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-95-14/1-T

Date: 25 June 1999
English
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IN THE TRIAL CHAMBER

Before: **Judge Almiro Simões Rodrigues, Presiding**
Judge Lal Chand Vohrah
Judge Rafael Nieto-Navia

Registrar: **Mr. Jean-Jacques Heintz, Deputy Registrar**

Decision of: **25 June 1999**

THE PROSECUTOR

v.

ZLATKO ALEKSOVSKI

DISSENTING OPINION OF JUDGE RODRIGUES, PRESIDING JUDGE OF THE TRIAL CHAMBER

The Office of the Prosecutor:

Mr. Grant Niemann
Mr. Anura Meddegoda

Defence Counsel:

Mr. Sr|an Joka

1. The majority of the Judges of the Trial Chamber found that Article 2 of the Statute only applies if the alleged offence was perpetrated against persons protected under the Geneva Conventions of 1949; that in the case before them, it has not been proved that the victims of the acts attributed to Zlatko Aleksovski were protected persons in this sense and that, legally, Zlatko Aleksovski should be found not guilty in respect of the two counts of the indictment pursuant to Article 2 of the Statute.[1] I disagree on this point and express this Dissenting Opinion[2].

2. Article 2 of the ICTY Statute entitled "Grave Breaches of the Geneva Conventions of 1949" provides that:

"The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(a) wilful killing;
(b) torture or inhuman treatment, including biological experiments;
(c) wilfully causing great suffering or serious injury to body or health;
(d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
(f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
(g) unlawful deportation or transfer or unlawful confinement of a civilian;
(h) taking civilians as hostages.

3. Article 2 of the Statute in and of itself does not require that the conflict be international in nature for the provisions of the Geneva Convention to apply. That requirement derives from the wording of common Article 2 of the four Geneva Conventions, according to which the Convention shall apply "to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them."[3] The question which thus arises is to determine whether and, if necessary, to what extent the international character requirement, set forth in the Geneva

[1] Rendering of the Judgment, oral decision of the Trial Chamber, IT-95-14/1-T, 7 May 1999, French transcript, pp. 3250-3251.
[2] This Opinion was communicated to the two other Trial Chamber judges well before they redacted their own.
[3] The wording of common Article 2 of the Geneva Conventions demonstrates that it is not necessary for all the parties to the conflict to recognise the existence of a state of war, or even to have broken all diplomatic relations, for a conflict to be characterised as international. The traditional notion of international law, according to which the state of war automatically implies the break of diplomatic relations, cannot legitimately be used as an argument to justify the refusal to characterise a conflict as international.

Conventions must be incorporated into the elements of the offences covered by Article 2 of the Statute. The present Opinion will approach the issue from two vantage points:

- even if one takes the majority view, the evidence presented establishes the international character of this conflict.

- in any case, it is not necessary that such evidence be presented at trial for Article 2 of the Statute to apply.

I. THE INTERNATIONAL CHARACTER OF THE CONFLICT HAS BEEN ESTABLISHED

4. Different evidence was given at trial about the character of the conflict. In particular, the testimony of Witnesses Bianchini, X, Biland`i} and Domazet, as well as prosecution exhibits tendered during that testimony, lead me to the following observations. In my view, that evidence has demonstrated an international armed conflict at the times and places of the facts alleged. However, even if that were not the case, the fact that an international armed conflict existed has been established at least for Herzegovina and, for that reason, humanitarian law applies throughout the time of the hostilities and over the entire territory.

5. The Republic of Croatia and the Republic of Bosnia and Herzegovina declared their independence on 25 June 1991 and 6 March 1992, respectively. Both States were admitted as members of the United Nations by a resolution of the General Assembly on 25 May 1992. The Republic of Croatia recognised the independence of Bosnia and Herzegovina on 7 April 1992.[4] However, that recognition did not bring with it the severance of all ties between Croatia and the Bosnian Croats. On the contrary, the trial brought to the fore the many ties binding the Croatian community in Bosnia to the Republic of Croatia, politically and financially and also from a strictly military point of view.

6. The Community of Herceg-Bosna and the Republic of Croatia aspired to a common political objective: to bring all Croats into a single political entity. The decision establishing the Community of Herceg-Bosna, as amended on 3 July 1992, specified that the "Croatian people of Bosnia and Herzegovina is fully persuaded that its future is linked to that of the entire Croatian people."[5] The decision moreover also states that the Community should also pursue the goal of "defending its interests and protecting the territories that are ethnically and

[4] Exhibit 126B, tendered by witness Bianchini, French transcript, p. 1575.

historically Croatian." This coincided perfectly with Zagreb's intentions.[6] A secret agreement was allegedly reached between Presidents Tu|man and Milo{evi} as early as March 1991 to partition Bosnia and Herzegovina into two entities which would be incorporated, respectively, into the Republic of Croatia and the Federal Republic of Yugoslavia.[7] The act of recognition of Bosnia and Herzegovina also speaks of the "sovereign rights" of the Croatian people in Bosnia as one of the three constituent nations of Bosnia and Herzegovina,[8] implying thereby the right to secession of the Croatian people of Bosnia-Herzegovina. The act of recognition also reveals Croatia's intention to maintain a link with Bosnian nationals of Croatian ethnic origin. The decision guaranteed the automatic right to Croatian citizenship of all nationals of Bosnia-Herzegovina of Croatian ethnic origin, a right which implied the right to vote in Croatia and to take up residence in that country. That fact is particularly relevant if one considers that at the time of the conflict, the Bosnian Croats were also Croatian Croats. From this standpoint, it does not matter that the perpetrators of a crime covered by Article 2 of the Statute legally had a different nationality from that of their victims, or specifically, that the accused Zlatko Aleksovski chose Croatian nationality at the time whereas the detainees under his responsibility were Bosnian Muslims. What is crucial is that at the time of the acts ascribed to him, the accused, as well as those persons whose superior he was within the meaning of Article 7 (3) of the Statute, deliberately behaved toward their victims as if they, the accused and his subordinates, were nationals of a third State, which in this instance is the Republic of Croatia.[9] Moreover, it is known that the accused was arrested in Croatia by the Croatian authorities and that he holds a passport issued by the Croatian authorities.[10] On the assumption that an international armed conflict existed, it does not matter whether the accused and his victims have the same nationality so long as the accused is acting on behalf of a third State.

7. The first president of the Community of Herceg-Bosna, Stjepan Kljui}, was forced to resign in February 1992 because he had not supported President Tu|man's policy of partitioning Bosnia and Herzegovina. He was replaced by Mate Boban who was backed by

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[5] Decision on the Creation of the Croatian Community of Herceg-Bosna, Exhibit P126A.
[6] Incidentally, Franjo Tu|man wrote as early as 1981: "Furthermore, Bosnia and Herzegovina were historically linked with Croatia and they together comprise an indivisible geographic and economic entity. Bosnia and Herzegovina occupy the central part of this whole, separating southern (Dalmatian) from northern (Pannonian) Croatia", FRANJO TU\MAN, "*Nationalism in Contemporary Europe*", East European Monographs, No. LXXVI, 1981, p. 113.
[7] Witness Bianchini, French transcript p. 1543; Witness X, French transcript pp. 5292-5296 and pp. 5376-5377. Witness Biland`i}, French transcript, p. 1820; Exhibit 466, tendered as part of the testimony of Admiral Domazet in the Bla{ki} trial and admitted into evidence in the Aleksovski case.
[8] Point 1, para 2: "international recognition of Bosnia and Herzegovina shall imply that the Croatian people, as one of the three constituent nations in Bosnia and Herzegovina, shall be guaranteed their sovereign rights."
[9] Zlatko Aleksovski told the Croatian news agency Hina as he was returning to Zagreb: "I am returning to our beautiful homeland tomorrow", HINA news agency, Zagreb, in English 1704 gmt 7 May 99.
[10] Passport handed over by the Croat authorities 3 May 1994.

President Tu|man.[11] Decisions relating to Bosnian HDZ were taken by and under the influence of the Zagreb HDZ[12] and Mate Boban merely implemented President Tu|man's policy, whom he consulted for every important decision.[13] From 1992 to 1994, the Community of Herceg-Bosna issued many regulations resulting, *inter alia*, in the closing of the Muslim universities and the establishment of a Croatian university in Mostar, the use of Croatian currency in the Community and the control of the Community's air space by the Republic of Croatia.[14] All these elements demonstrate the political allegiance of the Community of Herceg-Bosna to the Republic of Croatia.

8. That the Republic of Croatia provided financial backing for the HVO's (Croatian Defence Council) war effort was also proved. An OSCE document reported that a Croatian private company managed by President Tu|man's son was supplying arms to the HVO. The document notes that the company subsequently passed into State ownership.[15] Funds were disbursed to the Bosnian HDZ by the Croatian Ministry of Defence itself.[16] An prominent member of the Croatian intelligence service stated publicly that Croatia had spent one million German marks a day in assistance to the Herceg-Bosna structures, including the HVO.[17]

9. From the strictly military point of view, the organisational chart showing the command structure of the Army of the Republic of Croatia (HV) and its links with the HVO[18] is very revealing. According to this document, the HVO was attached to the HV military district corps responsible for the southern front (military district 6). This front, under the command of General Janko Bobetko, officially covered the area between Split and Dubrovnik.[19] In fact, it covered a much larger area, including a large part of Herzegovina and Mostar also.[20] This information is confirmed by correspondence and orders issued by Janko Bobetko in 1992[21] as well as the testimony of Admiral Domazet.[22] In addition, the frequent transfer of military personnel from the HV to the HVO and vice-versa has been proved at trial.[23]

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[11] Witness X, French transcript, pp. 5282-5285.
[12] Witness X, French transcript, pp. 5276-5279.
[13] Witness X, French transcript, pp. 5389, 5418-5419, 5428; see also President Tu|man's role in Mate Boban's withdrawal from negotiations, Exhibit 126T.
[14] Witness Bianchini, French transcript, p. 1565.
[15] Witness Bianchini, French transcript, p. 1562.
[16] Witness Bianchini, French transcript, p. 1570.
[17] Witness X, French transcript, pp. 5314-5320 and 5400-5403.
[18] Exhibit P117; Witness Bianchini, French transcript, pp. 1569-1570.
[19] Exhibit P121A.
[20] Witness Bianchini, French transcript, p. 1870.
[21] Exhibits 121B, 121C, 121D, 121F, 121G, 121H, 121I, 121J, 121K, 121L, 121M, 121N, 121O.
[22] Witness Domazet, French transcript, pp. 8474-8479.
[23] See in particular Witness Bianchini, French transcript, p. 1564; Exhibits P137 and P132; Witness X, French transcript, pp. 5314-5320 and 5400-5403.

10. The intervention of the Croatian Army in Bosnia and Herzegovina continued in 1993. Croatian Army personnel were present on Bosnian territory in April 1993, especially in the Livno region.[24] Two HV army brigades were still stationed in Mostar - where the HVO had its headquarters - in May 1993.[25] Furthermore, the evidence presented at trial also established HVO's continued attachment to the Croatian Army after 1992. HVO's command structure did not change between 1992 and 1994, as is shown by a set of documents from the Croatian Defence Ministry dated 6 October 1992,[26] 9 October 1992[27] and 12 April 1993,[28] whereby the HV requested HVO units to provide certain information about Croatian Army officers. These documents demanded that information about the HV soldiers attached to the HVO be forwarded to the Ministry of Defence of the Republic of Croatia. Some of the information requested was to indicate the number of the promotion decree, the date of entry into an HVO unit, the name of the person who gave the orders, the nature of the duties these soldiers performed in the HVO and whether they were still being paid by the Croatian Army. Furthermore, the documents instructed HVO officers not to leave the units in which they were serving without an order from the Ministry of Defence of the Republic of Croatia. Moreover, "any HV officer joining your units must have a written order assigning him to the HVO."[29] It was shown at trial that Croatian officers were temporarily detached to Bosnia and Herzegovina, but remained members of the Croatian Army and continued, *inter alia*, to receive their pay from the Croatian Government.[30] The order to remove HV insignia,[31] even if issued by the HVO authorities, was mere window-dressing designed to prevent the Republic of Croatia from being compromised in the conflict at the international level.[32]

[24] Witness Domazet, French transcript, pp. 8481-8483.
[25] Witness McLeod, French transcript, p. 94.
[26] Exhibit P129A.
[27] Exhibit P129B.
[28] Exhibits P130A and P130B.
[29] Exhibit P129B.
[30] Witness Domazet, French transcript, pp. 8494-8496.
[31] See especially Exhibit P131A (order of 26 November 1992), P131B (order of 9 December 1992).
[32] See especially paras. 2 and 3 of Exhibit P131B.
2. "commanders to point out to the individuals that wearing such emblems [HV insignia] *compromises the reputation of the HVO in the world*" [our italics].
3. "Wearing HVO insignia is linked to accusations against the Republic of Croatia and the Croatian Community of Herceg-Bosna regarding a direct deployment of HV units in the territory of the Croatian Community of Herceg-Bosna. Ask HV members (with explanation) to wear HVO insignia during their deployment in our area."
The text also specifies that "should there be a shortage of emblems, members may wear uniforms without any insignia".

11. Many United Nations documents reported Croatia's involvement in the Muslim-Croat conflict in central Bosnia between 1992 and 1994.[33] On the basis of UNPROFOR's observations, on 1 February 1991, the UN Secretary-General deplored the direct support of the Croatian Army to the Croatian Defence Council, which consisted *inter alia* of manpower, arms and materiel.[34] Specifically, the Secretary-General reported the presence of 3,000 to 5,000 Croatian Army soldiers in central and southern Bosnia and Herzegovina. Croatia's representative to the United Nations himself implicitly acknowledged the involvement of Croatian Army soldiers and the presence of materiel from Croatia in central Bosnia when he announced their withdrawal in February 1994[35].

12. All these elements lead me to the conclusion that the HVO was integrated into the strategic and tactical command structure of the Croatian Army and that it acted as an agent of the Croatian Army, including during the period covered by the indictment.

13. The Defence contends, however, that this evidence has absolutely no relevance for the Croat-Muslim conflict in the La{va River Valley in 1993. According to the Defence, the conflict, which was triggered by the massive influx of Muslim refugees into the region, was strictly local and completely separate from the general conflict raging in Bosnia and Herzegovina.[36]

14. In my opinion, this argument does not hold. The La{va River Valley was clearly a strategic objective for the HVO. Indeed, the region had been allocated to the Croatian side under the Vance-Owen plan[37] and was consequently one of the territorial claims put forth by

[33] Security Council Resolution of 15 May 1992, Exhibit P126C; Report of the Secretary-General of 30 May 1992 (UN Doc. S/24049), para 10, Exhibit P122; Security Council Resolution of 16 November 1992, Exhibit 126D; letter from the Prime Minister of Bosnia and Herzegovina to the Chairman of the Security Council, dated 28 January 1994 (UN Doc. S/1994/95), Exhibit P126M; Declaration of the Chairman of the Security Council of 3 February 1994 (UN Doc. S/PRST/1994/6), Exhibit P123; letter dated 17 February 1994, from the Secretary-General to the Chairman of the Security Council (S/1994/190), Exhibit P126Q.

[34] Letter dated 1 February 1994, from the Secretary-General to the Chairman of the Security Council (S/1994/109), 2 February 1994, Exhibit P126N: "There have been confirmed reports by UNPROFOR personnel that elements (troops and equipment) from the following Croatian Army (HV) units are indeed present in central and southern Bosnia and Herzegovina:

a. 1 Guards Brigade
b. 2 Guards Brigade
c. 5 Guards Brigade
d. 7 Guards Brigade
e. 114 Guards Brigade
f. 116 Brigade, 4th Battalion; and
g. Special military police

[35] Letter dated 17 February 1994, from the Croatian representative to the Secretary-General (UN Doc. S/1994/197), Exhibit P126R.

[36] Closing arguments of the Defence, pp. 14 and 39.

[37] Exhibit P119.

the Croatian authorities. The trial also demonstrated that the Croatian forces fighting in the La{va River Valley were part of the HVO and none of the evidence presented showed a distinction between these units and the other HVO units in Mostar. I believe that none of the evidence permits a distinction to be drawn between the Croat-Muslim conflict in the La{va River Valley and the general conflict fought by the HVO in the territory of Bosnia and Herzegovina.

15. Firstly, I consider that the above evidence proved beyond a reasonable doubt that an international armed conflict existed at the times and places of the acts alleged.

16. In its Judgment of 2 October 1995, the Appeals Chamber decided by majority that "the conflicts in the former Yugoslavia have both internal and international aspects,"[38] and thus left it to the Trial Chambers to determine the nature of the conflict on a case-by-case basis. The Appeals Chamber, however, used the criterion of direct participation of foreign armed forces as relevant for characterising the conflict,[39] thus falling back upon the concept of invasion. The Trial Chamber hearing the *Tadi}* case adopted an approach based on the concepts of subordination and control which flow from the case-law of the International Court of Justice in the *Nicaragua* case,[40] in order to interpret this general concept. During the review of the Indictment against Ivica Raji} issued under Rule 61 of the Rules, Trial Chamber II held, however, that "as a result of the significant and continuous military intervention of the Croatian Army in support of the Bosnian Croats, the domestic conflict between the Bosnian Croats and their Government in central Bosnia became an international armed conflict."[41]

17. The Trial Chamber hearing the *Tadi}* case at first instance thus referred to the *Nicaragua* Judgment in order to determine the nature of the conflict in the municipality of Prijedor. The *Nicaragua* case-law set out a particularly strict criterion, that is, the requirement that "the relationship of the contras to the United States Government was so much one of dependence on the one side and control on the other that it would be right to equate the contras, for legal purposes, with an organ of the United States Government, or as acting on behalf of

[38] Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, 2 October 1995, para 77.
[39] *Ibid*, para 72.
[40] Case Concerning Military and Paramilitary Activities in and against Nicaragua, Merits, Judgment, ICJ Reports, 1986.
[41] Review of the indictment under Rule 61 of the Rules of Procedure and Evidence, IT-95-12-R61, 13 September 1996, para 21. The decision was rendered by the Trial Chamber composed as follows: Judge Gabrielle Kirk McDonald, Presiding, Judge Rustam S. Sidhwa and Judge Lal C. Vohrah.

that Government."[42] Transposing that criterion to the *Tadi}* case, the Judges took into consideration the fact of logistical support by the foreign forces on the territory concerned but, for there to have been effective control, also required a "command and control relationship"[43] as well as a direct connection between political leaders and the political objectives.[44] In her Dissenting Opinion, Judge McDonald considered that imposing that standard of effective control, laid down by the International Court of Justice in a context where the question was one of determining the responsibility of a State and not that of an individual, was tantamount to applying conditions set by the case-law more strictly and in a manner incompatible with international humanitarian law.[45] The same Opinion also contains a crucial point on the formal retreat of foreign forces from a given territory which alone, and in the absence of corroborative evidence of the effectiveness of the retreat, is insufficient to characterise a hitherto international conflict as internal.[46]

18. The majority of this Trial Chamber agreed with the legal findings of the majority of the Judges hearing the *Tadi}* case and held that proof of the existence of an international armed conflict, at the time and place relevant for the indictment, had not been provided. In my opinion, a review of the facts presented in this case points to the opposite conclusion.

19. Secondly, I consider that in any case, the evidence presented at trial at least established the existence of an international armed conflict in Herzegovina. In accordance with Article 5 of the Third Geneva Convention[47] and Article 6 of the Fourth Geneva Convention[48], international humanitarian law applies throughout the territory in which an international conflict takes place, including the places where the alleged violations occurred, and for the entire duration of the hostilities, insofar as the conflict must be viewed as a whole.

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[42] The *Nicaragua* Judgment cited above, para 109.
[43] Judgment, IT-94-1-T, 7 May 1997, para 598.
[44] *Ibid*, para 599.
[45] Separate and Dissenting Opinion of Judge McDonald Regarding the Applicability of Article 2 of the Statute, IT-94-1-T, 7 May 1997, para 21.
[46] Ibid, para 7: "the creation of the VRS was a legal fiction [...] There remained the same weapons, the same equipment, the same officers, the same commanders, largely the same troops, the same logistics centres, the same suppliers, the same infrastructure, the same source of payments, the same goals and mission, the same tactics, and the same operations. Importantly, the objective remained the same [...]".
[47] Article 5 of the Third Geneva Convention relative to the treatment of prisoners-of-war: "The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation. [...]"
[48] Article 6 of the Fourth Geneva Convention relative to the protection of civilian persons in time of war: "The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2. In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations. [...]"

20. The Trial Chamber hearing the *^elebi}i* case set a precedent in this matter and distanced itself significantly from the *Nicaragua* jurisprudence. According to the *^elebi}i* Trial Chamber, the latter dealt with "the incursion of the forces of one such distinct, bounded entity [...] and the operation of agents of that entity within the bounds of another." Conversely, the same Trial Chamber considered that, in the case before it, "the situation [..] is characterised by the breakdown of previous State boundaries and the creation of new ones. Consequently, the question which arises is one of continuity of control of particular forces."[49] In so doing, the Trial Chamber also noted that the Tribunal is an international judicial criminal organ charged with determining individual responsibility and not the responsibility of a State.[50] Using these arguments, the *^elebi}i* Trial Chamber chose to base its reasoning on Articles 5 and 6 respectively of the Third and Fourth Geneva Conventions to reach its conclusion that "should the conflict in Bosnia and Herzegovina be international, the relevant norms of international humanitarian law apply throughout its territory until the general cessation of hostilities, unless it can be shown that the conflicts in some areas were separate internal conflicts, unrelated to the larger international armed conflict."[51] In so doing, the Trial Chamber reversed the burden of proof and went on to examine more broadly the engagement of external forces in Bosnia and Herzegovina at the time of the alleged acts and not only in the municipality relevant to the indictment.

21. It seems appropriate to have taken some distance from the *Nicaragua* case-law for the reasons set out clearly in the *^elebi}i* Judgment. This Tribunal is charged with applying international criminal law and sanctioning individual responsibility; it is not seized of a dispute or a conflict in order to issue a decision on the responsibility of States or a State.

22. In keeping with this case-law, I support a global approach to the conflict in the former Yugoslavia. If the international character of the conflict is proved or acknowledged, it must be done while taking into account the overall territorial and temporal dynamic from the moment of dissolution of a country (the whole) into several other countries (the parts). We must always bear in mind the complete picture in order to understand the dynamic between the parts and the whole. The Appeals Chamber itself held that "the very nature of the Conventions - particularly Conventions III and IV - dictates their application throughout the territories of the parties to the conflict; any other construction would substantially defeat their purpose".[52]

[49] Judgment, IT-96-21-T, 16 November 1998, para 231.
[50] *Ibid*, para 230.
[51] *Ibid*, para 209.
[52] Judgment of 2 October 1995 cited above, para 68.

23. The Commission of Experts established pursuant to Security Council resolution 780, adopted that approach in its final report. It was of the opinion that '[...] the character and complexity of the armed conflicts concerned, combined with the web of agreements on humanitarian law that the parties have concluded among themselves, justifies the Commission's approach in applying the law applicable in international armed conflicts to the entirety of the armed conflicts in the territory of the former Yugoslavia."[53] This position is quite reasonable and realistic given the need to consider the relationship between the whole and its parts.

24. In his Separate Opinion on the Defence Motion for Interlocutory Appeal on Jurisdiction, Judge Li also rejected the notion of an individual analysis of each conflict on the territory of the former Yugoslavia. He considered that the conflict in the former Yugoslavia must be viewed as a whole and characterised as international in and of itself.[54] At question is the forced partition of a single country into several countries.

25. The Government of the United States of America set out similar views in its *amicus curiae* brief which states that "the fighting in the former Yugoslavia since 1991 must be seen as a whole, constituting an international armed conflict to which the rules of international armed conflict apply. We believe it is artificial and improper to attempt to divide it into isolated segments, either geographically or chronologically, in an attempt to exclude the application of those rules."[55]

26. Some writers, moreover, have put forward similar views. Thus, George. H. Aldrich noted that not to follow Judge Li's interpretation would be tantamount to "complicat[ing] unnecessarily the further work of the Tribunal by suggesting that each prosecution will have to involve arguments and decisions as to the characterisation of the armed conflict in which the alleged offences occurred" [56].

27. That approach is attractive because of its concern for clarity and consistency. Firstly, it precludes victims of similar acts from being protected in a given time and place but not in other times and places in the conflict as a whole. That argument is consistent with the systematic notion of humanitarian law, seen as a set of standards interacting in an organised manner whose

[53] Final Report of the Commission of Experts, 24 May 1994, S/1994/674, para 44.
[54] Separate Opinion of Judge Li on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, 2 October 1995, para 7.
[55] *Amicus curiae* brief of the United States government, 25 July 1995, p. 28, unofficial translation.

purpose, namely the protection of the dignity of individuals in times of armed conflict, is still with us today, whatever the circumstances. Second, the approach precludes two Trial Chambers with two different cases before them but whose facts relate to the same conflict from reaching different conclusions as to its nature. It is clear that the evidence submitted by the parties might very well not be similar and thus lead to diverging conclusions.[57] In the present case, I deem that the facts presented have at least proved the existence of an international armed conflict in Herzegovina. The rules of humanitarian law should therefore apply to the places and times of the alleged violations.

28. This Tribunal is charged with prosecuting the perpetrators of violations of the humanitarian law "committed in the territory (not territories, but territory[58]) of the former Yugoslavia since 1991." The jurisdiction of the Tribunal has been clearly defined and the territorial and chronological circumstances clearly specified. This precise definition of the scope of the Tribunal's jurisdiction leads me to another conclusion: Article 2 is autonomous vis-à-vis the Geneva Conventions from which it derives.

II. THE INTERNATIONAL CHARACTER OF THE CONFLICT IS NOT A CONDITION FOR ARTICLE 2 OF THE STATUTE TO APPLY

29. Lastly, I deem that the international character of the conflict is not a condition for Article 2 of the Statute to apply since it is autonomous.

30. The Appeals Chamber Judges followed exactly the same line of reasoning as the one which would lead to the conclusion, or rather to the assertion, as far as the present case is concerned, that an international character is not a condition for Article 2 of the Statute to apply, except for the very last stage of that reasoning, that is, the analysis of the scope of reference to persons protected under Article 2. The Appeals Chamber held that Article 2, precisely because it invokes provisions concerning protected persons and property, could only apply within the

[56] G. ALDRICH, "*Jurisdiction of the ICTY*", AJIL, 1996, p. 68, unofficial translation.
[57] This point raises a more general problem relating to proceedings before this Tribunal: the evidence is for the most part, and subject to the powers of the Chambers under Rule 98 of the Rules, submitted by the parties in a given case. Since the investigative powers conferred on the judges are not the same as those in other legal systems, the idea of determining the nature of the conflict on a case-by-case basis presents risks. The concept of judicial notice, which otherwise might provide certain rectification, is also inapplicable in the absence of a definitive decision on the subject, if one must weigh evidence and reach a verdict in more than one case.
[58] Parenthesis added.

context of an international armed conflict and does not cover the persons and property referred to in common Article 3 in respect of internal armed conflicts.[59] The Appeals Chamber also compared its findings against the provisions of Article 5, which expressly confers jurisdiction for the crimes committed in both internal and international conflicts, which would lead one to conclude, from the absence of such an explicit reference in Article 2, that it applies to international conflicts only.[60]

31. The original aim[61] of the "law on armed conflict" was to define in sufficiently clear terms the rights and obligations of States in times of war, in order to establish the legal responsibilities of States in cases of blatant violations. The notion of "the laws of war" was gradually superseded by the notion of "international humanitarian law" which was "codified", so to speak, for the first time in the Geneva Conventions of 1949.[62] In a similar development, although not concomitantly, individual responsibility, grafted onto the notion of State responsibility, was clearly established by the Nuremberg and Tokyo Tribunals. Thus, our Tribunal is part of a historical and legal development which contributed to the definition of its jurisdiction: to conduct criminal proceedings against persons guilty of violations of international humanitarian law, including the Geneva Conventions. [63]

Since World War II, international humanitarian law has, to a large extent, grown beyond its State-centred beginnings. International humanitarian law recognises the legitimacy of attributing individual criminal responsibility for war crimes. In several resolutions, the Security Council reaffirmed that persons committing serious violations of international humanitarian law in the former Yugoslavia are "individually[64] responsible for such violations,[65]" irrespective of their membership in groups.[66] Indeed, the Secretary- General held in his Report that "the ordinary meaning of the term 'persons responsible for serious violations of international humanitarian law' would be natural persons to the exclusion of juridical

[59] Judgment of 2 October 1995 cited above, para 81.
[60] *Ibid*, para 71.
[61] In this connection, see the Geneva Convention on the treatment of wounded members of armed forces of 22 August 1864 as well as The Hague Conventions of 1899 and 1907.
[62] Taking into account the considerable import of such a fundamental text as the Convention for the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the Geneva Conventions were added to an already existing body of law but did not abolish it; together with The Hague Conventions, they make up the essence of international humanitarian law. See B.S. BROWN, "Nationality and Internationality in International Criminal Law", *Stanford Journal of International Law*, vol. 34, No. 2, 1998, pp. 352-353.
[63] The Statute specifies that they must be serious violations, committed on the territory of the former Yugoslavia since 1991.
[64] Not underlined in the original.
[65] Report of the Secretary-General pursuant to paragraph 2 of resolution 808 of the Security Council, 3 May 1993, S/25704, para 53.
[66] *Ibid*, para 51.

persons". [67] He also rejected the concept of responsibility of juridical persons such as associations or organisations.[68] If the principle is to prosecute natural persons individually responsible for serious violations of international humanitarian law irrespective of their membership in groups, how can one accept the notion that the interests of a State's sovereignty limit the individual responsibility of any citizen?

32. According to our argument, Article 2 of the Statute is autonomous in relation to the Geneva Conventions from which it is inspired and, *a fortiori*, from the conditions required for them to apply. The argument is based on the interpretation that the Security Council was the appropriate organ to characterise the conflict in the former Yugoslavia as internal or international and did not intend to make such a characterisation; concomitantly, the Security Council established the Tribunal under Chapter VII of the United Nations Charter and conferred on it definite and specific judicial powers defined by the Statute so that they might be applied as such, irrespective of issues of State sovereignty, protected under the Geneva Convention by the international character condition.

That argument therefore divides into two stages: first of all, proof that the Security Council did not intend to characterise the nature of the conflict; then the demonstration that, accordingly, the grave breaches system set forth in Article 2 of the Statute cannot be interpreted as having fully and strictly incorporated the regime defined by the Geneva Conventions and, in particular, the condition that the conflict be international.

A. The Security Council did not intend to characterise the conflict as internal or international

33. We should first note that for political reasons the Security Council would have encountered very great difficulties in characterising the conflict in former Yugoslavia. As we shall see presently, the time factor is crucial here. To characterise the conflict as internal would, at the time, have made it especially difficult to adopt the Statute of the Tribunal because such a

[67] *Ibid*, para 50.
[68] *Ibid*, para 51: "The question arises, however, whether a juridical person, such as an association or organisation, may be considered criminal as such and thus its members, for that reason alone, be made subject to the jurisdiction of the International Tribunal [...] The criminal acts set out in this statute are carried out by natural persons; such persons would be subject to the jurisdiction of the International Tribunal irrespective of membership in groups."

decision could have been interpreted as interference in the internal affairs of a State.[69] Conversely, to characterise the conflict as international would have made no sense since the first State emerging from the former Yugoslavia was recognised as independent by the international community only in 1992 (Slovenia, Bosnia and Herzegovina and Croatia were only admitted as members of the United Nations on 22 May 1992[70]) and the goal was to prosecute serious violations of international humanitarian law committed before that date (one might mention the example of Vukovar in November 1991). Generally speaking, it suffices to recall that the Tribunal was established under Chapter VII of the Charter of the United Nations which allows the Security Council to take coercive measures to remove a threat to international peace and security.

34. From a more legal vantage point, we may refer directly to the Appeals Chamber's Judgment on the Defence Motion for Interlocutory Appeal on Jurisdiction in the *Tadi} case*.[71] The Appeals Chamber affirms that "the context in which the Security Council acted indicates that it intended to achieve this purpose [bringing to justice persons responsible for serious violations of international humanitarian law thereby deterring future violations] without reference whether the conflicts in the former Yugoslavia were internal or international."[72] Furthermore, the Appeals Chamber ruled that "the Security Council purposely refrained from classifying the armed conflicts in the former Yugoslavia as either international or internal and, in particular, did not intend to bind the International Tribunal by a classification of the conflict as international."[73] In so doing, the Appeals Chamber relied especially on the Report of the Secretary-General which explicitly stated that "no judgment as to the international or internal character of the conflict was being exercised"[74] in Security Council resolution 808.

35. In this respect, the Security Council conferred temporal jurisdiction on the Tribunal for the violations committed "since 1991". The Secretary-General's Report understands this to mean "anytime on or after 1 January" and adds that this is "a neutral expression which is not tied to any specific event and is clearly intended to convey the notion that no judgement as to the international or internal character of the conflict is being exercised." Accordingly, it should be noted that a contrary interpretation would have the effect of creating a potential conflict between the Tribunal's temporal jurisdiction and its subject-matter jurisdiction. How would we

[69] In this respect, the establishment of the International Criminal Tribunal for Rwanda indicates the evolution of opinion in this matter.
[70] General Assembly resolutions 46/236, 46/237 and 46/238, respectively.
[71] Judgment of 2 October 1995 cited above, para 72-78.
[72] *Ibid*, para 72.
[73] *Ibid*, para 76.

deal with crimes allegedly committed in the period beginning "on or after January 1991" and extending to the date of independence of the first Republic at the time the former Yugoslavia was being dissolved. These crimes unequivocally fall under the Tribunal's temporal jurisdiction but could not be prosecuted under Article 2 of the Statute insofar as there was clearly only one country, the then Yugoslavia.

36. In sum, it appears that the Security Council "was clearly preoccupied with bringing to justice those responsible for these specifically condemned acts, regardless of context"[75] and refrained from characterising the conflict as internal or international because the conflict in question is temporally and geographically defined. Thus, the Tribunal's jurisdiction is clearly defined and, in respect of Article 2, autonomous in relation to the conditions for the Geneva Conventions to apply.

B. Article 2 must be interpreted as autonomous vis-à-vis the condition that the conflict be international as allegedly set forth in the Geneva Conventions

37. It has been demonstrated that the Security Council deliberately avoided characterising the conflict in the former Yugoslavia. The remaining question is therefore whether and, if relevant, to what extent the Security Council's reference to the Geneva Conventions in Article 2 of the Statute implies that its applicability is limited to strictly international conflicts. Expressed otherwise, to what extent have the provisions on grave breaches as set forth in the Geneva Conventions been incorporated into the Statute?

38. An initial argument for the Statute's autonomy is that the grave breaches system as provided in the Geneva Conventions may be considered only in the context of the universal normative jurisdiction mechanism which those Conventions affirm. In that connection, the Appeals Chamber itself held that "the international armed conflict requirement was a necessary limitation on the grave breaches system in light of the intrusion on State sovereignty that such mandatory universal jurisdiction represents."[76] This expresses a legitimate concern to preclude foreign national courts from having jurisdiction over acts committed in strictly internal conflicts. However, the condition that the conflict be international, supported by the mechanism for national courts to exercise their authority, has no basis when viewed against the background of

[74] Report of the Secretary-General cited above, para 62.
[75] Judgment of 2 October 1995 cited above, para 74.
[76] *Ibid*, para 80.

an international tribunal, which the Conventions had not considered but which was established under Chapter VII of the United Nations Charter, with defined and limited jurisdiction constituting an autonomous mechanism for assessment and decision-taking, separate from national jurisdictions and having supremacy over them. Professor Pellet goes even further when he notes that it would be "something of a paradox for the violation of treaty-based rules, which moreover have their own control mechanism, to be punished by a court created by non treaty-based means."[77]

39. A second factor supporting that interpretation may be found in the wording of the Secretary-General's Report annexed to the Statute. The Report states that "the Geneva Conventions constitute rules of international humanitarian law and provide the core of the customary law applicable in international armed conflicts",[78] whilst reaffirming the Security Council's wish to have prosecuted "persons who commit or order the commission of grave breaches of the 1949 Geneva Conventions, in the territory of the former Yugoslavia (...)".[79] It seems possible to interpret the parallel established as a reflection of the intention of those drafting the Statute to apply the grave breaches system, recognised as ordinarily applicable to international conflicts, to the territory of the former Yugoslavia, without the question as to the nature of the conflict needing to be decided. In other words, the fundamental objective of international humanitarian law, that is, the dignity of the human person, is neither negotiable nor subject to modification depending on temporal and geographical circumstances.

40. That same Report of the Secretary-General stipulates that "the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise."[80] If that reasoning is applied to Article 2 of the Statute, it may only be inferred that the reference to the Geneva Conventions was not made so that the Tribunal would be obliged to apply them to the letter and under all the conditions for their application with the risk that this cannot be done. On the contrary, it seems that it is more an acknowledgement that the Geneva Conventions are an integral part of customary international law, like other international instruments.[81] The report goes on to say "the part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Convention of 12

[77] A. PELLET, "Le Tribunal criminel international pour l'ex-Yougoslavie, poudre aux yeux ou avancée décisive?", *Revue Générale de Droit International Public*, 1994, n. 1, p. 36.
[78] Report of the Secretary-General cited above, para 37.
[79] *Ibid*, para 39.
[80] *Ibid*, para 34.

August 1949 for the Protection of War Victims; The Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations Annexed Hereto of 18 October 1907; the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 and the Charter of the International Military Tribunal of 8 August 1945."[82] The Report noted that "in assigning to the International Tribunal the task of prosecuting persons responsible for serious violations of international humanitarian law, the Security Council would not be creating or purporting to "legislate" that law. Rather, the International Tribunal would have the task of applying existing international humanitarian law."[83] In performing this task by applying a literal, teleological and updated interpretation, the Tribunal needs to extract from existing international humanitarian law all the available means for regulating human life today, taking into account all its complexity and diversity. These interpretations do not amount to an analogy or the creation of new law. Rather, they are merely a method for ascertaining law. The fact that the Tribunal applies the rules of international law which are beyond any doubt part of customary law guarantees that the principle *nullum crimen sine lege* is respected.[84] In this respect, the very specific wording of the Security Council resolutions on the former Yugoslavia consistently refers to parties to the conflict (and not States parties to the conflict) and the obligations incumbent upon them to respect international humanitarian law, in particular the Geneva Conventions of 1949.[85]

41. Article 2 of the Statute thus "incorporated" international customary law applicable to armed conflicts *inter alia* the Geneva Conventions for the protection of war victims. Taking into account the criminal judicial principle of legality, Article 2 seems to have sought to refer to the Geneva conventions only to list and integrate the offences which the Tribunal is empowered to prosecute, that is, to reproduce the list of grave breaches. Had the purpose of this article been to "import" both the acts and the conditions, it would only have made a general reference without enumerating the "following acts against persons or property protected under the provisions of the relevant Geneva Convention". The Secretary-General's Report[86] supports this view: "The lists of grave breaches contained in the Geneva Conventions are reproduced[87] in the article which follows," that is, Article 2 of the Statute.

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[81] See A. PELLET cited above, pp. 32-37.
[82] Report of the Secretary-General cited above, para 35.
[83] *Ibid*, para 29.
[84] *Ibid*, para 34.
[85] See Security Council resolution 764, 13 July 1992, para 10.
[86] Report of the Secretary-General cited above, para 38.
[87] Not underlined in the original.

Article 2, in fact, confers subject-matter jurisdiction for the prosecution of grave breaches of the Geneva Conventions and identifies these breaches with the words "the following acts against persons or property protected under the provisions of the relevant Geneva Convention". A listing of these acts follows. The acts are selected from the four Conventions, and, despite slight differences, reiterate, in fact even consolidate, the terms of the grave breaches provisions contained, albeit in different form, in each of the Conventions. "The article has been so drafted as to be self-contained rather then referential."[88]

42. A literal interpretation of Article 2 of the Statute also supports the view that the international character requirement does not apply within the Tribunal. Article 2 provides expressly that the requirement relating to the status of protected persons and property, which flows directly from the Geneva Conventions, be met. The *a contrario* interpretation would therefore lead to the conclusion that, since it is not specifically stated, the condition that the conflict be international is not a requirement.

43. That approach presents the undeniable advantage of being consistent with regard to the objectives which resulted in the establishment of the Tribunal, namely the prosecution of persons accused of serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991[89] in accordance with the provisions imposed upon it by the Statute and not by any other legislative instrument. It may also claim to be operational since it permits Article 2 to be applied more soundly and with greater certainty and unconditional respect for the dignity of the humankind as a universal value. One must also bear in mind that any differences in the characterisation of the conflict could jeopardise or even run directly counter to the objectives of the Tribunal which are to administer justice and to contribute to the restoration of peace and peace-keeping - especially to the extent that the conflict, at least in part, can be viewed as having been motivated by cultural, religious or ethnic reasons.

44. In addition, I consider that the development of the rules of customary law since 1949 tends to advocate the extension of the grave breaches system to internal conflicts and, accordingly, to reinforce the autonomy of Article 2 of the Statute in relation to the Geneva Conventions. Admittedly, in its Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, the Appeals Chamber held that "in the present state of development of the law,

[88] Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-PT, 10 August 1995, para 49.
[89] Article 1 of the Statute

Article 2 of the Statute only applies to offences committed within the context of international armed conflicts."[90] However, it also left the door open for the recent trend of State practice and of legal opinion as a whole to extend the scope of the grave breaches system to internal conflicts.[91] The Trial Chamber hearing the ^*elebi}i* case confirmed the prudent overture granted by the Appeals Chamber by asserting that "the possibility that customary law has developed the provisions of the Geneva Conventions since 1949 to constitute an extension of the system of "grave breaches" to internal armed conflicts should be recognised."[92]

45. In his Separate Opinion of 2 October 1995, Judge Abi-Saab took that step and noted that "a growing practice and *opinio juris* both of States and international organisations, has established the principle of personal criminal responsibility for the acts figuring in the grave breaches articles as well as for other serious violations of the *jus in bello*, even when they are committed in the course of an internal armed conflict [...and] in much of this accumulating practice and opinio juris, the former acts are expressly designated as "grave breaches".[93] In so doing, Judge Abi-Saab concluded that this new normative substance leads to a new interpretation of the Geneva Conventions which would apply to all armed conflicts, and even to the creation of a new customary rule, ancillary to the Conventions, but achieving the same result.

46. The *amicus curiae* brief presented by the United States prior to the Appeals Chamber Judgment argued for such an interpretation: "the 'grave breaches' provisions of Article 2 of the Tribunal Statute apply to armed conflicts of a non-international character as well as those of an international character."[94] In support of this argument, the Government of the United States also submitted that according to the theory of the "*acte clair*" (a provision not requiring interpretation by the Court of Justice), the provisions of common Article 3 must be interpreted as including persons taking no active part in the hostilities as persons protected by the Conventions and that, accordingly, the strict distinction between internal and international conflicts had no basis.

47. An argument of principle in support of such an approach is that the concept of humanitarian law is a whole, and that the distinctions as to the nature of conflicts which date

[90] Judgment of 2 October 1995 cited above, para 84.
[91] *Ibid*, para 83.
[92] Judgment of 16 November 1998 cited above, para 202.
[93] Separate Opinion of Judge Abi-Saab on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, 2 October 1995, p. 6.
[94] Brief of 25 July 1995, cited above, p. 35.

from its codification were justified at a time when conflicts were primarily international and when no consideration had been given to the establishment of an international tribunal. It is obvious that, at the time, States would not have ratified instruments restricting them in the conduct of their internal affairs. In that connection, it is interesting to note Security Council resolution 780 which in paragraph 1 calls on States and international humanitarian organisations to gather information on violations of humanitarian law,[95] without any distinction whatsoever as to their nature. I unreservedly support that systematic approach to the concept of humanitarian law and a similar interpretation of its constituent rules. In that connection, the distinction in respect of character between treaty-based public international law and international criminal law whose purpose is to protect the dignity of the human person in all circumstances of time and place must be stated once more.

48. In my view, the issue of characterisation of the conflicts has no connection with the identity of the individual participants in this conflict. The characterisation of the conflict is not a consideration in the mind of a person, be it a man or woman, who is preparing to commit a crime which might be characterised as a grave breach of the Geneva Conventions. The person who perpetrated or ordered the perpetration of an act which constitutes a grave breach of the Geneva Conventions was fully aware that he or she was perpetrating a crime, whether under the law of his or her own State of origin or the law of another State. In this respect, it is interesting to place oneself within the context of the normative cultural values peculiar to the accused persons and to note that this frame of reference does not impose any conditions related to the nature of the conflict. Articles 142, 143, 146, 148, 149 and 151 of the Yugoslav Criminal Code, which cover the prosecution of war crimes, set out the following condition: "in times of war or armed conflict", thus envisaging humanitarian law as a whole which applies regardless of the internal or international nature of the conflict. Ultimately, the essential point is to ascertain whether the principles embodied in the Geneva Conventions have been violated in respect of persons or property protected under Article 2 of the Statute.

49. For the foregoing reasons, I favour the autonomy of Article 2 of the Statute of the Tribunal vis-à-vis the conditions required for the application of the Conventions in their own judicial context; accordingly, the international character of the conflict is not a condition for Article 2 of the Statute to apply.

[95] Resolution 780 of the Security Council, 6 October 1992, para 1.

III. CONCLUSION

50. One of the fundamental challenges facing the international community today is how to give the world a human face. More than a mere vision, this must be a moral and legal imperative.

51. The recent conflicts, almost irrespective of where they occurred, present a number of common features. They drew their strength from ethnic, cultural or religious differences and, in general, barbarously and cruelly pitted against one another combatants from the same country rather than different ones. Too often, the international treaties which regulate the relationships between States contribute little to the protection of civilians. It is undeniable that the international community must redouble its efforts to strengthen international humanitarian law and provide better guarantees for the security of persons. From this perspective, it is essential to ensure the full and effective application of existing international humanitarian law, whether treaty-based or not.

52. This is the goal which the international community sought to achieve in 1993 when it established the International Criminal Tribunal for the former Yugoslavia. The establishment of the ICTY as *an ad* hoc tribunal in my opinion reflects a new conception of international law. Whereas the other tribunals were set up to settle conflicts between States, the ICTY was created to try persons who perpetrated offences against international humanitarian law on the territory of the former Yugoslavia and, in this way, contribute to the restoration of peace in accordance with the provisions of its Statute.

53. The mission of the International Criminal Tribunal for the former Yugoslavia is to apply a body of international humanitarian law established as international criminal law. This criminal law must be adjusted to its substance and must evolve from a "law of nations" focused on the rights and duties of States into "international humanitarian law" more concentrated on the individual and individual criminal responsibility. This adaptation must take place while bearing in mind the goals of international humanitarian law, that is, the protection of individuals in times of war[96] and the realities of armed conflicts world-wide and, more pertinently, in the territory of the former Yugoslavia.

[96] War in the broader sense.

54. Ultimately, to favour a restrictive approach to Article 2 of the Statute would certainly reinforce a sense of impunity among the perpetrators of certain crimes. It would even be tantamount to refusing to follow the Secretary-General's Report, which notes that the Geneva Conventions of 1949 which have "beyond any doubt" become part of international customary law. That Report is the basis of our founding instrument, the Statute of the Tribunal. It is not for the Judges to deviate from that rule. Their duty is to apply the entire Statute the better to contribute to reconciliation and the restoration of peace in the former Yugoslavia.

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

Done this twenty-fifth day of June 1999
At The Hague
The Netherlands

(signed)

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Judge Almiro Simões Rodrigues
Presiding Judge of the Trial Chamber