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JUDGEMENT IN THE CASE
THE PROSECUTOR V. STANISLAV GALIĆ

• **STANISLAV GALIĆ SENTENCED TO 20 YEARS' IMPRISONMENT**

Please find below the summary of the Judgement delivered by Trial Chamber I, composed of Judges Orić (Presiding), El Mahdi and Nieto-Navia, as read out by the Presiding Judge.

Summary of Judgement

Introduction

Trial Chamber I of the International Criminal Tribunal for the Former Yugoslavia is sitting today to deliver its Judgement in the trial of General Stanislav Galić.

General Galić is accused of having conducted, between September 1992 and August 1994, a campaign of sniping and shelling attacks on the civilian population of Sarajevo, causing death and injury to civilians, with the primary purpose of spreading terror among the civilian population.

For the purposes of this session, the Trial Chamber will give a brief explanation of the reasons for its Judgement. The only authoritative account, however, is the written Judgement. Copies of this will be made available to the parties and to the public at the conclusion of the session.

The Trial Chamber's Judgement is rendered by a majority of its members (the Majority). Judge Nieto-Navia is dissenting in part, and will explain briefly, at the end of my speech, the reasons for his dissent. The Majority reached its decision after being convinced of the correctness of its conclusions as to the law, and after impartial appreciation of the facts.

The facts of this case

The Accused's trial concerned events which took place in and around Sarajevo, the capital of Bosnia-Herzegovina. At the time of those events, an entity known as Republika Srpska had established itself within the territory of Bosnia-Herzegovina. The Army of Bosnia-Herzegovina and the Army of Republika Srpska were engaged in armed conflict.

The Army of Republika Srpska was known as the VRS. By September 1992 one branch of the VRS, called the Sarajevo Romanija Corps, or SRK, had virtually encircled Sarajevo.

General Galić was the commander of the SRK throughout the Indictment period, that is, from September 1992 to August 1994.

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The major part of Sarajevo was under the control of the Army of Bosnia-Herzegovina, or ABiH. A confrontation line around Sarajevo separated the warring sides.

The Prosecutor alleges that General Galić is criminally responsible for a campaign conducted by the SRK of sniping and shelling attacks on civilians in the parts of Sarajevo controlled by the ABiH. The campaign is said to have resulted in a large number of deaths and injuries to civilians. According to the Prosecutor, there was thus a violation international humanitarian law. The principle of distinction, which forms part of that body of law, obliges military commanders to distinguish between military objectives, on the one hand, and civilians, on the other, and not to attack civilians under any circumstances.

The Prosecutor claims that the Accused ordered the campaign of attacks on civilians, or otherwise failed to prevent or punish the crimes of his subordinates. For this General Galić is charged with war crimes and crimes against humanity. He is also charged with the crime of terror. Terror, it is said, was the primary purpose of the campaign of attacks.

I should point out that the Indictment is not concerned with legitimate military attacks by forces under the control of the Accused, even if such attacks may have resulted in unintended civilian casualties.

The Defence contests the allegations and argues that the Prosecutor did not establish that civilian casualties were caused by deliberate or indiscriminate shelling or sniping by the SRK.

The Defence's case is that civilian casualties were collateral to legitimate military activity. The casualties resulted as well from targeting errors and stray bullets. According to the Defence, some casualties may have been the result of ABiH forces firing upon their own civilians.

The Trial Chamber was confronted with a large amount of evidence, testimonial and documentary. A total of 171 witnesses were heard. The number of exhibits, including written reports, film, photographs, maps, and sound-recordings, amounted to 1,268 items, in addition to which there were 15 experts' reports.

Many witnesses were the victims of attacks, or had otherwise been caught up in sniping or shelling incidents. Witnesses included international military personnel stationed in Sarajevo, as well as members of the armed forces of the parties to the conflict. Several expert witnesses with specializations ranging from history to ballistics were called by the Prosecutor and the Defence.

The Trial Chamber was mindful when assessing and drawing conclusions from the evidence that one party to the conflict – the ABiH army – was positioned in close proximity with the civilian population of Sarajevo, and that much of the fighting was conducted in a confined urban setting in which military targets were not always clearly separated from civilian objects.

The evidence demonstrates beyond reasonable doubt that Sarajevo civilians were indeed made the object of deliberate attack by SRK forces. The Trial Chamber heard from local witnesses who had experienced a multiplicity of attacks in their neighbourhoods. They were attacked while attending funerals, while in ambulances, trams, and buses, and while cycling. They were attacked while tending gardens, or shopping in markets, or clearing rubbish in the city. Children were targeted while playing or walking in the streets.

These attacks were mostly carried out in daylight. They were not in response to any military threat. The attackers could for the most part easily tell that their victims were engaged in everyday civilian activities.

The topography of Sarajevo, with its ridges and high-rise buildings, provided vantage-points for SRK personnel to target civilians in the city. Certain locations in Sarajevo became notorious sniping spots. For example, several witnesses testified that the main thoroughfare in Sarajevo was known as “Sniper Alley”.

Although civilians adapted to some extent to the frequent attacks, by closing schools, by living at night and hiding during the day, by moving around Sarajevo as little as possible, and by setting up steel containers to shield against sniper fire, they were still not safe. They were still seen and targeted. There was little effective protection against shelling.

Many witnesses provided the Trial Chamber with general impressions as to the frequency and pattern of shelling and sniping attacks over the protracted period which is the subject of the Indictment. Other witnesses concentrated on specific incidents, which were presented to the Trial Chamber often in minute detail.

The Prosecutor listed certain sniping and shelling incidents as exemplary of the campaign against civilians. The Majority has found that 18 of the 26 listed sniping incidents and all five of the listed shelling incidents were proven by the Prosecutor as exemplifying the campaign. I will not go into these in any detail, except to give an example of two sniping incidents accepted by the Trial Chamber, and of a shelling incident accepted by the Majority.

The first sniping incident I shall discuss concerns the killing of Munira Zametica, a 48-year-old civilian woman on 11 July 1993.

Mrs Zametica had gone to the Dobrinja river to fetch water. She remained for a while on the north-western side of the bridge. The bridge shielded her from sniping fire that had been ongoing through that day. The half-dozen people standing with her hesitated to approach the river bank, for this would have meant leaving the shelter of the bridge. When Mrs Zametica overcame her hesitation, and went down to the river to fill her bucket, she was struck by a bullet. The shooting continued. The bystanders and Mrs Zametica’s daughter, who had arrived in the meantime, could not approach the victim because of the danger. Mrs Zametica was face down in the river, bleeding. She was finally pulled out of the water and taken to hospital, where she died. The Trial Chamber has concluded that she was deliberately shot from the area of the Orthodox church in Dobrinja, a well-known source of sniper fire under SRK control.

In another incident, on a sunny afternoon in September 1993, an eight-year-old girl, Elma, and her mother went out to collect some textbooks from one of Elma’s fellow pupils. Their neighbourhood on that day had been peaceful. Mother and daughter, holding hands, followed a line of steel containers which had been put up to provide cover from SRK snipers operating on Hrasno Hill. There were no soldiers or other possible military targets in the immediate vicinity. As the two emerged from the shelter of the containers, they were shot. A single bullet struck the mother’s thigh, passed through the flesh, and penetrated Elma’s stomach. Both fell to the ground. Another bullet whizzed past them. No bystanders dared to come to their assistance. Mother and daughter managed to crawl away from the exposed ground. They spent almost two weeks in hospital. The evidence establishes beyond reasonable doubt that the fire came from SRK positions. Elma and her mother were targeted from there, deliberately.

I will now mention the Majority’s finding on one of the listed shelling incidents. On 5 February 1994 a mortar shell exploded in the Markale market in downtown Sarajevo, killing some 60 people and injuring more than a hundred. The Trial Chamber heard about this incident in great detail. We examined the contemporary investigations conducted by United Nations personnel and by local investigators, as well as the analyses of experts called by the parties in this case. A variety of new information was brought to light. The Majority has concluded that the mortar shell which caused the explosion was fired from territory controlled by the SRK. It was a devastating attack against a civilian target.

The Majority is thus convinced that civilians in Sarajevo were attacked directly or without distinction from SRK-controlled territory. The exact number of civilian casualties from these attacks is not known. What is known is that hundreds of civilians were killed and thousands were injured in sniping and shelling incidents over the two-year period covered by the Indictment. A fraction of these, but no more than a fraction, may have been accidents.

Because, to the Majority, it is clear from the evidence that civilians were deliberately attacked by the SRK in a large number of incidents over a long period of time, we are persuaded that the attacks were not isolated incidents but amounted to a widespread or systematic campaign.

In addition to supporting the existence of a campaign, the evidence as understood by the Majority reveals that the campaign against civilians was intended primarily to terrorize the civilian population. It had no discernible significance in military terms. The frequency of attacks may have fluctuated from day to day, but they always underscored the fact that no civilian of Sarajevo was safe anywhere.

There is some testimony, which the Majority has scrutinized carefully, that the ABiH sought to attract the sympathy of the international community by periodically staging attacks on its own civilians, knowing that the SRK would be blamed for them. The Majority does not believe that this evidence amounts to much. In any case, even if such things happened occasionally, they do not alter the Majority's conclusions as to which party perpetrated the vast number of sniping and shelling attacks on civilians which were considered in the course of this trial.

Legal characterization of the crimes

The Prosecutor charged General Galić with the crime of terror and with the crime of attack on civilians. Both are said to be prohibited by Article 51 of Additional Protocol I to the Geneva Conventions of 1949. These charges are brought under Article 3 of the Statute as violations of the laws or customs of war.

Moreover, murder and inhumane acts are charged as crimes against humanity under Article 5 of the Statute. (The legal notion of "inhumane acts" is meant to cover the non-fatal injuries inflicted in the course of the attacks on civilians.)

The Trial Chamber has found that the International Tribunal does indeed have jurisdiction over the crime of attack on civilians under Article 3 of the Statute. Not only does this crime have a sound basis in customary international law, in the present case it has a foundation in conventional law. This is because the warring sides were treaty-bound to respect the law on the conduct of hostilities contained in an agreement they signed on 22 May 1992. This agreement reproduced the prohibitions contained in Article 51 of Additional Protocol I.

The Trial Chamber explains in its Judgement that the crime of attack on civilians is constituted of acts of violence, wilfully directed against the civilian population or individual civilians not taking direct part in hostilities, causing death or serious injury to body or health within the civilian population.

As for the crime of terror as a violation of the laws and customs of war, this is the first time the International Tribunal has had to pronounce on its material and mental elements.

For the reasons detailed in the Judgement, the Majority finds that the International Tribunal has jurisdiction over the crime of terror under Article 3 of the Statute. The prohibition against this crime is found in Article 51 of Additional Protocol I. That provision had been brought into effect by the aforementioned agreement of 22 May 1992.

The Majority's discussion of the crime of terror takes up many pages of the Judgement. Suffice to say here that the crime is constituted of the same legal elements as the crime of attack on civilians, plus an additional mental element.

In particular, for the Accused to be convicted of the crime of terror, the Prosecutor must prove that the attack on civilians for which the Accused has been shown to be responsible was carried out with the primary purpose of spreading terror among the civilian population.

Upon review of the factual findings made in the Judgement, the Majority is satisfied that attacks were carried out by SRK forces against the civilian population of Sarajevo with the primary purpose of spreading terror among that population.

The Trial Chamber is satisfied that the SRK's attacks may be characterized also as murder and inhumane acts within the meaning of Article 5 of the Statute, namely as crimes against humanity.

Criminal Responsibility of General Galić

I shall now address issue of whether responsibility for the crime of terror, attack on civilians, and murder and inhumane acts is to be imputed to the Accused.

The Trial Chamber has considered whether General Galić effectively controlled the actions of his troops and knew of the crimes committed by them. We are convinced by the evidence that the sniping and shelling activity of the SRK were under the control of the SRK's chain of command. The Trial Chamber is also satisfied that General Galić had the material ability to punish those who would go against his orders, who violated military discipline, or who committed crimes.

It is therefore established that General Galić, as commander of the SRK, had effective control of SRK troops.

There is ample evidence that General Galić was informed of the attacks against civilians committed by SRK forces. Formal complaints were lodged with him, and he was duly informed through his chain of command of the actions of his troops. The Trial Chamber has no doubt that the Accused was well aware of the unlawful activities of his troops.

However, in the view of the Majority, General Galić was not simply kept abreast of the crimes of his subordinates. He actually controlled the pace and scale of those crimes. For example, several witnesses testified to a reduction in the frequency of attacks on civilians by the SRK after pressure was put on General Galić to have them stopped. This drop in frequency never lasted long. The attacks would again increase in intensity. The SRK troops performed at the level which their commander decided they should perform in the circumstances.

The Majority is convinced that the SRK's widespread attacks against the civilian population of Sarajevo could not have occurred without this being the will of the corps' commander. It is clear that General Galić, through his orders, and by other means of facilitation and encouragement, conducted the campaign of attacks. He did so with the primary aim to spread terror among the civilian population of Sarajevo.

The gravity of the crime for which General Galić is responsible is determined by the scale, pattern, and reiteration of the attacks, on an almost daily basis, over many months. The civilian population of Sarajevo – men and women of all ages, including children – were killed in their hundreds and wounded in their thousands, with the intent to terrorize the entirety of the population. The Majority takes into consideration the physical and psychological suffering inflicted on civilians over the two-year span of the Indictment period.

Finally, the Majority finds that the fact that General Galić occupied the position of corps commander in the VRS, a very senior position of public trust and duty, and repeatedly breached that duty and trust, counts as an aggravating factor in determining the penalty.

The Defence argued that the ABiH itself committed crimes against civilians of Serbian ethnicity and conducted hostilities under the shield provided by its own civilian population. While there is some evidence to support this view, the occasional unlawful conduct of one party to a conflict cannot possibly excuse the opposing party's attacking civilians as part of a protracted campaign of terror.

Disposition

GENERAL GALIĆ, PLEASE RISE:

For the reasons I summarized above, the Trial Chamber, with Judge Nieto-Navia dissenting, having considered all of the evidence and arguments of both the Prosecutor and the Defence, makes the following disposition:

General Galić, you are found **GUILTY** on the following counts, pursuant to Article 7(1) of the Statute:

COUNT 1: Violations of the laws or customs of war (acts of violence the primary purpose of which is to spread terror among the civilian population, as set forth in Article 51 of Additional Protocol I to the Geneva Conventions of 1949) under Article 3 of the Statute.

COUNT 2: Crimes against humanity (murder) under Article 5(a) of the Statute.

COUNT 3: Crimes against humanity (inhumane acts – other than murder) under Article 5(i) of the Statute.

COUNT 5: Crimes against humanity (murder) under Article 5(a) of the Statute.

COUNT 6: Crimes against humanity (inhumane acts – other than murder) under Article 5(i) of the Statute.

According to the rule against cumulation of convictions for the same acts, where one crime is only a more specific form of another, and both crimes are proven, a conviction should be entered for the more specific crime. The finding of guilt on count 1 – terror – has the consequence that Counts 4 and 7 – both charging the crime of attack on civilians which forms part of the crime of terror – are **DISMISSED**.

General Galić, the Trial Chamber by majority hereby **SENTENCES** you to a single sentence of 20 years' imprisonment. Pursuant to Rule 101(C) of the Rules, you are entitled to credit for the time spent in detention.

GENERAL GALIĆ, YOU MAY BE SEATED.

Judge Nieto-Navia will now read a summary of his dissenting opinion.

Separate and Dissenting Opinion of Judge Nieto-Navia

I regret to have to speak separately today as a dissenting Judge on many of the factual and legal conclusions reached by a majority of this Trial Chamber.

The principle of *in dubio pro reo* is one of the foundational precepts of criminal law which can be found in domestic and international legal systems as well in the jurisprudence of

the Tribunal. According to this principle, the Prosecution must prove a fact aimed at a conviction beyond a reasonable doubt. I indicated to the Majority my concerns and doubts about the evidence relating to 8 out of 23 scheduled sniping incidents, 3 out of 5 scheduled shelling incidents - including the Markale incident which is discussed in detail in my opinion - as well as certain unscheduled incidents. I considered these doubts to be reasonable. I had expected this plural Trial Chamber to accept my doubts as sufficient to establish that the Prosecution has failed to prove an allegation beyond a reasonable doubt. The Majority did not share this expectation and I have been obliged to express separately my disagreement with its assessment of the evidence.

The Prosecution has alleged that the SRK “conducted a protracted campaign of shelling and sniping upon civilians areas of Sarajevo and upon by the civilian population.” An army characterized by the level of competence and professionalism ascribed to the SRK by the Prosecution would be expected, when conducting during 23 months a campaign of purposefully targeting civilians living in a city of 340,000, to inflict a high number of civilian casualties in relation to the city’s total population. The results obtained by the Prosecution’s demographic experts based on an analysis of extensive sources indicate otherwise. Furthermore, the monthly number of civilian casualties dropped significantly over the 23 months of the Indictment Period. This evidence leads me to conclude that the SRK forces under the command of General Galić did not engage in a campaign of purposefully targeting civilians in Sarajevo throughout the Indictment Period. Such a conclusion accords with the evidence regarding the conduct of the SRK leadership, which relinquished voluntarily control of the airport, authorized the establishment of “blue routes” to allow for the distribution of humanitarian supplies and the safe passage of civilians in and out of the city, entered into anti-sniping agreements under the auspices of the United Nations and agreed to the establishment of the “Total Exclusion Zone”.

I now consider issues related to the applicable law and legal findings. The Majority has reached the conclusion that the offence of inflicting terror on a civilian population falls within the jurisdiction of this Trial Chamber. When proposing the establishment of this Tribunal, the U.N. Secretary-General explained that the application of the criminal law principle of *nullum crimen sine lege* would require that this international Tribunal apply rules which are beyond any doubt part of customary law. This principle has been consistently recognized in the jurisprudence of this Tribunal as requiring that a Trial Chamber verify that an offence alleged in an indictment reflects international customary law. For the first time in the history of this Tribunal, this Trial Chamber has had to consider whether the offence of inflicting terror on a civilian population falls within its jurisdiction. I would have therefore expected the Trial Chamber to confirm whether such an offence existed as a form of liability under international customary law, attracting individual criminal responsibility under that body of law. The Majority did not do so and, instead, relied on an argument based on conventional law to conclude that the Trial Chamber may consider such an offence. In my view, such an approach does not satisfy the jurisdictional requirements of this Tribunal. Since I am not aware of an established state practice regarding the criminalization of such an offence sufficient to prove the latter’s customary nature, I conclude that the offence of inflicting terror on a civilian population does not fall within this Trial Chamber’s jurisdiction. By concluding otherwise without establishing that the offence of inflicting terror on a civilian population attracted individual criminal responsibility under international customary law, or even under the conventional rule which it invokes, the Majority is furthering a conception of international humanitarian law which I do not support.

The Majority also concludes that General Galić ordered his forces to attack civilians in Sarajevo deliberately, thereby finding him criminally responsible under Article 7(1) of the Statute. Its conclusion rests entirely on inferences though, since no witness testified to hearing General Galić issue such orders and no written orders were tendered which would indicate that he so instructed his troops. There is significant evidence which explicitly establishes the opposite: written orders signed by General Galić instructing his troops to respect the Geneva

Conventions and other instruments of international humanitarian law, the testimonies of 16 SRK soldiers and officers posted throughout Sarajevo during the Indictment Period confirming that they had received orders not to target civilians, as well as other written evidence indicating that General Galić launched some internal investigations on a number of occasions when alerted by UN representatives about possible attacks on civilians by his forces. Based on the available evidence, I conclude that the Trial Record does not establish beyond a reasonable doubt that General Galić issued orders to target civilians and dissent from the Majority's conclusion on this issue.

Despite my aforementioned disagreements with the Majority, I share in the conclusion that the Prosecution has proved that, in a number of instances, the SRK either deliberately or recklessly fired upon civilians in Sarajevo during the Indictment Period, thereby committing the crimes of attacks on civilians, murders and inhumane acts. I also note that the evidence presented at trial establishes that General Galić, as the commander of the SRK, knew or had reason to know of these crimes, but did not take *all* the necessary and reasonable measures to prevent their commission or to punish the perpetrators. I therefore conclude that General Galić is guilty of the crimes of unlawful attacks against civilians, murder and inhumane acts under Article 7(3) of the Statute.

In light of this finding, I would sentence General Galić to 10 years' imprisonment.

THE TRIBUNAL STANDS ADJOURNED.

The full text of the Judgement is available upon request at the Public Information Services and is also available on the Internet site of the Tribunal. www.un.org/icty
