

IT-95-14/2-PT
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**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-95-14/2-PT

Date: 1 March 1999

Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Mohamed Bennouna
Judge Patrick Robinson

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 1 March 1999

PROSECUTOR

v.

**DARIO KORDIĆ
MARIO ČERKEZ**

**DECISION ON JOINT DEFENCE MOTION TO DISMISS ALL ALLEGATIONS OF
PLANNING AND PREPARATION UNDER ARTICLE 7(1) AS OUTSIDE THE
JURISDICTION OF THE TRIBUNAL OR AS UNENFORCEABLE**

The Office of the Prosecutor

**Mr. Geoffrey Nice
Mr. Rodney Dixon**

Counsel for the accused

**Mr. Mitko Naumovski, Mr. Leo Andreis, Mr. David F. Geneson, Mr. Turner T. Smith, Jr.,
and Ms. Ksenija Turković, for Dario Kordić**

Mr. Božidar Kovačić, for Mario Čerkez

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“the International Tribunal”),

BEING SEISED OF the “Joint Defense Motion to Dismiss all Allegations of Planning and Preparation Under Article 7(1) As Outside the Jurisdiction of the Tribunal or As Unenforceable” filed by counsel for the two accused, Dario Kordić and Mario Čerkez, (together “the Defence”), on 22 January 1999 (“the Motion”), seeking to strike the words “preparation”, “planned”, “planning” and other like terms from all Counts and their associated charging paragraphs in the Amended Indictment,

NOTING the Prosecutor’s Response to the Motion filed by the Office of the Prosecutor (“Prosecution”) on 5 February 1999 (“the Response”),

HAVING HEARD the oral arguments of the Defence and Prosecution presented on 16 February 1999,

NOTING in particular the arguments of the Defence that there is no basis in customary international law for the incrimination of preparation and planning provided for by Article 7, paragraph 1, of the Statute of the International Tribunal; that neither the Nürnberg Charter¹ Control Council Law No. 10², nor the jurisprudence of the International Military Tribunal for the Trial of the Major War Criminals at Nürnberg³ supports the incrimination of such offences; and, that criminal liability for mere planning and preparation of offences is, bar exceptional circumstances, prohibited,

NOTING FURTHER the arguments of the Prosecution that the international military tribunals at Nürnberg and Tokyo⁴ did in fact hold persons responsible for the planning and preparation of offences, and that Control Council Law No. 10 and the Charter of the United States Military Tribunals provided explicitly for planning and preparation offences; that the Defence is confusing the planning and preparation for offences not completed with those which were in fact completed; that it is well established in international law that the planning and preparation of offences in

¹ Annex to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis (London Agreement).

² Official Gazette of the Control Council for Germany, No. 3, p. 22, Military Government Gazette, Germany, British Zone of Control, No. 5, p. 46, Journal Officiel du Commandement en Chef Français en Allemagne, No.12 of 11 January 1946.

³ Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, Germany (1947).

⁴ International Military Tribunal for the Far East.

violation of international humanitarian law are punishable; and that the jurisprudence of the International Tribunal and the International Criminal Tribunal for Rwanda⁵ confirms this,

CONSIDERING that the planning and preparation offences alleged in the Amended Indictment pursuant to Article 7, paragraph 1, of the Statute are linked with serious violations of international humanitarian law which are alleged by the Prosecution to have been completed,

CONSIDERING that it is established in customary international law that the planning and preparation of violations of international humanitarian law are punishable, and that the principle of legality (*nullum crimen sine lege*) is not violated by the prosecution of or conviction for planning and preparation of completed offences,

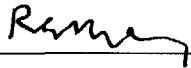
CONSIDERING FURTHER that the plain language of Article 7, paragraph 1, of the Statute, as well as the jurisprudence of the International Tribunal in *Prosecutor v. Tadić*⁶, and of the International Criminal Tribunal for Rwanda in *Prosecutor v. Akayesu*⁷, confirm that criminal responsibility may flow from the planning and preparation of offences under the Statutes of the International Tribunals, where the offences were completed,

PURSUANT TO Rule 72 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY DISMISSES THE MOTION.

Done in English and French, the English text being authoritative.

Dated this first day of March 1999
At The Hague
The Netherlands


Richard May
Presiding

[Seal of the Tribunal]

⁵ The International Criminal Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January and 31 December 1994.

⁶ Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, T. Ch. II, 7 May 1997, at para. 692.

⁷ Judgement, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 2 Sept. 1998, para. 473.