ANNEX A

AUTHORITY 22

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UNITED
NATIONS

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

Case No. IT-95-14-T

Date: 3 March 2000

Original: English
French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Almiro Rodrigues
Judge Mohamed Shahabuddeen

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 3 March 2000

THE PROSECUTOR

v.

TIHOMIR BLA[KI]

JUDGEMENT

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Andrew Cayley
Mr. Gregory Kehoe

Defence Counsel:

Mr. Anto Nobilo
Mr. Russell Hayman

count 19 as the indictment specifies only Muslim *civilians*[295]. Nonetheless, the provisions of the Fourth Convention still remain applicable.

iv) Protected property

148. Pursuant to Article 53 of the Fourth Geneva Convention, the extensive destruction of property by an occupying Power not justified by military necessity is prohibited. According to the Commentary on the Fourth Geneva Convention, this protection is restricted to property within occupied territories:

> In order to dissipate any misconception in regard to the scope of Article 53 it must be pointed out that the property referred to is not accorded general protection; the Convention merely provides here for its protection in occupied territory[296].

149. The Prosecution maintained that the property of the Bosnian Muslims was protected because it was in the hands of an occupying Power[297]. The occupied territory was the part of BH territory within the enclaves dominated by the HVO, namely Vitez, Busova~a and Kiseljak. In these enclaves, Croatia played the role of occupying Power through the overall control it exercised over the HVO, the support it lent it and the close ties it maintained with it. Thus, by using the same reasoning which applies to establish the international nature of the conflict, the overall control exercised by Croatia over the HVO means that at the time of its destruction, the property of the Bosnian Muslims was under the control of Croatia and was in occupied territory. The Defence did not specifically address this issue.

150. Following to a large extent the reasoning of the Trial Chamber in the *Raji}* Decision[298], this Trial Chamber subscribes to the reasoning set out by the Prosecution.

c) The elements of the grave breaches

151. Once it has been established that Article 2 of the Statute is applicable in general, it becomes necessary to prove the ingredients of the various crimes alleged. The indictment contains six counts of grave breaches of the Geneva Conventions which refer to five sub-headings of Article 2 of the Statute.

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[295] Amended indictment, para. 16.
[296] Commentary, p. 301.
[297] Prosecutor's Summary, p. 7, para. 1.9.
[298] Review of the indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *The Prosecutor v. Raji}*, Case no. IT-95-95-12-R61, 13 September 1996, para. 42.

152. The Defence claimed that it is not sufficient to prove that an offence was the result of reckless acts. However, according to the Trial Chamber, the *mens rea* constituting all the violations of Article 2 of the Statute includes both guilty intent and recklessness which may be likened to serious criminal negligence. The elements of the offences are set out below.

i) Article 2(a) – wilful killing (count 5)

153. The Trial Chamber hearing the *^elebi}i* case[299] defined the offence of wilful killing in its Judgement. For the material element of the offence, it must be proved that the death of the victim was the result of the actions of the accused as a commander. The intent, or *mens rea*, needed to establish the offence of wilful killing exists once it has been demonstrated that the accused intended to cause death or serious bodily injury which, as it is reasonable to assume, he had to understand was likely to lead to death.

ii) Article 2(b) – inhuman treatment (counts 15 and 19)

154. Article 27 of the Fourth Geneva Convention states that protected persons "shall at all times be humanely treated". The *^elebi}i* Judgement analysed in great detail the offence of "inhuman treatment"[300]. The Trial Chamber hearing the case summarised its conclusions in the following manner:

> inhuman treatment is an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity [...]. Thus, inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed "grave breaches" in the Conventions fall. Hence, acts characterised in the Conventions and Commentaries as inhuman, or which are inconsistent with the principle of humanity, constitute examples of actions that can be characterised as inhuman treatment.[301]

155. The Trial Chamber further concluded that the category "inhuman treatment" included not only acts such as torture and intentionally causing great suffering or inflicting serious injury to body, mind or health but also extended to other acts contravening the fundamental principle of humane treatment, in particular those which constitute an attack on human dignity. In the final analysis, deciding whether an act constitutes inhuman treatment is a question of fact to be ruled on with all the circumstances of the case in mind[302].

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[299] Hereinafter the "*^elebi}i* Trial Chamber".
[300] *^elebi}i* Judgement, paras. 512 to 544.
[301] *^elebi}i* Judgement, para. 543.
[302] *^elebi}i* Judgement, para. 544.

iii) Article 2(c) – wilfully causing great suffering or serious injury to body or health (count 8)

156. This offence is an intentional act or omission consisting of causing great suffering or serious injury to body or health, including mental health. This category of offences includes those acts which do not fulfil the conditions set for the characterisation of torture, even though acts of torture may also fit the definition given[303]. An analysis of the expression "wilfully causing great suffering or serious injury to body or health" indicates that it is a single offence whose elements are set out as alternative options[304].

iv) Article 2(d) – extensive destruction of property (count 11)

157. An occupying Power is prohibited from destroying movable and non-movable property except where such destruction is made absolutely necessary by military operations. To constitute a grave breach, the destruction unjustified by military necessity must be extensive, unlawful and wanton. The notion of "extensive" is evaluated according to the facts of the case – a single act, such as the destruction of a hospital, may suffice to characterise an offence under this count[305].

v) Article 2(h) – taking civilians as hostages (count 17)

158. Within the meaning of Article 2 of the Statute, civilian hostages are persons unlawfully deprived of their freedom, often arbitrarily and sometimes under threat of death[306]. However, as asserted by the Defence[307], detention may be lawful in some circumstances, *inter alia* to protect civilians or when security reasons so impel. The Prosecution must establish that, at the time of the supposed detention, the allegedly censurable act was perpetrated in order to obtain a concession or gain an advantage. The elements of the offence are similar to those of Article 3(b) of the Geneva Conventions covered under Article 3 of the Statute.

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[303] *^elebi}i* Judgement, para. 511.
[304] *^elebi}i* Judgement, para. 506.
[305] Commentary, p. 601.
[306] Commentary, pp. 600-601.
[307] Defence Brief, pp. 58-59.

275. Finally, in the view of the Defence, the *mens rea* satisfying Article 7(1) is intent to commit an act facilitating offences. The deliberate act cannot be presumed even if the evidence were to satisfy the criminal omission element of Article 7(3) of the Statute[502].

c) Discussion and Findings

276. The Appeals Chamber in the *Tadi}* case and the Trial Chambers in other cases brought before both this Tribunal and the ICTR, notably the *Tadi}*, *Akayesu*, *^elebi}i* and *Furund`ija* cases[503], defined those legal elements which under customary international law refer to the various forms of individual criminal responsibility included in Article 7(1) of the Statute. This Trial Chamber will consider their findings in order to ascertain their applicability to the present case.

277. Following the approach taken by the Prosecution, the Trial Chamber will determine the *actus reus* and *mens rea* required for holding an accused individually criminally responsible for having "planned", "instigated", "ordered" or "aided and abetted" the offences alleged in the indictment.

i) Planning, instigating and ordering

278. The Trial Chamber holds that proof is required that whoever planned, instigated or ordered the commission of a crime possessed the criminal intent, that is, that he directly or indirectly intended that the crime in question be committed. However, in general, a person other than the person who planned, instigated or ordered is the one who perpetrated the *actus reus* of the offence. In so doing he must have acted in furtherance of a plan or order. In the case of instigating, as appears in the definition below, proof is required of a causal connection between the instigation and the fulfilment of the *actus reus* of the crime. In defining each of the forms of participation, the Trial Chamber concurs with the relevant findings of the Trial Chamber in the *Akayesu* case.

279. Accordingly, planning implies that "one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases"[504]. The Trial Chamber is of the view that circumstantial evidence may provide sufficient proof of the existence of a plan.

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[502] *Ibid.*, p. 38.
[503] *Tadi}* Judgement; *Akayesu* Judgement; *^elebi}i* Judgement; *Furund`ija* Judgement.
[504] *Akayesu* Judgement, para. 480.

280. Instigating entails "prompting another to commit an offence"[505]. The wording is sufficiently broad to allow for the inference that both acts and omissions may constitute instigating and that this notion covers both express and implied conduct. The ordinary meaning of instigating, namely, "bring about"[506] the commission of an act by someone, corroborates the opinion that a causal relationship between the instigation and the physical perpetration of the crime is an element requiring proof.

281. The *Akayesu* Trial Chamber was of the opinion that ordering

> implies a superior-subordinate relationship between the person giving the order and the one executing it. In other words, the person in a position of authority uses it to convince another to commit an offence[507].
>
> There is no requirement that the order be in writing or in any particular form; it can be express or implied. That an order was issued may be proved by circumstantial evidence.

It is not necessary that an order be given in writing or in any particular form. It can be explicit or implicit. The fact that an order was given can be proved through circumstantial evidence.

282. The Trial Chamber agrees that an order does not need to be given by the superior directly to the person(s) who perform(s) the *actus reus* of the offence[508]. Furthermore, what is important is the commander's *mens rea*, not that of the subordinate executing the order. Therefore, it is irrelevant whether the illegality of the order was apparent on its face.

ii) Aiding and abetting

283. As a starting point, the Trial Chamber concurs with the opinion of the Trial Chamber in the *Furund`ija* case which states that

> the legal ingredients of aiding and abetting in international criminal law to be the following: the *actus reus* consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime. The *mens rea* required is the knowledge that these acts assist the commission of the offence[509].

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[505] *Ibid*, para. 482.
[506] The Concise Oxford Dictionary, 10th edition (1999), p. 734.
[507] *Akayesu* Judgement, para. 483.
[508] As to criminal responsibility of commanders for passing on criminal orders, the Trial Chamber notes the *High Command* case in which the military tribunal considered that "to find a field commander criminally responsible for the transmittal of such an order, he must have passed the order to the chain of command and the order must be one that is criminal upon its face, or one which he is shown to have known was criminal" (*U.S.A. v. Wilhelm von Leeb et al.*, in *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, (hereinafter the "*Trials of War Criminals*") Vol. XI, p. 511)
[509] *Furund`ija* Judgement, para. 249.

284. The Trial Chamber holds that the *actus reus* of aiding and abetting[510] may be perpetrated through an omission, provided this failure to act had a decisive effect on the commission of the crime and that it was coupled with the requisite *mens rea*[511]. In this respect, the mere presence at the crime scene of a person with superior authority, such as a military commander, is a probative indication for determining whether that person encouraged or supported the perpetrators of the crime[512].

285. Proof that the conduct of the aider and abettor had a causal effect on the act of the principal perpetrator is not required[513]. Furthermore, participation may occur before, during or after the act is committed and be geographically separated therefrom[514].

286. As to the *mens rea* requirement for aiding and abetting, a distinction is to be made between "knowledge" and "intent"[515]. As held earlier in this Judgement, the *mens rea* required for establishing the responsibility of an accused for one of the crimes in Articles 2, 3 and 5 of the Statute is "willingness", comprising both direct and indirect intent. In the case of aiding and abetting, the Prosecution relies on *inter alia* the *Furund`ija* Judgement and argues that the applicable *mens rea* applicable to the aider and abettor is "knowledge" that his acts assist the commission of the offence. In the submission of the Defence, however, Article 7(1) of the Statute requires proof of the specific intent on the part of the accused to commit the deliberate act to facilitate the commission of a crime[516]. The Trial Chamber is of the view that in addition to knowledge that his acts assist the commission of the crime, the aider and

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[510] The Trial Chamber notes that in the *Akayesu* Judgement, the Trial Chamber distinguished between, on the one hand, aiding and, on the other, abetting, as constituting two different heads of individual criminal responsibility. The *Akayesu* Trial Chamber held that whereas the prior means giving assistance, the latter entails the facilitation of an act by being sympathetic thereto. *See Akayesu* Judgement, para. 484. In this respect, the Trial Chamber further takes note of Article 25(3)(c) of the Statute of the International Criminal Court, where aiding and abetting appear to be considered two separate forms of assistance to the commission of a crime. Likewise, the 1996 ILC Report, p. 24.

[511] *Tadi}* Judgement, para. 686; *^elebi}i* Judgement, para. 842; *Akayesu* Judgement, para. 705.

[512] Judgement, *The Prosecutor v. Zlatko Aleksovski*, Case no. IT-95-14/1-T, 25 June 1999, (hereinafter the "*Aleksovski* Judgement"), para. 65; *Akayesu* Judgement, para. 693.

[513] *Furund`ija* Judgement, para. 233; *Aleksovski* Judgement, para. 61.

[514] *Aleksovski* Judgement, para. 62.

[515] The Trial Chamber takes note of Article 30 ("mental element"), paragraph 1, of the Rome Statute of the International Criminal Court, which applies to any form of criminal responsibility under that Statute: "Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with *intent* and *knowledge*" (emphasis added).

[516] Defence Brief, p. 37. In fact, this also appears to be the Prosecution's view: "If the aider and abettor is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he or she has *intended to facilitate the commission* of that crime" (Prosecutor's Brief, Part XI, para. 1.46 (emphasis added))

abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct[517].

287. Finally, the Trial Chamber concurs with the following finding in the *Furund`ija* Judgement:

> [I]t is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor[518].

288. The Trial Chamber deems it appropriate to point out that a distinction is to be made between aiding and abetting and participation in pursuance of a purpose or common design to commit a crime[519]. In the case in point, it notes that the only question raised is the question of aiding and abetting.

2. Individual Criminal Responsibility Within the meaning of Article 7(3)

a) Introduction

289. The accused faces concurrent charges under Article 7(3) of the Statute, which provides that

> [t]he fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

290. As found by the Trial Chamber in the *^elebi}i* case[520], the Trial Chamber first holds that the principle of command responsibility *strictu sensu* forms part of customary international law.

291. The Prosecution submitted that for an accused to be held criminally responsible within the meaning of Article 7(3) of the Statute, proof is required that: an offence was committed; the accused exercised superior authority over the perpetrator of the offence or over his or her superiors; the accused knew or had reason to know that the subordinate was

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[517] In *Tadic* it was held that "intent [...] involves awareness of the act of participation coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime" (*Tadi}* Judgement, para. 674). This was corroborated in the *^elebi}i* Judgement, para. 326, and the *Aleksovski* Judgement, para. 61.
[518] *Furund`ija* Judgement, para. 246.
[519] *Cf. Tadic* Appeal Judgement, paras. 178-229.

about to commit a crime or had done so; and the accused failed to take the necessary and reasonable measures to prevent the offence or to punish the perpetrator[521].

292. The Defence, however, submitted that Article 7(3) of the Statute requires fulfilment of the following conditions: the commission of crimes by direct subordinates of the accused; the accused knew or had reasons to know that his subordinates were going to commit such crimes or had done so; the accused had the legal authority and actual ability to prevent or punish the acts committed by his subordinates; and the accused failed to prevent or punish the acts of his subordinates[522].

293. In the submission of the Defence, it needs to be additionally demonstrated that the commander's failure to act caused the crime, that is, that the crime was the direct result of the commander's omission, and that the commander foresaw or knew that the omission could reasonably and foreseeably lead to the crime[523].

294. As to the essential elements of command responsibility under Article 7(3) of the Statute, the Trial Chamber concurs with the views of the Trial Chambers in the *^elebi}i* and *Aleksovski* cases[524]. Accordingly, for a conviction under Article 7(3) of the Statute in the present case, proof is required that:

(1) there existed a superior-subordinate relationship between the commander (the accused) and the perpetrator of the crime;

(2) the accused knew or had reason to know that the crime was about to be or had been committed; and

(3) the accused failed to take the necessary and reasonable measures to prevent the crime or punish the perpetrator thereof.

b) The Superior-Subordinate Relationship

i) Arguments of the parties

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[520] *^elebi}i* Judgement, para. 343. Corroborated in the *Kayishema-Ruzindana* Judgement, para. 209.
[521] Prosecutor's Brief, Part XIII, p. 125.
[522] Defence Brief, p. 37-38.
[523] *Ibid.*, p. 38 and p. 45.
[524] *^elebi}i* Judgement, para. 346; *Aleksovski* Judgement, para. 69.

295. The Prosecution submitted that the term "superior" is not limited to commanders who are above the perpetrators of crimes in the regular chain of command. The determining factor in the case in point is whether or not the commander exercised control over the acts of his subordinates. Proof is required that the superior has effective control over the persons committing the violations of international humanitarian law in question, that is, has the material ability to prevent the crimes and to punish the perpetrators thereof.

296. In the view of the Prosecution, formal designation as a commander is not a necessary prerequisite for superior responsibility. Such responsibility may be imposed by virtue of a person's *de facto* as well as *de jure* position of authority or power of control. A person may be a "superior" for the purpose of Article 7(3) on the basis of effective influence that person exercises which amounts to forms of control giving to him the ability to intervene to prevent a crime. The fact that the commander had *de jure* authority to take *all* the necessary measures to punish the subordinates in question is also not a necessary prerequisite to entail the commander's responsibility. It suffices that he could have taken some measures. The fact that the commander is the *only one* who can take all the necessary measures to punish the subordinates in question is also not a necessary prerequisite incurring the commander's responsibility.

297. On a factual note, the Prosecution submitted that this legal criterion when duly applied to the evidence can only lead to the conclusion that the accused was also the "superior" of some independent units such as the Vitezovi, the D`okeri and the HVO Military Police Fourth Battalion[525].

298. The Defence submitted that proof is required that the accused possessed the legal authority and the actual ability to impose measures to prevent or punish the commission of crimes by his subordinates. For a commander's responsibility to apply not only to his direct subordinates but also to the local civilian population, the Prosecution must proof that the commander exercised executive or sovereign power in his area of command, and that there was a state of total occupation by his forces.

299. In the case in point, the Defence contended that the accused did not possess sovereign power within an occupied area during the relevant period of the indictment. Therefore, the accused's responsibility is limited to the crimes committed by his direct subordinates whose

[525] Prosecutor's Brief, Part XIII, paras. 1.1-1.12.

conduct he had the legal authority and actual ability to prevent and punish. Furthermore, the Defence submitted that the accused did not have the legal authority to punish the criminal acts of any soldiers in the CBOZ and that he did not have the legal authority to impose disciplinary sanctions against members of certain autonomous units[526].

ii) Discussion and Findings

300. The Trial Chamber in the *^elebi}i* case held that in order for Article 7(3) of the Statute to apply, the accused must be in a position of command. This principle is not limited to individuals formally designated commander but also encompasses both *de facto* and *de jure* command.[527] On the basis of judicial precedents and the concept of "indirect subordination" defined in Article 87 of the 1977 Additional Protocol I to the Geneva Conventions of 1949[528], the *^elebi}i* Trial Chamber held that

> in order for the principle of superior responsibility to be applicable, it is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences[529].

301. The Trial Chamber concurs with this view. Accordingly, a commander may incur criminal responsibility for crimes committed by persons who are not formally his (direct) subordinates, insofar as he exercises effective control over them[530].

302. Although the Trial Chamber agrees with the Defence that the "actual ability" of a commander is a relevant criterion, the commander need not have any legal authority to prevent or punish acts of his subordinates. What counts is his material ability[531], which instead of issuing orders or taking disciplinary action may entail, for instance, submitting reports to the competent authorities in order for proper measures to be taken[532].

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[526] Defence Brief, p. 42-44.
[527] *^elebi}i* Judgement, para. 370.
[528] Ibid., para. 364-378.
[529] *Ibid.*, para. 378.
[530] The Trial Chamber takes notice of Article 28(1) of the Rome Statute of the International Criminal Court, which limits a military commander's criminal responsibility to crimes which are about to be or which are being committed by "forces under his or her effective command and control".
[531] *^elebi}i* Judgement, para. 395: "a superior may only be held criminally responsible for failing to take such measures that are *within his powers*" (emphasis added). Likewise, Article 86(2) of Additional Protocol I refers to superiors and "feasible measures *within their power* to prevent or repress" (emphasis added).
[532] *Aleksovski* Judgement, para. 78, concerning reporting to the appropriate authorities the commission of crimes.

303. Finally, as recognised in the *Aleksovski* Judgement[533], the Trial Chamber holds that the test of effective control exercised by the commander implies that more than one person may be held responsible for the same crime committed by a subordinate.

c) Mens Rea: "Knew or Had Reason to Know"

i) Arguments of the Parties

304. Both Prosecution and Defence agreed that actual knowledge may be proved either through direct or circumstantial evidence. In respect of the latter, the Prosecution submitted a number of relevant factors, such as the number, type and scope of the illegal acts[534].

305. In the Prosecution's view a commander "had reason to know" if he had information putting him on notice or tending to suggest that subordinates were about to commit or had committed crimes or if the fact that he did not have this information stemmed from a serious dereliction of his duty to obtain information of a general nature concerning the conduct of his subordinates to which he could reasonably have had access[535].

306. The Defence submitted that for a commander to know or have reason to know of a crime, the Prosecution must prove that the commander actually knew or wantonly disregarded information within his possession which could only lead to the conclusion that such an act was going to occur or had occurred[536].

ii) Discussion and Findings

a. "Actual knowledge"

307. Knowledge may not be presumed[537]. However, the Trial Chamber agrees that "knowledge" may be proved through either direct or circumstantial evidence. With regard to circumstantial evidence, the Trial Chamber concurs with the view expressed by the Trial Chamber in the *^elebi}i* case and holds that in determining whether in fact a superior must have had the requisite knowledge it may consider *inter alia* the following indicia enumerated by the Commission of Experts in its Final Report: the number, type and scope of the illegal

[533] Ibid., para. 106.
[534] Prosecutor's Brief, Part XIII, paras. 2.2-2.3; Defence Brief, p. 39.
[535] Prosecutor's Brief, Part XIII, paras. 2.4-2.15.
[536] Defence Brief, p. 39-42.

acts; the time during which the illegal acts occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; the widespread occurrence of the acts; the speed of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the commander at the time[538].

308. These indicia must be considered in light of the accused's position of command, if established. Indeed, as was held by the *Aleksovski* Trial Chamber, an individual's command position *per se* is a significant indicium that he knew about the crimes committed by his subordinates[539].

b. "Had reason to know"

309. In the *^elebi}i* case, the Trial Chamber conducted a survey of post-World War II jurisprudence and held that

> the principle can be obtained that the absence of knowledge should not be considered a defence if, in the words of the Tokyo judgement, the superior was "at fault in having failed to acquire such knowledge"[540].

310. However, the *^elebi}i* Trial Chamber went on to state that since it was bound to apply customary law as it stood at the time of the alleged offences[541], it must in addition fully consider the standard established by Article 86 of Additional Protocol I[542]. It held that, read in accordance with its ordinary meaning, the provision reflects the following position of customary law at the relevant time:

> a superior can be held criminally responsible only if some specific information was in fact available to him which would provide notice of offences committed by his subordinates. This information need not be such that it by itself was sufficient to compel the conclusion of the existence of such crimes. It is sufficient that the superior was put on further inquiry by the information, or, in other words, that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by his subordinates[543].

311. The *^elebi}i* Trial Chamber added that this is without prejudice to the current state of customary international law. In this respect, it noted Article 28(1)(a) of the Statute of the

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[537] *^elebi}i* Judgement, para. 386. The Trial Chamber notes that in the submission of the Defence, the Prosecution at some stage during the trial argued that knowledge may be presumed in certain circumstances, a position which the Defence opposes. Defence Brief, p. 41-42.
[538] Final Report of the Commission of Experts, para. 58; *^elebi}i* Judgement, para. 386.
[539] *Aleksovski* Judgement, para. 80.
[540] *^elebi}i* Judgement, para. 388 (footnote omitted). *See also ^elebi}i* Judgement, para. 389.
[541] 1992.
[542] *^elebi}i* Judgement, para. 390.
[543] *Ibid.*, para. 393.

and therefore,

SENTENCES Tihomir Bla{ki} to forty-five years in prison;

STATES that the length of time he has been detained for the Tribunal, that is the period from 1 April 1996 until the date of this Judgement, shall be deducted from the overall length of the sentence.

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

Done this third day of March
At The Hague
The Netherlands.

/signed/

Claude Jorda
President of the Trial Chamber

/signed/

Mohamed Shahabuddeen

/signed/

Almiro Rodrigues

[Seal of the Tribunal]

Judge Shahabuddeen appends a declaration to this Judgement.