party after the cleansing of Muslims from the area. *Opinion and Judgment*, paras. 127, 142, 180, 188.

70. It is against this background that the personal circumstances of Duško Tadić must be determined. This is not to say that his criminal culpability is to be measured by a comparison with the alleged acts of other persons known and unknown to the Trial Chamber. The guilt or innocence of such persons is not in issue. In fact, evidence of the possible crimes of others was presented only in a tangential way to the Trial Chamber to establish that Duško Tadić’s

offences were committed in the context of an armed conflict. No strict hierarchy of relative criminal culpability can be, or should be, established by the Trial Chamber. However, the Trial Chamber cannot ignore these events, how they may bear on the offences of Duško Tadić, and how they illuminate his role and thus his personal circumstances. The specific harm caused to victims and their families by Duško Tadić is of paramount importance. That harm cannot be explained away by pointing to others to whom Defence counsel and Duško Tadić himself referred during the Pre-Sentencing Hearing.

71. In his final statement, Duško Tadić offered a list of persons whom he suggested were more responsible than he for the horrific events that transpired. At trial, he testified that “I do not think that anybody is guilty”. TP 6137 (Tuesday, 29 October 1996). Likewise, in closing submissions at trial, his counsel at that time quoted from a letter from the then President of the United States, Abraham Lincoln, in the period of the Civil War in the United States in the mid-nineteenth century, in which he stated: “Each man feels an impulse to kill his neighbour, lest he be first killed by him”. *Abraham Lincoln: Speeches and Writings 1859-1865* (1989), p 523. However, what was not pointed out by that counsel was that the Executive Order which President Lincoln issued in response to that conflict, the Instructions for the Government of Armies of the United States in the Field, better known as the Lieber Code, has been recognised as one of the foundations of the Law of The Hague, setting limits on the conduct of armed conflicts. See Frits Kalshoven, *Constraints on the Waging of War* (2 ed., 1991), pp 11, 12, 13. Thus, this quote from President Lincoln should not be construed as excusing criminal conduct even when committed during a time of armed conflict. The International Tribunal was established to adjudge individual guilt or innocence, and it discharges that responsibility without recognising as justifications the exigencies some say are inherent in the nature of armed conflict.

72. Thus, the Trial Chamber does not accept that Duško Tadić’s actions were anything but criminal, constituting offences against individuals, and indeed, against all mankind. To condone Duško Tadić’s actions is to give effect to a base view of morality and invite anarchy. However, the virulent propaganda that stoked the passions of the citizenry in opština Prijedor was endemic and contributed to the crimes committed in the conflict and, as such, has been taken into account in the sentences imposed on Duško Tadić. As two writers have noted:

When victims are dehumanised...the moral restraints against killing or harming them become less effective. Groups of people who are systematically demonized, assigned to inferior or dangerous categories, and identified by derogatory labels are readily excluded from the bonds of human empathy and the protection of moral and legal precepts.

HC Kelman and VL Hamilton, *Crimes of Obedience: Toward a Social Psychology of Authority and Responsibility* (1989), p 163.

Duško Tadić himself in part responded to this campaign. In this respect, the Trial Chamber has recognised Duško Tadić's personal circumstances and considered them in determining the appropriate sentence.

D. Crimes against humanity and violations of Common Article 3

73. A prohibited act committed as part of a crime against humanity, that is with an awareness that the act formed part of a widespread or systematic attack on a civilian population, is, all else being equal, a more serious offence than an ordinary war crime. This follows from the requirement that crimes against humanity be committed on a widespread or systematic scale, the quantity of the crimes having a qualitative impact on the nature of the offence which is seen as a crime against more than just the victims themselves but against humanity as a whole. *See Opinion and Judgment*, paras. 646-647. The Trial Chamber sees no reason to depart from this view. Here, Duško Tadić was aware that his acts were part of, and contributed to, the crime against humanity committed by Bosnian Serb forces against the non-Serb population of opština Prijedor.

V. PENALTIES

74. FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments, the Statute and the Rules, THE TRIAL CHAMBER imposes on Duško Tadić the following penalties:

A. Counts 10 and 11

For inhumane treatment as a crime against humanity, the Trial Chamber sentences Duško Tadić to ten years' imprisonment;

For cruel treatment as a violation of the laws or customs of war, the Trial Chamber sentences Duško Tadić to nine years' imprisonment.

B. Counts 13 and 14

For inhumane treatment as a crime against humanity, the Trial Chamber sentences Duško Tadić to seven years' imprisonment;

For cruel treatment as a violation of the laws or customs of war, the Trial Chamber sentences Duško Tadić to six years' imprisonment.

C. Counts 16 and 17

For inhumane treatment as a crime against humanity, the Trial Chamber sentences Duško Tadić to seven years' imprisonment;

For cruel treatment as a violation of the laws or customs of war, the Trial Chamber sentences Duško Tadić to six years' imprisonment.

D. Counts 22 and 23

For inhumane treatment as a crime against humanity, the Trial Chamber sentences Duško Tadić to seven years' imprisonment;

For cruel treatment as a violation of the laws or customs of war, the Trial Chamber sentences Duško Tadić to six years' imprisonment.

E. Counts 33 and 34

For inhumane treatment as a crime against humanity, the Trial Chamber sentences Duško Tadić to ten years' imprisonment;

For cruel treatment as a violation of the laws or customs of war, the Trial Chamber sentences Duško Tadić to nine years' imprisonment.

F. Count 1

For various acts of persecution as a crime against humanity, including the killing of Osman Bešić and Edin Bešić, the Trial Chamber sentences Duško Tadić to twenty years' imprisonment.

G. Concurrence of Sentences

75. Each of the sentences is to be served concurrently *inter se*.

H. Minimum term recommendation

76. The Trial Chamber recommends that, unless exceptional circumstances apply, Duško Tadić's sentence should not be commuted or otherwise reduced to a term of imprisonment less than ten years from the date of this Sentencing Judgment or of the final determination of any appeal, whichever is the latter.

I. Credit for time served

77. In accordance with Rule 101(E), Duško Tadić is entitled to credit for time for which he "was detained in custody pending his surrender to the Tribunal or pending trial or appeal." Although he was arrested on 12 February 1994, his detention pending surrender to the International Tribunal did not commence until 8 November 1994 when Trial Chamber I issued a formal request to the Government of the Federal Republic of Germany to defer to the jurisdiction of the International Tribunal (*Prosecutor v Duško Tadić*, Decision of the Trial Chamber on the Application by the Prosecutor for a Formal Request for Deferral, Case No. IT-94-1-D, T. Ch. I, 8 November 1994). Consequently, Duško Tadić is entitled to credit, except in respect of the minimum term recommendation made by the Trial Chamber in paragraph 76 of this Sentencing Judgment, for two years, eight months and six days of time served in relation to the sentence imposed by the Trial Chamber as at the date of this Sentencing Judgment together with such additional time as he may serve pending the determination of any appeal.

J. Enforcement of Sentences

78. The Trial Chamber directs the Registrar to submit to the Trial Chamber and to the parties a list of States Members of the United Nations or other States who, pursuant to Article 27 of the Statute, have indicated to the Security Council their willingness to accept convicted persons. The Trial Chamber decides that it shall consider the list submitted by the Registrar and will entertain written submissions from the parties as to the State in which Duško Tadić should serve his sentence. The Trial Chamber shall then order the Registrar to make

arrangements for the transfer of the prisoner to the selected State, in consultation with the President of the International Tribunal and the Presiding Judge of this Trial Chamber, but shall suspend that order until such time as the Appeal Chamber has considered and determined the appeal of the parties. Until that time, in accordance with Rule 102, Duško Tadić is to remain in the custody of the International Tribunal.

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

Gabrielle Kirk McDonald
Presiding

Ninian Stephen

Lal Chand Vohrah

Dated this fourteenth day of July 1997
At The Hague
The Netherlands

[Seal of the Tribunal]