Jelisić Revisited: 'No Case to Answer' at the Special Tribunal for Lebanon

1. Introduction

The Trial Chamber rendered the instant oral decision[1] in response to a motion by counsel for Mr Hussein Hassan Oneissi for a judgement of acquittal pursuant to Rule 167(A) of the Rules of Procedure and Evidence (RPE) of the Special Tribunal for Lebanon (STL). This provision provides as follows:

> At the close of the Prosecutor's case, the Trial Chamber shall, by oral or written decision and after hearing submissions of the Parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction on that count.[2]

The procedure in accordance with which counsel filed this application is also known as a "no case to answer" motion,[3] though "half-way determination" arguably better describes how this procedural device operates, namely at the close of the prosecution case (and, therefore, before that of the defence is due to begin) or half-way through the trial.[4] According to Håkan Friman *et al*, the half-way determination or no case to answer motion is thus "generally linked to a trial that consists of two contradictory and clearly separated cases—a prosecution case and a defence case—and thus to the adversarial model of the common law jurisdictions."[5]

[1] STL, Decision on the Oneissi defence application for a judgment of acquital [sic] under Rule 167 (A), *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, T. Ch., 7 March 2018, in this volume, **PAGINA** (Oneissi Rule 167 (A) Decision).
[2] Rule 167(A) STL Rules of Procedure and Evidence (RPE).
[3] See, for example, *R v. Galbraith* [1981] 1 WLR 1039.
[4] Håkan Friman *et al*, Charges, in Göran Sluiter *et al.* (eds.), International Criminal Procedure: Principles and Rules, Oxford U.P., Oxford 2013, p. 466-467.
[5] *Ibid.*

It is the operation of this tool in the decision at hand (the first and, at the time of writing, only decision rendered in response to such a motion at the STL) on which this commentary will focus.

Nomenclature aside,[6] considering that the origins of this procedural device lie in the common law, it is hardly surprising that the tool is also tied to the division of labour between the judge – as trier of law – and the (lay) jury – as trier of fact – in criminal trials in these jurisdictions.[7] In the words of the former Judge and President of the International Criminal Tribunal for the former Yugoslavia (ICTY), Patrick Robinson, the central purpose of half-way determinations in the common law legal tradition is "to prevent juries bringing in an unjust conviction on the basis of evidence that cannot lawfully support a conviction."[8] It accordingly follows that few civil law legal systems adopt such a procedure.[9]

This said, the relationship between the device and jury trials has not precluded its inclusion in the procedural regimes of international(ised) criminal tribunals (ICTs), including that of the STL,[10] whose trial procedures have been aptly labelled "common law/civil law hybrids".[11]

[6] Other names by which the procedure might be known in various common law jurisdictions include motion for non-suit, motion for directed verdict of acquittal, and half-time motion: see ICC, Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), *Prosecutor v. Ruto and Sang*, Case No. ICC-01/09-01/11, T. Ch. V(A), 3 June 2014, par. 11.

[7] See *R v. Galbraith*, *supra* note 3, described by Ady Niv as "the *locus classicus* in the UK and the basis for the standard of 'no case to answer' submissions in international tribunals": see A. Niv, The Schizophrenia of the 'No Case to Answer' Test in International Criminal Tribunals, 14 Journal of International Criminal Justice 2016, p. 1122.

[8] P.L. Robinson, Rough Edges in the Alignment of Legal Systems in the Proceedings at the ICTY, 3 Journal of International Criminal Justice 2005, p. 1048.

[9] Spain is an exception to this general rule: see ICTY, Decision on Defence Motions for Judgement of Acquittal, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, T. Ch., 6 April 2000, par. 24, citing S. Andrés de la Oliva Santos *et al.*, Derecho Procesal Penal, Centro de Estudios Ramón Areces, Madrid 1997, p. 905-906.

[10] Rule 167(A) STL RPE; Rule 98 *bis* ICTY RPE; Rule 98 *bis* ICTR RPE; Rule 98 SCSL RPE. Notably, the ICC RPE do not explicitly regulate no case to answer motions, though Trial Chamber V(A) has found that individual Trial Chambers are authorised to consider them "in appropriate circumstances": see ICC, Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), *Prosecutor v. Ruto and Sang*, *supra* note 6, par. 15.

[11] A.T. Cayley and A. Orenstein, Motion for Judgement of Acquittal in the Ad Hoc and Hybrid Tribunals: What Purpose If Any Does It Serve?, 8 Journal of International Criminal Justice 2010, p. 583, referring to ICTY, Separate Opinion of Judge Patrick Robinson, *Prosecutor v. Milošević*, Case No. IT-02-54-T, T. Ch., 16 June 2004,

However, this is not to say that the device operates in precisely the same manner on the international plane as it might at a domestic level.[12]

This commentary proceeds in four parts: following this introduction (1), the focus turns to the Trial Chamber's interpretation of Rule 167(A) STL RPE (2), and its assessment of the evidence in the prosecution's case against Mr Oneissi (3). The commentary then concludes in part (4) by reflecting on the significance of the decision for the STL and other ICTs.

2. The Trial Chamber's Understanding of Rule 167(A) and the "relevant legal test"

Commentators have described procedures akin to that set out in Rule 167(A) STL RPE as "a filtering device"[13] and as "a tool of trial management […] that allows the chamber to 'prune' cases".[14] Besides facilitating judicial economy, however, there is also general agreement that the use of the procedural device also serves to protect the rights of the accused,[15] particularly the presumption of innocence.[16] It is this latter policy justification that the STL Trial Chamber explicitly endorses in the decision under review, with reference to a decision rendered by an

Klip/Sluiter, ALC-XIX-444, par. 3 (expressing the view that "the no case to answer procedure has a peculiarly common law origin and does not fit readily into a regime that attempts to blend the civil and common law systems"). For analysis of the latter decision, see K. De Meester, Commentary, Klip/Sluiter, ALC-XIX-449. For discussion of how certain ICTs' procedures incorporate "characteristic features" of the two legal models, see A. Orie, Accusatorial v. Inquisitorial Approach in International Criminal Proceedings Prior to the Establishment of the ICC and in the Proceedings Before the ICC, in Antonio Cassese, Paola Gaeta and John R.W.D. Jones (eds.), The Rome Statute of the International Criminal Court: A Commentary, Volume II, Oxford U.P., Oxford 2002, p. 1439-1496.

[12] According to one ICTY Trial Chamber, "Ultimately, the regime to be applied for Rule 98 *bis* proceedings is to be determined on the basis of the Statute and the Rules, having in mind, in particular, its construction in the light of the context in which the Statute operates and the purpose it is intended to serve. That determination may be influenced by features of the regime in domestic jurisdictions with similar proceedings, but will not be controlled by it; and therefore a proper construction of the Rule may show a modification of some of those features in the transition from its domestic berth": Decision on Defence Motions for Judgement of Acquittal, *Prosecutor v. Kordić and Čerkez*, *supra* note 9, par. 9.

[13] Niv, *supra* note 7, p. 1121.

[14] D. Groome, Adjudicating Genocide: Is the International Court of Justice Capable of Judging State Criminal Responsibility?, 31 Fordham International Law Journal 2007, p. 963.

[15] Set out in, for example, Art. 16 STL Statute.

[16] See, for example, Cayley and Orenstein, *supra* note 11, p. 577; Y. McDermott, Fairness in International Criminal Trials, Oxford U.P., Oxford 2016, p. 46.

ICTY Trial Chamber in response to an application for a judgement of acquittal filed pursuant to Rule 98 *bis* ICTY RPE by counsel for Pavle Strugar.[17]

Indeed, at the outset of its discussion of what it labels the "relevant legal test",[18] the STL Trial Chamber observes that Rule 167(A) STL RPE is "modelled on" Rule 98 *bis* ICTY RPE and the counterpart provisions set out in the respective RPE of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL).[19] The STL Trial Chamber's subsequent reliance on decisions issued by these ICTs in setting out its interpretation of "the general principles of international criminal law and procedure" in relation to half-way determinations is thus expected.[20]

Quoting the judgements rendered by the ICTY Appeals Chamber in *Jelisić*,[21] *Karadžić*,[22] and *Hadžihasanović and Kubura*,[23] and the aforementioned decision by one ICTY Trial Chamber in *Strugar*,[24] the STL Trial Chamber explained as follows: "the main issue at the close of the Prosecution's case is whether the Trial Chamber has received sufficient evidence upon which it, as a reasonable trier of fact, could - and 'could' is underlined and emphasized - convict an accused person of a charge or a count in an indictment."[25] It then expressed the view that this

[17] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3, quoting ICTY, Decision on Defence Motion Requesting Judgement of Acquittal Pursuant to Rule 98 *Bis*, *Prosecutor v. Strugar*, Case No. IT-01-42-T, T. Ch. II, 21 June 2004, Klip/Sluiter, ALC-XX-223, par. 13. For analysis of the latter decision, see C. Rassi, Commentary, Klip/Sluiter, ALC-XX-288.
[18] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 2.
[19] *Ibid*, p. 3.
[20] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3, referring to Rule 3(A)(iii) STL RPE.
[21] Oneissi Rule 167 (A) Decision, *supra* note 1 p. 3, quoting ICTY, Judgement, *Prosecutor v. Jelisić*, Case No. IT-95-10-A, A. Ch., 5 July 2001, Klip/Sluiter, ALC-VII-513, par. 37 and 55. For analysis of the latter decision, see C. Blakesley, Commentary, Klip/Sluiter, ALC-VII-562.
[22] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3, quoting ICTY, Judgement, *Prosecutor v. Karadžić*, Case No. IT-9S-SI18-AR98bis.l, A. Ch., 11 July 2013, par. 9.
[23] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 4, quoting ICTY, Judgement, *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-A, 22 April 2008, par. 55.
[24] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 4, quoting Decision on Defence Motion Requesting Judgement of Acquittal Pursuant to Rule 98 *Bis*, *Prosecutor v. Strugar*, *supra* note 17, par. 11.
[25] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3.

understanding of the relevant principles applicable to half-way determinations found support in (other) decisions rendered by ICTY, ICTR, and SCSL Trial Chambers[26] and, additionally, that the Rule 98 *bis* test had been embraced at the International Criminal Court (ICC).[27]

Prima facie, the STL Trial Chamber might appear to approve and apply the so-called "Jelisic test",[28] which, as Ady Niv summarises, "requires a *specific* trial chamber to speculate whether a *reasonable trial chamber* could convict, rather than deciding whether *they themselves* could convict."[29] This test, applied in successive decisions issued in analogous proceedings before the *ad hoc* Tribunals and the SCSL and endorsed in the (limited) relevant jurisprudence of the ICC,[30] has been subjected to criticism in the academic literature, not least for its reference to the reasonable trier (or tribunal) of fact.[31]

The criticism is well-founded: in asking whether a reasonable trier of fact (as opposed to whether the seized Trial Chamber itself) could convict, the test, as formulated in *Jelisić*, imports a jury-based process into a trial with no jury, that is to say, one in which the Trial Chamber deciding on the motion for judgement of acquittal is the sole trier of fact and law. In his partially dissenting opinion in *Jelisić*, Judge Fausto Pocar pithily captures the futility of

[26] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 4, referring to SCSL, Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98, *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-T, T. Ch. II, 31 March 2006, Klip/Sluiter, ALC-XXI-733, par. 8.
[27] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 4, quoting Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), *Prosecutor v. Ruto and Sang*, *supra* note 6, par. 22-32.
[28] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 4.
[29] Niv, *supra* note 7, p. 1127 (emphasis in original).
[30] See the ICTY, ICTR, SCSL, and ICC decisions referenced in Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3-5. See also the decisions cited in Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), *Prosecutor v. Ruto and Sang*, *supra* note 6, fn. 54.
[31] See, for example, Niv, *supra* note 7, p. 1129, citing T.W. Waters, A Kind of Judgment: Searching for Judicial Narratives After Death, 42 George Washington International Law Review 2011, p. 316; M. Bohlander, Radbruch Redux: The Need for Revisiting the Conversation between Common and Civil Law at Root Level at the Example of International Criminal Justice, 24 Leiden Journal of International Law 2011, p. 409; Idi Gaparayi, The Milošević Trial at the Halfway Stage: Judgement on the Motion for Acquittal, 17 Leiden Journal of International Law 2004, p. 752; J. Kneitel, The Forgotten Dinner Guest: The Beyond Reasonable Doubt Standard in Motion for Judgment of Acquittal in Federal Bench Trial, 36 American Journal of Trial Advocacy 2012, p. 48-57.

employing such a test at the ICTY: "There is no point in leaving open the possibility that another trier of fact could come to a different conclusion if the Trial Chamber itself is convinced of its own assessment of the case".[32]

A similar case could surely be made against applying the same test at the STL, whose Rule 167(A) STL RPE is "modelled on" Rule 98 *bis* ICTY RPE (and its equivalents under ICTR RPE and SCSL RPE).[33]

But the STL Trial Chamber, while making explicit reference to "a reasonable trier of fact",[34] also asks "whether the Trial Chamber has received sufficient evidence upon which *it* … could … convict an accused person of a charge or a count in an indictment."[35] Further, after setting out its understanding of the principles of international criminal law and procedure governing motions for judgement of acquittal before the STL, the same Trial Chamber asserts – on this occasion without any reference to the reasonable trier (or tribunal) of fact – that it "will apply these established principles in deciding whether the Prosecution has led evidence upon which *it* could convicted [sic] Mr. Oneissi on any of the counts charged against him".[36]

On the one hand, a plausible reading of the decision under review could be that the terminology adopted might have been simplified (compared with the wording employed in *Jelisić* and in decisions applying *Jelisić*) to facilitate delivery of an oral decision. On the other hand, it might be argued that the STL Trial Chamber pays lip service to the "*Jelisić* test" before applying a different test, one that the former ICTY Judge Carmel Agius might consider to be less likely to

[32] ICTY, Partial Dissenting Opinion of Judge Pocar, *Prosecutor v. Jelisić*, Case No. IT-95-10-A, A. Ch., 5 July 2001, ALC-VII-558, par. 6.
[33] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 2.
[34] *Ibid*, p. 3.
[35] *Ibid* (emphasis added).
[36] *Ibid*, p. 5 (emphasis added).

induce "schizophrenia" on the part of the Trial Chamber seized of the no case to answer motion.[37]

In other words, having found itself to constitute a reasonable trier of fact, the Trial Chamber proceeds to ask whether it, rather than a fictional bench, could convict Mr Oneissi, taking the evidence adduced by the prosecution "at its highest".[38]

The STL Trial Chamber might have therefore taken one step closer towards abandoning the reference to the reasonable trier of fact than the majority of the ICC Appeals Chamber in its March 2021 Judgment in *Prosecutor v. Gbagbo and Blé Goudé*.[39] Though "persuaded by the reasoning of Judge Pocar" in *Jelisić*,[40] the majority nonetheless continues to refer to this limb of the test when detailing the applicable law,[41] an approach Niv labels "cryptic", "puzzling", and "counterintuitive".[42] At worst, the application of the legal test by the STL Trial Chamber in the decision under review can be described as ambiguous; at best, it could be said to be a tentative step towards removing the jury-based component from a judge-only process.

As for the standard of review for Rule 167(A) applications, the STL Trial Chamber endorses the one consistently employed by the ICTY Appeals Chamber, that is, "whether there is evidence (if accepted) upon which a reasonable trier of fact could be satisfied beyond

[37] Niv, *supra* note 7, p. 1129, quoting ICTY, Transcript, *Prosecutor v. Brđanin*, Case No. IT-99-36-T, T. Ch. II, 3 December 2003, p. 23118.
[38] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3, quoting ICTY, Judgement, *Prosecutor v. Jelisić*, *supra* note 21, par. 55.
[39] ICC, Judgment in the appeal of the Prosecutor against Trial Chamber I's decision on the no case to answer motions, *Prosecutor v. Gbagbo and Blé Goudé*, Case No. ICC-02/11-01/15 A, A. Ch., 31 March 2021.
[40] *Ibid*, par. 314.
[41] *Ibid*, par. 315.
[42] A. Niv, Revisiting the 'No Case to Answer' Procedure – the First Step in the Right Direction, Opinio Juris 2021, http://opiniojuris.org/2021/05/28/revisiting-the-no-case-to-answer-procedure-the-first-step-in-the-right-direction/.

reasonable doubt of the guilt of the accused on the particular charge in question, not whether an accused's guilt has been established beyond a reasonable doubt."[43]

On several occasions in its assessment of the evidence adduced by the prosecution against Mr Oneissi, the decision under review draws a clear distinction between what is (and what is not) required at this stage of the proceedings. Having observed, in detailing its understanding of the established test, that it "is required to assume that the Prosecution's evidence was entitled to credence unless incapable of belief",[44] the STL Trial Chamber stresses that the question of whether the guilt of the accused has been established beyond reasonable doubt is to be determined at a later stage of the proceedings.[45] Again, this reflects the position adopted by the ICTY Appeals Chamber in *Jelisić*.[46]

Nor does the decision under review diverge from ICTY jurisprudence in its treatment of circumstantial evidence. Referring to the Judgement rendered by the ICTY Appeals Chamber in the *Čelebići* case, the STL Trial Chamber affirms as follows: "For a chamber to convict an accused person on circumstantial evidence, it must be convinced beyond a reasonable doubt that it is the only reasonable conclusion available".[47] The decision then proceeds to highlight that, at this stage of the trial, the STL Trial Chamber need only "be satisfied that there is evidence on which it could … reasonably conclude such an inference and hence convict."[48]

---

[43] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3, quoting ICTY, Judgement, *Prosecutor v. Karadžić*, *supra* note 22, par. 9. See also ICC, Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), *Prosecutor v. Ruto and Sang*, *supra* note 6, fn. 54.
[44] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3, quoting ICTY, Judgement, *Prosecutor v. Jelisić*, *supra* note 21, par. 55.
[45] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 18, 22, and 31.
[46] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 3, quoting ICTY, Judgement, *Prosecutor v. Jelisić*, *supra* note 21, par. 55.
[47] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 18, referring to ICTY, Judgement, *Prosecutor v. Delalić, Mucić, Delić and Landžo*, Case No. IT-96-21-A, A. Ch., 20 February 2001, ALC-V-369, par. 458.
[48] *Ibid*, p. 18. The STL Trial Chamber continues as follows: "Thus, the Chamber need not now consider alternative conclusions that may be inconsistent with guilt. The Trial Chamber will therefore not assess whether competing possibilities, consistent with innocence, are available."

It is to the evidence led by the prosecution in the case against Mr Oneissi to which the discussion now turns.

3. The Trial Chamber's "Assessment of the evidence in the Prosecution's case"

The STL Trial Chamber observes throughout the decision at hand that the prosecution's case against Mr Oneissi – and the other three accused in the instant case (Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, and Mr Assad Hassan Sabra) – is circumstantial.[49] The evidence led against the accused largely comprises records of calls made from a mobile phone alleged by the prosecution to belong to Mr Oneissi, contact between the accused and Mr Merhi and Mr Sabra, and the location of Mr Oneissi's phone "at key times in the conspiracy alleged".[50] The full list of charges included in the indictment against Mr Oneissi is as follows:

- Count 1 – Conspiracy aimed at committing a terrorist act;
- Count 6 – being an accomplice to the felony of committing a terrorist act by means of an explosive device;
- Count 7 – being an accomplice to the felony of intentional homicide of Mr Rafik Hariri with premeditation by using explosive materials;
- Count 8 – being an accomplice to the felony of intentional homicide of 21 persons in addition to Mr Hariri with premeditation by using explosive materials; and

[49] *Ibid*, p. 2, 18, and 22.
[50] *Ibid*, p. 2.

- Count 9 – being an accomplice to the felony of attempted intentional homicide of 226 persons in addition to Mr Hariri with premeditation by using explosive materials.[51]

Having found that none of the evidence adduced by the prosecution was "incapable of belief" and having therefore reserved its appraisal of the weight and credibility of the evidence for a later stage of the trial, the STL Trial Chamber turned to consider the facts of the case.[52]

The discussion of the facts of the case falls under several subheadings, each of which pertains to a particular category of evidence or event relevant to the charges. Though it is beyond the scope of this commentary to reproduce all the facts underlying the prosecution's case against Mr Oneissi, a concise overview ought to shed light on the Trial Chamber's application of the legal test discussed in the preceding paragraphs to the evidence against the accused.

After relaying the uncontested facts, namely that, on 14 February 2005, Mr Hariri, the former Lebanese Prime Minister, was killed in an explosion, which killed 21 other people and injured a further 226 individuals,[53] the STL Trial Chamber examined evidence of what it terms an "a sophisticated and well-planned operation to assassinate Mr. Hariri".[54] The Trial Chamber set out evidence received in relation to four closed mobile phone networks involving the alleged members of the conspiracy.[55]

Having found that the evidence that "[a]lmost immediately after the explosion, those connected with the conspiracy contacted Reuters and Al Jazeera in Beirut to disseminate a false claim of

[51] See STL, Redacted Version of the Amended Consolidated Indictment, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, 12 July 2016, par. 1.
[52] Oneissi Rule 167 (A) Decision, *supra* note 1, p. 6.
[53] *Ibid*, p. 6.
[54] *Ibid*, p. 7.
[55] *Ibid*, p. 7-11.

responsibility for the attack" was also uncontested,[56] the Trial Chamber considered evidence received with respect to Mr Oneissi's communication with the others who formed part of the conspiracy and with the two news outlets, especially as regards a video in which a man who had disappeared in the preceding month, Mr Ahmad Abu Adass, claimed responsibility for the attack.[57]

After detailing the elements of the crime of conspiracy to commit an act of terrorism under the applicable law and having recounted the facts of the conspiracy,[58] the Trial Chamber concluded in relation to Count 1 that it had "heard sufficient evidence from which it could find that Mr. Oneissi … participated in the conspiracy knowing that it concerned the attack on Mr. Hariri - a terrorist act committed with explosives".[59]

As for Counts 6-9, the Trial Chamber's focus rests less on considering the evidence and more on examining another legal issue, namely the knowledge that an accomplice must possess of the crime with which they are charged. In short, after setting out the material facts,[60] the STL Trial Chamber considered the Lebanese Criminal Code, pertinent Lebanese case law, and an interlocutory decision rendered by the STL Appeals Chamber in explaining its understanding of the applicable law.[61] Concluding that "an accomplice must have known that the perpetrator intended to commit a particular crime to prove their knowledge … is reasonable",[62] the Trial Chamber found that it "could conclude that all elements of each offence [under Counts 6-9] are satisfied in respect of the perpetration of each of the crimes charged".[63]

[56] *Ibid*, p. 11.
[57] *Ibid*, p. 11-18.
[58] *Ibid*, p. 19-21.
[59] *Ibid*, p. 22.
[60] *Ibid*, p. 23.
[61] *Ibid*, p. 24-30.
[62] *Ibid*, p. 29.
[63] *Ibid*, p. 31.

Having decided that "there is evidence on each of the elements on each of the counts charged on which [it] could convict Mr. Oneissi",[64] the STL Trial Chamber dismissed the application for a judgement of acquittal.[65] Throughout its assessment of the evidence in the prosecution's case, the Trial Chamber restated and consistently applied the legal test outlined earlier in the decision under review, except for the language used in relation to the reasonable trier of fact. Indeed, before dismissing the application, again referring to the Judgement in *Jelisić*, the STL Trial Chamber explicitly observed that it "could still acquit Mr. Oneissi at the end of the trial even if the Defence adduces no further evidence."[66]

The approach taken in the decision under review can thus be said to be largely consistent with that followed before other ICTs, but for the wording employed with regard to the reasonable trier of fact element of the legal test.

4. Conclusion

As the first decision rendered in response to a motion filed under Rule 167(A) STL RPE, the decision under review represents a milestone for the law applicable to motions for judgement of acquittal, or half-way determinations, before the STL. The foregoing shows that the STL Trial Chamber generally followed the established jurisprudence of the ICTY which, as noted in the decision at hand, also finds support in that of the ICTR and SCSL. The decision is therefore largely coherent with the law governing analogous procedures before other ICTs.

[64] *Ibid*, p. 32.
[65] *Ibid*, p. 33.
[66] *Ibid*, p. 32, referring to ICTY, Judgement, *Prosecutor v. Jelisić*, *supra* note 21, par. 37.

This said, depending how one reads the decision under review, it could be plausibly submitted that the STL Trial Chamber also departs from the foregoing case law in one key respect, that is, in relation to the reasonable trier (or tribunal) of fact. When evaluated against the criticism directed at this aspect of the "*Jelisić* test", to which the majority of the ICC Appeals Chamber alluded in a 2021 Judgment (albeit without rejecting this limb of the test), the approach taken in the decision under review might be – at least for those scholars who support Judge Pocar's position in *Jelisić* – a courageous, progressive, and welcome development of the law.