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APPEALS CHAMBER  
CHAMBRE D'APPEL

CC/PIO/212-E  
The Hague, 11 June 1997

International  
Criminal Tribunal  
for the Former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

### BLAŠKIĆ CASE: UPDATE

- *Trial Chamber I orders general protective measures for witnesses.*
- *Trial Chamber I rules on the amended indictment.*

Trial Chamber I, composed of Judges Jorda (presiding), Li and Riad, rendered on 6 June and 23 May 1997 two Decisions in the Blaškić case: the first one on the protection of witnesses, the second concerning the amended indictment.

#### Protective measures for witnesses

On 6 June 1997, the Chamber ruled on requests filed by the Prosecutor.

1. It rejected the Prosecutor's request for an investigation, filed following the disclosure of the identity and statements of a witness (Stipe Mesić) to two Croatian newspapers, on the ground that "*the said witness was not covered by any protective measures*" and "*that it would be extremely difficult to determine who is responsible for such disclosure*".
2. Regarding protective measures for witnesses in general, the Chamber ordered that the Defence "*not disclose to the public or to the media the name of the witnesses residing in the territory of the former Yugoslavia or any information which would permit them to be identified, unless absolutely necessary for the preparation of the defence*".
3. As "*additional measures*", it also ordered both parties, namely the Prosecutor and the Defence:
  - "*to maintain a log indicating the name, address and position of each person who has received a copy of a witness statement as well as the date it occurred and to submit the log to the Trial Chamber whenever it so requests*";
  - "*to instruct those persons who have received a copy of the statements not to reproduce them - under pain of sanction for contempt of the Tribunal - and to return them as soon as they are no longer required*".Finally, the Chamber requested the parties to "*verify that those individuals comply strictly with the above orders*".

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case update.)

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### **The amended indictment**

In a Decision dated 23 May 1997, the Chamber ruled on the Defence motion filed on 2 May 1997. In its motion, the Defence, considering that "*the indictment [as amended and filed by the Prosecutor on 25 April] fails to comport with the Trial Chamber's Order [of 4 April 1997] in several significant respects*", requested the Chamber to dismiss the amended indictment. (see PR 189).

The Chamber rejected the Defence motion, but found that some of the modifications made by the Prosecutor to the indictment "*do not comply*" with its previous decision. However, "*out of a concern that the trial begin without undue delay*", it decided not to grant the Prosecutor additional time to satisfy the obligations with which she did not comply. It concluded: "*At trial, the Defence will have the opportunity to contest the admissibility of the evidence relating to the amendments to the indictment which the Trial Chamber may have not granted*".

The Chamber, which examined the Prosecutor's modifications to the indictment in the light of its Decision of 4 April (see PR 175), followed a three step approach:

#### **1. Amendments which comply with the Decision**

Regarding the following points, the Chamber considered that "*the Prosecutor has satisfied the Judges' concerns*", and rejected the Defence allegations that "*the indictment contains new factual allegations which were not authorised or invited by the Order*".

As to the time and place of the alleged crimes:

- the qualifying adverbs ('including but not limited to', 'among others' and 'about'), considered too vague by the Chamber, have been removed;
- the names of the villages of Vareš, Žepče, Duvno, Stolac, Mostar, Jablanica, Prozor, Čapljina, Gornji Vakuf, Novi Travnik, Travnik, Kreševo, and Fojnica were added in paragraph 1 and 5.2, "*which makes the presumed locations of the alleged crimes more precise*";
- the introduction of a new category of violations committed against the civilian population, "*forced transfer of civilians*", and the details added in paragraph 6.6 on that issue, are, according to the Chamber, in line with its Decision;
- the Chamber also considers that the specifications regarding the place of the alleged crimes added in paragraph 12 and 14, and "*the listing of the locations and the inclusion of the dates when the destruction occurred*" in count 14 (previous count 12) concerning the destruction of institutions dedicated to religion or education, comply with its Decision;

Regarding the legal characterisation of the alleged crimes, the Chamber found that the reference made to Additional Protocol I to the 1949 Geneva Conventions in counts 3 and 4 is in compliance with its Decision of 4 April.

## **2. Amendments which do not comply with the Decision**

Concerning the role of the accused in the alleged crimes, pursuant to the types of responsibility set out in Articles 7.1 (direct command responsibility) and 7.3 (indirect command responsibility) of the Tribunal's Statute, the Chamber noted that the Prosecutor "*merely repeats the wording of Article 7(1) and 7(3) without providing any further details about the acts alleged in respect of the types of responsibility incurred*".

Not considering that "*at this stage of the proceedings, it need to grant any additional time to the Prosecutor to amend the indictment further*", it concludes: "*For this reason, the Trial Chamber will not fail to draw all the legal consequences at trial of the possible total or partial failure to satisfy the obligations incumbent on the Prosecutor insofar as that failure inter alia might not have permitted the accused to prepare his defence pursuant to Article 21 of the Statute and the principles identified in its Decision*".

## **3. New count 2**

The Prosecutor added to the second amended indictment a new count, "*devastation not justified by military necessity*", challenged by the Defence (see PR 189).

The Chamber, noting that "*[i]n the absence of any factual indications in support [of this count] (...), the count is new*", considers that it "*can therefore merely refer the Prosecutor to the confirming judge unless she considers that the count might be covered by the wording and contents of Counts 3 and 4*".

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*The Trial Chamber's Decisions are available upon request  
from the Press and Information Office.*