

2003

International Decisions: Prosecutor v. Plavsic

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Repository Citation

Combs, Nancy Amoury, "International Decisions: Prosecutor v. Plavsic" (2003). *Faculty Publications*. 34.
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International Criminal Tribunal for the Former Yugoslavia—genocide and crimes against humanity—international criminal law and procedure—plea bargaining—justice, reconciliation, and sentencing

PROSECUTOR V. PLAVŠIĆ. Case No. IT-00-39&40/1-S. Sentencing Judgment. At <<http://www.un.org/icty/ind-e.htm>>.

International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, February 27, 2003.

Prosecutors at the International Criminal Tribunal for the Former Yugoslavia (ICTY) have recently been obtaining an increased number of guilty pleas. In the last two-and-a-half years, twelve ICTY defendants have pleaded guilty, with eight of those pleas occurring in just the last nine months.¹ Most of these guilty pleas garnered little attention because most of the defendants making the guilty pleas had engaged in relatively minor crimes, at least by the standards of a war crimes tribunal. Milan Simić, for instance, pleaded guilty to torture as a crime against humanity for organizing and participating in the beating of five men.² Dragan Kolundžija was a shift leader at the notorious Keraterm Detention Center but was not convicted of personally mistreating any detainees or of having any meaningful control over the conditions in the

¹ The December 2000 guilty plea of Stevan Todorović, Prosecutor v. Todorović, Case No. IT-95-9/1-S, Sentencing Judgment, para. 4 (July 31, 2001) [hereinafter Todorović sentencing judgment], was followed in September 2001 by three guilty pleas in the *Sikirica* case, Prosecutor v. Sikirica, Case No. IT-95-8-S, Sentencing Judgment (Nov. 13, 2001) [hereinafter Sikirica sentencing judgment]. Five months later, in February 2002, Milan Simić pleaded guilty, Prosecutor v. Milan Simić, Case No. IT-95-9/2-S, Sentencing Judgment, paras. 9–10 (Oct. 17, 2002) [hereinafter Simić sentencing judgment]. Biljana Plavšić, the defendant in the instant case, pleaded guilty eight months after that, in October 2002, Prosecutor v. Plavšić, Case No. IT-00-39&40/1-S, Sentencing Judgment, para. 5 (Feb. 27, 2003) [hereinafter Plavšić sentencing judgment]. The pace has quickened in recent months with Momir Nikolić and Dragan Obrenović pleading guilty in May 2003, ICTY Press Release JL/P.I.S./751-e (May, 7, 2003) (Nikolić), ICTY Press Release JL/P.I.S./756-E (May, 21, 2003) (Obrenović), and these pleas were quickly followed by Predrag Banović's guilty plea in June 2003, ICTY Press Release JL/P.I.S./764-e (June 26, 2003), by Darko Mrdja's guilty plea in July 2003, Marlise Simons, *In a Startling Plea, a Serbian Policeman Confesses to Atrocities*, N.Y. TIMES, July 27, 2003, §1, at 9, by Miodrag Jokić's guilty plea in August 2003, ICTY Press Release CVO/P.I.S./776-e (Aug. 27, 2003), and by Dragan Nikolić's guilty plea in September 2003, ICTY Press Release CVO/P.I.S./778-e (Sept. 4, 2003). The basic legal documents, cases (judgments, orders, transcripts, and so on), press releases, and other materials relating to the ICTY are available on its Web site, <<http://www.un.org/icty/>>.

Two ICTY defendants pleaded guilty prior to *Todorović*, though in neither case did prosecutors bargain with the defendants in order to induce their pleas. Dražen Erdemović, a foot soldier in the Serbian army who participated in the Srebrenica massacres, brought himself and his crimes to the attention of the ICTY in 1996 and, once an indictment was prepared, immediately told prosecutors everything he knew and pleaded guilty to crimes against humanity. Prosecutor v. Erdemović, Case No. IT-96-22-T, Sentencing Judgment, paras. 3, 6, 10 (Nov. 29, 1996). Goran Jelišić offered the next guilty plea (over the objections of his lawyers), and he received no concessions therefor. Prosecutor v. Jelišić, Case No. IT-95-10-T, Judgment, paras. 12[a], 15–16 (Dec. 14, 1999). For a more detailed discussion of *Erdemović* and *Jelišić*, see Nancy Amoury Combs, *Copping a Plea to Genocide: The Plea Bargaining of International Crimes*, 151 U. PENN. L. REV. 1, 109–17 (2002).

At the ICTY's sister tribunal, the International Criminal Tribunal for Rwanda, three defendants have pleaded guilty: Jean Kambanda, Omar Serushago, and Georges Ruggiu. See Prosecutor v. Kambanda, Case No. ICTR-97-23-S, Judgment and Sentence, para. 3 (Sept. 4, 1998); Prosecutor v. Serushago, Case No. ICTR-98-39-S, Sentence, paras. 2–4 (Feb. 5, 1999); Prosecutor v. Ruggiu, Case No. ICTR-97-32-1, Judgment and Sentence, paras. 7, 44 (June 1, 2000). The basic legal documents, cases (judgments, orders, transcripts, and so on), and other materials relating to the ICTR are available on its Web site, <<http://www.icty.org>>.

² Simić sentencing judgment, *supra* note 1, paras. 10–11.

camp.³ When Biljana Plavšić—the defendant in the instant case⁴—pleaded guilty in October 2002, however, the plea made headlines worldwide.⁵ From 1990 through 1992, Plavšić was the Serbian representative to the Presidency of the Socialist Republic of Bosnia and Herzegovina, serving for a time as the acting co-president of the Serbian Republic of Bosnia and Herzegovina, and later as a member of the collective and expanded Presidencies of the Republika Srpska.⁶ Known as the “Serbian Iron Lady” as a result of her hard-line nationalism and rabidly anti-Muslim views, Plavšić was a close ally of Radovan Karadžić.⁷

Plavšić was the first Bosnian Serb leader to plead guilty. In doing so, she acknowledged that the Bosnian Serb leadership had conducted a campaign of ethnic cleansing. Committed to ensuring that all Serbs in the former Yugoslavia would remain in a common state, the Bosnian Serb forces, with the assistance of Yugoslavia’s army and Serbian paramilitary units, implemented the “objective of ethnic separation by force”⁸ by killing and forcibly expelling non-Serb civilians, destroying property and religious buildings, and operating detention centers where prisoners were beaten, raped, and confined in appalling conditions without adequate food, water, or sanitary conditions.⁹ As the trial chamber’s sentencing judgment¹⁰ vividly recounts, the campaign resulted in the expulsion of hundreds of thousands of Bosnian Muslims and Croats. Approximately 850 Muslim- and Croat-occupied villages were destroyed entirely,¹¹ and in many municipalities virtually all non-Serbs were killed or forced to flee. In the 37 municipalities described in Plavšić’s indictment, the evidence showed that Serbian forces killed approximately fifty thousand non-Serbs,¹² destroyed more than one hundred mosques and Catholic churches,¹³ and established more than four hundred detention facilities, which confined nearly one hundred thousand people.¹⁴

Plavšić was by no means the most culpable of those leading the Bosnian Serbs during the ethnic cleansing. The “factual basis” to which Plavšić agreed states that Radovan Karadžić and Momčilo Krajišnik exercised primary control over the Bosnian Serb power structures, and it was they who instructed municipal leaders charged with implementing the persecutory campaign.¹⁵ Plavšić played a lesser role, but she did support the ethnic cleansing by serving as a co-president and by inviting Serbian paramilitaries to assist in the ethnic cleansing. She also publicly encouraged the forcible expulsions, in particular by telling Bosnian Serbs that they

³ Sikirica sentencing judgment, *supra* note 1, para. 33.

⁴ See *supra* note 1.

⁵ See, e.g., Marlise Simons, *Ex-Bosnia Serb Leader Enters Guilty Plea in The Hague*, N.Y. TIMES, Oct. 3, 2002, at A6; Isabelle Wesselingh, *Former Bosnian Serb President Admits Crimes Against Humanity*, AGENCE FRANCE-PRESSE, Oct. 2, 2002; Katarina Kratovac, *Bosnian Serb Leader Pleads Guilty to Crimes Against Humanity at Yugoslav Tribunal*, ASSOCIATED PRESS, Oct. 2, 2002.

⁶ Plavšić sentencing judgment, *supra* note 1, para. 10.

⁷ *Bosnia’s Iron Lady Jailed*, BBC ONLINE NEWS REPORT, Feb. 27, 2003; *Serb War Criminal Sentenced to 11 Years in Prison*, ASSOCIATED PRESS, Feb. 27, 2003 (describing Plavšić as the “right hand” of Radovan Karadžić); Isabel Vincent, *Bosnia’s ‘Iron Lady’ Owns Up to Atrocities, Implicates Milosevic*, NATIONAL POST, Dec. 17, 2002; Katarina Kratovac, *Bosnian Serb Leader Pleads Guilty to Crimes Against Humanity at Yugoslav Tribunal*, ASSOCIATED PRESS, Oct. 2, 2002. Plavšić once described Muslims as “a genetic defect on the Serbian body.” Alissa J. Rubin, *Former Serb Leader’s Admission of Guilt Alienates Compatriots*, L.A. TIMES, Dec. 16, 2002, at A4. A notorious photograph taken during the first days of the conflict showed Plavšić stepping over the body of a dead Muslim civilian to kiss the murderous Serbian warlord Zeljko Ražnjatović, better known as Arkan, greeting him as a patriot. Bill Glauber, *Sentencing Hearings Start for Iron Lady of Balkans*, CHI. TRIB., Dec. 17, 2002, at 3.

⁸ Plavšić sentencing judgment, *supra* note 1, para. 15.

⁹ *Id.*, paras. 30–48.

¹⁰ See *supra* note 1.

¹¹ Plavšić sentencing judgment, *supra* note 1, para. 32.

¹² *Id.*, para. 41.

¹³ *Id.*, para. 44.

¹⁴ Prosecutor v. Plavšić, Case No. IT-00-39&40/1-S, Transcript, at 416 (Dec. 16, 2002) [hereinafter Dec. 16 transcript]; Plavšić sentencing judgment, *supra* note 1, paras. 45–48 (describing the conditions).

¹⁵ Prosecution v. Krajišnik & Plavšić, Case No. IT-00-39&40-PT, Factual Basis for Plea of Guilt, para. 16 (Sept. 30, 2002) [hereinafter Plavšić factual basis] (on file with author).

were in danger of genocide at the hands of Bosnian Muslims and Croats, and that certain territories were “Serbian by right.”¹⁶

For these actions, the prosecution indicted Plavšić on two counts of genocide and complicity in genocide and six counts of crimes against humanity.¹⁷ Plavšić voluntarily surrendered to the ICTY, and in October 2002, before the trial commenced, she pleaded guilty to one count of persecution as a crime against humanity.¹⁸ The prosecution dropped the remaining seven charges, including the genocide charges.¹⁹

The impact of Plavšić’s guilty plea and her expressions of remorse on peace-building efforts in Bosnia became a central focus of Plavšić’s subsequent sentencing hearing. The prosecution and defense joined in remarkable agreement as to the benefits of Plavšić’s actions. The prosecution, for instance, not only lauded the guilty plea as “an unprecedented contribution to the establishment of truth and a significant effort toward the advancement of reconciliation,”²⁰ but elicited testimony from virtually all of its witnesses about the reconciliatory effects of Plavšić’s plea.²¹ The prosecution further asserted that it and the defense

share the view that it is only through the establishment of truth about what occurred in Bosnia and Herzegovina that the fragile and vital process of reconciliation can begin. Furthermore, we agree that it is only through the establishment of truth that the unhealthy shackles of revision that debilitate the former Yugoslavia and that foster suspicion, ethnic hatred, and civil unrest can be broken.²²

As a result of their shared perspective, the prosecution and defense took the unprecedented step of jointly presenting two witnesses: Madeleine Albright, U.S. secretary of state during the Clinton administration, and Alex Boraine, deputy chairperson of the South African Truth and Reconciliation Commission. Both witnesses, like the prosecution, praised Plavšić’s guilty plea for the contribution that it would make to reconciliation in Bosnia.²³

Plavšić sounded the same themes in making her own statement at the sentencing hearing. She stated, in part:

I have now come to the belief and accept the fact that many thousands of innocent people were the victims of an organised, systematic effort to remove Muslims and Croats from the territory claimed by Serbs. . . . Our leadership, of which I was a necessary part, led an effort which victimised countless innocent people. . . .

. . . .

¹⁶ Plavšić factual basis, *supra* note 15, at para. 17; Plavšić sentencing judgment, *supra* note 1, paras. 14, 17. Plavšić once said that if Serbs lost half their population in the battle for a Greater Serbia, it would be worth it. Rubin, *supra* note 7.

¹⁷ Prosecutor v. Krajišnik & Plavšić, Case No. IT-00-39&40-PT, Amended Consolidated Indictment (Mar. 7, 2002). The six counts of crimes against humanity consisted of one count of persecution, three counts of extermination and killing, and two counts of deportation and inhumane acts, all as crimes against humanity. *Id.*

¹⁸ Plavšić sentencing judgment, *supra* note 1, paras. 1, 5.

¹⁹ Prosecutor v. Plavšić, Case No. IT-00-39&40/1-S, Decision Granting Prosecution’s Motion to Dismiss Counts 1, 2, 4, 5, 6, 7 and 8 of the Amended Consolidated Indictment (Dec. 20, 2002).

²⁰ Prosecution v. Plavšić, Case No. IT-00-39&40/1-S, Prosecution’s Brief on the Sentencing of Biljana Plavšić, para. 24 (Nov. 25, 2002) [hereinafter Prosecution’s sentencing brief] (on file with author).

²¹ See Dec. 16 transcript, *supra* note 14, at 408 (In response to a question seeking the witness’s “view of the potential contribution toward reconciliation of Mrs. Plavšić’s acknowledgement of the crimes and acceptance of responsibility,” Mirsad Tokača described it as “an extremely courageous, brave, and important gesture [that] represents support to what is the ultimate aim of all of us[, namely, that] normal conditions of life should be resumed in Bosnia-Herzegovina, not only in Bosnia-Herzegovina but in the entire region as well.”), 450–53 (Teufika Ibrahimfendić responding to the prosecution’s query as to “how the ability to talk about the events of the war could contribute to a greater understanding and tolerance and possibly reconciliation within Bosnia”), 458–59 (Elie Wiesel praising Plavšić as “the only accused to have freely and wholly assumed her role in the wrongdoings and crimes set out in the indictment, even though she once moved in the highest circles of power in her country”).

²² *Id.* at 376.

²³ See Prosecutor v. Plavšić, Case No. IT-00-39&40/1-S, Transcript, at 520–22, 562–66 (Dec. 17, 2002) [hereinafter Dec. 17 transcript].

You have heard, both yesterday and today, the litany of suffering that this produced. I have accepted responsibility for my part in this. This responsibility is mine and mine alone. It does not extend to other leaders who have a right to defend themselves. It certainly should not extend to our Serbian people, who have already paid a terrible price for our leadership. The knowledge that I am responsible for such human suffering and for soiling the character of my people will always be with me.

There is a justice which demands a life for each innocent life, a death for each wrongful death. It is, of course, not possible for me to meet the demands of such justice. I can only do what is in my power and hope that it will be of some benefit, that having come to the truth, to speak it, and to accept responsibility. This will, I hope, help the Muslim, Croat, and even Serb innocent victims not to be overtaken with bitterness, which often becomes hatred and is in the end self-destructive.²⁴

The prosecution and defense also agreed that, following the war, Plavšić took great steps to advance peace and reestablish the rule of law in Bosnia. Both parties elicited testimony showing that Plavšić broke her ties with Karadžić and was instrumental in the implementation of the Dayton Agreement.²⁵ She fired General Ratko Mladić²⁶ and made efforts to eliminate corruption in Republika Srpska,²⁷ going so far as to dissolve the National Assembly, which was dominated by hard-liners.²⁸ She took these actions, the witnesses agreed, in the face of great political and personal risks.²⁹

Despite their substantial areas of agreement, the prosecution and defense did not agree on the sentence that Plavšić should receive. The prosecution recommended a sentence of between fifteen and twenty-five years' imprisonment.³⁰ The defense introduced evidence of life expectancies and argued that, because Plavšić was seventy-two years old, any sentence of imprisonment longer than eight years would effectively be a life sentence, the imposition of which would violate the prohibition against cruel and unusual, or inhumane or degrading, punishment.³¹

The trial chamber sentenced Plavšić to eleven years' imprisonment.³² The chamber identified one aggravating factor (Plavšić's superior position) and four mitigating factors (her voluntary surrender, age, postconflict conduct, and guilty plea).³³ As for Plavšić's age, the chamber, after surveying municipal court decisions and decisions of the European Court of Human Rights, rejected the view that a sentence in excess of eight years would constitute inhumane or degrading punishment, but it did conclude that the advanced age of a defendant was relevant to determining the appropriate sentence. First, physical deterioration associated with advanced age may make the same sentence harder to serve for an older defendant than for a younger one, and second, an older defendant may have little worthwhile life left upon release.³⁴ The chamber made clear, however, that while advanced age and voluntary surrender gained Plavšić some benefit, her guilty plea and postconflict conduct were given greater weight. "Together, these circumstances make a formidable body of mitigation."³⁵

²⁴ *Id.* at 609–11.

²⁵ Plavšić sentencing judgment, *supra* note 1, para. 86.

²⁶ Dec. 17 transcript, *supra* note 23, at 559.

²⁷ *Id.* at 578–79.

²⁸ *Id.* at 579–80; Plavšić sentencing judgment, *supra* note 1, para. 86.

²⁹ The witnesses described the efforts of hard-liners "in Pale to get rid of [Plavšić], because they judged that Dayton—full Dayton implementation was a threat to them." Dec. 17 transcript, *supra* note 23, at 554–55.

³⁰ Prosecution's sentencing brief, *supra* note 20, para. 43; Prosecutor v. Plavšić, Case No. IT-00-39&40/1-S, Transcript, at 638 (Dec. 18, 2002).

³¹ Prosecutor v. Plavšić, Case No. IT-00-39&40/1-S, Biljana Plavšić's Sentencing Brief, paras. 50–53, 59 (Nov. 25, 2002); Prosecutor v. Plavšić, Case No. IT-00-39&40/1-S, Transcript, at 651 (Dec. 18, 2002).

³² Plavšić sentencing judgment, *supra* note 1, para. 132; see also *Serb War Criminal Sentenced to 11 Years in Prison*, ASSOCIATED PRESS, Feb. 27, 2003 (reporting that Plavšić smiled slightly when she heard the prison term).

³³ Plavšić sentencing judgment, *supra* note 1, paras. 57, 110.

³⁴ *Id.*, paras. 104–05.

³⁵ *Id.*, para. 110.

The trial chamber held that Plavšić's expressions of remorse, "together with the substantial saving of international time and resources as a result of a plea of guilty before trial," entitled Plavšić to a "discount in the sentence which would otherwise have been appropriate."³⁶ The trial chamber went on separately to consider, as a "further and significant circumstance," the role of Plavšić's guilty plea "in establishing the truth in relation to the crimes and furthering reconciliation in the former Yugoslavia."³⁷ Plavšić herself asserted that acknowledging the crimes committed during the war was a necessary step toward peace and reconciliation—a view that the trial chamber wholeheartedly endorsed.³⁸ Consequently, the chamber gave "significant weight" to Plavšić's guilty plea in conjunction with her "expressed remorse and positive impact on the reconciliatory process."³⁹

As previously noted, the trial chamber also gave "significant weight" to Plavšić's postconflict conduct. Reviewing the testimony from the sentencing hearing, the chamber concluded that Plavšić was instrumental in ensuring that the Dayton Agreement was accepted and implemented in Republika Srpska. Moreover, in so doing, she made a significant contribution to peace in the region. Noting the "high international reputation" of the witnesses who testified on behalf of Plavšić, the chamber stated that the support of witnesses of such stature "adds much weight to the plea in mitigation."⁴⁰

* * * *

Does the truth telling that arises from a guilty plea foster reconciliation and peace building in war-torn lands? Proponents of truth commissions certainly believe that the information generated through those bodies can assist victims in their psychological healing and eventual reintegration into society.⁴¹ Similarly, human rights activists emphasize the benefits of truth telling in the wake of governmental transitions from repressive to democratic regimes. Aware of the political and financial constraints that typically render widespread prosecutions a practical impossibility, activists often seek, instead, to place a burden on successor governments to establish some sort of truth-seeking mechanisms. These mechanisms help to distinguish the new government from its repressive predecessor⁴² and provide information that the new government may need to prevent a recurrence of the conditions that gave rise to the crimes.⁴³

The ICTY advances similar arguments in praise of Plavšić's guilty plea, but it is not clear, at least at this point, whether the guilty plea can live up to those claims. Admittedly, Plavšić did acknowledge her crimes, but she did so in a five-page document that presented only a brief sketch of the atrocities that were committed and of Plavšić's role in implementing them. Plavšić

³⁶ *Id.*, para. 73.

³⁷ *Id.*

³⁸ *Id.*, para. 74. Specifically, Plavšić stated: "To achieve any reconciliation or lasting peace in [Bosnia-Herzegovina], serious violations of humanitarian law during the war must be acknowledged by those who bear responsibility—regardless of their ethnic group. This acknowledgement is an essential first step." *Id.* The trial chamber cited Alex Boraine's testimony that "full disclosure in confessions is vital for the reconciliatory process" and that "genuine and voluntary expressions of remorse often provide a degree of closure for victims." *Id.*, para. 77. The trial chamber also cited Mirsad Tokača's similar testimony, *id.*, para. 78, and concluded that Plavšić's guilty plea "and her acknowledgement of responsibility, particularly in light of her former position as President of Republika Srpska, should promote reconciliation in Bosnia and Herzegovina and the region as a whole," *id.*, para. 80.

³⁹ *Id.*, para. 81.

⁴⁰ *Id.*, para. 94.

⁴¹ See MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE 61 (1998); PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: FACING THE CHALLENGE OF TRUTH COMMISSIONS 30–31 (2002). Hayner reports, however, that victims who relive the brutal details of their experiences before truth commissions without being provided subsequent psychological support are in danger of experiencing symptoms of post-traumatic stress disorder. *Id.* at 141–44.

⁴² RUTI G. TEITEL, TRANSITIONAL JUSTICE 89–90 (2000).

⁴³ See, e.g., José Zalaquett, *Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints*, in 1 TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 3, 6, 7 (Neil J. Kritz ed., 1995).

also expressed remorse, and it must be acknowledged that she did so with a seemingly greater degree of sincerity than previous ICTY defendants who pleaded guilty were able to muster.⁴⁴ But even Plavšić's remorseful expressions go only so far. Although Plavšić was clear in taking responsibility for her own actions, she was equally clear in limiting that responsibility, stating that it was hers and hers "alone" and that it did "not extend to other leaders who have a right to defend themselves."⁴⁵ In the same vein, Plavšić categorically refused to cooperate with the prosecution by providing information or testifying in other cases.⁴⁶ Under ordinary circumstances, such a refusal might lead one to doubt a defendant's commitment to truth telling.⁴⁷ In Plavšić's case, however, the prosecution did not even mention her refusal in its sentencing brief, necessitating that the trial chamber inquire as to the prosecution's views.⁴⁸ Such reticence has by no means characterized the prosecution's submissions in other cases. In both *Jelišić* and *Simić*, for instance, the prosecution was quite keen to inform the trial chambers of the defendants' refusals to cooperate.⁴⁹

So why all the kindness and solicitude for Plavšić? In some part, it represents merely the next step in the ICTY's increasing acceptance of, and desire for, guilty pleas—a trend that can be traced through the cases preceding *Plavšić*. In its early days, the ICTY did not even have procedures regarding the making and accepting of guilty pleas,⁵⁰ and the idea that guilty pleas would be compensated by sentencing concessions was a controversial one at best.⁵¹ Over the years, the idea gained ground, and by the time that Stevan Todorović pleaded guilty in December 2000, he was able to secure a prosecutorial promise to recommend a sentence of no longer than twelve years' imprisonment in exchange for his plea and a pledge to cooperate,⁵² even though the prosecution believed he would have received a fifteen-to-twenty-five-year sentence had he been convicted at trial.⁵³ Nine months later, the three *Sikirica* defendants were able to negotiate a similar deal even though they did not plead guilty until the vast bulk of the trial had already been completed, and they did not agree to cooperate.⁵⁴ Following the prosecution's lead in these more recent cases, the trial chambers have emphasized the benefits of guilty pleas, promised concessions to defendants who make them,⁵⁵ and, most importantly, imposed sentences in accordance with the prosecution's recommendations, thereby maintaining the prosecution's credibility for the next bargain.

No one can say, then, that the *Plavšić* judgment comes as a complete surprise, but the almost reflexive enthusiasm about Plavšić's guilty plea, exhibited particularly by the prosecution, is unprecedented. Presumably, it springs from factors relating both to Plavšić's position in the eyes of Bosnians and to the ICTY's position in the eyes of the UN Security Council. Turning to the

⁴⁴ See Combs, *supra* note 1, at 151–52 (describing previous, unsatisfactory statements of remorse).

⁴⁵ Dec. 17 transcript, *supra* note 23, at 610.

⁴⁶ Press Statement of Biljana Plavšić (Oct. 2, 2002), at <http://www.un.org/icty/pressreal/play_statement.htm>.

⁴⁷ Plavšić could, of course, have feared reprisals had she agreed to cooperate with the prosecution, but her assistance would have been so valuable that the prosecution undoubtedly would have undertaken unprecedented efforts to protect her safety. In addition, it is unlikely that Plavšić's refusal was motivated by fear since she was willing to place herself in extreme danger a few years earlier when seeking to implement the Dayton Agreement and to root out corruption in Republika Srpska.

⁴⁸ Dec. 16 transcript, *supra* note 14, at 378.

⁴⁹ See *Prosecutor v. Milan Simić*, Case No. IT-95-9/2-T, Prosecutor's Brief on the Sentencing of Milan Simić, para. 50 (July 15, 2002) (on file with author); *Prosecutor v. Jelišić*, Case No. IT-95-10-T, Transcript, at 3,077 (Nov. 24, 1997).

⁵⁰ See *Prosecutor v. Erdemović*, Case No. IT-96-22-A, Sep. and Diss. Op., Cassese, J., para. 10 (Oct. 7, 1997); see also ICTY RULES OF PROCEDURE AND EVIDENCE 62 *ter* (as amended Dec. 12, 2002) (governing guilty pleas; adopted in December 2001).

⁵¹ See MICHAEL P. SCHARF, *BALKAN JUSTICE* 67 (1997).

⁵² Todorović sentencing judgment, *supra* note 1, para. 11.

⁵³ *Prosecutor v. Todorović*, Case No. IT-95-9/1, Transcript, at 55 (May 4, 2001).

⁵⁴ *Sikirica* sentencing judgment, *supra* note 1, paras. 25, 31, 37 (describing plea agreements).

⁵⁵ See, e.g., Todorović sentencing judgment, *supra* note 1, para. 80 (July 31, 2001) (stating that a guilty plea "should, in principle, give rise to a reduction in the sentence that the accused would otherwise have received"); *Sikirica* sentencing judgment, *supra* note 1, paras. 149–50.

second point first, the ICTY dispenses slow and expensive justice. Prior to the recent spate of guilty pleas, the Tribunal has taken ten years and nearly \$650 million to resolve eighteen cases,⁵⁶ and it has been widely criticized for the slow pace and high cost of its proceedings.⁵⁷ Good reasons exist for the long time and substantial funds expended,⁵⁸ but the Security Council does not currently find those reasons to be persuasive. With the United States leading the charge, the Security Council has lately pressured the ICTY to adopt a timetable for completing its work, prompting the Tribunal propose that it will finish its trials by 2008.⁵⁹ A guilty plea in even the most straightforward case, then, is tremendously valuable in time and resource savings, and the savings accruing in cases involving high-level defendants are all the more dramatic. Since high-level defendants typically performed no dirty deeds themselves, tracing the crimes to their orders can be an especially complicated, time-consuming task. In the court of public opinion, Slobodan Milošević, for instance, is without question responsible for the ethnic cleansing campaign in Bosnia and the forced expulsions in Kosovo. But in the court of law called the ICTY, the prosecutors have had painstakingly to trace—sometimes through fickle insider witnesses⁶⁰—the line from the mass graves to the man ordering the actions that filled them. High-level defendants who admit their guilt and thereby obviate the need for such proof taking are valuable commodities indeed, and the ICTY has a strong interest in treating them in a way that encourages other defendants to behave likewise.

Admissions of guilt from high-level defendants confer on the ICTY not only practical benefits, but reputational ones. At its inception, the Tribunal was accused of bias and illegitimacy, with some of those charges made even by supporters of international prosecutions.⁶¹ The ICTY has withstood these challenges so that Milošević's initial tirades⁶² and Vojislav Šešelj's more recent defiance⁶³ now seem, at least to most of the world, like the last, sad gasps of former strongmen, rather than serious threats. That same view has not necessarily penetrated in the countries of the former Yugoslavia, however. Milošević's charges of an international plot against the Serbs

⁵⁶ The eighteen cases featured thirty-five defendants. Budget figures and other statistics are available at the ICTY's Web site, <<http://www.un.org/icty>>.

⁵⁷ See, e.g., John E. Ackerman, *Assignment of Defense Counsel at the ICTY*, in *ESSAYS ON ICTY PROCEDURE AND EVIDENCE IN HONOUR OF GABRIELLE KIRK MCDONALD* 167, 170 (Richard May et al. eds., 2001) ("One of the major criticisms levelled at the Tribunal is the length of trials."); Daryl A. Mundis, *Improving the Operation and Functioning of the International Criminal Tribunals*, 94 *AJIL* 759, 759 (2000) (describing the justified criticism of the Tribunals' "inordinately long trials").

⁵⁸ See Nancy Amoury Combs, *Establishing the International Criminal Court*, 5 *INT'L L. F.* 77, 81 (2003) (citing, among other things, lack of state cooperation, complexity of crimes, and logistical difficulties).

⁵⁹ See SC Res. 1503 (Aug. 29, 2003); *The U.N. Criminal Tribunals for Yugoslavia and Rwanda: International Justice or Show of Justice? Hearing Before the Committee on International Relations*, United States House of Representatives, 107th Cong. 20 (2002) (testimony of Pierre-Richard Prosper, ambassador-at-large for war crimes issues, U.S. Department of State) ("We have and are urging both Tribunals to begin to aggressively focus on the end-game and conclude their work by 2007–2008"); ICTY Press Release JDH/P.I.S./690-e (July 26, 2002) (address by Judge Claude Jorda, ICTY president, to the UN Security Council); see also Carla Del Ponte, *Hiding in Plain Sight*, *N.Y. TIMES*, June 28, 2003, at A15.

⁶⁰ See *Prosecutor v. Milošević*, Case No. IT-02-54, Transcript, at 16,727 (Feb. 21, 2003) (prosecutor attempting to cross-examine his own witness, Dragan Vasilković, after Vasilković, under Milošević's cross-examination, changed his story and disavowed a written statement).

⁶¹ Ivan Simonović, *The Role of the ICTY in the Development of International Criminal Adjudication*, 23 *FORDHAM INT'L L.J.* 440, 444–45 (1999) (noting that "Brazil and China expressed concern that the interpretation of Security Council powers had been overstretched" and that "Mexico presented an official report, challenging the Security Council's authority to act as it did").

⁶² *Prosecutor v. Milošević*, Case No. IT-99-37-I, Transcript, at 2 (July 3, 2001) (Milošević stating that "I consider this Tribunal a false Tribunal and the indictment a false indictment"). The Trial Chamber eventually turned off Milošević's microphone when he continued in the same fashion. See *id.* at 5; see also *Milošević Again Defies Tribunal*, *INT'L HERALD TRIB.*, Oct. 30, 2001, at 7 ("After four months in prison, former President Slobodan Milošević remained combative Monday, denouncing new war crimes charges by UN prosecutors and scorning three lawyers assigned to his defense.")

⁶³ See *Serb Radical Denies War Crimes*, *BBC NEWS*, Mar. 25, 2003, at <<http://news.bbc.co.uk/1/hi/world/europe/2883951.stm>> (describing Šešelj's refusal to enter a plea, refusal to stand when the judges entered the courtroom, and promise to use court appearances to make political speeches).

play well at home,⁶⁴ and many Serbs continue to view the ICTY as an illegitimate institution conducting a persecutory witch-hunt.⁶⁵ An admission of guilt proffered by a defendant with such sterling nationalist credentials as the Serbian Iron Lady not only provides strong evidence to counteract the self-serving histories that still hold sway among Serbs, but also serves to legitimate the institution that brought the criminal charges in the first place.

To return to my initial question: does the truth-telling that arises from a guilty plea foster reconciliation and peace building in war-torn lands? Probably, it can. In some cases. But it may take a long, long time. Certainly news of Plavšić's guilty plea did not send Serbs rushing to examine their own consciences. Rather, a majority in the Republika Srpska denounced the plea as an act of treachery and betrayal.⁶⁶ Plavšić's victims, for their part, were reportedly gratified by Plavšić's plea,⁶⁷ but they decried the withdrawal of the genocide charges⁶⁸ and condemned in harsher tones still the lenient, eleven-year sentence.⁶⁹ Truth telling is one thing; deal cutting is another; and the latter appears to have few reconciliatory effects. Recognizing this fact, the *Plavšić* prosecution sought to minimize the appearance of compensation; indeed, the prosecutor, Carla Del Ponte, went so far as to tell the trial chamber that Plavšić had not sought "to gain personal advantage" as a result of her guilty plea,⁷⁰ apparently not considering the withdrawal of the genocide charges a personal advantage. Prospects for reconciliation were dealt a further blow when Plavšić was sent to serve her term in a posh Swedish prison that reportedly provides prisoners with use of a sauna, solarium, massage room, and horse-riding paddock, among other amenities. Victims reacted with predictable outrage.⁷¹

Plavšić presented the ICTY with a difficult case in that it featured a defendant who was old enough that she would probably die before serving any sentence that the trial chamber might see fit to impose. The Trial Chamber might therefore have opted for symbolism; that is, it could have tried to satisfy victims by sentencing her to, say, twenty-five years' imprisonment, knowing that, in all likelihood, she would not have spent many more, if any more, years in prison than she would have under the eleven-year sentence. But Plavšić's co-indictee, Momcilo Krajišnik, for instance, is only fifty-eight years old, so for him, the difference between an eleven-year and a twenty-five-year sentence has real consequences. If the ICTY wants to preserve any hope of obtaining a guilty plea from Krajišnik or other leaders like him, it will probably have to entice them with the implicit promise that they will see life after imprisonment. The ICTY made that promise with *Plavšić*.

Whether that promise is in the long-term interest of international criminal justice remains to be seen. On the fundamental question, the prosecution and trial chamber have it right.

⁶⁴ See *Milošević Supporters Demand His Release from U.N. Court*, ASSOCIATED PRESS, June 28, 2003; Rod Nordland & Zoran Cijakovic, *Back to the Future: Farewell, Yugoslavia. Hello to New Nationalist Politics*, NEWSWEEK, Feb. 17, 2003, at 39.

⁶⁵ See *Serbian Town Wakes Up to Graffiti Glorifying Former President Milošević*, BBC MONITORING INTERNATIONAL REPORTS, June 27, 2003.

⁶⁶ Rubin, *supra* note 1; Daniela Valenta, *Plavšić Denounced as a Traitor*, [INSTITUTE FOR WAR & PEACE REPORTING] TRIBUNAL UPDATE, No. 293, Dec. 9–14, 2002, at <<http://www.iwpr.net>>.

⁶⁷ Daria Sito-Sucic, *Muslim Victims Outraged, Say Plavšić Sentence Low*, REUTERS, Feb. 27, 2003; Amra Kebo, *Regional Report: Plavšić Sentence Divides Bosnia*, [INSTITUTE FOR WAR & PEACE REPORTING] TRIBUNAL UPDATE, No. 302, Feb. 24–28, 2003 (reporting the views of Sulejman Tihić, Bosniak member of the Bosnian Presidency and a detainee in Serb detention centers, who described Plavšić's plea as "a highly moral act" which helps establish the truth about the kind of war that took place").

⁶⁸ Kebo, *supra* note 67; Peter Shard, *Ex-Bosnian Serb Leader Admits Guilt*, AGENCE FRANCE-PRESS, Oct. 2, 2002, at <<http://iafrica.com/news/worldnews/169826.htm>>.

⁶⁹ Mujesira Memisević, whose husband and children were killed during a Bosnian Serb ethnic cleansing campaign, described the sentence as "outrageously low" and stated, "I am speechless. I cannot talk at all. I am shivering. I am completely shaken." Sito-Sucic, *supra* note 67. The president of Bosnia-Herzegovina's federal committee for the missing, Amor Masović, observed that Plavšić "will spend just two and a half minutes in prison for every one of her 200,000 Bosniak and Croat victims." Kebo, *supra* note 67. Serbian politicians, by contrast, denounced the sentence as too harsh. See Sito-Sucic, *supra* note 67.

⁷⁰ Dec. 16 transcript, *supra* note 14, at 371.

⁷¹ Patrick McLoughlin, *Serb War Criminal Plavšić Goes to Swedish Jail*, REUTERS, June 27, 2003.

Peace is better advanced by defendants who acknowledge their atrocities rather than denying the obvious, who accept responsibility rather than blaming their enemies, and who apologize to victims rather than continuing their demonization. Even now, many Bosnian Serbs continue to deny, for instance, that massacres took place at Srebrenica, so that after former Bosnian Serb army officers Momir Nikolić and Dragan Obrenović pleaded guilty in May 2003 to helping plan the Srebrenica massacre, one survivor described feeling a sense of relief that he had not known since the massacre took place.⁷² Admissions and apologies can advance reconciliation and should be commended and probably rewarded. But institutions like the ICTY can impair the very reconciliation that they seek to advance if the rewards that they hand out themselves become a new source of bitterness.

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⁷² Emir Suljagić, *Truth at The Hague*, N.Y. TIMES, June 1, 2003, §4, at 13.