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ANNEX A

AUTHORITY 33

**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-95-10-T

Date: 14 December 1999

Original: English
French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Fouad Riad
Judge Almiro Rodrigues

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 14 December 1999

THE PROSECUTOR

v.

GORAN JELISI]

JUDGEMENT

The Office of the Prosecutor:
Mr. Geoffrey Nice
Mr. Vladimir Tochilovsky

Defence Counsel:
Mr. Veselin Londrovi}
Mr. Michael Greaves

2. An attack against a civilian population as a general condition of the charge

(a) A widespread or systematic attack

53. Article 5 defines crimes against humanity as crimes "directed against any population". Customary international law has interpreted this characteristic, particular to crimes against humanity, as assuming the existence of a widespread or systematic attack against a civilian population⁵⁵. The conditions of scale and "systematicity" are not cumulative as is evidenced by the case-law of this Tribunal⁵⁶ and the Tribunal for Rwanda⁵⁷, the Statute of the International Criminal Court⁵⁸ and the works of the International Law Commission (hereinafter "the ILC")⁵⁹. Nevertheless, the criteria which allow one or other of the aspects to be established partially overlap. The existence of an acknowledged policy targeting a particular community⁶⁰, the establishment of parallel institutions meant to implement this policy, the involvement of high-level political or military authorities, the employment of considerable financial, military or other resources and the scale or the repeated, unchanging and continuous nature of the violence committed against a particular civilian population are among the factors which may demonstrate the widespread or systematic nature of an attack.

(b) against a civilian population

54. It follows from the letter and the spirit of Article 5 that the term "civilian population" must be interpreted broadly. The text states that the acts are directed against "any" civilian population. In addition, reference to a civilian population would seek to place the emphasis more on the collective aspect of the crime than on the status of the victims⁶¹. The Commission of Experts formed pursuant to Security Council resolution 780 (hereinafter "the

⁵⁵ See, in particular, the report of the Secretary-General pursuant to Security Council resolution 808 (S/25704, 3 May 1993, para. 48). Article 3 of the Statute of the International Criminal Tribunal for Rwanda and Article 7 of the Statute of the International Criminal Court also state this element explicitly. The widespread or systematic attack was also specified as a legal ingredient of a crime against humanity by the Appeals Chamber of the Tribunal in the *Tadić* Appeal Judgement, para. 648. The Legal Committee of the United Nations War Crimes Commission also adopted this position (History of the U.N. War Crimes Commission, p. 179).

⁵⁶ In particular, in the cases *The Prosecutor v. Miroslav Radić and Veselin [Jjivan]anin* (Case No. IT-95-13-R61 of 3 April 1996, para. 30) and *The Prosecutor v. Duško Tadić alias "Dule"* (Case No. IT-94-1-T of 7 May 1997, hereinafter "the *Tadić* Judgement", paras. 646-647).

⁵⁷ In particular, in the *Akayesu* Judgement (para. 579) and in *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, 21 May 1999, para. 123 (hereinafter "the *Kayishema* case").

⁵⁸ Article 7, paragraph 1.

⁵⁹ Draft Articles of the ILC, pp. 94-95.

⁶⁰ Expressed, in particular, in the writings and speeches of political leaders and media propaganda.

⁶¹ In the *Tadić* Judgement, the Trial Chamber noted that "[i]t is the desire to exclude isolated or random acts from the notion of crimes against humanity that led to the inclusion of the requirement that the acts must be directed against a civilian 'population'" (para. 648).

Commission of Experts")⁶² considered furthermore that the civilian population within the meaning of Article 5 of the Statute must include all those persons bearing or having borne arms who had not, strictly speaking, been involved in military activities. The Trial Chamber therefore adjudges that the notion of civilian population as used in Article 5 of the Statute includes, in addition to civilians in the strict sense, all persons placed *hors de combat* when the crime is perpetrated. Moreover, in accordance with the case-law of this Tribunal and the Tribunal for Rwanda⁶³, the Trial Chamber deems that "[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character"⁶⁴.

55. The elements presented in support of the guilty plea as summarised in the historical background⁶⁵ do not leave any doubt as to the widespread and systematic nature of the attack against the Muslim and Croatian civilian population in the municipality of Br-ko.

3. An attack in which an accused participates in full knowledge of the significance of his acts

56. The accused must also be aware that the underlying crime which he is committing forms part of the widespread and systematic attack.

57. The accused has not denied that his acts formed part of the attack by the Serbian forces against the non-Serbian population of Br-ko⁶⁶. The Trial Chamber moreover notes that, despite remaining uncertainties regarding his exact rank and position, the accused was part of the Serbian forces that took part in the operation conducted against the non-Serbian civilian population in Br-ko. It was indeed in anticipation and in the service of the attack that the accused, who comes from Bijeljina, was given police duties in the municipality of Br-ko. As one of the active participants in this attack, Goran Jelisić must have known of the widespread and systematic nature of the attack against the non-Serbian population of Br-ko.

⁶² *Final Report of the Commission of Experts established pursuant to Security Council resolution 780 (1992)*, UN Off. Doc., S/1994/674, para. 78.

⁶³ *Tadić* Judgement, para. 639. The Tribunal for Rwanda took the same position in the *Akayesu* case (Judgement, para. 582) and *Kayishema* case (Judgement, para. 128).

⁶⁴ This case-law is based upon Article 50(3) of the first Protocol additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims in International Armed Conflicts.

⁶⁵ See section II above.

⁶⁶ See the "Addendum", p. 3.

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

Done this fourteenth day of December 1999

At The Hague

The Netherlands

Claude Jorda
Presiding Judge, Trial Chamber

Fouad Riad

Almiro Rodrigues

(Seal of the Tribunal)

Nations and the government of Sweden on the enforcement of sentences of the International Criminal Tribunal for the former Yugoslavia (23 February 1999).