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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

Press Release . Communiqué de presse
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CHAMBERS

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The Hague, 14 December 2001

CC/P.I.S./652e

**THE TRIAL CHAMBER ISSUES ITS WRITTEN DECISION ON PROSECUTION'S
MOTION FOR JOINDER IN THE MILOSEVIC CASE**

On Thursday 13 December 2001, Trial Chamber III, composed of Judges Richard May (Presiding), Patrick Robinson and O-Gon Kwon, issued its written Decision on the Prosecution's Motion for Joinder in the cases *The Prosecutor v. Slobodan Milosevic*.

Two days earlier, the Trial Chamber had given its oral decision on the Motion, allowing it to the extent that the "Croatia" and the "Bosnia" indictments will be joined together, and denied it to the extent that the "Kosovo" indictment will be tried separately.

In the written reasons for its ruling, the Trial Chamber reviewed the case-law of the Tribunal, the International Criminal Tribunal for Rwanda, as well as common and civil law States. It expressed the view that "*the essence of the test is to determine whether there were a series of acts committed which together formed the same transaction, i.e. part of a common scheme, strategy or plan.*" The Trial Chamber emphasised that "[t]here is no power to join unconnected acts on the ground that they form part of the same plan. [...] If there was no such series of acts and no such plan, any application for joinder must fail. Where there is no similarity in time and in place, the conclusion that the counts represent interrelated parts of a particular criminal episode will be more difficult, albeit not impossible, to draw."

The Trial Chamber also stressed that Rule 49 on joinder "*must be interpreted in light of the entitlement of the accused [...] to a fair hearing*", and considered that "[j]oinder should not be granted where the interests of justice would be prejudiced – those interests relate not only to the accused but also to the interests of the Prosecution and the international community in the trial of any accused charged with serious violations of international humanitarian law." Last, the Trial Chamber stated that "*judicial economy, e.g. the avoidance of duplication of evidence and the avoidance of hardship to witnesses*" was also a factor to be taken into account.

THE "KOSOVO" INDICTMENT

The Trial Chamber noted that "*the conflict in Kosovo occurred in a province*" of the Federal Republic of Yugoslavia and that "*no mention of a 'Greater Serbia' plan appears in the Kosovo indictment*". Consequently, it considered "*that nexus too nebulous to point to the existence of 'a common scheme, strategy or plan' required for the 'same transaction' under Rule 49.*" The Trial Chamber added that "*there is a distinction in time and place between the Kosovo and the other indictments and also a distinction in the way in which the accused is alleged to have acted.*" It concluded that the acts alleged in the three indictments did not "*form the same transaction for the purposes of Rule 49.*"

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THE “CROATIA” AND THE “BOSNIA” INDICTMENTS

However, the Trial Chamber deemed that the Croatia and Bosnia and Herzegovina “*indictments exhibit a close proximity in time, type of conflict and responsibility of the accused*” and found that “*the requirements for joinder under Rule 49 are satisfied.*” It held that “[t]he two indictments contain allegations of a series of acts which together formed the same transaction, i.e. a plan to take over the areas with a substantial Serbian population in two neighbouring States. [...] The two conflicts are close enough in time and similar enough in the methods used to be said to represent interrelated parts of a particular episode.”

ADDITIONAL CONSIDERATIONS

With regard to judicial economy, the Trial Chamber considered that two trials would enable it “*to manage the trial more easily.*” It expressed the view that “*the fact that the accused would have to defend himself on the contents of three indictments together would be onerous and prejudicial.*”

Last, the Trial Chamber noted that the Kosovo indictment “*is ready for trial*”, unlike the other two. It pointed out that “[t]he fact that the trials will take place in this order is the result of the fact that the Prosecution issued the Kosovo indictment 2 years ago, but did not issue the Croatia and Bosnia indictments until this autumn”, i.e. nine years and six years respectively after the events.

The full text of the Chamber’s Decision is available upon request from Public Information Services and has also been released on the ICTY Internet site.