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AT



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

Case No. IT-01-42-PT

Date: 7 June 2002

Original: English

IN THE TRIAL CHAMBER

Before: Judge Daquin Liu
Judge Amin El Mahdi
Judge Alphons Orie,

Registrar: Mr. Hans Holthuis

Decison of: 7 June 2002

THE PROSECUTOR

v.

**PAVLE STRUGAR
MIODRAG JOKIĆ
& Others**

DECISION ON DEFENCE PRELIMINARY MOTION CHALLENGING JURISDICTION

The Office of the Prosecutor:
Ms. Susan Somers

Defence Counsel:
Mr. Goran Rodić
Mr. Žarko Nikolić

1. The Indictment

1. Pending before this Trial Chamber (the "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 Tribunal") is a motion filed in accordance with Rule 72 of the Rules of Procedure and Evidence of the Tribunal (the "Rules") by the accused Pavle Strugar (the "Accused"), on 18 January 2002;¹

2. On 22 February 2001, the Prosecution issued an Indictment (the "Indictment") against Pavle Strugar (the "Accused"), Miodrag Jokić, Milan Zec and Vladimir Kovačević, which was confirmed by Judge Wald on 27 February 2001. An order for limited disclosure dated 27 February 2001 was vacated by a decision issued on 2 October 2001.

3. The Indictment is comprised of sixteen counts charging the Accused with:

Violations of the laws or customs of war, pursuant to Article 3 of the Amended Statute of the International Criminal Tribunal for the Former Yugoslavia (the "Statute");

murder (counts 1, 4 and 7); cruel treatment (counts 2, 5 and 8); attacks on civilians (counts 3, 6 and 9); devastation not justified by military necessity (count 10); unlawful attacks on civilian objects (count 11); destruction or wilful damage done to institutions dedicated to religion and to historic monuments (count 12); wanton destruction of villages, or devastation not justified by military necessity (count 14); destruction or wilful damage done to institutions dedicated to education or religion (count 15); and plunder of public or private property (count 16).

Grave breach of the Geneva Conventions of 1949, pursuant to Article 2 of the Statute:

extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (count thirteen).

4. It is alleged that all acts or omissions charged in the Indictment occurred between 1 October and 31 December 1991 (the "Indictment Period"), during which time the Accused incurred responsibility under both Article 7(1) and 7(3) of the Statute for the crimes charged in the Indictment. It is alleged that between 1 October and 7 December 1991, the Accused, acting individually or in concert with others, participated in the crimes alleged in the Indictment in order to secure control of those areas of Croatia that were intended for inclusion in the so-called "Dubrovnik

¹ The "Defence Preliminary Motion."

Republic.” It is alleged that the Accused engaged in the following unlawful acts in his position as commander of the Second Operational Group, which was formed by the JNA to conduct the military campaign against the Dubrovnik region of Croatia:

(1) From 1 October 1991 to 6 December 1991, the unlawful shelling in and around the city of Dubrovnik, during which 43 civilians were killed and numerous others wounded. The attacks included the following:

- on 7 October 1991, the town of Mokošica, a residential suburb of Dubrovnik, was shelled; nine civilians were killed and numerous others were wounded (counts 1 to 3);

- between 9 and 12 November 1991, all areas of the city of Dubrovnik were shelled; ten civilians were killed and numerous others were wounded (counts 4 to 6);

- on 6 December 1991, all areas of the city of Dubrovnik were shelled; fourteen civilians were killed and numerous others were wounded (counts 7 to 9);

(2) Between 1 October and 6 December 1991, dwellings and other buildings in the city of Dubrovnik were wilfully damaged or destroyed (counts 10 to 12);

(3) In October 1991, public, commercial and private property under the control of the JNA was plundered and public, commercial, private and religious buildings were destroyed (counts 13 to 16).

2. The Accused’s Application

5. The Accused puts forward a two-fold challenge to the Indictment: first, he challenges the jurisdiction of the Tribunal over offences of attacks against civilians and unlawful attacks on civilian objects as charged in counts three, six, nine and eleven of the Indictment; second, he challenges the form of the Indictment. The challenge on the form of the Indictment will be dealt with in a separate decision.

6. On 1 February 2002, the Prosecution filed the “Prosecution’s Response to Defence Preliminary Motion Challenging Jurisdiction” and the “Prosecution’s Response to Defendant’s Preliminary Motion Challenging Jurisdiction and Objecting to the Form of the Indictment”. These filings were supplemented by a “Consolidated Corrigenda and Supplemental Sourcing to Prosecution’s Responses to Defence Preliminary Motions Alleging Defects in the Form of the Indictment and Challenging Jurisdiction” filed on 6 February 2002. The latter document contains

two separate filings and these are relied upon herein as being the Prosecution's response to the Motion (the "Response concerning Jurisdiction"² and the "Response concerning Form"³).

7. On 6 February 2002, the Trial Chamber granted a request by the Defence for leave to file a reply to the response filed by the Prosecution⁴ by 15 February 2002 and the Prosecution was granted leave to file a response to the reply (if any) within seven days of such filing. On 15 February 2002, the Defence filed the "Defence Reply to the Prosecution's Response to the Defence Preliminary Motion" (the "Defence Reply") and on 21 February 2002, the Prosecution filed the "Prosecution's Response to the 'Defence Reply to the Prosecution's Response to the Defence Preliminary Motion'" ("the Response of 21 February 2002").

8. The Trial Chamber heard oral argument by the parties on 12 March 2002. During the hearing, the Defence requested leave to file written submissions in relation to a particular issue raised by Judge Orić. Leave was granted to file no later than 15 March 2002.⁵ Following an oral request, the deadline was extended to 21 March 2002.⁶ The Defence did not file its submission until 4 April 2002 (the Defence Submission").⁷ No request for an extension of time was made by the Defence prior to the filing, although it requests that the Trial Chamber recognise this filing as validly done in accordance with Rule 127(A)(ii) of the Rules. The Trial Chamber is not satisfied with this late filing, in particular given the fact that one extension had already been accorded and no attempt was made to request another. However, as the Prosecution does not object and in light of the particular circumstances of this case, the Trial Chamber sees no reason not to recognise the filing as validly done, pursuant to Rule 127(A)(ii) of the Rules.

2. Challenge to the Jurisdiction of the Tribunal

9. The Defence of the Accused challenges the jurisdiction of the Tribunal in relation to counts 3, 6, 9 and 11 (charges of attacks on civilians and unlawful attacks on civilian objects, as recognised by Articles 51 and 52 of Additional Protocol I and Article 13 of Additional Protocol II). It submits that the offences of attacks on civilians and unlawful attacks on civilian objects did not at the

² "Prosecution's Response to Defence Preliminary Motion Challenging Jurisdiction."

³ "Prosecution's Response to Defence Preliminary Motion Alleging Defects in the Form of the Indictment."

⁴ "Decision on the Defence Request for Leave to Reply and Extension of Time (Re: Preliminary Motion by the Defence for the Accused Strugar on the form of the indictment and challenging jurisdiction," issued 6 February 2002.

⁵ T, 12 March 2002, p. 123.

⁶ "Order Granting Extension of Time for a Defence Filing," issued 15 March 2002.

⁷ "Additional Defence Submission," filed 4 April 2002. The Defence stated that the filing was late due to the impossibility of their expert to consider the issues raised within the time period set.

relevant times form part of customary international law as the underlying instruments were not of a customary nature.⁸ The Defence also argues that the Additional Protocols did not bind either party to the conflict as a matter of treaty law during the Indictment Period because they were ratified by the Republic of Croatia on 11 May 1992 whereas the Indictment period runs from 1 October to 31 December 1991.⁹ In addition, it argues that the Additional Protocols are of a contractual nature; that the conflicting parties did not agree upon their application by any mutual special agreement, “which would allow their application in a concrete situation.”¹⁰ Consequently, the Defence submits that to charge the Accused with these offences amounts to a violation of the principle *nullum crimen sine lege*.¹¹

10. The Defence alleges that the Prosecution has improperly pleaded the charges against the Accused. It claims that Article 3 of the Statute functions as a residual clause and that the Prosecution “is not allowed to arbitrarily opt for either Article 2 or Article 3 because the Tribunal’s jurisprudence provides clear guidelines in terms of applicability of certain Articles, depending on circumstances, in this concrete case depending on the character of the armed conflict.”¹² It further maintains that charging the Accused with attacks against civilians on the basis of both Additional Protocols is improperly cumulative; the Prosecution must chose between the two grounds.¹³

A- Whether Articles 51 and 52 of Additional Protocol I and Article 13 of Additional Protocol II Fall Within the Scope of Article 3 of the Statute

11. The Defence states that “[i]t goes without saying that attacks on civilians are forbidden by international humanitarian law.”¹⁴ However, it claims that Articles 51 (and 52) of Additional Protocol I and Article 13 of Additional Protocol II which set out this principle, did not at the relevant times form part of customary international law. Those norms did not apply regardless of any ratification or signature by the relevant State sought to be bound by them. The Prosecution responds that “this Tribunal unambiguously has jurisdiction over the offences of unlawful attacks

⁸ The Motion, para. 4.

⁹ The Motion, para 4.

¹⁰ The Motion, para 4.

¹¹ The Motion, para 5.

¹² The Motion, para 27.

¹³ The Motion, para 29.

¹⁴ The Defence Reply, para 4.

on civilians and civilian objects on the basis of its settled jurisprudence pertaining to the scope of Article 3 of the Statute.¹⁵

12. In relation to the scope of Article 3 of the Statute,¹⁶ the Defence accepts the conclusion of the Appeals Chamber in the *Tadić* Jurisdiction Decision, which held that Article 3 “is a general clause covering all violations of humanitarian law not falling under Article 2 or covered by Articles 4 and 5.”¹⁷ The Appeals Chamber stated that: “[c]onsidering this list in the general context of the Secretary-General’s discussion of The Hague Regulations and international humanitarian law, we conclude that this list may be construed to include other infringements of international humanitarian law.”¹⁸ [...] “provided that certain conditions, *inter alia* relating to the customary status of the rule, are met.”¹⁹ It specified four requirements that must be met in order for a violation of international humanitarian law to be subject to Article 3 of the Statute. Those that are relevant in the instant case, are the following:

- (i) the violation must constitute an infringement of a rule of international humanitarian law;
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met [...].²⁰

13. The Defence accepts the conclusion of the Appeals Chamber that the Secretary-General’s Report, in listing instruments which unambiguously form part of customary international law,²¹ may be construed to include other infringements of international humanitarian law.²² However, it argues that the Secretary-General’s Report does not list the Additional Protocols as customary international law and that therefore this means that the Secretary-General did not consider these Additional Protocols to form part of customary international law.²³ The Defence accepts that applicable conventional law binds parties to a conflict and it notes that the Appeals Chamber designated Additional Protocol II as “applicable to some aspects of the conflict in the former

¹⁵ Prosecution Response Concerning Jurisdiction, para 4.

¹⁶ Article 3 of the Statute (Violations of the Laws or Customs of War) reads: The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and science, historic monuments and works of art and science; (e) plunder of public or private property.

¹⁷ The Motion, para 20. See *The Prosecutor v. Duško Tadić*, Case No. IT-94-I-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), para 89.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, para 94.

²⁰ *Tadić* Jurisdiction Decision, para 94.

²¹ Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993) (the “Secretary-General’s Report”), para 35.

²² The Motion, para 7.

²³ The Motion, para 6.

Yugoslavia”²⁴ while the *Blaškić* Judgement designated the Additional Protocols as conventional law.²⁵ In the present case however, the Defence argues that during the Indictment Period, the conflicting parties were not bound by matter of conventional law. Croatia ratified the Additional Protocols on 11 May 1992, well outside the Indictment Period, and Croatia and Bosnia and Herzegovina agreed explicitly on 22 May 1992 to observe the Additional Protocols.²⁶ On the other hand, the Defence accepts that as of 27 November 1991, the conflicting parties were bound to observe the Additional Protocols by matter of special agreement.²⁷

14. The Prosecution maintains that the conflicting parties were bound to observe the provisions of the Additional Protocols by matter of conventional law (treaty law and special agreements in force) and by virtue of customary international law.²⁸ As to treaty law, the Prosecution submits that this was principally upon the basis of the succession of the Federal Republic of Yugoslavia (FRY) and other constituent states of the Socialist Federal Republic of Yugoslavia (SFRY) and that 8 October 1991 is the effective date of independence of Croatia.²⁹ As for special agreements, it asserts that the Additional Protocols apply upon the basis of, for example the special agreement between the President of the six Republics of Yugoslavia dated 5 November 1991 and the Memorandum of Understanding entered into on 27 November 1991 by the Republics of Yugoslavia and Croatia.³⁰ Finally, it submits that prohibitions against attacks on civilians and civilian objects had by the Indictment Period, unambiguously been recognised as forming part of customary international law.³¹

15. The Trial Chamber interprets the finding by the Appeals Chamber in the *Tadić* Jurisdiction Decision case as meaning that if a rule is customary in nature, there is no need to discuss whether the rule in question belongs to conventional law. The Trial Chamber will therefore examine first whether the norms in question are customary law.

16. The Appeals Chamber, in the *Tadić* Jurisdiction Decision, discussed the existence of customary international humanitarian rules applicable to internal conflicts. It found that State

²⁴ The Motion, para 11, quoting *Tadić* Jurisdiction Decision, para 69.

²⁵ The Motion, para 12, referring to *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 (“*Blaškić* Judgement”), para 172.

²⁶ The Motion, paras 14-15.

²⁷ The Reply, para 8.

²⁸ Prosecution Response Concerning Jurisdiction, para 4.

²⁹ The Prosecution submits that although Croatia’s instrument of succession was lodged on 11 May 1992, in accordance with international practice and as expressed by Croatia in its instrument of succession, the Additional Protocols are deemed to have come into force retroactively on 8 October 1991, the effective date of independence. Prosecution Response Concerning Jurisdiction, paras 9-13.

³⁰ Prosecution Response Concerning Jurisdiction, paras 14-18.

³¹ Prosecution Response Concerning Jurisdiction, paras 19-25.

practice had developed since the 1930s, to the effect that rules aiming at protecting the civilian population form part of customary international law. The Trial Chamber will adopt a similar approach in ascertaining whether the principles contained in the relevant provisions of the Additional Protocols have attained the status of customary international law.

17. Rules of customary law sometimes become treaty law. If the treaty in question also contains rules that have not acquired the status of customary international law, the latter only binds the States parties to the treaty. Adherence to treaties may also be an element to be taken into consideration when establishing whether State practice has reached a level as to support the acceptance of a rule as customary international law. Articles 51 and 52 of Additional Protocol I and Article 13 of Additional Protocol II do not contain new principles. They recite earlier codes.³² The Fourth Geneva Convention expanded in detail many rules of customary international law and The Hague rules relating to civilians. The prohibition of attacks on civilian populations was qualified as a rule of international customary law in 1938, by former British Prime Minister A.N. Chamberlain.³³ This position was subsequently formulated in a resolution that was unanimously adopted by the Assembly of the League of Nations the same year.³⁴ The United Nations General Assembly again embodied these principles it considered general humanitarian principles in Resolution 2444.³⁵ The ICJ considered this type of statements to represent the *opinio juris* of the states passing the Resolution and held that these rules reflect “elementary considerations of humanity” applicable under customary law to any armed conflict, whether it is of an internal or international character.³⁶

18. At the time of the adoption of the Additional Protocols, the overwhelming majority of states regarded the principles enunciated in Articles 51 and 52 of Additional Protocol I and in Article 13 of Additional Protocol II as general humanitarian principles. These latter are embodied in some States’ military manuals and contrary practice has consistently met disapproval.

³² Three and a half centuries ago, Grotius made the distinction between civilians and combatants. The Lieber Code in its articles 23 and 25 maintained the distinction. The Brussels Declaration of 1874 in articles 15-18 stated that civilian dwellings are immune from attacks. Even though the Brussels Declaration was never ratified as a treaty it had widely been accepted as declaratory of customary international law leading to the Hague Convention No II of 1899 and No IV of 1907.

³³ In 1938, following the German and Italian air forces operations during the civil war in Spain and similar acts by Japan in China, he explained that “it is against international law to bomb civilians as such and to make deliberate attacks upon civilian populations”. He further added that “targets which are aimed at from the air must be legitimate military objectives and must be capable of identification”; see in Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet, L.R. Penna, Customary International Law and Protocol I: An Analysis of some Provisions, Ed. Martinus Nijhoff, 218. See also Tadić Jurisdiction Decision, paras 100 *et seq.*

³⁴ See Tadić Jurisdiction Decision, para 101; also, Oppenheim, International Law, Vol. II, pp 523, 1060.

³⁵ G.A. Res. 2444, UN GAOR, 23rd Session, Supp. No. 18, UN Doc. A/7218 (1969).

³⁶ See Case Concerning Military and Paramilitary Activities in and Against Nicaragua, ICJ, 1986, Rep. 14, paras 218, 219; in 1996, in its Advisory Opinion on the Legality of Nuclear Weapons, the ICJ observed again that “the cardinal principles contained in the text constituting the fabric of humanitarian law are the following. The First is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatant and non-

19. The drafting history of the Additional Protocols also clearly indicates the *opinio juris* of the States. It leaves no doubt that Article 51 of Additional Protocol I entitled "Protection of the Civilian Population" and comprised of eight paragraphs provides for a customary principle of protection of civilians against armed conflict in its first paragraph.³⁷ Article 52 entitled "General Protection of Civilian Objects" states that civilian objects enjoy protection from attack and reprisals and contains three paragraphs.³⁸ The three paragraphs state a general principle of international humanitarian law that civilian objects must not be subject to military attacks.³⁹ This rule is the necessary pendant of Article 51 of Additional Protocol I,⁴⁰ and is a reaffirmation of a similar provision contained in the Geneva Convention IV.

20. Article 13 of Additional Protocol II entitled "Protection of the Civilian Population" contains three paragraphs which mirrors the first three paragraphs of Article 51 of Additional Protocol I. It is emphasized that Article 1 of Additional Protocol II states that Additional Protocol II applies to conflict not covered by Additional Protocol I.

21. The Trial Chamber has no doubt that Articles 51 and 52 of Additional Protocol I and Article 13 of Additional Protocol II constitute a reaffirmation and reformulation, not long before the Indictment Period, of the existing norms of customary international law, which prohibit attacks on civilians and civilian objects.

22. The reference to the Additional Protocols by the use in the Indictment of the words "as recognized by" is to be understood as a reference to a clear and relatively recent legal instrument in which the relevant prohibitions under customary international law is reaffirmed. The Defence's objection to the use of the reference to instruments, which are not listed as source of customary law by the Secretary-General Report, is therefore rejected.

combatants; States must never make civilians the object of attack [...], ICJ, Advisory Opinion of 1996 on the Legality of Nuclear Weapons, ICJ Rep. 1996, para 78.

³⁷ The United Kingdom delegate in the Diplomatic Conference observed that paragraphs 1 to 3 of Article 51 entitled "protection of the civilian population" contain "a valuable reaffirmation of existing customary rules of international law" designed to protect civilians, 6 official Records, p 164.; For the Ukrainian delegate, paragraph 2 is "in line with the generally recognized rules of international law", *Ibid*, p 201. He had further emphasized that prohibition of using the civilian population for shielding military objectives in Article 28 of the IVth Convention is reaffirmed in Article 51.7. For the Canadian delegate many of the provisions of Article 51 are "codification of customary international law", 6 official Records p 179;

³⁸ Article 52.1 provides that objects which are not military objectives are "civilian objects". Article 52.2 defines what military objectives are. Article 52.3 postulates that in case of doubt whether a normal civilian object such as a place of worship, house or dwelling, or a school is used for an "effective contribution to military action", such places shall be presumed not to be so used.

³⁹ See the *Tadić* Jurisdiction Decision, paras 100 *et sequitur*.

⁴⁰ It would have been pointless to provide for a principle of protection of civilians if there would have been no immunity granted to civilian dwellings.

23. The requirement for the application of Article 3 of the Statute that the violations of the laws and customs of war with which the Accused is charged, constitute violations of a rule of international humanitarian law is thus fulfilled.⁴¹

24. Upon the finding of the Trial Chamber that the norms in question fall within the scope of Article 3 of the Statute, it is not necessary to consider whether these norms apply as a matter of conventional law between the conflicting parties.

B. Improper Charging in the Indictment

25. The Defence submits on the one hand that Article 3 of the Statute functions as a residual clause and that the Prosecution “is not allowed to arbitrarily opt for either Article 2 or Article 3.”⁴² The Accused has been charged with 15 counts under Article 3 of the Statute, with only one count brought under Article 2 (count 13). On the other hand, the Defence submits that the Indictment’s charging of the Accused with attacks against civilians on the basis of both Additional Protocols is improperly cumulative.⁴³ The Prosecution relies on the *Čelebići* Appeal Judgement’s conclusions regarding cumulative charging to address this latter argument and submits that this finding *mutatis mutandis*, extends to and dispenses with the objection of the Defence regarding the residual nature of common Article 3.⁴⁴

26. The Defence replies that the view of the Appeals Chamber in “the *Čelebići* Judgement relates to the admissibility of charging for the same act under two counts of the indictment, for example pursuant to Articles 2 and 3 of the Statute” whereas in the case to which the Motion relates, “there is just one count which is simply untenable as it contains contradictory allegations”.⁴⁵ The Defence further replies that “the Trial Chamber cannot accept or reject in part or conditionally a count of the indictment, which is inevitable if the logic of the indictment in this matter were followed”.⁴⁶

27. The Prosecution maintains that cumulative charging constitutes the usual and accepted practice of this Tribunal, as recognised by the Appeals Chamber in the *Čelebići* Appeal

⁴¹ See *Tadić* Jurisdiction Decision, para 94.

⁴² The Motion, paras 27.

⁴³ The Motion, para 29.

⁴⁴ Prosecution Response Concerning Jurisdiction, para 26 and the Prosecution Response dated 21 February 2002, para 8.

⁴⁵ The Reply, para 11.

⁴⁶ The Reply, para 11.

Judgement.⁴⁷ It maintains that although Article I of Additional Protocol II provides that simultaneous charging of both Additional Protocols is excluded, cumulative charging of both Additional Protocols is not designed to result in the *simultaneous* application of both Protocols to the same conduct but instead to ensure that unlawful attack charges may be brought *irrespective* of whether the conflict is determined to be of an international or non-international character.⁴⁸ At the same time, the Prosecution accepts that where it is established that Additional Protocol I applies (that is, when the conflict is deemed to be international), the simultaneous application of Additional Protocol II is excluded pursuant to Article 1 of that Protocol.

28. As correctly observed by the Prosecution, the cumulative charging of both Protocols is not designed to result in the simultaneous application of both Protocols to the same conduct but instead to ensure that unlawful attack charges may be brought irrespective of whether the conflict is determined to be of an international or non-international character. For this reason, cumulative charging constitutes the accepted practice of this Tribunal, as recognised by the Appeals Chamber in the *Čelebići* judgement:⁴⁹

cumulative charging is [...] allowed in light of the fact that, prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven. The Tribunal Chamber is better poised, after the parties' presentation of the evidence, to evaluate which of the charges may be retained, based upon the sufficiency of the evidence.

29. This finding, *mutatis mutandis*, extends to and dispenses with the objection of the Defence regarding the residual nature of Common Article 3. The Prosecution is at liberty to choose charges to be brought against an accused; it exercises discretion when preparing indictments.⁵⁰

⁴⁷ *The Prosecutor v Željko Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”).

⁴⁸ Prosecution Response Concerning Jurisdiction, para. 26.

⁴⁹ *Čelebići* Appeal Judgement, para 400.

⁵⁰ See for instance, the *Čelebići* Appeal Judgement, para 602.

PURSUANT TO Rule 72 of the Rules;

HEREBY, DENIES the Motion in respect of the Defence's challenge to the jurisdiction of the Tribunal.

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



Judge Liu Daqun

Dated this 7th day of June 2002
At The Hague,
The Netherlands.

[Seal of the Tribunal]