

INTERNATIONAL CRIMINAL COURT

IN THE TRIAL CHAMBER

THE PROSECUTOR v COLONEL C

SUBMISSIONS OF COUNSEL FOR THE DEFENCE

The Defence by its Counsel submits:

Count 1 – Violation of the Laws and Customs of War (War Crime of outrages upon personal dignity) (Senior Counsel)

1. The Accused is not criminally responsible within the meaning of Article 25(3)(c) of the Rome Statute of the International Criminal Court (“the Statute”) for the actions described in Count 1 of the Indictment.
 - 1.1. The requisite *actus reus* on the part of the Accused has not been established. It cannot thus be shown that the Accused aided, abetted or otherwise assisted in the commission of a crime.
 - (a) The conduct which aids or abets in the commission of the crime must have been specifically directed toward that purpose. Further, it must have had a substantial impact on the execution of the crime.

The Prosecutor v Duško Tadić, Judgment, Trial Chamber, 7 May 1997, [688], [691]; *The Prosecutor v Mitar Vasiljević*, Judgment, Appeals Chamber, 25 February 2004, [102]; *The Prosecutor v Blagoje Simić*, Judgment, Appeals Chamber, 28 November 2006, [130]
 - (b) The conduct of the Accused was too remote and inconsequential to the abuse of internees in Arisian military custody to render him criminally responsible.
 - 1.2. It cannot be proven that the Accused knowingly assisted in the commission of a crime, or acted for the purpose of facilitating the commission of a crime. He thus lacked the requisite *mens rea*.
 - (a) The conduct attracting criminal responsibility must have been undertaken with knowledge that it would contribute to the commission of a specific crime. Knowledge of the elements of the crime and the principal offender’s *mens rea* is also required.

The Prosecutor v Jean-Paul Akayesu, Judgment, Trial Chamber, 2 September 1998, [479]; *The Prosecutor v Dragolub Kunarac*, Judgment, Trial Chamber, 22 February 2001, [392]; *The Prosecutor v Blagoje Simić*, Judgment, Trial Chamber, 17 October 2003, [163]
 - (b) The conduct attracting criminal responsibility must have been undertaken specifically for the purpose of facilitating the commission of a crime.
 - (c) There is no evidence to suggest that the Accused knew his orders related to internment of civilians were assisting in the commission of the particular offence alleged in the Indictment. Furthermore, there is no evidence to suggest that the Accused acted for the purpose of enabling or assisting in the commission of the offence alleged in the Indictment.

Count 2 – Violation of the Laws and Customs of War (War Crime of outrages upon personal dignity) (Junior Counsel)

2. The Accused is not criminally responsible within the meaning of Article 28(a) of the Statute for the actions described in Count 2 of the Indictment.

2.1. The Accused did not have effective command and control, or effective authority and control, over other Arisian soldiers who committed the crimes alleged. The requisite *actus reus* is thus not established.

(a) The mere existence of a *de jure* power does not necessitate the imposition of command authority. Criminal responsibility will only be established in situations where the accused person has the *de facto*, rather than merely *de jure*, power to prevent and punish abuses by subordinates.

The Prosecutor v Clement Kayishema and Obed Ruzindana, Judgment, Trial Chamber, 21 May 1999, [490], [491]; *The Prosecutor v Zejnil Delalić et al.*, Judgment, Appeals Chamber, 20 February 2001, [197], [198]

(b) The Accused did not possess the necessary ability to exercise command authority over Arisian soldiers involved in the mistreatment of internees.

The Prosecutor v Clement Kayishema and Obed Ruzindana, Judgment, Trial Chamber, 21 May 1999, [501]

(c) There was no reasonable course of action available to the Accused that he could have taken to prevent or repress the commission of the crime.

The Prosecutor v Tihomir Blaškić, Judgment, Appeals Chamber, 29 July 2004, [417], [421]

(d) The necessary causal link between the actions of the Accused and the commission of the crimes by his subordinates is missing in the present matter.

The Prosecutor v Jean-Pierre Bemba Gombo, Decision pursuant to Article 67(a) and (b) of the Rome Statute on the charges, Pre-Trial Chamber II, 15 June 2009, [423]

2.2. The Accused did not possess the necessary *mens rea* required by the Statute to establish criminal responsibility.

(a) The Accused did not have actual knowledge of crimes committed by subordinates, nor did he have information sufficient to put him “on notice” to the possibility.

The Prosecutor v Zejnil Delalić et al., Judgment, Appeals Chamber, 20 February 2001, [238], [239]; *The Prosecutor v Milorad Krnojelac*, Judgment, Appeals Chamber, 17 September 2003, [155], [156]

(b) Mere negligence on the part of the Accused will not result in criminal responsibility; any negligence must have been so gross as to amount to malicious intent.

The Prosecutor v John-Paul Akayesu, Judgment, Trial Chamber, 2 September 1998, [488], [489]

(c) There was no implied duty on the Accused to seek out more information than was available to him.

The Prosecutor v Tihomir Blaškić, Judgment, Appeals Chamber, 29 July 2004, [406]

So submits the Counsel for the Defence on this the 29th Day of September 2009.

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Junior Counsel for the Defence