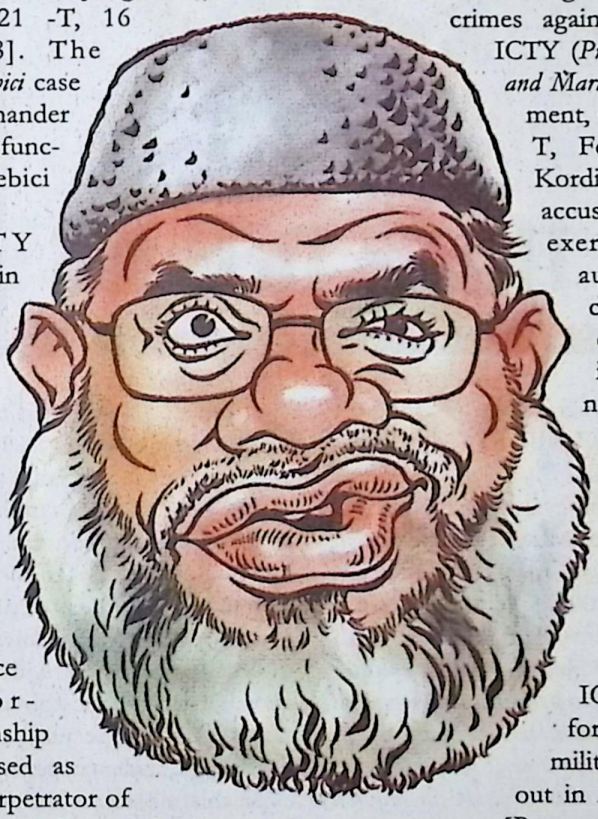
the acts or offences of their subordinates. It was with the advent of tribunals like International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) that we get to see a consistent practice of imposing liability on civilian superiors.

As a matter of fact, the responsibility of civilian superiors in war crimes was only recognised very recently. *The Celebici* case was the first case before the ICTY where the question of superior responsibility for persons not shown to be part of the military chain of command had to be considered [*Prosecutor v. Zejnil Delalic et al.*, Judgement (*Celebici* Trial Judgement), Case No. IT-96-21 -T, 16 November 1998]. The accused in the *Celebici* case acted as camp commander or worked in other functions at the Celebici prison camp.



By the ICTY Appeals Chamber in *Blaskic [Prosecutor vs. Tihomir Blaskic*, ICTY (Appeals Chamber) March 3, 2000], three general elements of command responsibility (including civilian superior responsibility) were laid out. They are: (1) The existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; (2) the superior knew or had reason to know that the crime was about to be or had been committed; and (3) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.

To establish the existence of a superior-subordinate relationship, the ICTY, ICTR and other tribunals used the 'effective control test'. This test further assisted in finding out whether the civilian superior had 'the material ability to prevent and punish criminal conduct' [*Prosecutor vs. Delalic, Mucic, Delic and Landzo*, International Criminal Tribunal for the former Yugoslavia (Appeals Chamber) February 20, 2001]. It must be stated that the 'effective control test' is generally dependant on certain factual information, such as, the accused's official position, his or her capacity to issue orders, the procedure for appointment, the accused's position in the relevant power structure and the actual tasks that he or she has performed. At times, the civilian superior's de facto authority is also taken into account [*Prosecutor v. Brima et al.*, Special Court for Sierra Leone (Trial Chamber) June 20, 2007].

It was in the case of the *Prosecutor v. Kordic and Cerkez*, a political leader (civilian) was for the first time found guilty of war crimes and crimes against humanity by the ICTY (*Prosecutor v. Dario Kordic and Mario Cerkez*, ICTY Judgment, Case No. IT-95-14/2-T, February 26, 2001). Kordic, one of the two accused in the case, had exercised considerable authority during the conflict in Bosnia and, contrary to the accused in earlier cases, he did not have a clear military position. Therefore, the case offers a formal beginning of the doctrine of superior responsibility with respect to civilian superiors.

Similarly, before the ICTR, the requirements for the 'civilian or non-military' superior were laid out in *Prosecutor v. Bagilishema* case [*Prosecutor v. Bagilishema*, International Criminal Tribunal for Rwanda (Trial Chamber) June 7, 2001]. It was held in *Prosecutor v. Bagilishema* case that a civilian superior's degree of control must be 'similar to' that of a military commander, the control over subordinates must be 'effective' and the superior must have the 'material ability' to prevent and punish any offence.

The contemporary formulation of superior responsibility is found in a plethora of international legal instruments, such as Article 7(3), the Statute of the ICTY; Article 6(3), the Statute of the ICTR; Article 28(2), the Statute of