

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“SREBRENICA” (IT-02-60/2)

DRAGAN OBRENOVIĆ



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From December 1992 to November 1996, chief of staff and deputy commander of the 1st Zvornik Infantry Brigade of the Drina Corps of the Bosnian Serb Army (VRS); from 8 August 1995 until 15 September 1995 and again between 18 and 24 September 1995, acting commander of the Zvornik Infantry Brigade

- Sentenced to 17 years' imprisonment

Convicted of:

Persecutions on political, racial and religious grounds (crimes against humanity)

- Obrenović aided and abetted in the planning, preparation, and execution of persecutions.
- He failed to prevent his subordinates from committing criminal acts or to punish them for committing such acts.

The crime of persecutions was carried out through the following means:

- The murder of thousands of Bosnian Muslim civilians, including men, women and children. At one location, the Branjevo military-run farm, around 20 kilometres north of Zvornik in eastern Bosnia, approximately 1,200 Bosnian Muslim were executed by automatic weapon fire.
- In Luke, near Tišća (approximately 30 kilometres west of the Srebrenica enclave) some of the women who had been separated from their male relatives in Potočari were, on 13 July 1995, “selected” by Bosnian Serb soldiers to go to a school where they were abused and assaulted. The men and boys who were “selected” were abused before being executed.
- Beginning around 12 July 1995 and continuing throughout the period of the executions, the personal property of the Bosnian Muslim prisoners, including their identification documents, was confiscated and destroyed by members of the VRS and the Ministry of Interior (MUP).

Born	12 April 1963 in Rogatica, Bosnia and Herzegovina
Indictment	Initial: 9 April 2001; joint: 22 January 2002; joint amended: 27 May 2002
Arrested	15 April 2001, by the multinational Stabilisation Force (SFOR)
Transferred to ICTY	15 April 2001
Initial appearance	18 April 2001, pleaded not guilty to all charges
Guilty plea	21 May 2003, pleaded guilty to persecutions
Trial Chamber sentencing judgement	10 December 2003, sentenced to 17 years' imprisonment
Serving sentence	18 June 2004, transferred to Norway to serve the remainder of his sentence; credit was given for time served since 15 April 2001; early release granted on 21 September 2011

STATISTICS

As a plea agreement was reached before the beginning of trial, no trial was necessary.

TRIAL CHAMBER SENTENCING JUDGEMENT	
<i>10 December 2003</i>	
Trial Chamber I	Judge Liu Daqun (presiding), Judge Volodymyr Vassylenko, Judge Carmen Maria Argibay
Counsel for the Prosecution	Peter McCloskey, Stefan Waespi, Antoinette Issa, Anne Davis
Counsel for the Defence	David Wilson, Dušan Slijepčević

RELATED CASES
BLAGOJEVIĆ & JOKIĆ (IT-02-60) "SREBRENICA"
ERDEMOVIĆ (IT-96-22) "PILICA FARM"
KARADŽIĆ (IT-95-5/18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"
KRSTIĆ (IT-98-33) "SREBRENICA-DRINA CORPS"
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"
MLADIĆ (IT-09-92) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"
NIKOLIĆ MOMIR (IT-02-60/1) "SREBRENICA"
ORIĆ (IT-03-68)
PERIŠIĆ (IT-04-81)
POPOVIĆ <i>et al.</i> (IT-05-88) "SREBRENICA"
STANIŠIĆ & SIMATOVIĆ (IT-03-69)
TOLIMIR (IT-05-88/2) "SREBRENICA"
TRBIĆ (IT-05-88/1) "SREBRENICA"

INDICTMENT AND CHARGES

The initial indictment against Obrenović was confirmed on 9 April 2001 (IT-01-43). The indictment charged him with five counts of complicity in genocide, extermination, murder as a crime against humanity, murder as a violation of the laws or customs of war, and persecutions. The initial indictment was later joined with the indictments issued against Vidoje Blagojević (IT-98-33/1) and Dragan Jokić (IT-01-44). Under the joint indictment filed on 22 January 2002 (IT-02-53), the three accused were charged as members of a joint criminal enterprise for the same charges as in the initial indictments.

On 17 May 2002, the indictment against Momir Nikolić (IT-02-56) was combined with the joint indictment and the case was filed under case number IT-02-60. The Prosecution filed the joint amended indictment (IT-02-60) on 27 May 2002. The charges against Obrenović remained the same.

The final indictment charged Obrenović on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and his superior criminal responsibility (Article 7(3)) with:

- Complicity in genocide (genocide, Article 4(3)(e)),
- Murder, extermination, persecutions, and inhumane acts (crimes against humanity, Article 5),
- Murder (violations of the laws or customs of war, Article 3).

On 23 May 2003, Obrenović pleaded guilty and his case was assigned case number IT-02-60/2.

PLEA AGREEMENT/GUILTY PLEA

The Tribunal's Rules of Procedure and Evidence provide for a plea agreement procedure (Rule 62 *ter*). The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor can apply to the Trial Chamber to amend the

indictment accordingly and ask for a sentence within a specific range or agree to the sentencing range suggested by the Defence. The Trial Chamber is not bound by any such agreement.

On 20 May 2003, the Prosecution and the Defence filed a "Joint Motion for Consideration of a Plea Agreement between Dragan Obrenović and the Office of the Prosecutor".

The Trial Chamber accepted the plea agreement and guilty plea, and entered a finding of guilty against Obrenović for count 5 of the indictment: persecutions, a crime against humanity. Pursuant to the plea agreement, the Prosecution moved to dismiss the remaining counts. On 23 May 2003, the Trial Chamber granted the motion.

Additionally, under the plea agreement, Obrenović agreed to testify in other proceedings before the Tribunal, including those trials related to Srebrenica. In October 2003, Obrenović testified for seven days in the trial of his two former co-accused, Blagojević and Jokić (IT-02-60).

The Obrenović sentencing hearing was held on 30 October 2003.

STATEMENT OF DRAGAN OBRENOVIĆ

"On the territory of the country in which I was born, shooting from firearms was usual when celebrating the birth of a male child. These shots tell you everything, what a new male member of the family means and what is expected of him - strength, protection; he should be a warrior, a soldier, the head of the family, as they say in our parts. Unfortunately, when other kinds of shooting started in the former Yugoslavia, shooting in war, it was normal for every man, every male child, to put on a uniform, take up a weapon, and go to protect his homeland, his nation, and ultimately his family. This was expected of him. This was his role, a sacred role.

There was no choice. You could be either a soldier or a traitor. At the beginning of the war, it seemed as if the war and all it brought with it was impossible, that this wasn't really happening to us, and that everything would be resolved within a few days, and that finally our generation would have a chance. We didn't even notice how we were drawn into the vortex of inter-ethnic hatred and how neighbours were no longer able to live beside each other, how death moved into the vicinity, and we didn't even notice that we had got used to it. Death became our reality.

Unfortunately, it became everyday reality. Who before that could have believed that the horrors of war would have become everyday reality? Who could have believed that they could become a part of our lives? Surrounded with horrors, we got used to them and went on living like that. Among those horrors, things happened that were done by people who knew each other, people who, until yesterday, had lived almost as family members together. In Bosnia, a neighbour means more than a relative. In Bosnia, having coffee with your neighbour is a ritual, and this is what we trampled on and forgot. We lost ourselves in hatred and brutality. And in this vortex of terrible misfortune and horror, the horror of Srebrenica happened.

I am here before Your Honours because I wish to express my remorse. I have thought for a long time, and I'm always followed by the same thought - guilt. I find it very hard to say this truth. I am to blame for everything I did at that time. I am trying to erase all this and to be what I was not at that time. I am also to blame for what I did not do, for not trying to protect those prisoners. Regardless of the temporary nature of my then-post. I ask myself again and again, what could I have done that I didn't do? Thousands of innocent victims perished. Graves remain behind, refugees, general destruction and misfortune and misery. I bear part of the responsibility for this.

There is misfortune on all sides that stays behind as a warning that this should never happen again. My testimony and admission of guilt will also remove blame from my nation because it is individual guilt, the guilt of a man named Dragan Obrenović. I stand by this. I am responsible for this. The guilt for this I feel remorse and for which I apologise to the victims and to their shadows, I will be happy if this contributed to reconciliation in Bosnia, if neighbours can again shake hands, if our children can again play games together, and if they have the right to a chance.

I will be happy if my testimony helps the families of victims, if I can spare them having to testify again and thus relieve the horrors and the pain during their testimony. It is my wish that my testimony should

help prevent this ever happening again, not just in Bosnia, but anywhere in the world. It is too late for me now, but for the children living in Bosnia now, it's not too late and I hope that this will be a good warning to them.

In our wartime sufferings, no one has come out as the winner; everybody is suffering now. On all sides, there is still pain. What has won the victory is misfortune and unhappiness, as a consequence of blind hatred. The spirit of this unhappiness still hovers over our Bosnian hills, which have suffered so much, and it will take years to wipe out the traces of this horrible war and to have smoke rise again from people's chimneys, from the hearths, and maybe decades will have to pass before the wounds in people's souls are healed. If my confession, my testimony, and my remorse, if my attempt to face myself contributes to the quicker healing of these wounds, I will have done my duty of a soldier, a fighter, a human being, and a father.

In the end, I wish to thank the Prosecution for their efforts to establish the truth and for their efforts to have justice done. I would like to thank you, Your Honours, for listening to me so attentively throughout my testimony. I tried to answer every question put to me as correctly and truthfully as I could. Thank you."

(Dragan Obrenović, Sentencing Hearing, 30 October 2003)

TRIAL CHAMBER JUDGEMENT

In March 1995, political and military leaders in the Bosnian Serb-controlled portion of Bosnia and Herzegovina issued orders calling for, among other things, the creation of "an unbearable situation of total insecurity, with no hope of further survival or life" for the inhabitants of Srebrenica.

Between 6 and 11 July 1995, the enclave of Srebrenica was shelled and attacked by units of the VRS Drina Corps. In the days following this attack, VRS forces captured, detained, summarily executed, and buried more than 7,000 Bosnian Muslim men and boys from the enclave, and forcibly transferred the Bosnian Muslim women and children of Srebrenica out of the enclave.

In mid-July 1995, within approximately one week around 6,000 Bosnian men, who had tried to escape from the enclave to the nearby Bosnian government controlled territory, were captured, detained and executed in various locations in the Bratunac and Zvornik municipalities to the north of Srebrenica. On 13 July 1995, more than 1,000 prisoners were executed at the Kravica warehouse, situated on the immediate northwest of the enclave. Obrenović learned about the killing of the prisoners detained in the Kravica warehouse on 15 July 1995. At the Branjevo military-run farm, approximately 1,200 Bosnian Muslim men who had been captured were executed by automatic weapon fire on 16 July 1995.

Members of the VRS Zvornik Brigade, including members of the Military Police, participated in mass executions of Bosnian Muslim men either directly as executioners or by providing assistance by guarding the prisoners and transporting the captured men to execution sites. VRS Zvornik Brigade members further assisted in transporting the bodies of executed Bosnian Muslim men to mass grave sites.

According to Obrenović, during the evening of 13 July 1995, he was informed by Drago Nikolić, chief of security of the Zvornik Brigade, of the plan to bring a "huge number of Muslim prisoners" from Bratunac, to the immediate north of the enclave, to Zvornik, a further 30 kilometres north, to be executed there. According to Obrenović, Nikolić said everyone, including Obrenović's commander, knew about the plan to kill the prisoners.

Obrenović was aware that the killing operation was occurring when he was back in the Zvornik Brigade Headquarters on the morning of 15 July 1995; Dragan Jokić had told him about problems with burying executed prisoners, as well as the guarding of prisoners awaiting execution.

On 16 July 1995, Ostoja Stanišić, commander of the 6th Battalion of the Zvornik Brigade, informed Obrenović that Muslim prisoners brought by Colonel Ljubiša Beara, chief of security of the VRS Main Staff, to the school in Petkovci, 10 kilometres north of Zvornik, had been taken to the nearby "Dam" to be executed; the last group of prisoners was executed at the school and members of the 6th Battalion of the Zvornik Brigade removed them to a mass grave at the "Dam".

The Bosnian Muslim civilians were terrorised and subjected to acts of violence, including beatings, at schools and other detention centres in the Zvornik area. In Luke, some of the women who had been separated from their male relatives in Potočari were, on 13 July 1995, "selected" by VRS soldiers to go to a school where they were abused and assaulted; men and boys were also selected and abused before being taken for execution.

Beginning on or around 12 July 1995 and continuing throughout the period of the executions, the personal property of the Bosnian Muslim prisoners, including their identification documents, was confiscated and destroyed by members of the VRS and the MUP.

The Trial Chamber found that Obrenović was deputy commander and chief of staff of the Zvornik Brigade, which was the brigade responsible for the municipality in which the vast majority of the executions took place, and that during the two days when many of these executions occurred he was the brigade's acting commander. Obrenović not only knew that members of the Zvornik Brigade took part in the organisation of the killings and the burials of the executed Muslim prisoners, but also approved the release of members of the Zvornik Brigade to participate in the implementation of this plan on at least three occasions: he released seven of his men to "assist" with the prisoners - prisoners that he knew were to be shot; he ordered the commander of the Military Police of the Zvornik Brigade and five military policemen to assist Nikolić; and he also approved the release of two machine operators from duty, knowing that their task was the burial of executed prisoners.

The Chamber found that although the plan to kill the prisoners was decided by commanders above Obrenović, he participated in the implementation of the killings by approving the removal of his soldiers and ordering them to follow orders that came from above. The Chamber considered his participation through this action to be aiding and abetting. Obrenović accepted criminal responsibility for his participation in the joint criminal enterprise, the common purpose of which was, among other things, to execute and bury thousands of Muslim men and boys from 12 July until about 19 July 1995. Hence, the Chamber found that his participation was best characterised as "co-perpetratorship".

The Chamber also found that, although Obrenović was not present at execution sites while the killing operation was carried out, he had a responsibility as the acting commander and as the deputy commander and chief of staff to prevent the commission of crimes by his subordinates, and in the event that such crimes were committed, to punish those who committed criminal offences. He did neither and was therefore also responsible under Article 7 (3) of the Statute: superior criminal responsibility.

Weighing Obrenović's different forms of individual criminal responsibility, the Chamber found his liability stemmed primarily from his responsibility as a commander. While Obrenović only released seven of his soldiers to prepare for the arrival of the Muslim prisoners in Zvornik and two of his men to take part in the burial of prisoners he knew or had reason to know that members of several units of the Zvornik Brigade took part in the killing operation at various locations by guarding, executing and burying Muslim prisoners. The Chamber therefore found that the central part of Obrenović's responsibility arose from his failure to act in the face of the commission of the crime of persecutions - by being passive when he should have prevented his subordinates from committing the criminal acts or punished them for such crimes afterwards.

The Chamber also noted that Obrenović tried to convince the VRS Main Staff to open the frontline to let the columns of Muslim civilians fleeing the enclave pass through into territory under control of Bosnian government forces. Obrenović also discussed the opening of a corridor with his commander, Vinko Pandurević, who eventually ordered the opening on the afternoon of 16 July 1995. As a consequence, further heavy fighting was prevented and many refugees safely reached territory under control of the Bosnian government.

In determining the sentence to be imposed on Obrenović, the Chamber considered whether any aggravating or mitigating circumstances existed in the case.

The Chamber took particular note of the vulnerability of the victims. They were all in a position of helplessness and were subject to cruel treatment at the hands of their captors. The Chamber found this to be an aggravating factor.

With regard to mitigating circumstances, the Chamber found that Obrenović, under the force of his own conscience, had begun the process toward rehabilitation. This process began shortly after the murder operations when, after hearing a survivor of an execution on the radio, Obrenović asked General Radislav Krstić why the Muslims had been killed. The process continued when, in 1998, Obrenović permitted the Office of the Prosecutor to search the premises of the Zvornik Brigade knowing that the search was likely to yield information that could incriminate him. Later, knowing that he held the status of a suspect, Obrenović agreed to speak with the Office of the Prosecutor and cooperate in their investigation of Srebrenica on three occasions, and even went so far as to offer to surrender himself. He continued the process toward rehabilitation after his arrest by taking full responsibility for the crimes he committed and by cooperating fully with the Prosecution.

Based on the evidence presented, the Chamber found that, prior to the war, Obrenović was a highly respected member of the community who did not discriminate against other groups. Furthermore, the Chamber found, based on witness testimony, that even during the war he provided help on an ongoing basis to several Muslims whom he previously had not known.

The Chamber found numerous mitigating circumstances upon which they placed substantial weight. Through the unqualified acceptance of his responsibility and his guilt, his sincere remorse, his substantial cooperation with the Prosecution, and his character, Obrenović mitigated his sentence. The Chamber stressed that the allocation of significant weight to the mitigating circumstances should not be interpreted as dismissal of the enormous gravity of the offence for which he was convicted.

On 10 December 2003, the Trial Chamber sentenced Obrenović to 17 years' imprisonment.

CONCLUSION OF PROCEEDINGS

Neither party lodged an appeal against the sentencing judgement.

On 18 June 2004, Obrenović was transferred to Norway to serve his sentence. Credit was given for time served since 15 April 2001.

On 21 September 2011, Obrenović was granted early release.