

## **EXCERPTS FROM MIODRAG JOKIĆ TRIAL CHAMBER JUDGMENT**

18 March 2004

Para 45. Two crimes among those to which Miodrag Jokić has pleaded guilty – devastation not justified by military necessity and unlawful attack on civilian objects – are, in the present case, very serious crimes in view of the destruction that one day of shelling ravaged upon the Old Town and its long-lasting consequences. According to the Plea Agreement, six buildings in the Old Town were destroyed, and many more buildings suffered damage. “Hundreds, perhaps up to a thousand projectiles” hit the Old Town on 6 December 1991. A map was shown to the Trial Chamber indicating their extensive impact.

Para 46. Another crime to which Miodrag Jokić pleaded guilty is the crime of destruction or wilful damage done to institutions dedicated to religion, charity, education, and the arts and sciences, and to historic monuments and works of art and science. This crime represents a violation of values especially protected by the international community.

Para 47. Codification prohibiting the destruction of institutions of this type dates back to the beginning of the last century, with the Regulations annexed to the Hague Convention Respecting the Laws and Customs of War on Land (the “Hague Regulations”)<sup>64</sup> and the Hague Convention Concerning Bombardment by Naval Forces in Time of War of 18 October 1907.

Para 48. The 1954 Hague Convention provides a more stringent protection for “cultural property”, as defined in Article 1 of the Convention. The protection comprises duties of safeguard and respect of cultural property under “general protection.”

Para 49. The preamble to the UNESCO World Heritage Convention provides “that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world.”<sup>68</sup> The Old Town of Dubrovnik was put on the World Heritage List in 1975.

Para 50. Additional Protocols I (art. 53) and II (art. 16) of 1977 to the Geneva Conventions of 1949 reiterate the obligation to protect cultural property and expand the scope of the prohibition by, inter alia, outlawing “any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.” According to the Additional Protocols, therefore, it is prohibited to direct attacks against this kind of protected property, whether or not the attacks result in actual damage. This immunity is clearly additional to the protection attached to civilian objects.

Para 51. The whole of the Old Town of Dubrovnik was considered, at the time of the events

contained in the Indictment, an especially important part of the world cultural heritage. It was, among other things, an outstanding architectural ensemble illustrating a significant stage in human history. The shelling attack on the Old Town was an attack not only against the history and heritage of the region, but also against the cultural heritage of humankind. Moreover, the Old Town was a “living city” (as submitted by the Prosecution)<sup>73</sup> and the existence of its population was intimately intertwined with its ancient heritage. Residential buildings within the city also formed part of the World Cultural Heritage site, and were thus protected.

Para 52. Restoration of buildings of this kind, when possible, can never return the buildings to their state prior to the attack because a certain amount of original, historically authentic, material will have been destroyed, thus affecting the inherent value of the buildings.

Para 53. The Trial Chamber finds that, since it is a serious violation of international humanitarian law to attack civilian buildings, it is a crime of even greater seriousness to direct an attack on an especially protected site, such as the Old Town, constituted of civilian buildings and resulting in extensive destruction within the site. Moreover, the attack on the Old Town was particularly destructive. Damage was caused to more than 100 buildings, including various segments of the Old Town’s walls, ranging from complete destruction to damage to non-structural parts. The unlawful attack on the Old Town must therefore be viewed as especially wrongful conduct.

## **EXCERPTS FROM [PAVLE STRUGAR TRIAL CHAMBER JUDGMENT](#)**

31 January 2005

### **Dubrovnik before October 1991 / The broader Dubrovnik, the city of Dubrovnik and the Old Town**

Para 19. The broader municipality of Dubrovnik extends for approximately 120 kms along the coast of southern Dalmatia in present-day Croatia. It borders with Montenegro to the south and with Bosnia and Herzegovina to the east. The city or town of Dubrovnik is comprised of the area from Sustjepan to the northwest to Orsula in the southeast, and includes the island of Lokrum situated to the southeast of the Old Town.

Para 20. The part of Dubrovnik known as the Old Town is an area of some 13.38 hectares enclosed by the medieval city walls. The Old Town is situated between the Adriatic Sea on one side and steep slopes on the other. These slopes ascend to Mount Sr|, the dominant topographical feature of Dubrovnik, which overlooks the Old Town.

Para 21. The Old Town of Dubrovnik is endowed with an exceptional architectural heritage, including palaces, churches and public buildings. The city first rose to prominence as a

significant trading centre in the 13th century, and the oldest buildings in the Old Town date from this period. The fortifications of the Old Town, begun in the 12th century and completed in the mid 17th century, are widely regarded as some of the finest examples of city fortifications in Europe. Demilitarisation of this historic area was a precondition to the recognition of the Old Town as a World Heritage site by UNESCO in 1979. One of the unique features of the Old Town is that it has remained a living city. In fact, in 1991, the Old Town had an estimated population of between 7,000 and 8,000 residents.<sup>40</sup> Within its city walls, the Old Town is fairly densely populated. Its palaces, which would previously have housed not more than a single noble family, have been divided up into flats and line the narrow streets of the Old Town. Stradun is the main street bisecting the Old Town on a west east axis.

### **Destruction and devastation of property, including cultural property**

Para 227. As to the first and the second Tadić conditions, the Chamber observes that Article 3(b) is based on Article 23 of the Hague Convention (IV) of 1907 and the annexed Regulations. Both The Hague Convention (IV) of 1907 and The Hague Regulations are rules of international humanitarian law and they have become part of customary international law.

Para 228. Recognising that the Hague Regulations were made to apply only to international armed conflicts, the Chamber will now examine whether the prohibition contained in Article 3(b) of the Statute covers also non-international armed conflicts. The rule at issue is closely related to the one prohibiting attacks on civilian objects, even though certain elements of those two rules remain distinct. Both rules serve the aim of protecting property from damage caused by military operations. In addition, the offence of devastation charged against the Accused is alleged to have occurred in the context of an attack against civilian objects. Therefore, and having regard to its conclusion that the rule prohibiting attacks on civilian objects applies to non-international armed conflicts, the Chamber finds no reason to hold otherwise than that the prohibition contained in Article 3 (b) of the Statute applies also to non-international armed conflicts.

Para 229. Turning now to the crime charged under Article 3(d), the Chamber notes that this provision is based on Article 27 of the Hague Regulations. Moreover, protection of cultural property had developed already in earlier codes. The relevant provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 confirm the earlier codes. The Appeals Chamber in the Tadić case explicitly referred to Article 19 of the Hague Convention of 1954, as a treaty rule which formed part of customary international law binding on parties to non-international armed conflicts. More generally, it found that the customary rules relating to the protection of cultural property had developed to govern internal strife. The Chamber additionally notes that it is prohibited “to commit any act of hostility directed against [cultural property]” both in Article 53 of Additional Protocol I

relating to international armed conflicts and Article 16 of Additional Protocol II governing non-international armed conflicts.

Para 230. In view of the foregoing, the Chamber is satisfied that Article 3(d) of the Statute is a rule of international humanitarian law which not only reflects customary international law but is applicable to both international and non-international armed conflicts. Accordingly, the first and second Tadić conditions with regard to Articles 3(b) and 3(d) are met.

Para 231. As to the third Tadić condition, the Chamber recalls its conclusion that the offence of attacking civilian objects fulfils this condition when it results in damage severe enough to involve “grave consequences” for its victims. It is of the view that, similarly to the attacks on civilian objects, the crime of devastation will fall within the scope of the Tribunal’s jurisdiction under Article 3 of the Statute if the damage to property is such as to “gravely” affect the victims of the crime. Noting that one of the requirements of the crime is that the damage be on a large scale, the Chamber has no doubt that the crime at hand is serious.

Para 232. As regards the seriousness of the offence of damage to cultural property (Article 3(d)), the Chamber observes that such property is, by definition, of “great importance to the cultural heritage of every people”. It therefore considers that, even though the victim of the offence at issue is to be understood broadly as a “people”, rather than any particular individual, the offence can be said to involve grave consequences for the victim. In the Jokić case, for instance, the Trial Chamber noted that the destruction and damage inflicted to the Old Town of Dubrovnik were very serious crimes. It found that “since it is a serious violation of international humanitarian law to attack civilian buildings, it is a crime of even greater seriousness to direct an attack on an especially protected site, such as the Old Town [of Dubrovnik].” In view of the foregoing, the Chamber finds that the offences under Articles 3(b) and 3(d) of the Statute are serious violations of international humanitarian law. Hence, the third Tadić condition is satisfied.

Para 233. As to the fourth Tadić condition, the Chamber notes that Article 6 of the Charter of the Nuremberg International Military Tribunal already provided for individual criminal responsibility for war crimes, including devastation not justified by military necessity, which is listed in Article 3(b) of the Statute. Concerning Article 3(d) of the Statute, the Chamber recalls that Article 28 of the Hague Convention of 1954 stipulates that “the high contracting parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the Convention.” Furthermore, the case law of this Tribunal provides several examples of individuals convicted under Articles 3(b) or 3(d), or both, of the Statute. Accordingly, the Chamber finds that Articles 3(b) and 3(d) of the Statute entail individual criminal responsibility. Thus, the fourth Tadić condition is fulfilled.

## **EXCERPTS FROM [PAVLE STRUGAR APPEALS CHAMBER JUDGMENT](#)**

17 July 2008

### **Destruction or Wilful Damage of Cultural Property (Count 6)**

Para 277. The crime of destruction or wilful damage of cultural property under Article 3(d) of the Statute is *lex specialis* with respect to the offence of unlawful attacks on civilian objects. The *mens rea* requirement of this crime is therefore also met if the acts of destruction or damage were wilfully (i.e. either deliberately or through recklessness) directed against such “cultural property”.

Para 278. The Trial Chamber held that “a perpetrator must act with a direct intent to damage or destroy the property in question” and that the issue as to whether “indirect intent” could also be sufficient for this crime did not arise in the circumstances of the case.

Para 279. On the basis of the fact that the entire Old Town of Dubrovnik was added to the World Heritage List in 1979, the Trial Chamber concluded that each structure or building in the Old Town fell within the scope of Article 3(d) of the Statute. The Trial Chamber also noted that the protective UNESCO emblems were visible from the JNA positions on Žarkovica and elsewhere. Strugar does not allege that any of these findings are erroneous. Hence, the Trial Chamber reasonably concluded that the direct perpetrators of the crime were aware of the protected status of the cultural property in the Old Town and that the attack on this cultural property was deliberate and not justified by any military necessity. Consequently, his submission that the Trial Chamber’s findings on the *mens rea* of the direct perpetrators of the crime do not meet the standard of direct intent must fail.