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-04-74-T

Date: 15 January 2009

Original: ENGLISH French

IN TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, presiding**
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Acting Registrar: **Mr John Hocking**

Decision of: **15 January 2009**

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC

DECISION ON SLOBODAN PRALJAK'S MOTION FOR CLARIFICATION OF THE TIME FRAME OF THE ALLEGED JOINT CRIMINAL ENTERPRISE

The Office of the Prosecutor:
Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:
Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III ("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 ("Tribunal"),

SEIZED of "Slobodan Praljak's Motion to Clarify the Time Frame of the Alleged Joint Criminal Enterprise", filed on 27 November 2008 by Counsel for the Accused Praljak ("Praljak Defence"), in which the Praljak Defence requests that the Chamber rule that the alleged joint criminal enterprise ended in April 1994 and/or order the Office of the Prosecutor ("Prosecution") to specify when it considers the joint criminal enterprise to have ended, and to decide that the same standards which applied to the Prosecution, as regards the admission of evidence that is tenuously linked to the present case, shall apply to the Defence teams ("Motion"),

NOTING the "Prosecution Response to Slobodan Praljak's Motion to Clarify the Time Frame of the Alleged Joint Criminal Enterprise", filed by the Prosecution on 5 December 2008, in which it requests that the Chamber deny the Motion ("Response"),

NOTING "Slobodan Praljak's Request for Leave to Reply to the Prosecution's Response to Slobodan Praljak's Motion to Clarify the Time Frame of the Alleged Joint Criminal Enterprise and Slobodan Praljak's Reply to the Prosecution Response", filed by the Praljak Defence on 5 December 2008 ("Request for Leave to Reply"),

NOTING the oral ruling of the Chamber of 25 November 2008, in which the Chamber stated its position to the Parties regarding the scope *ratione temporis* of the second amended indictment of 11 June 2008 ("Indictment") and on the admissibility of evidence relating to facts before and after the material period as alleged in the Indictment, ("Oral Ruling of 25 November 2008"),[1]

CONSIDERING that in support of the Motion, the Praljak Defence first argues that since the wording of paragraph 15 of the Indictment indicates the date of April 1994 and the facts alleged in the Indictment do not continue after April 1994, the period relevant to the joint criminal enterprise should end in April 1994; that if the Prosecution intended to allege that the joint criminal enterprise had not ended in April

1994 but continued after that date, it should have stated this clearly and unambiguously in the Indictment, and it should have alleged facts in support of a theory expanding the joint criminal enterprise beyond April 1994,[2]

CONSIDERING that the Praljak Defence next submits that on several occasions the Prosecution has recently made contradictory statements concerning the time frame of the joint criminal enterprise, and that these assertions confuse the theory put forth by the Prosecution concerning this time frame, if indeed, according to the Praljak Defence, the Prosecution even has a specific theory on this point,[3]

CONSIDERING that the Praljak Defence submits that the Oral Ruling of 25 November 2008 has not settled the issue of the date when the joint criminal enterprise ended,[4]

CONSIDERING that the Praljak Defence holds that this is a crucial point, and the fact that the end date of the joint criminal enterprise is not sufficiently explained constitutes an obstacle to the preparation of its defence,[5]

CONSIDERING that, as a result, the Praljak Defence requests that the Chamber rule that the alleged joint criminal enterprise ended in April 1994 and/or order the Prosecution to specify when it considers the criminal enterprise to have ended,[6]

CONSIDERING that the Praljak Defence further requests equal application of the standard for the admission of evidence which led to the admission of certain prosecution evidence even though, according to the Praljak Defence, that evidence was very tenuously linked to the present case,[7]

CONSIDERING that from the terms of the Motion the Chamber understands that the Praljak Defence is in fact requesting equal application of the same standard for the admission of evidence from after the material period alleged in the Indictment, which is said to have applied to the Prosecution up to this stage of the trial,

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[1] Transcript in French ("T(F)"), pp. 34937-34939.
[2] Motion, paras. 18-26.
[3] Motion, paras. 27-33.
[4] Motion, paras. 1 and 34.
[5] Motion, paras. 35-37.
[6] Motion, paras. 2, 40 and 41.
[7] Motion, paras. 23-26 and 41.

CONSIDERING that in its Response, the Prosecution submits that the Praljak Defence continues to confound the issue of the Accused Slobodan Praljak's responsibility for the offences charged against him, on the one hand, and the issue of the relevance of the evidence adduced to establish these offences, on the other hand, when in fact these two issues have already been considered and settled previously,[8]

CONSIDERING that, as regards the first issue, the Prosecution argues that the offences for which the Accused Slobodan Praljak is allegedly responsible are clearly set out in paragraphs 218 to 230 of the Indictment, in particular in Counts 1 to 26, and that his responsibility for the crimes charged in the Indictment can never be expanded,[9]

CONSIDERING that the Prosecution submits that the Motion in reality seeks to challenge the form of the Indictment and, as a result, raises a preliminary point that was not only settled in the pre-trial stage, but also may not be raised at this advanced stage of the proceedings pursuant to Rule 72 (A) of the Rules,[10]

CONSIDERING that, as regards the second issue, the Prosecution argues that the relevance of evidence is not determined by its date but rather by what it tends to prove, such that evidence before or after the time frame of an offence may be relevant in a case to establish the existence of that offence,[11]

CONSIDERING that the Prosecution adds that the issue of the relevance of evidence before or after the time frame of an offence was discussed before the Chamber on several occasions,[12] and that the Defence teams themselves have made use of such evidence,[13]

CONSIDERING finally that the Prosecution argues that the Praljak Defence has taken out of context the alleged contradictory statements made by the Prosecution which form the basis for the Motion,[14]

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[8] Response, paras. 2 and 4.
[9] Response, paras. 2 and 5.
[10] Response, para. 5.
[11] Response, para. 10.
[12] Response, paras. 6 to 9.
[13] Response, para. 16.
[14] Response, paras. 12 to 14.

CONSIDERING as a preliminary point that the Chamber finds that the Motion is not strictly speaking a request for clarification of the Oral Ruling of 25 November 2008, but rather a new motion requesting that the Chamber rule on the end date of the joint criminal enterprise as alleged in the Indictment, and decide that the same standards which applied to the Prosecution, as regards the admission of evidence before and after the material period as alleged in the Indictment, shall also apply to the Defence teams,

CONSIDERING that the Chamber was not seized of this specific request when it rendered its Oral Ruling of 25 November 2008,[15]

CONSIDERING as a result that the Chamber will deal with the Motion as a new application,

CONSIDERING that the Chamber next decides to reject the Praljak Defence Request for Leave to Reply since it fails to demonstrate how the circumstances are sufficiently compelling for the Chamber to grant its request and puts forth no new argument not already raised in the Motion,[16]

CONSIDERING that according to Article 21 (4) (a) of the Statute of the Tribunal ("Statute"), any accused person has the right "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him",

CONSIDERING that according to settled Tribunal jurisprudence, Articles 18 (4), 21 (2), 21 (4) (a) and 21 (4) (b) of the Statute, as well as Rule 47 (C) of the Rules require the Prosecution to set out the material facts which justify the charges made in the Indictment; that in order for an Indictment to be considered sufficiently specific, it must plead the material facts with enough detail to inform a defendant clearly of the charges brought against him so that he may prepare his defence,[17]

CONSIDERING that when an Indictment alleges the existence of a joint criminal enterprise it must plead, among the material facts that will assist the Defence in the

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[15] *See* T(F) pp. 34937-34939.
[16] *See* revised version of the Decision Adopting Guidelines on Conduct of Trial Proceedings, 28 April 2006, para. p.
[17] *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Appeals Judgement, 23 October 2001, para. 88; *Prosecutor v. Krnojelac*, Case No. IT-95-25-A, Appeals Judgement, 17 September 2003, para. 131;

preparation of its case, the time when this enterprise is alleged to have existed or the period which it is alleged to have covered,[18]

CONSIDERING that in the present case, the period covered by the joint criminal enterprise alleged in the Indictment is set out in paragraph 15 thereof, and is worded as follows:

> "From on or before 18 November 1991 to about April 1994 and thereafter, various persons established and participated in a joint criminal enterprise to politically and militarily subjugate [...] Bosnian Muslims and other non-Croats [...]."

CONSIDERING that the Praljak Defence argues that the end date of the joint criminal enterprise as alleged in the aforementioned paragraph 15 is not pleaded with sufficient detail and constitutes an obstacle to the preparation of its defence,

CONSIDERING that the Chamber first notes that the complaint that the time frame of the joint criminal enterprise is not pleaded with sufficient detail in the Indictment was already raised by the Defence teams in the pre-trial stage of this case, more specifically in the context of the preliminary motions submitted by the Defence teams in accordance with Rule 72 (A) (ii) of the Rules alleging defects in the form of the indictment, and that Trial Chamber I, handling the pre-trial phase of this case, disposed of it in a decision of 22 July 2005,[19]

CONSIDERING that, accordingly, in the Decision of 22 July 2005, Trial Chamber I dismissed this complaint by ruling that:

> "The Chamber is satisfied that the Prosecution sufficiently informs the Accused of the nature, time-frame, geographical frame, criminal objective, form of the JCE [...]. In relation to the Defence's complaint that the time-frame of the JCE is only approximate, the Chamber emphasises that the Prosecution's duty is to inform the Defence of a temporal time-frame as precise as possible. The degree of accuracy may vary depending on the determination of the issue. For instance, the Prosecution is expected to provide the Defence with exact dates and locations when alleging attacks of villages when possible. The Prosecution is not expected to give the exact dates of the beginning of a plan which need not to be prearranged to exist but to

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Prosecutor v. Blaškić, Case No. IT-95-14-A, Appeals Judgement, 29 July 2004, para. 209; *Prosecutor v. Naletilić et al.,* Case No. IT-98-34-A, Appeals Judgement, 3 May 2006, para. 23.

[18] *Prosecutor v. Kvočka et al.,* Case No. IT-98-30/1-A, Appeal Judgement, 28 February 2005, para. 28; *Prosecutor v. Simić,* Case No. IT-95-9-A, 28 November 2006, Appeals Judgement, para. 22.

[19] *Prosecutor v. Prlić et al.,* Case No. IT-04-74-PT, Decision on Defence Preliminary Motions Alleging Defects in the Form of the Indictment, 22 July 2005 ("Decision of 22 July 2005"), para. 20.

> inform, including approximately if accuracy is not possible, the Defence of what it believes is the temporal time-frame of the JCE based on the elements of the case. The determination of the exact dates, if possible, at which the JCE commenced and ended is a matter for resolution at trial."[20]

CONSIDERING as a result that Trial Chamber I has already held that the period covered by the joint criminal enterprise as alleged in the Indictment is sufficiently pleaded and that an exact date when this enterprise ended need not necessarily be pleaded in the Indictment,

CONSIDERING next that the Chamber cannot agree with the Praljak Defence argument which states that three recent statements made by the Prosecution in court during the hearing of three witnesses are of such a nature as to confuse the time frame of the joint criminal enterprise alleged in the Indictment,[21]

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[20] *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Defence Preliminary Motions Alleging Defects in the Form of the Indictment, 22 July 2005, paras. 20 and 21 (emphasis added).

[21] Motion, paras. 27-33. The relevant contentious passages read as follows:

(a) T(F), pp. 34225-34226, hearing of 4 November 2008:
"JUDGE ANTONETTI: Mr. Scott, do you wish to respond? But you have responded a few weeks ago when you said that as far as you were concerned, the JCE still prevailed after the Washington agreement. Isn't that what you said?
MR. SCOTT: Yes, Your Honour, in this sense, and that is that we -- what the Prosecution's case is and the Chamber may ultimately agree or disagree, but it's the Prosecution case that Herceg-Bosna represented a long-term project that did not end with Washington or Dayton, and the reason that's relevant is because among -- among other things is because the Defence has repeatedly said it was temporary, it was provisional, it wouldn't last after the war, and this witness -- the further answer is this witness himself has this afternoon said everything that the Bosnian Croats and the HDZ was trying to do to implement the Washington Agreement and everything that was being done and they were holding out because they didn't want to organise this institution or they didn't want to do this or they couldn't pay the customs revenue [...] ("First Statement").

(b) T(F), pp. 34585-34586, hearing of 13 November 2008:
"MR. SCOTT: Excuse me, Your Honour, and I apologise to my colleague who is obviously extremely capable, but because of the long history of these issues in this case and because of some of the comments that have been made my lead counsel on the other side, I think it's appropriate for me to address the matter, with the Court's indulgence. Thank you. Your Honour, this is not a new issue, and the fact that Mr. Karnavas hopefully, whether he intended to or not, perhaps has assisted the Chamber in seeing, in fact, the direct relevance of this issue. What this shows and what Mr. Karnavas has just, indeed, explained to the Chamber is the utter consistency of this political view and political Chamber, or political - excuse me - programme, political programme from 1991 to at least 2001 to create a Croat entity. We go back to the Livno question -- excuse me. We go back to the Livno question that we've seen again in the last few days, February 1992. "The formulation of the referendum we want is one of each constituent people in three separate areas (cantons)." It's exactly the same, and the only thing the Prosecution has said in response to Defence allegations along the way that this isn't, you know, this is not -- this is not relevant. This was only a temporary thing. It was only during the war. We never intended to do this. It's all been a long-term consistent programme, a third entity. A third entity. And that's the point." ("Second Statement")

(c) T(F) p. 34834, hearing of 18 November 2008:
"[MR. KARNAVAS] Were you aware of this, as you were the finance -- the head of the Finance Department, that these sorts of monies were coming in and that the Sarajevo government had access to this sort of resources in financing its military?

CONSIDERING that, after arguing that the end date of the joint criminal enterprise as alleged in the aforementioned paragraph 15 was not sufficiently pleaded, the Praljak Defence submits, in support of the alleged confusion created by the Prosecution's statements, that the alleged joint criminal enterprise ended in April 1994 and that, consequently, any reference to the continuation of the joint criminal enterprise beyond this date would be contradictory and of such a nature as to confuse the Prosecution's theory on the time frame of the joint criminal enterprise,

CONSIDERING that the Chamber is of the opinion that such an argument lacks foundation since it is based on the erroneous premise that the joint criminal enterprise as alleged in the Indictment ended in April 1994, although the period covered by the joint criminal enterprise as worded in paragraph 15 of the Indictment does not end on that date,

CONSIDERING that the Chamber does not rule out the possibility that a joint criminal enterprise may have existed before or after the material period referred to in the other paragraphs of the Indictment, namely the period between 18 November 1991 and April 1994, and therefore ended in April 1994; that it will be up to the Chamber to determine, at the end of the trial, after all of the evidence has been tendered into the record, the existence of any joint criminal enterprise and, if possible, the end date of any joint criminal enterprise,

CONSIDERING however that the Chamber recalls that in order to hold the six accused responsible for the crimes alleged in the Indictment, it must necessarily be established, first, that the crimes for which the responsibility of the six Accused is alleged were committed during the material period alleged in the Indictment and, second, that the acts or omissions of the six accused, which provide the basis for their responsibility under Article 7 (1) and 7 (3) of the Statute, took place during the material period as charged, and that at the time of these acts or omissions, the six

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A. At the time, I was not aware of that. We didn't have information to that effect.
Q. Let me go on to -- what about afterwards, because, you know, I don't want to be testifying, but it's a pretty widely-known secret, what has been going on in Bosnia for several years, so could you tell us a little bit?
MR. SCOTT: Excuse me, Your Honour. The relevant time period, to the extent it affects this case, would be back to the time of the mid-1990s and when this was happening, and -- excuse me, excuse me. You don't have to -- well, I object to this running commentary and colour comments on the other side. The point of it is that the witness has been saying, and I've been supporting Mr. Tomić on this, Mr. Tomić says, "I didn't know this at the time," and that's the end of the inquiry. ("Third Statement").

accused had the requisite *mens rea* to be held responsible under the mode of responsibility in question,[22]

CONSIDERING as a result that only criminal conduct, in the form of a joint criminal enterprise or any other form of responsibility alleged in the Indictment, taking place during the alleged material period, that is from 18 November 1991 to April 1994, may form the basis for the conviction of the accused,

CONSIDERING that the Chamber therefore does not see how the absence of an indication of a specific end date for the alleged joint criminal enterprise would constitute an obstacle to the preparation of the Accused Praljak's defence since for its part the material period is clearly determined,

CONSIDERING furthermore that the Chamber agrees with the Prosecution that the Third Statement was completely taken out of context by the Praljak Defence, and that the Prosecution's First Statement and Second Statement sought to argue the relevance of post-1994 evidence,

CONSIDERING that, insofar as it may be necessary, the Chamber recalls that evidence relating to facts before or after the material period alleged in the Indictment, that is the period from 18 November 1991 until April 1994, may be adduced and admitted when such evidence is relevant and probative and satisfies the criteria for the admissibility of documents as required by the Chamber's decisions in this regard,[23]

CONSIDERING, for example, that the Chamber may validly rely on evidence relating to facts before or after the material period alleged in the Indictment when this evidence is aimed at clarifying a given context, establishing by inference the elements, in particular the *mens rea*, of criminal conduct occurring during the alleged material period or at demonstrating a consistent pattern of conduct,[24]

CONSIDERING that, contrary to the Praljak Defence claim, such evidence is appropriate for presenting a link with the present case and may be admitted if it satisfies the admission criteria recalled above,

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[22] *See* Oral Ruling of 25 November 2008.
[23] *See* Oral Ruling of 25 November 2008.
[24] *See Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Appeals Judgement, 28 November 2007, para. 315. *See* also Oral Ruling of 25 November 2008.

CONSIDERING that these criteria for the admission of evidence relating to facts before or after the material period alleged in the Indictment apply equally to the Prosecution and to the Defence teams, such that the application made in the Praljak Motion on this point[25] is moot,

CONSIDERING that for all of the reasons thus set out, with the exception of this last point, the Motion need not be granted,

[25] *See* Motion, paras. 23-26 and 41.

FOR THESE REASONS,

IN ACCORDANCE WITH Articles 18 and 21 of the Statute and Rules 47, 54, 89 and 126 *bis* of the Rules,

DENIES the Request for Leave to Reply,

DISMISSES as moot the part of the Motion regarding the criteria for the admission of evidence before and after the material period alleged in the Indictment,

AND

DENIES the Motion in all other respects.

The Presiding Judge appends a separate concurring opinion to the decision.

Judge Stefan Trechsel appends a separate concurring opinion to the decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fifteenth day of January 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

SEPARATE OPINION OF PRESIDING JUDGE JEAN-CLAUDE ANTONETTI CONCERNING SLOBODAN PRALJAK'S MOTION FOR CLARIFICATION OF THE TIME FRAME OF THE ALLEGED JOINT CRIMINAL ENTERPRISE

The Judges of the Trial Chamber have unanimously denied the Accused Praljak's request for clarification of the time frame of the joint criminal enterprise.

In the first "considering" on page 9, the Trial Chamber held that only criminal conduct, in the form of a joint criminal enterprise or any other form of alleged responsibility, taking place from 18 November 1991 to April 1994, could form the basis for a conviction of the accused.

This request for clarification and the denial thereof nonetheless allow me to set out **my** position clearly with regard to this joint criminal enterprise.

It is appropriate to recall that this concept, stemming from the jurisprudence in *Tadić*,[26] must be understood as a form of criminal responsibility within the meaning of Article 7 (1) of the Statute.

For the Prosecution, "the territorial ambition of the joint criminal enterprise was to establish a Croatian territory with the borders of the Croatian Banovina".[27]

According to paragraph 15 of the Second Amended Indictment of 11 June 2008 ("Indictment"), the specific objective of this joint criminal enterprise was to redraw the political and ethnic map of these regions so that they would be dominated by the Croats both politically and demographically.

The discussion started by the repeated requests of the Accused Praljak revolves around the terms **before** and **thereafter**, used in the first line of paragraph 15 of the Indictment.

According to the Indictment, this Joint Criminal Enterprise is alleged to have existed before **18 November 1991** and continued **after** the **month of April 1994.**

[26] *Prosecutor v. Duško Tadić,* Case No. IT-94-1-A, Appeal Judgement, 15 July 1999, paras. 185 *et seq.*
[27] Paragraph 15 of the Indictment.

The Chamber unambiguously states that the Accused may be held responsible only for acts committed between these two dates (18 November 1991 and April 1994) and in no way for acts committed outside these dates.[28]

A reasonable trier of fact could, where appropriate, take into consideration evidence adduced by the parties which is related to facts before or after the period, on the understanding that according to the Prosecution the starting date of that period is 18 November 1991, the date when, according to paragraph 22 of the Indictment, the Croatian Community of Herceg Bosna was created.

A reasonable trier of fact should also consider, where appropriate, that the period covered by the criminal conduct ends in April 1994, as alleged in the Indictment.

Likewise, a reasonable trier of fact should clearly distinguish between the concept of a joint enterprise and the concept of a joint **criminal** enterprise.

In actual fact, the issue behind the question raised by the Defence for the Accused Praljak is, in my view, the issue of a consistent **pattern of conduct**.

This concept, which is defined in Rule 93 of the Rules of Procedure and Evidence, provides that evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the interests of justice.

Accordingly, a consistent pattern of conduct may have begun **before** 18 November 1991 and continued **thereafter,** beyond 1 March 1994.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fifteenth day of January 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

[28] Oral Ruling on the Time Frame of the Indictment, 25 November 2008, T(F) p. 34938.

SEPARATE CONCURRING OPINION OF JUDGE STEFAN TRECHSEL CONCERNING SLOBODAN PRALJAK'S MOTION FOR CLARIFICATION OF THE TIME FRAME OF THE ALLEGED JOINT CRIMINAL ENTERPRISE

The Chamber unanimously and appropriately denied the Praljak Defence request for clarification. Nevertheless, I feel it necessary to add my opinion.

Indeed, I believe that the problem raised by the Praljak Defence proceeds on the basis of a misconception. Joint criminal enterprise (JCE) does not constitute a crime and therefore is not punishable as such. Discussing JCE *in abstracto* would amount to "putting the cart before the horse". The starting point must be a crime alleged in the Indictment under Articles 2 to 5 of the Statute. Only after the existence of such a crime has been established does the issue of an accused's individual responsibility arise. The relevant provisions in this respect are set out in Article 7 of the Statute. The jurisprudence of this Tribunal, beginning with the *Tadić* Appeals Judgement, has interpreted this Article as including the JCE mode of responsibility.

There is no doubt that the Indictment alleges that the crimes charged were committed during the material period of 18 November 1991 to the end of April 1994. It is true that the wording of paragraph 15 of the Indictment alleges the existence of the JCE before and after these dates. That allegation, however, bears no relevance for the Trial Chamber. Should it be shown that a JCE existed, it must have existed at the very moment the underlying offence was committed.

That said, the question may also arise as to how the existence of a JCE may be proved. More specifically, may facts alleged to have occurred before or after this material period be considered by the Chamber? Here, the answer must be yes. Both the preparatory acts and the continuation of an activity may, where appropriate, present indicia supporting the conclusion that a JCE existed at the moment the crime in question was committed. Moreover, that conclusion applies to the proof of the crime itself. In this connection, it suffices to cite the example of the possibility of subsequent confessions, or the discovery of a mass grave.

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

/signed/

Stefan Trechsel
Judge of the Trial Chamber

Done this fifteenth day of January 2009
At The Hague
The Netherlands

[Seal of the Tribunal]