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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

PROSECUTOR

v.

DRAŽEN ERDEMOVIĆ
CASE NO. IT-96-22-PTbis

UNDER SEAL

ANNEXURE A
TO THE JOINT MOTION FOR CONSIDERATION OF PLEA
AGREEMENT BETWEEN DRAŽEN ERDEMOVIĆ AND THE
OFFICE OF THE PROSECUTOR

PLEA AGREEMENT

Introduction

1. This constitutes the plea agreement between the accused, Dražen Erdemović, through his counsel, Jovan Babić and Nicola Kostić and the Office of the Prosecutor. The purpose of this agreement is to clarify the understanding of the parties as to the nature and consequences of Mr. Erdemović's plea of guilty, and to assist the parties and the Trial Chamber in ensuring the plea is valid, according to the Rules set forth by this Tribunal.

2. The terms of the agreement are as follows:

Plea

3. Dražen Erdemović agrees to plead guilty to a Violation of the Laws and Customs of War as charged against him in the Indictment, in exchange for which the Office of the Prosecutor agrees to move to dismiss at the time of sentencing, the alternative charge in the Indictment of a Crime Against Humanity.

4. Dražen Erdemović agrees that he is pleading guilty to the crime because he is in fact guilty and acknowledges full responsibility for his actions that are the subject of the Indictment.

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Nature of the Offence

5. Dražen Erdemović understands he is pleading guilty to a Violation of the Laws and Customs of War which has been described to him as follows: A violation of the laws and customs of war is a violation of the international law on the conduct of warfare. These crimes can vary in severity from the destruction of historic monuments, to murder and bombardment of undefended towns. Whereas, a crime against humanity is an attack on any civilian population of a widespread or systematic nature, normally on a massive scale. It can also be committed against members of one's own population or country. A Crime Against Humanity is therefore a more serious crime than a violation of the Laws and Customs of War.

6. Dražen Erdemović understands that the Prosecution has to prove each of the following elements beyond a reasonable doubt for Mr. Erdemović to be found guilty of a Violation of the Laws and Customs of War, punishable under Article 3 of the Statute of the Tribunal and recognised by Article 3(1)(a) (murder) of the Geneva Conventions:

- (a) The unlawful act was committed in the context of an armed conflict.
- (b) The victim was a person who was not taking an active part in hostilities.
- (c) The victim died.
- (d) The death resulted from an unlawful act, in which the accused participated.
- (e) At the time of the killing, the accused had the intent to kill or inflict grievous bodily harm upon the victim.

In the present case the intent to kill is based upon the fact that the accused was ordered to kill the victims and made the conscious decision to follow that order to avoid the possibility of being killed himself. Under the law of the Tribunal, when the accused made the decision to follow that order and carried it out, he formed the intent to kill and committed the crime, despite the fact that he was following superior orders and under duress. Dražen Erdemović further understands and acknowledges, as noted in paragraph 13 of this agreement, that superior orders as noted in Article 7, paragraph 4 of the Statute of the Tribunal and the duress to which he was subjected, do not constitute complete

defences to the charges against him, but can be considered in mitigation of the sentence.

7. Dražen Erdemović also understands that if he were to be found guilty of a Crime Against Humanity, punishable under Article 5(a) (murder) of the Statute of the Tribunal, the prosecution would have to prove each of the following elements beyond a reasonable doubt:
- (a) The act of a very serious nature occurred during an armed conflict.
 - (b) The act was part of a large-scale, massive or systematic attack or action directed against a civilian population.
 - (c) The accused knew or had reason to know that his acts were part of the attack or action against the civilian population.
 - (d) The victim died.
 - (e) The death resulted from an unlawful act of the accused.
 - (f) At the time of the killing, the accused had the intent to kill or inflict grievous bodily harm upon the victim. (It is understood by the parties that the meaning of intent here is the same meaning as noted in paragraph 6 (e) of this agreement).

Penalty

8. Dražen Erdemović and the Office of the Prosecutor acknowledge that sentencing is a matter for the Trial Chamber, but wish to record their discussions on the issue of sentence. Both have taken the view for the reasons stated in paragraphs 13 and 14, that 7 years incarceration is an appropriate sentence in this case. However, the Office of the Prosecutor and Dražen Erdemović understand that the Trial Chamber is not bound by anything in this agreement and that sentencing is the sole discretion of the Trial Chamber. The Trial Chamber may follow the recommendation of this agreement or reject it and sentence the accused without regard to the agreement; and as noted in Rule 101 of the Tribunal's Rules of Procedure and Evidence the penalty that may be imposed for a Violation of the Laws and Customs of war can include a sentence of up to life in prison. Under Rule 101 a violation of a Crime Against Humanity may also result in a sentence of life in prison.

Factual Basis

9. Dražen Erdemović and the Office of the Prosecutor agree that were the Prosecution to proceed with evidence, the facts and allegations as set out in paragraphs 1-15 of the Indictment, dated 22nd May 1996, would be proven beyond a reasonable doubt and are not disputed by Mr. Erdemović.
10. In determining the factual basis of the plea, the Office of the Prosecutor has had regard to:
- (a) The testimony of Investigator Jean-Rene Ruez, given during the sentencing hearing of Dražen Erdemović on 19-20 November 1996.
 - (b) The testimony of Dražen Erdemović, given during his sentencing hearing on 19-20 November 1996.
 - (c) The testimony of the protected witnesses given during the sentencing hearing in this matter.
 - (d) The two reports of the expert medical commission concerning his psychological evaluation dated 24 June 1996 and 14 October 1996.
11. Dražen Erdemović acknowledges that he, on or about 16 July 1995, did shoot and kill and did participate with other members of his unit and soldiers from another unit in the shooting and killing of unarmed Bosnian Muslim men at the Pilica collective farm, and that these summary executions resulted in the deaths of hundreds of Bosnian Muslim male civilians. Dražen Erdemović and the Office of the Prosecutor acknowledge that it is not possible on the evidence to determine how many persons he actually killed.
12. Dražen Erdemović acknowledges that when he participated in the summary execution he did so pursuant to superior orders and that he feared for his life if he did not carry out that order. Dražen Erdemović further acknowledges that the superior orders and the duress to which he was subjected to do not constitute complete defences to the charges against him, but can be considered in mitigation of the sentence.
13. The Prosecution acknowledges that Dražen Erdemović voluntarily and on his own initiative reported the crime to the media to which he is

pleading guilty, admitted his involvement in that crime to the media and requested that he be transported to this Tribunal to continue to report on the crime and admit his own responsibility in the crime. The Prosecution acknowledges that Dražen Erdemović did in fact travel to The Hague and in an interview with officials of the OTP, with his counsel Mr. Babić present, did continue to report on the crime in question and admit his responsibility in the commission of that crime.

Co-operation by Dražen Erdemović

14. The Office of the Prosecutor acknowledges that Dražen Erdemović has assisted the Prosecution by providing valuable information to the Prosecution in some of the Prosecution's most important investigations, as well as by testifying in the Rule 61 hearing for the Indictment against Radovan Karadžić and Ratko Mladić. Dražen Erdemović agrees to continue to provide complete and truthful information regarding the events in the Indictment. In addition, Dražen Erdemović agrees to testify truthfully before the Tribunal if so requested by the Office of the Prosecutor.

15. It is understood by the parties to this agreement that all such information and testimony must be absolutely truthful. This means that Dražen Erdemović must neither minimise his own actions or fabricate someone else's involvement.

Consideration by the Prosecution

16. In exchange for Dražen Erdemović's plea of guilty to a Violation of the Laws and Customs of War and his complete fulfilment of all his obligations under this agreement, the Office of the Prosecutor agrees to the following:

- (a) The Prosecution will not proceed with the alternative count, Count 1: a Crime Against Humanity, punishable under 5(a) (murder) of the Statute of the Tribunal and move the Trial Chamber to dismiss the count at the time of sentencing.
- (b) That Dražen Erdemović has provided considerable assistance to the Prosecution within the meaning of Rule 101 (B) (ii), as noted in paragraph 14 of the agreement.
- (c) That at the time Dražen Erdemović committed the acts charged in the Indictment he was following superior orders and feared for his

own life if he did not carry out those orders and as such was under sufficient duress to justify mitigation in the consideration of any sentence against him.

- (d) That where such mitigation is fully considered, along with the valuable assistance Dražen Erdemović has provided the Prosecution, along with the other facts and circumstances of the case, seven years incarceration is an appropriate sentence.
- (e) The Prosecution agrees to address the Trial Chamber on the matter concerning length of sentence and state that the Prosecution agrees that seven years is an appropriate sentence.

Waiver of Rights

17. By pleading guilty Dražen Erdemović understands he will be giving up the following rights:

- (a) The right to plead not guilty and require the Prosecution to prove the charges in the Indictment beyond a reasonable doubt at a fair and impartial public trial.
- (b) The right to prepare and put forward a defence to the charges at such public trial.
- (c) The right to be tried without undue delay.
- (d) The right to be tried in his presence, and to defend himself in person at trial or through legal assistance of his own choosing at trial;
- (e) The right to examine at his trial, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf at a trial under the same conditions as witnesses against him.
- (f) The right not to be compelled to testify against himself or to confess guilt.

It is understood that by pleading guilty the accused does not waive his right to be represented by counsel at all stages of the proceedings.

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Declaration of Dražen Erdemović

18. I, Dražen Erdemović, have read this plea agreement and have carefully reviewed every part of it with my counsel, Jovan Babić. Mr. Babić has advised me of my rights, of possible defences, and of the consequences of entering into this agreement. No other promises or inducements have been made to me, other than those contained in this agreement. Furthermore, no one has threatened me or forced me in any way to enter into this agreement and I have entered into this agreement freely and voluntarily and am of sound mind. I understand the terms of this agreement, and I voluntarily agree to each of the terms.

Dated this 8 - day of January, 1998.

Erdemović
Dražen Erdemović

Declaration of Counsel

19. I, Jovan Babić, am Dražen Erdemović's counsel. I have carefully reviewed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defences, of the maximum possible sentence and the consequences of entering into this agreement. To my knowledge, my client is of sound mind and his decision to enter into this agreement is an informed and voluntary one.

Dated this 03 day of January, 1998.

Jovan Babić
Jovan Babić
Attorney

Other Agreements

20. Except as expressly set forth herein, there are no additional

promises, understandings or agreements between the Office of the Prosecutor and Dražen Erdemović or his counsel, Jovan Babić.

Erdemović 06.01.98
Dražen Erdemović Date

Grant Niemann 7/1/98
Grant Niemann Date
Senior Trial Attorney

Jovan Babić 03.01.1998
Jovan Babić Date
Counsel for Erdemović

Peter McCloskey 7/1/98
Peter McCloskey Date
Trial Attorney

Originals
PROSECUTOR'S OFFICE
PROSECUTOR'S SERVICE
Datum: 8.1.00

UNITED NATIONS INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA PROSECUTOR'S EXHIBIT
NATIONS UNIES TRIBUNAL PENAL INTERNATIONAL POUR L'EX-YUGOSLAVIE PIÈCE À CONVICTION DU PROCUREUR

CASE No. IT-02-54-T CHAMBER: TRIAL CHAMBER III
EXHIBIT No. P514, Tab 24 DATE SUBMITTED: 25.08.03
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