

**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-95-9-A  
Date: 28 November 2006  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Mehmet Güney, Presiding  
Judge Mohamed Shahabuddeen  
Judge Liu Daqun  
Judge Andrésia Vaz  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 28 November 2006

**PROSECUTOR**

v.

**BLAGOJE SIMIĆ**

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Mr. Peter Kremer  
Ms. Barbara Goy  
Mr. Steffen Wirth

**Counsel for the Appellant:**

Mr. Igor Panteli}  
Mr. Peter Murphy

14. Moreover, in many other legal systems, committing is interpreted differently from the jurisprudence of the Tribunal. Since Nuremberg and Tokyo, both national and international criminal law have come to accept, in particular, co-perpetratorship as a form of committing<sup>20</sup>. For example, the recent Comparative Analysis of Legal Systems, carried out by the Max-Planck-Institute, Freiburg, Germany, illustrates that, *inter alia*, the following States include co-perpetratorship in their criminal codes<sup>21</sup>:

State	Relevant Provision (in part as an unofficial translation)
<b>Cameroon</b> ( <i>Livre I du Code pénal</i> )	Art. 96: "Est coauteur celui qui participe avec autrui et en accord avec lui à la commission de l'infraction."
<b>Chile</b> ( <i>Código Penal</i> )	Art. 15: "Se consideran autores: 3° Los que, concertados para su ejecución, facilitan los medios con que se lleva a efecto el hecho o lo presencian sin tomar parte inmediata en él."
<b>Czech Republic</b> ( <i>Trestní zákon</i> )	Sec. 9(2): "If a crime is committed by the joint conduct of two or more persons, each of them shall be criminally liable as if he alone had committed the crime (accomplice)".
<b>Germany</b> ( <i>Strafgesetzbuch</i> )	Sec. 25(2): "If more than one person commit the crime jointly, each shall be punished as a perpetrator (co-perpetrator)."
<b>Greece</b> ( <i>Poinikós Kodikas</i> )	Art. 45: "Co-Perpetrators: If two or more persons commit a criminal offence jointly, each of them shall be punished as a perpetrator."
<b>Hungary</b> (1978. évi IV. Törvény a Büntető Törvénykönyvről)	Art. 20(2): "Co-principals are the persons who jointly realize the legal facts of an intentional crime in awareness of each other's activities."
<b>Israel</b> (חוק העונשין)	Section 29(b): "Participants in the commission of an offence, who perform acts for its commission are joint perpetrators, and it is immaterial whether all acts were performed jointly or some were performed by one person and some by another."
<b>Japan</b> (.. <i>Keihō</i> )	Art. 60: "(Co-principals): Two or more persons who jointly commit a criminal act shall all be dealt with as principals."
<b>Mexico</b> ( <i>Código Penal</i> )	Art. 13(3): "Son autores o partícipes del delito: Los que lo realicen conjuntamente."
<b>Netherlands</b> ( <i>Wetboek van Strafrecht</i> )	Art. 47(1): "As perpetrators of a criminal offence will be punished: Those who commit a criminal offence, who cause a criminal offence to be committed or who jointly commit a criminal offence."
<b>Poland</b> ( <i>Kodeks Karny</i> )	Art. 18 §1 "Not only the person who has committed a prohibited act himself or together and under arrangement with another person, but also a person who has directed the commission of a prohibited act by another person or taken advantage of the subordination of another person to him, orders such a person to commit such a prohibited act, shall be liable for perpetration."
<b>Portugal</b> ( <i>Código Penal</i> )	Art. 26: "É punível como autor quem executar o facto, por si mesmo ou por intermédio de outrem, ou tomar parte directa na sua execução, por acordo ou juntamente com outro ou outros, e ainda quem, dolosamente, determinar outra pessoa à prática do facto, desde que haja execução ou começo de execução."
<b>Republic of Korea</b> ( <i>Hyeong-beop</i> )	§ 30: "Co-perpetratorship: If two or more persons commit a criminal offence jointly, each shall be punished as a perpetrator."
<b>Spain</b> ( <i>Código Penal</i> )	Art. 28: "Son autores quienes realizan el hecho por sí solos, conjuntamente o por medio de otro del que se sirven como instrumento."

In addition, the following States have accepted the concept of co-perpetratorship:

<sup>20</sup> With all due respect, I maintain my position that co-perpetratorship is firmly entrenched in customary international law. Unfortunately, when the *Stakić* Trial Judgement was rendered, the Trial Chamber – solely composed of civil law judges – took it for granted that the notion of co-perpetratorship need not be academically supported by reference to State practice. With the availability of the Expert Opinion, *supra* note 19, such an empirical basis can now be delivered.

<sup>21</sup> See Expert Opinion, *supra* note 19. Moreover, this research illustrates that even States which do not codify co-perpetratorship in their criminal codes recognize this concept, as demonstrated by settled jurisprudence. This includes Sweden (Expert Opinion, Report on Sweden, p. 10) and France (Expert Opinion, Report on France, p. 6). Although not