IT-05-88/2-PT
D 823 - D 796
14 DECEMBER 2007

823
PvK

UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991

Case No.: IT-05-88/2-PT

Date: 14 December 2007

Original: English

IN TRIAL CHAMBER II

Before: **Judge Carmel Agius, Presiding**
Judge O-Gon Kwon
Judge Kimberly Prost, Pre-Trial Judge

Registrar: **Mr. Hans Holthuis**

Decision of: **14 December 2007**

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

DECISION ON PRELIMINARY MOTIONS ON THE INDICTMENT PURSUANT TO RULE 72 OF THE RULES

Office of the Prosecutor
Mr. Peter McCloskey

The Accused
Zdravko Tolimir

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("Tribunal") is seised of the "Preliminary Motions on the Indictment in Accordance with Rule 72 of the Rules", submitted by the Accused Zdravko Tolimir on 30 October 2007 and filed in the English version on 7 November 2007 ("Preliminary Motions"), which includes the Accused's submissions on (1) the Tribunal's lack of jurisdiction ("Motion on Jurisdiction"), (2) the defects in the form of the Indictment ("Motion on the form of the Indictment"), and (3) the severance of counts ("Motion on severance of counts"), and hereby renders its decision thereon.

I. PROCEDURAL BACKGROUND

1. The Accused, originally charged with Radivoje Miletić and Milan Gvero in a single indictment[1] which was made public against him on 25 February 2005 ("original indictment"),[2] was transferred to the seat of the Tribunal on 1 June 2007.[3] On the same day, by order of the President of the Tribunal, the case against him ("*Tolimir* case") was assigned to Trial Chamber II,[4] and by order of the Presiding Judge of that Chamber, the Trial Chamber in the *Tolimir* case was composed of Judge Carmel Agius (Presiding), Judge O-Gon Kwon and Judge Kimberly Prost.[5] On 4 June 2007,[6] the initial appearance of the Accused took place before Judge Prost.[7] On that occasion, the Accused did not enter a plea on the counts in the original indictment.[8]

2. On 12 June 2007, the Prosecution sought leave to amend the indictment against Tolimir filed on 28 August 2006 ("amended indictment"),[9] requesting, as the only substantive change, that the reference to command responsibility under Article 7(3) of the Statute of the Tribunal ("Statute") be deleted from the last paragraph of the original indictment.[10]

---

[1] *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-I, Indictment, 8 February 2005.

[2] *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-I, Decision on Motion of the Prosecution to Further Vacate the Order for Non-disclosure, 25 February 2005.

[3] *Prosecutor v. Tolimir*, Case No. IT-05-88-2/I, Order for Detention on Remand, 1 June 2007.

[4] *Prosecutor v. Tolimir*, Case No. IT-05-88-2/I, Order Assigning a Case to a Trial Chamber, 1 June 2007.

[5] *Prosecutor v. Tolimir*, Case No. IT-05-88-2/I, Order Regarding Composition of Trial Chamber, 1 June 2007.

[6] On 4 June 2007, the Deputy Registrar "decided to assign Mr. Roger Sahota as counsel to represent the Accused at his initial appearance and in such other matters as may be necessary until a permanent counsel is assigned." *See Prosecutor v. Tolimir*, Case No. IT-05-88-2/I, Decision by the Deputy Registrar, 4 June 2007.

[7] *Prosecutor v. Tolimir*, Case No. IT-05-88-2/I, Order Designating Judge for Initial Appearance, 1 June 2007.

[8] Initial Appearance, T. 10 (4 June 2007).

[9] *Prosecutor v. Tolimir*, Case No. IT-05-88-2/I, Prosecution's Submission of Amended Indictment with Attached Annexes A, B and C, 12 June 2007 ("Prosecution's Submission of Amended Indictment").

[10] Prosecution's Submission of Amended Indictment, para. 3.

3. By order of 14 June 2007, the Presiding Judge of Trial Chamber II assigned Judge Prost as Pre-Trial Judge for this case.[11] The Pre-Trial Judge convened a further appearance on 3 July 2007. During this appearance, the Prosecution's request for leave to amend the indictment in the Prosecution's Submission of Amended Indictment was granted by the Pre-Trial Judge pursuant to Rule 50(A)(i)(c) of the Rules of the Procedure and Evidence ("Rules"), and the amended indictment became the operative indictment in the *Tolimir* case ("Indictment").[12] The Accused refused to enter a plea and, as provided for in Rule 62, the Pre-Trial Judge entered a plea of not guilty on each count of the Indictment on his behalf.[13]

4. On 20 July 2007, the Trial Chamber denied the Prosecution's motion for joinder of the *Tolimir* case with the case of *Prosecution v. Popović et. al.* filed on 6 June 2007.[14] On the same day, the Trial Chamber denied the Accused's motion to review the Registry's decision denying his request for the assignment of Mr. Nebojša Mrkić as Lead Counsel.[15] The Accused subsequently submitted that he wished to conduct his own defence in his case.[16] On 27 August 2007, the Deputy Registrar notified the Trial Chamber and the parties of the Accused's election to conduct his own defence.[17]

5. On 14 September 2007, the first status conference took place. Having inquired about the Accused's understanding of his election of self-representation,[18] the Pre-Trial Judge set a deadline of 45 days starting from 17 September 2007 for him to file preliminary motions pursuant to Rule 72 (A), which motions include those challenging jurisdiction, alleging defects in the form of the indictment, and seeking the severance of counts joined in one indictment under Rule 49.[19]

6. On 25 September 2007, the Accused sought an extension of time for the filing of preliminary motions, which was denied by the Pre-Trial Judge on 18 October 2007.[20] The Accused filed the Preliminary Motions on 30 October 2007 within the time-limit prescribed by the Pre-Trial Judge. The Prosecution responded on 21 November 2007 ("Response"), requesting that the Motion

---

[11] *Prosecutor v. Tolimir*, Case No. IT-05-88-2/I, Order Designating a Pre-Trial Judge, 15 June 2007.

[12] Further Appearance, T. 24 (3 July 2007).

[13] *Ibid.*, T. 31–38 (3 July 2007).

[14] Decision on Motion for Joinder, 20 July 2007.

[15] Decision on Motion by the Accused for Review of the Registrar's Decision of 29 June 2007, 20 July 2007.

[16] *See* Motion of the Accused to be Allowed to Defend Himself Personally or to be Defended by Counsel of his own Choosing, 30 July 2007 (original version in BCS), 31 July 2007 (English translation); Submission by the Accused to the Registrar for Leave to Conduct his own Defence or to Appoint Counsel of his own Choosing Pursuant to Article 21.4(d), and Rule 45(F) and Amended Rule 62 (C) of the Rules, 6 August 2007 (original version in BCS), 10 October 2007 (English version).

[17] *See* Notification by the Deputy Registrar, 27 August 2007. The Deputy Registrar also acknowledged the termination of representation by duty counsel. *Ibid.*

[18] Status Conference, T. 54–59 (14 September 2007).

[19] *Ibid.*, T. 98–100 (14 September 2007).

be dismissed in its entirety.[21] On 3 and 4 December 2007 the Prosecution filed a supplement to the Response and a corrigendum of the same ("Supplement").[22]

II. MOTION ON JURISDICTION

7. The Accused submits numerous challenges to the jurisdiction of the Tribunal. The Trial Chamber will address them in turn.

A. Legality of Arrest

(a) Submissions of the parties

(i) Motion

8. The Accused submits that the Tribunal has no jurisdiction to try abducted persons.[23] He claims that "the Tribunal has no jurisdiction to organise and conduct [an] abduction of the accused, effect and legalise a change of his legal identity and status, deny his acquired rights guaranteed by the [Serbian] Constitution and laws of an internationally recognised state whose citizen he is," and by other international human rights conventions.[24]

9. The Accused describes his alleged illegal arrest as follows:

(1) At 3.15 a.m. on 31 May 2007, the Accused was abducted from an apartment in Belgrade, Serbia. "The abduction was carried out by a well-equipped and organised group of 20 men" who introduced themselves as policemen. After having blown up the door of the apartment with explosives, the policemen put a sack over the Accused's head, put him in a van

---

[20] Decision on Motion for Suspension of Time Limit for Filing of Preliminary Motions, 18 October 2007.

[21] Prosecution Response to the Accused's Preliminary Motion on the Indictment, Public with Confidential Appendices, 21 November 2007.

[22] Supplement to Prosecution Response to the Accused's Preliminary Motion on the Indictment, confidential, 3 December 2007; Supplement to Prosecution Response to the Accused's Preliminary Motion on the Indictment – Correction, confidential, 4 December 2007. The supplement filed on 4 December 2007 contains all six documents mentioned in its Supplement filed on 3 December 2007, namely (i) a report from Republika Srpska, dated 4 June 2007 (in BSC with English translation) ("RS Report"), (ii) an ICTY investigator's report following arrest by Don King, dated 6 June 2007 ("Don King 6 June Report"), (iii) an ICTY investigator's debrief by Don King, dated 16 June 2007 ("Don King 16 June Report"), (iv) the formal request for information sent to the Serbian government on 17 September 2007, (v) the reminder sent on 6 November 2007 extending the deadline for the Serbian government to respond to the request for information until 4 December 2007, and (vi) an internal memorandum dated 23 November 2007. On 7 December 2007, the Prosecution filed a notice to change the status of the Response and the Supplement to public in its entirety. *See* Notice of Lifting Confidential Status of Three Prosecution Filings, 7 December 2007.

[23] Preliminary Motions, p. 2, para. 1.1.

[24] *Ibid.*, p. 2, para. 1.2. *See also ibid.*, pp. 2–3, paras. 1.3–1.4.

accompanied by escort vehicles, and took him to a detention facility in Belgrade. All this was done without providing the Accused with an opportunity to be assisted by a lawyer.[25]

(2) At 8 a.m. on the same day, the Accused was taken from the detention facility to "the Pavlovića Ćuprija border crossing, near Bijeljina, on the border between Serbia and Republika Srpska ("RS")."[26] It is alleged that the fact that the Accused crossed the border without impediment indicates "the organisation, official relations, and links between the persons who abducted [him] and the state customs organs of Serbia and Bosnia and Herzegovina, which is responsible for the borders of [the RS]."[27]

(3) A patrol of the Ministry of the Interior of RS came to the border and told the Accused that they came to transfer him to Banja Luka "to speak with the Minister of Police about [his] surrender and a deal with the organs of [the RS] to carry out [his] extradition to The Hague from [the RS] with certain privileges."[28] The Accused refused the possibility of any deal to be transferred to The Hague from [the RS] and he insisted to be taken back to Serbia.[29]

(4) After a two-hour telephone conversation "conducted from Bijeljina with Belgrade and Banja Luka which were in contact with The Hague", the Accused's request to be brought back to Serbia was rejected. He was then told that "the international peacekeeping forces" would hand him over to the Tribunal.[30] The Accused was taken from Bijeljina to Bratunac where he "was kept for several hours in a vehicle which changed its location and was parked near military and police features used by the army and the police during the war."[31] According to his submission, "[s]ecret and public TV footage was continuously made in order to deceive the public that [he] had been arrested in the Bratunac area."[32]

(5) In the afternoon on the same day, the Accused was taken from Bratunac via Bijeljina to the Ministry of the Interior in Banja Luka where he was again "offered a deal to be extradited to The Hague as a citizen of [the RS]." He refused this offer and requested that he be taken back to Serbia, but his request was again rejected. Thereafter, he was handed over to

---

[25] *Ibid.*, p. 3, para. 1.5.
[26] *Ibid.*, p. 3, para. 1.6.
[27] *Ibid.*, p. 3, para. 1.7.
[28] *Ibid.*, p. 3, para. 1.8.
[29] *Ibid.*, p. 3, para. 1.9.
[30] *Ibid.*, p. 3, para. 1.10.
[31] *Ibid.*, p. 3, para. 1.11.
[32] *Ibid.*, pp. 3–4, para. 1.11.

NATO.[33] The officers of NATO, in the presence of a representative of the Office of the Prosecutor from The Hague, put him in a helicopter at the airport in Banja Luka and brought him to the NATO base in Sarajevo. On the next day, 1 June 2007, the Accused was transferred to The Hague and placed under the jurisdiction of the Dutch police, who put him in the United Nations Detention Unit.[34]

10. The Accused also submits that his abduction was confirmed by public statements of the Serbian President, Prime Minister, Minister of the Interior, Minister of Justice, Minister for Local Administration, Minister of Labour and Social Policy, Director of the Serbian Police, and President of the National Council for Cooperation with The Hague.[35] These authorities stated, argues the Accused, that he "had not been arrested by legal organs of government of Serbia, thus confirming that [he] was abducted and that [his] abduction and transfer to [the RS] was carried out by illegal groups and individuals who unlawfully extradite [him] to a neighbouring state and to the [Tribunal]."[36] He further contends that his identity papers, files and documents which were found in the apartment in Belgrade were confiscated. The Accused submits that the whole process of his arrest and transfer to the RS and ultimately to the Tribunal constitutes "a violation of the Constitution and national laws of Serbia" and the Statute of the Tribunal as well as the Rules.[37]

(ii) <u>Response</u>

11. The Prosecution response on this issue is premised on three grounds. First, it submits that it has no knowledge of, and had no involvement in, the alleged abduction and that there is "no reason to believe that any Tribunal personnel committed, or colluded with others in the commission of, any illegal activities."[38] The Prosecution states that it first became involved in the arrest of the Accused on 31 May 2007, when the RS Prime Minister contacted the Prosecution, and advised that the Accused was in the custody of the RS police.[39] In the evening of 31 May 2007, the Accused was "formally" arrested in Banja Luka by Mr. Don King, head investigator for the Office of the

---

[33] *Ibid.*, p. 4, para. 1.12.
[34] *Ibid.*, p. 4, para. 1.13.
[35] *Ibid.*, p. 4, para. 1.15.
[36] *Ibid.* The Accused also states that "[t]he work of the Security Committee of the Serbian Assembly, and a parliamentary debate in the Serbian Assembly also confirmed [his abduction]." *Ibid.*
[37] *Ibid.*, pp.4–5, para. 1.17.
[38] Response, para. 6.
[39] *Ibid.*, para. 5.

Prosecutor's Sarajevo office and subsequently transferred to The Hague.[40] The Prosecution has filed two reports from Mr King in support of its position.[41]

12. Second, the Prosecution contends that the Accused's claim that the Tribunal has denied his rights under the Serbian Constitution, the Statute of the Tribunal and other unspecified international human rights instruments is not substantiated.[42] The Prosecution stresses that it lawfully arrested and assisted in the transfer of the Accused to The Hague.[43]

13. Lastly, the Prosecution, referring to the case against Dragan Nikolić ("*Dragan Nikolić* case"),[44] submits that even if a violation of Serbia's sovereignty had occurred during his arrest, this merely would have resulted in the Accused being returned to Serbia, whereupon his extradition to The Hague would be required under Article 29(2) of the Federal Republic of Yugoslavia's law on cooperation with the ICTY.[45] Therefore, it is submitted that the Tribunal may validly exercise jurisdiction over the Accused.[46] Additionally, the Prosecution contends that the Accused does not raise any human rights violations that "are of such a serious nature that the Tribunal should decline to exercise jurisdiction."[47]

14. The two reports by Mr. King provide a substantially similar description of the events starting from the moment the Accused is in Banja Luka:

(1) During the afternoon of 31 May 2007, the Head of Mission of the Sarajevo Field Office informed Mr. King that the Accused had been detained and was being taken to Banja Luka prior to the handover to the Tribunal.[48] Mr. King went to the NATO office at the Butmir EUFOR Military Base in Sarajevo and was transported to the Banja Luka airport at 7:40 p.m. of the same day, together with a NATO legal adviser and other military staff. Shortly before 9 p.m. at the airport terminal building of the Banja Luka airport, Mr. King was

---

[40] *Ibid.*

[41] *See infra* para. 14.

[42] Response, para. 8.

[43] *Ibid.*

[44] *See Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-PT, Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal, 9 October 2002 ("*Dragan Nikolić* Trial Decision"); *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-AR73, Decision on Interlocutory Appeal Concerning Legality of Arrest, 5 June 2003 ("*Dragan Nikolić* Appeal Decision").

[45] Response, para. 14. The Prosecution notes that it has submitted to the Government of Serbia a formal request for information concerning the Accused's allegations about the manner of his arrest, seeking "all records of investigations into the alleged capture and transportation of [the] Accused Tolimir within the territory of Serbia prior to Tolimir's arrest in Republika Srpska on 31 May 2007, and any other information concerning these alleged events." The Prosecution states that it has not received a reply from the Government of Serbia. *Ibid.*, para. 9, fn. 5.

[46] Response, para. 9.

[47] *Ibid.*, para. 15.

[48] Don King 6 June Report, p. 1. *See also* Don King 16 June Report.

informed that it had been agreed that the handover and arrest procedure would take place by helicopter and that the arrival of the Accused was imminent.[49]

(2) Mr. King went to the helicopter and saw that two vehicles were parked nearby. He was informed that the Accused was in the rear of one of the vehicles. The Accused refused to leave the vehicle "because he believed that he was being filmed by a press photographer." The NATO legal advisor explained to the Accused that a NATO officer was filming the operation for his safety and the security of all those involved, the role of which is known as "Combat Camera". The Accused declined to give his name.[50]

(3) The Accused remained uncooperative and refused to leave the vehicle "as he felt he had been kidnapped before being handed into the custody of the [RS] MUP officers." He also refused to enter the helicopter as he said he had not been arrested. Mr. King explained to him that he was believed to be Zdravko Tolimir, the subject of a Tribunal arrest warrant and that there was a procedure to be carried out on board.[51]

(4) At about 8:15 p.m., the Accused entered the helicopter. Two small bags of his personal property were also brought into the helicopter. The EUFOR security team searched him and offered a medical examination. The Accused initially declined the medical examination but, subsequently he agreed to it.[52]

(5) Following this, Mr. King went through the Tribunal's arrest procedure with the Accused, which was filmed by the Combat Camera. Throughout the procedure, the Accused did not confirm his identity, declined to reply to Mr. King's offer of a lawyer. He also refused a copy of the warrant for his arrest. Mr. King "formally" arrested the Accused and then they were flown back to the Butmir EUFOR Base. In this military base, the Accused was detained overnight to await air transfer to The Hague. During his detention, the Accused's property was listed and secured in his presence. He underwent further medical examinations. He refused to take any of the medication that was in his possession. He was given refreshments and slept in a bed in the security facility of the base.[53]

(6) On the morning of 1 June 2007, the Accused was transferred to The Netherlands and handed over to the Tribunal's Registry representatives at Rotterdam Airport. The Accused's

---

[49] Don King 6 June Report, p. 1.
[50] *Ibid.*
[51] *Ibid.*
[52] *Ibid.*, p. 2.
[53] *Ibid.*

detention and transfers were filmed by the Combat Camera. Due to his health and physical condition he was not handcuffed at any time during his detention and transfers.[54]

15. The RS Report attached to the Supplement describes the events concerning the arrest of the Accused as follows:

(1) In the early hours of 31 May 2007, members of the Security and Information agency of the Republic of Serbia called the Criminal Police Administration in the RS, informing that they had intelligence information to the effect that in the course of the same day "some of the Hague indictees, most probably Ratko Mladić or someone close to him" would attempt to cross over from Serbia to the territory of the RS in Bosnia and Herzegovina ("BiH").[55] Based on this information, the deputy head and other members of the Criminal Police Administration went to the area of the Bijeljina Public Security Centre to blockade and control there. This coordinated action "both from the territory of Serbia and that of the [RS]" started around 2 p.m. on the same day.[56]

(2) At around 2:15 p.m., a mobile team of the Criminal Police Administration intercepted the movement of a person who was walking towards the settlement of Sopotnik. The man was stopped and an attempt to identify him was made. He stated that he had no identification papers and introduced himself as General Zdravko Tolimir, officer of the Army of the RS. He was asked where he came from, whether he was driven to the location, and where he was going but refused to respond. His clothes and two bags he was carrying were examined. Neither identification papers nor weapons were found. The man provided the following personal information: Zdravko Tolimir, son of Stanko and Darinka, born on 27 November 1948 in Popovići, municipality of Glamoč in the BiH, residing in Belgrade, and a citizen of Serbia and of BiH.[57]

(3) The Accused was immediately put into a police vehicle and then transported to Banja Luka escorted by the entire team of the Criminal Police Administration. He was visibly nervous.[58]

(4) At around 6 p.m., the Accused was driven to the RS MUP official premises. At around 8:10 p.m., the Accused was taken from there to the Mahovljani airport near Banja Luka where

---

[54] *Ibid.*

[55] RS Report, p. 1. The RS Report states that the location was "between Zvornik and Ljubovija, most probably on the territory bordering with Ljubovija, to the municipality of Bratunac." *Ibid.*, pp. 1–2.

[56] *Ibid.*, p. 2.

[57] *Ibid.*, pp. 2–3.

[58] *Ibid.*, p. 3.

Mr. King officially apprehended him. The Accused was then put into a EUFOR helicopter with his personal belongings. At around 9 p.m., the helicopter flew him to Sarajevo.[59]

(b) Discussion

16. The Trial Chamber notes the jurisprudence of this Tribunal related to the question of jurisdiction in cases of alleged abductions.[60] In particular, in the *Dragan Nikolić* case the issue was examined in depth both by the Trial Chamber and by the Appeals Chamber.[61]

17. Applying that jurisprudence to the facts of this case, the Trial Chamber will consider whether the circumstances are such so as to require the Tribunal to decline to exercise its jurisdiction on the basis of a violation of State sovereignty or a violation of human rights.

(i) Circumstances under which violation of State sovereignty require jurisdiction to be set aside

18. The Appeals Chamber in the *Dragan Nikolić* case examined relevant national cases in order to determine State practice on whether irregularities in the manner in which an accused is brought before a court have an impact on the exercise of jurisdiction by the court itself.[62] The Appeals Chamber concluded that the following two principles seem to have support in State practice:

> First, in cases of crimes such as genocide, crimes against humanity and war crimes which are universally recognised and condemned as such ("Universally Condemned Offences"), courts seem to find in the special character of these offences and, arguably, in their seriousness, a good reason for not setting aside jurisdiction. Second, absent a complaint by the State whose sovereignty has been breached or in the event of a diplomatic resolution of the breach, it is easier for courts to assert their jurisdiction. The initial *iniuria* has in a way been cured and the risk of having to return the accused to the country of origin is no longer present.[63]

The Appeals Chamber further held:

---

[59] *Ibid.*, p. 3. The Report also states that "the Minister of Interior of the RS was informed about the [Accused's] apprehension over the phone and he was aware of that the [Accused] was driven to Banja Luka because of a timely reaction regarding the representatives of the International Community and Hague Tribunal."

[60] *See e.g.*, *Prosecutor v. Mrksić, Radić, Šljivančanin, Dokmanović*, Case No. IT-95-13a-PT, "Decision on the Motion for Release by the Accused Slavko Dokmanović Trial Chamber I", 22 October 1997 ("*Dokmanović* Trial Decision"). Slavko Dokmanović was the first case before the Tribunal in which the accused raised the legality of his arrest. The Trial Chamber in that case found that the trickery used by the Prosecution to arrest Dokmanović did not amount to "a forcible abduction or kidnapping" and that such "luring" was consistent with principles of international law and the sovereignty of the FRY. Finally, the Trial Chamber held that "[g]iven that the Trial Chamber had found that the particular method used to arrest and detain Mr. Dokmanović was justified and *legal*, we need not decide at this time whether the International Tribunal has the authority to exercise jurisdiction over a defendant *illegally* obtained from abroad." *Dokmanović* Trial Decision, paras. 57, 78. *See also*, *Dragan Nikolić* Trial Decision and *Dragan Nikolić* Appeal Decision.

[61] *See Dragan Nikolić* Trial Decision and *Dragan Nikolić* Appeal Decision.

[62] *See Dragan Nikolić* Appeal Decision, paras. 21–23.

[63] *Dragan Nikolić* Appeal Decision, para. 24.

> Universally Condemned Offences are a matter of concern to the international community as a whole. There is a legitimate expectation that those accused of these crimes will be brought to justice swiftly. [...] This legitimate expectation needs to be weighed against the principle of State sovereignty and the fundamental human rights of the accused. [...] In the opinion of the Appeals Chamber, the damage caused to international justice by not apprehending fugitives accused of serious violations of international humanitarian law is comparatively higher than the injury, if any, caused to the sovereignty of a State by a limited intrusion in its territory, particularly when the intrusion occurs in default of the State's cooperation. Therefore, the Appeals Chamber does not consider that in cases of universally condemned offences, jurisdiction should be set aside on the ground that there was a violation of the sovereignty of a State, when the violation is brought about by the apprehension of fugitives from international justice, whatever the consequences for the international responsibility of the State or organisation involved. This is all the more so in cases [...] in which the State whose sovereignty has allegedly been breached has not lodged any complaint and thus has acquiesced in the International Tribunal's exercise of jurisdiction. *A fortiori*, and leaving aside for the moment human rights considerations, the exercise of jurisdiction should not be declined in cases of abductions carried out by private individuals whose actions, unless instigated, acknowledged or condoned by a State, or an international organisation, or other entity, do not necessarily in themselves violate State sovereignty.[64]

19. In the present case, the Accused is charged with genocide, crimes against humanity and war crimes. Assuming, without deciding, that a violation of state sovereignty occurred in the instant case, the Trial Chamber finds that given the serious crimes involved such a violation is not sufficient to justify the setting aside of jurisdiction by this Tribunal. Moreover, the Trial Chamber notes that Serbia did not lodge a complaint. Therefore, any alleged violation of state sovereignty is not a basis to decline jurisdiction in this instance.

(ii) Circumstances under which violation of human rights require jurisdiction to be set aside

20. In considering the question of the effect of alleged human rights violations, the Trial Chamber will also rely on the findings of the Appeals Chamber in the *Dragan Nikolić* case. The Appeals Chamber first endorsed the analysis of the Trial Chamber of that case, which found that the treatment of the Appellant was not of such an egregious nature so as to impede the exercise of jurisdiction, but did not exclude that jurisdiction should not be exercised in certain cases. The Trial Chamber held that:

> [I]n a situation where an accused is very seriously mistreated, maybe even subject to inhuman, cruel or degrading treatment, or torture, before being handed over to the Tribunal, this may constitute a legal impediment to the exercise of jurisdiction over such an accused. This would certainly be the case where persons acting for SFOR or the Prosecution were involved in such very serious mistreatment.[65]

21. This approach was found by the Appeals Chamber as consistent with, among other cases, the approach taken by the Trial Chamber in the case against *Slavko Dokmanović* before this Tribunal, and the finding of the Appeals Chamber in the case against *Jean-Bosco Barayagwiza*

---

[64] *Dragan Nikolić* Appeal Decision, paras. 25–26 (footnotes omitted).

[65] *Dragan Nikolić* Trial Decision, para. 114.

012

before the International Tribunal for Rwanda ("ICTR").[66] The ICTR Appeals Chamber held that a court may decline to exercise jurisdiction in cases "where to exercise that jurisdiction in light of serious and egregious violations of the accused's rights would prove detrimental to the court's integrity".[67]

22. The Appeals Chamber in the *Dragan Nikolić* case agreed with these views and stated that:

> Although the assessment of the seriousness of the human rights violations depends on the circumstances of each case and cannot be made *in abstracto*, certain human rights violations are of such a serious nature that they require that the exercise of jurisdiction be declined. It would be inappropriate for a court of law to try the victims of these abuses. Apart from such exceptional cases, however, the remedy of setting aside jurisdiction will, in the Appeals Chamber's view, usually be disproportionate. The correct balance must therefore be maintained between the fundamental rights of the accused and the essential interests of the international community in the prosecution of persons charged with serious violations of international humanitarian law.[68]

23. In the present case, the Accused alleges that he was forcibly abducted from his apartment in Belgrade by a group of 20 "policemen" and brought to the RS, where he was then surrendered to NATO forces. As confirmed by the Prosecution and the RS authorities, the Accused was handed over to a representative of the Office of the Prosecutor of the Tribunal and transferred to The Hague. The Accused submits that the manner in which his abduction, transfer to the RS and ultimately transfer to the Tribunal were conducted resulted in a violation of his rights. According to the Accused, the NATO forces and the representatives from the Prosecution involved in the abduction acted in collusion with his captors and therefore the unlawful conduct of his capture, detention and transfer to The Hague are imputable also to them.[69]

24. The Trial Chamber notes that the only information concerning the very initial phase of the Accused's arrest is the description of the events given by the Accused himself. Although there was a request by the Prosecution for information from the relevant authorities of Serbia, no response has been received regarding the Accused's capture in Belgrade and his transportation within the

[66] *See Dragan Nikolić* Appeal Decision, para. 29, referring to *Dokmanović* Trial Decision, paras. 70–75.

[67] *Jean-Bosco Barayagwiza v. Prosecutor*, Case No. ICTR-97-19-AR72, Decision, 3 November 1999, para. 74. The Appeals Chamber in *Barayagwiza* applied this principle in ordering the release of the accused, as he was found to be the subject of human rights violations, including an excessively long pre-trial detention and the failure to promptly inform the accused of the charges against him. At the request of the Prosecutor, the Appeals Chamber reviewed this decision. It in its decision of 31 March 2000, the Appeals Chamber reversed the remedy it had previously ordered on the basis of new facts put forward by the Prosecution. These new facts presented a different picture of the violations of rights suffered by the accused and of the omissions of the Prosecutor. Despite this, in the decision of March 2000, the Appeals Chamber "confirm[ed] its Decision of 3 November 1999 on the basis of the facts it was founded on." *Jean-Bosco Barayagwiza v. Prosecutor*, Case No. ICTR-97-19-AR72, Decision (Prosecutor's Request for Review or Reconsideration), 31 March 2000, para. 51.

[68] *See Dragan Nikolić* Appeal Decision, para. 30 (footnotes omitted).

[69] *See supra* paras. 9–10.

territory of Serbia until his arrest in the RS on 31 May 2007.[70] Starting from the moment in which the Accused is in Banja Luka on 31 May 2007, the Prosecution and the RS authorities provide their description of the events, which substantially coincide with the one given by the Accused.

25. For the purpose of the present analysis only, the Trial Chamber is prepared to accept the factual allegations of the Accused related to the initial phase of his arrest. The Chamber has considered those facts, as well as the descriptions of the entire process of arrest as set out by the Accused and in the RS Report and the Prosecution's reports.[71] What is before the Trial Chamber—with reference to each phase of the arrest individually and cumulatively—does not amount to a human rights violation of such a serious nature so as to require that the exercise of jurisdiction be declined. In fact, the only irregular aspect of the arrest is the alleged circumstances surrounding the Accused's removal from his apartment in Belgrade. Assuming those allegations to be true, even that scenario however is not so egregious as to merit declining jurisdiction over this Accused in relation to the grave crimes charged against him.

26. Further, the Accused did not provide any evidence to show the involvement of either NATO or the Prosecution in the initial phase of his arrest. In addition, the Prosecution has provided evidence to the contrary, as the Investigator's report attached to the Prosecution's Response denies any such involvement. Once the Accused came into contact with NATO and the Prosecution his arrest was carried out in a lawful manner and without any violations of his rights. Thus, the Trial Chamber is satisfied that the circumstances of this case do not justify declining the exercise of jurisdiction by this Tribunal.

B. General submissions of lack of jurisdiction

(a) Submissions of the parties

(i) Motion

27. In support of his general argument that the Tribunal has no jurisdiction to try him, the Accused makes two broad submissions.[72] The Accused first contends that the Tribunal was not lawfully established.[73] In this regard, he argues that the Security Council as a political organ of the United Nations exceeded its power in establishing the Tribunal, which, consequently, rendered it

[70] *See* Supplement, the formal request for information sent to the Serbian government on 17 September 2007, the reminder sent on 6 November 2007 extending the deadline for the Serbian government to respond to the request for information until 4 December 2007, and an internal memorandum dated 23 November 2007.

[71] Namely, Don King 6 June Report and Don King 16 June Report.

[72] Preliminary Motions, pp. 5–9, para. 1.18.

[73] *Ibid.*, pp. 5–7.

unlawful and biased.[74] Second, the Accused asserts that the Tribunal is not set up in accordance with international human rights standards. He alleges that the Statute, the Rules and the practice before the Tribunal lead to violations of the accused's rights, as guaranteed by the International Covenant on Civil and Political Rights ("ICCPR") and the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"). In particular, the Accused submits that the appellate system has not been set up properly "because Judges in the second-instance proceedings rotate between the fist-instance and appeals chambers, so they act as second-instance appeals chambers to one another";[75] the accused's right to be tried without undue delay is violated;[76] the length of sentences imposed contravenes international law and the general practice regarding prison sentences in the courts of the former Yugoslavia;[77] and the Tribunal does not guarantee "the principle of equality of the parties" by permitting the Prosecutor to be "in a privileged position."[78]

(ii) Response

28. The Prosecution responds that none of the Accused's 'general legal assertions' about the Tribunal's legal foundation,[79] appellate system,[80] detention policy,[81] sentencing guidelines[82] and the equality of arms between the parties before the Tribunal,[83] constitutes a valid challenge to the jurisdiction of the Tribunal.[84]

(b) Discussion

29. The jurisprudence of this Tribunal has clearly affirmed that the Tribunal was lawfully established. In particular, the Appeals Chamber in the *Tadić* case analysed the issue in depth,[85] and found that the Tribunal "has been lawfully established as a measure under Chapter VII of the Charter."[86] It further stated that the Tribunal was established in accordance with the principle of the rule of law. It held that:

---

[74] *Ibid.*, pp. 5–6. In this respect, the Accused also argues that the Tribunal has no jurisdiction over individuals because "no organ of the United Nations can ever have direct jurisdiction over them." *Ibid.*, pp. 8–9.

[75] *Ibid.*, pp. 6–7.

[76] *Ibid.*, p. 7.

[77] *Ibid.*

[78] *Ibid.*, pp. 7–9.

[79] Response, para. 17.

[80] *Ibid.*, para. 18.

[81] *Ibid.*, para. 19.

[82] *Ibid.*, para. 21.

[83] *Ibid.*, paras. 22–24.

[84] *Ibid.*, para. 16.

[85] *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ("*Tadić* Appeal Decision"), paras. 9–48.

[86] *Tadić* Appeal Decision, para. 40.

> For a tribunal such as this one to be established according to the rule of law, it must be established in accordance with the proper international standards; it must provide all the guarantees of fairness, justice and ever-handedness, in full conformity with internationally recognized human rights instruments.[87]

30. The provisions included in the Statute and the Rules demonstrate that the Tribunal has been established in accordance with the rule of law. Pursuant to Article 20(1), any Trial Chamber must ensure "that a trial is fair and expeditious and that proceedings are conducted in accordance with [the Rules], with full respect for the rights of the accused and due regard for the protection of victims and witnesses." The fair trial guarantees in Article 14 of the ICCPR have been adopted almost verbatim in Article 21.[88] Other fair trial guarantees appear in the Statute and the Rules.[89] The Appeals Chamber in the *Tadić* case concluded that the Tribunal was "established in accordance with the appropriate procedures under the United Nations Charter and provides all the necessary safeguards of a fair trial. It is thus 'established by law'."[90]

31. In particular, both the Statute and Rules ensure that any decision rendered by a Trial Chamber may be subject to appeal.[91] The fact that permanent Judges may rotate on a regular basis between the Trial Chambers and the Appeals Chamber based on "the efficient disposal of case"[92] offers no basis for the Accused to claim that the appellate system of the Tribunal is flawed. Independence of judges is imperative before this Tribunal. Article 13 ensures the high moral character, impartiality, integrity and competence of the Judges of the Tribunal.

---

[87] *Ibid.*, para. 45.

[88] Article 21 reads: "1. All persons shall be equal before the International Tribunal. 2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute ["Protection of victims and witnesses"]. 3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute. 4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: [...] (c) to be tried without undue delay; [...] (e) to examine, or have examined, the witness against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him [...]." *See also* Article 9(3) of the ICCPR which reads: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."; Article 14(3) of the ICCPR reads: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] (c) To be tried without undue delay."

[89] *See also*, *Tadić* Appeal Decision, para. 46.

[90] *Ibid.*, para. 47.

[91] Article 25 on "Appellate proceedings" reads: "1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds: (a) an error on a question of law invalidating the decision; or (b) an error of fact which has occasioned a miscarriage of justice. 2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers." Part Seven of the Rules also contains provisions regarding the appellate proceedings (Rules 107–110). *See* also Rule 72 (B) on interlocutory appeals in the pre-trial phase and Rule 73 (B) on interlocutory appeals in the trial phase.

[92] Rule 27(A) ("Rotation").

32. Likewise, there is no basis for the Accused's assertion that "detention is a rule, and release to conduct one's defence is an exception, and trials are not held within a reasonable time."[93] The Rules provide for provisional release if conditions are met,[94] and there are numerous Rules and measures in place to ensure trials in a reasonable time.

33. The Trial Chamber further notes that it is well recognised in the jurisprudence of the Tribunal that although a Trial Chamber must consider the sentencing practices in the former Yugoslavia, it is not bound by such practice; rather, it should refer to this practice as an aid in determining an appropriate sentence.[95] Rule 101,[96] which, in accordance with Article 24,[97] grants the power to imprison for the remainder of a convicted person's life, is indicative of the fact that a Trial Chamber is not bound by a maximum sentence possible under a particular national legal system.[98]

34. Finally, the Trial Chamber does not find a basis for the Accused's general claim that the Tribunal violates the principle of equality of arms.[99] Quite to the contrary, Article 21, as referred to above, stipulates equal standing before the Tribunal, which is part of the guarantees of a fair trial provided by the Statute.[100] The principle of equality of arms has been applied in this Tribunal in many contexts.[101] Nothing in the Statute, the Rules, or the jurisprudence of the Tribunal violates

---

[93] Preliminary Motion, p. 7.

[94] *See* Rule 65 on "Provisional Release".

[95] *See Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005, para. 827, referring to, among others, *Prosecutor v. Tadić*, Judgement in Sentencing Appeal, 26 January 2000 ("*Tadić* Sentencing Appeal Judgement"), para. 20.

[96] Rule 101 provides, *inter alia*, that: "(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life. (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as: (i) any aggravating circumstances; (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute."

[97] Article 24 reads: "1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the court of the former Yugoslavia. 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. [...]."

[98] *See Tadić* Sentencing Appeal Judgement, para. 21.

[99] Preliminary Motions, pp. 7–9, in which the Accused alleges violation of the "principle of equality of the parties".

[100] *See Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement"), para. 44. *See also*, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Application by Mario Čerkez for Extension of Time to file his Respondent's Brief, 11 September 2001, para. 5.

[101] *See Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Judgment, 17 December 2004, para. 176 ("the Appeals Chamber has already, prior to this appeal, had occasion to consider the principle and held that the 'principle of equality of arms is described as being only one feature of the wider concept of a fair trial.' Nevertheless, the right of an accused to have adequate time and facilities to prepare his or her defence does not imply that the Chambers are charged to ensure parity of resources between the Prosecutor and the Defence, such as the material equality of financial or personal resources. The right to equality arms is not a right to equality of relief." Footnotes omitted); *Tadić* Appeal Judgement, para. 52 ("This principle [of equality of arms] means that the Prosecution and the Defence must be equal before the Tribunal Chamber. It follows that the Chamber shall provide every practicable facility it is capable of granting under the Rules and [the] Statute when faced with a request by a party for assistance in

this principle. To the extent that the Accused argues that the Statute and the Rules violate this principle by, *inter alia*, allowing Trial Chambers to adopt measures aimed at protecting the rights of witnesses or information provided by States,[102] the Trial Chamber notes that in applying these measures, a balance is always struck between the rights of the accused and the other public interest considerations involved. Lastly, contrary to the Accused's argument, the independence of the Prosecutor acting as a separate organ of the Tribunal is guaranteed in the Statute.[103]

35. The provisions enshrined in the Statute and the Rules are indeed in full conformity with internationally recognized human rights instruments. For the reasons above, the Trial Chamber finds that the arguments set forth in the Motion on Jurisdiction do not demonstrate a lack of jurisdiction of the Tribunal over the Accused.

III. MOTION ON FORM OF THE INDICTMENT

A. Submissions of the parties

1. Motion

36. The Accused raises several arguments in challenging the form of the Indictment.[104] His main arguments can be summarised as follows.

37. First, the Accused submits that the Indictment "represents a ready-made form on which you can enter any of the hundreds of names of people from the Serbian state and political organs or military and political officers, and the contents of the [I]ndictment would remain literally the same."[105]

---

presenting its case."). *See also*, *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on the Financing the Defence of the Accused, 30 July 2007, para. 52; *Prosecutor v. Krajišnik,* Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007, para. 41.

[102] Preliminary Motions, pp. 7–9. The Accused argues that "[i]n accordance with Rule 66, paragraph (C), the Prosecutor may, pursuant to the approval by the Trial Chamber, deny the right to the defence to see evidence if it would be contrary to the public interest or affect the security interests of any State, and this is assessed by the Prosecutior. [...] Secretly concealing the identity of a witness (Rule 75), allowing a prosecution witness to decline to answer a question on grounds of confidentiality (Rule 70), compelling a witness to incriminate himself (Rule 90 E), and the possibility of withholding disclosure of evidence (Rule 70) put the Prosecutor in a privileged position and /allow/ the use of unequal and advantageous weapons in relation to the defence [...]. " *Ibid.*, p. 8.

[103] Article 16 reads in part: "1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991. 2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source."

[104] Preliminary Motions, pp. 9–13, paras. 2.1–2.18 Among the arguments, the Accused reiterates his claims concerning his illegal arrest (p. 9, para. 2.1) and his request to have the Indictment and the supporting material under Rule 66(A)(i) disclosed in the Cyrillic script (pp. 12–13, paras. 2.17–2.18).

[105] *Ibid.*, p. 9, para. 2.2.

38. The Accused claims that the Indictment does not provide information on the elements of the crimes charged, on how the crimes had allegedly been committed and how the Accused is held responsible for them.[106]

39. The Accused challenges a number of substantive allegations in the Indictment, claiming that some of them are not true, and others do not amount to criminal conduct or to any form of responsibility alleged in the Indictment.[107]

40. The Accused further challenges the joint criminal enterprise ("JCE"), arguing its lack of legal basis in the Statute[108] and the ambiguous way it is charged in the Indictment. In this last respect, the Accused submits that the Indictment (1) does not specify the causal link between the crimes charged and the Accused;[109] (ii) does not provide information on the creation of the common plan, its content and form;[110] and (iii) does not provide any basis for the existence of a joint criminal enterprise and for his alleged participation in it.[111]

---

[106] *Ibid.*, p. 10, para. 2.9. The Accused submits that "[t]he Indictment [...] contains no clear, unambiguous facts or factual information on the act and manner of commission of crimes, unlawfulness, causal link, objective and subjective elements necessary to identify the legal elements of a crime, or information indicating the likelihood that [he] committed the crimes with which [he is] charged [...]" and that "[c]onsidering that there are no elements of the crimes charged, [...] the International Tribunal has no jurisdiction to prosecute [him] for the counts of the Indictment." *Ibid.*

[107] The Accused alleges, *inter alia*, that "[t]he factual context of the Indictment and the description of [his] establishment duties and powers are incorrectly and imprecisely worded so that [he] can be imputed that [he] had any unit of the Army of Republika Srpska in the direct line of command or under [his] 'supervision', which is not true [...]" (*Ibid.*, pp. 9–10, para. 2.3) and that "[he is] charged in the Indictment with transmitting to General Krstić the order on the takeover of the Srebrenica enclave on 9 July 1995. This is neither a crime nor instigation [...]." (*Ibid.*, p. 11, para. 2.13); (iii) with regard to charges against him concerning Žepa, "[t]o conduct negotiations with soldiers and the population on the status of a demilitarised zone is not a war crime [...]." (*Ibid.*, p. 12, para. 2.15).

[108] The Accused submits that "[w]hen adopting the Statute [...], the Security Council did not include conspiracy as a form or type of individual criminal responsibility. Insistence on [his] participation in joint criminal enterprises, against Article 7, paragraph 1 [...] constitutes a violation of the '*in dubio pro reo*' principle that suspicion is resolved in favour of the accused." *Ibid.*, p. 10, para. 2.6.

[109] The Accused submits that "[his] alleged participation is used as a generally derived term for the commission or any form of co-perpetration, and there is a tendency to emphasize it or represent it outside any causal relationship. With this wording, the Indictment exceeds the prescribed and possible grounds of individual criminal responsibility and contravenes the provisions of Article 7 [...]." *Ibid.*, p. 10, para. 2.4.

[110] The Accused submits that "[t]he Indictment does not specify at all who created the plan of a joint criminal enterprise, when the plan was made, what it contained, how it was worded orally or in writing, whether it was a public or secret document, etc". *Ibid.*, p. 10, para. 2.5.

[111] The Accused submits that "[t]he wording 'participation in a joint criminal enterprise' in Article 7 [...] is groundless and represents an attempt at changing it and compensating for the lack of command responsibility and impossibility to prove the non-existent individual responsibility." (*Ibid.*, p. 10, para. 2.8) and that "[n]othing is provided to prove that such a 'joint enterprise' existed or how it could affect [his] criminal responsibility when [he] did not commit any of the crimes [charged] in the Indictment [...], nor [has he] ever or in any manner, consciously or unconsciously, took part and acted in any 'joint criminal enterprise'" (*Ibid.*, p. 11, para. 2.11).

41. The Accused complains about the use of a document dated 1992 in support of the Indictment.[112] He also claims that the Prosecution has not provided facts relevant to the other forms of responsibility alleged in the Indictment.[113]

2. Response

42. The Prosecution avers that the Indictment is not defective because "the charges, specific crimes and nature of the Accused's involvement are clearly set out" and that the Indictment "details the nature and cause of the charges against the Accused in terms of these two JCEs", namely, his participation in the JCE to murder the able-bodied Muslim men from Srebrenica, and to forcibly transfer or deport the Bosnian Muslim population from Srebrenica and Žepa.[114] It also submits that the substantive allegations against the Accused that he seeks to address in the Indictment should be dealt with at trial.[115]

43. The Prosecution further submits the Accused's complaint about the reference to a document dated 1992 in support of the Indictment is ill-founded because "[t]here is no temporal limit on the evidence that may be used to prove any such crimes" as committed since 1991.[116]

B. General pleading principles

44. Article 18(4) and Rule 47(C) provide that an indictment shall contain a concise statement of the facts of the case and the crimes with which the accused is charged under the Statute. The provisions should be interpreted together with the rights of the accused set out in Article 21(2) and, in particular, Article 21(4)(a) and (b), which entitle the accused to be informed of the nature and cause of the charges against him in a language he understands, and to have adequate time and facilities for the preparation of his defence. These provisions translate into an obligation on the part of the Prosecution to plead the material facts underpinning the charges with enough detail to inform the accused clearly of the charges against him so that he may prepare his defence.[117]

---

[112] The Accused submits that "[i]t is also unacceptable that 'Strategic Objectives of the Serbian People in Bosnia and Herzegovina', adopted on 12 May 1992 [...] are included in the Indictment as a preamble or pre-text for joint criminal enterprises, especially because the creator of the Statute did not criminalise them when it adopted the Statute a year later." *Ibid.*, p. 10, para. 2.7.

[113] The Accused submits that "no crime which [he] personally planned and committed, or any specific crime by means of which [he] instigated, aided and abetted others has been listed. Nowhere does the Indictment cite my specific mutual relationship in the instigator-main perpetrator relation at the time the crime was committed." *Ibid.*, p. 11, para. 2.12.

[114] Response, para. 25.

[115] *Ibid.*, para. 26.

[116] *Ibid.*, para. 27.

[117] *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement"), para. 209 citing *Prosecutor v. Kupreškić, Kupreškić, Kupreškić, Kupreškić, Josipović, Šantić*, Case No. IT-95-16-A, Judgement, 23

45. The materiality of a particular fact depends on the nature of the Prosecution case and the alleged criminal conduct with which the accused is charged. The materiality of facts such as the identity of the victims, the time and place of the events alleged in the indictment and the description of those events depends upon the proximity of the accused to those events and, therefore, the form of individual responsibility with which the accused is charged. It has been established in the jurisprudence of the Tribunal that the precise details to be pleaded as material facts are the acts of the accused himself, not the acts of those persons for whose acts he is alleged to be responsible.[118] Furthermore, where the scale of the crimes renders it impractical to require a high degree of specificity regarding, for example, the identity of the victims, the Prosecution does not need to identify every victim in the indictment in order to meet its obligation of specifying the material facts of the case.[119]

46. As to the pleading of different forms of liability under Article 7(1), it is required that the nature of the alleged individual responsibility of an accused be pleaded in an unambiguous way in the indictment.[120] The Prosecution is entitled to plead different forms of responsibility under Article 7(1). In such a case the Prosecution has to plead the material facts relevant to each of the modes of liability alleged in the indictment so that the accused may effectively prepare his defence.[121] Likewise, if the accused is charged with the "commission" of a crime, it should be made clear in the indictment whether he is charged with physical commission or participation in a JCE, or both.[122] An accused charged with participation in a JCE must be informed by the indictment of (i) the nature or purpose of the JCE; (ii) the period over which the enterprise is said to have existed; (iii) the identity of those engaged in the JCE, at least by reference to their category as a group; and (iv) the nature of participation of the accused in the JCE.[123]

October 2001 ("*Kupreškić et al.* Appeal Judgement"), para. 88). *See also, Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Tolimir, Miletić, Gvero, Pandurević, Trbić*, Case No. IT-05-88-PT, Decision on Motions Challenging the Indictment pursuant to Rule 72 of the Rules, 31 May 2006 ("*Popović et al.* Decision Challenging Indictment"), para. 4.

[118] *See e.g., Blaškić* Appeal Judgement, para. 210. *See also, Popović et al.* Decision Challenging Indictment, para. 5

[119] *See e.g., Kupreškić et al.* Appeal Judgement, paras. 89–90. *See also, Popović et al.* Decision Challenging Indictment, para. 5.

[120] *See e.g., Blaškić* Appeal Judgement, para. 226; *Krnojelac* Appeal Judgement, para. 138. *See also, Popović et al.* Decision Challenging Indictment, para. 25.

[121] *See e.g., Prosecutor v. Kvočka, Radić, Žigić, Prcać*, Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvočka* Appeal Judgement"), paras. 29, 41. *See also, Popović et al.* Decision Challenging Indictment, para. 25.

[122] *See e.g., Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Judgement, 17 September 2003 ("*Krnojelac* Appeal Judgement"), para. 138. *See also, Popović et al.* Decision Challenging Indictment, para. 25.

[123] *See e.g., Prosecutor v. Brđanin*, Case No. IT-99-36-T, Judgement, 1 September 2004, para. 346; *Prosecutor v. Simić, Tadić, Zarić*, Case No. IT-95-9-T, Judgement, 17 October 2003, para. 145; *Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, Decision on Form of Second Amended Indictment, 11 May 2000, para. 16; *Popović et al.* Decision Challenging Indictment, para. 44.

C. Discussion

47. As a preliminary matter, the Trial Chamber notes that the jurisdiction *ratione temporis* as defined in Article 1 of the Statute allows for the prosecution of crimes committed since 1991.[124] The Prosecution may use any evidence that it may deem relevant to support its case. There is no temporal limit on such evidence.

1. Challenges on the truth of allegations

48. Whether the allegations of the Indictment are true or not is not a matter to be considered at the pre-trial stage pursuant to Rule 72, but a matter of evidence to be proven during trial.[125] The Trial Chamber is not required, at this stage in the proceedings, to determine whether there is sufficient evidence put forward by the Prosecution to support the allegations made against an accused in the indictment.[126] Accordingly, the Trial Chamber notes that any such submission of the Accused in his Motion on the form of the Indictment, including those in paragraphs 2.3, 2.14–2.15, relate to matters which do not concern the form of the Indictment, but to matters to be dealt with at trial.

2. Challenges to the pleading of material facts supporting crimes charged

49. The Accused is charged with two counts of genocide under Article 4, namely genocide and conspiracy to commit genocide;[127] five counts of crimes against humanity under Article 5, namely, extermination, murder, persecutions on political, racial and religious grounds, inhumane acts (forcible transfer) and deportation, and one count of violations of the laws or customs of war under Article 3, namely murder. The Indictment alleges that the Accused is individually responsible for the crimes charged against him pursuant to Article 7(1). The Indictment states that during the time

---

[124] Article 1 of the Statute reads that the Tribunal "shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 [...]."

[125] *See also*, *Popović et al.* Decision Challenging Indictment, para. 86.

[126] *See also*, *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-AR73.1, Decision on Vinko Pandurević's Interlocutory Appeal Against the Trial Chamber's Decision on Joinder of Accused, 24 January 2006, para. 13.

[127] The Indictment alleges that between 11 July 1995 and 1 November 1995, the Accused and others with intent to destroy a part of the Bosnian Muslim people as a national, ethnical, or religious group killed members of the group by summary execution, including both planned and opportunistic summary executions, and caused serious bodily or mental harm to both female and male members of the Bosnian Muslim population of Srebrenica and Žepa. The Indictment also alleges that the Accused and others entered into a conspiracy to commit genocide. According to the Indictment, the Accused and others agreed to kill the able-bodied Bosnian Muslim men from Srebrenica who were captured or surrendered after the fall of Srebrenica on 11 July 1995, and to remove the remaining Bosnian Muslim population of Srebrenica and Žepa from the RS, with the intent to destroy those Bosnian Muslims. *See* Indictment, paras. 10, 25.

period relevant to the events described in the indictment, the Accused was the Assistant Commander for Intelligence and Security of the Main Staff of the VRS.[128]

50. The Prosecution has identified when and where the alleged crimes were committed. The Trial Chamber notes in particular that the Indictment pleads the alleged forcible separation of more than 1,000 Bosnian Muslim men and boys from their families in Potočari on 12 and 13 July 1995, and the removal of the entire Bosnian Muslim population from the area of Potočari by forced displacement of the women, children and elderly to Bosnian Muslim-controlled territory, and by forced displacement of the separated men and boys to different detention sites mentioned in the Indictment. The Indictment also pleads that, between 12 and about 19 July 1995, approximately 6,000 Bosnian men and boys, who were trying to escape the Srebrenica enclave, were captured or surrendered, and were together with the men who had been separated in Potočari detained in several detention sites and subsequently executed. Many of the detention and execution sites are listed and a detailed description of the alleged organised systematic murder of the Bosnian Muslim men provided in paragraphs 21.1 to 21.16 of the Indictment, as well of the alleged murder of the Bosnian Muslim men provided in paragraphs 22 to 22.4 of the Indictment. It further pleads in paragraphs 53–57 that on 14 July 1995 the Bosnian Serb Army ("VRS") started to attack the Žepa enclave by shelling civilian areas, that the women and children were transported out of the enclave from 25 July 1995 onwards, and that the men from the Žepa enclave were forced to flee to Serbia by, among other things, making life unbearable in the enclave.

51. The Trial Chamber is of the opinion that the Indictment contains a sufficient amount of information on the crimes charged, on their large-scale character, on the manner they were committed and on the fact they were committed with the alleged objectives to kill the able-bodied men of Srebrenica and to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves. The Trial Chamber is satisfied that this information provides the Accused with sufficient detail about the description of the events, including the victims of the alleged crimes.

3. Challenges on "joint criminal enterprise" and other forms of responsibility

52. In the present case, the Trial Chamber understands that the Accused's submissions on the JCE contain two allegations: (i) JCE is not a form of liability recognised in the Statute and (ii) the Indictment is ambiguous about the nature of the JCE and the role the Accused allegedly played in it.

---

[128] *See* Indictment, para. 2.

53. The Appeals Chamber has on numerous occasions held that joint criminal enterprise is a mode of liability which is "firmly established in customary international law"[129] and is routinely applied in the Tribunal's jurisprudence.[130]

54. The Indictment charges the Accused with two JCEs, as it alleges that the Accused and others were members of and knowingly participated in a JCE, the common purpose of which was to summarily execute and bury the able-bodied Bosnian Muslim men from Srebrenica, and in another JCE, the common purpose of which was to force the Bosnian Muslim population out of the Srebrenica and Žepa enclaves to areas outside the control of the RS from about 8 March 1995 through the end of August 1995.[131] In this respect, the Trial Chamber notes that paragraphs 8 and 9 of the Indictment address both JCEs together, as they were closely interlinked. Paragraph 8 of the Indictment states that, following Radovan Karadžić's order of 8 March 1995 to remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves, the Srebrenica enclave was taken over on 11 and 12 July 1995 and the plan to remove the Bosnian Muslim population from Srebrenica was implemented, along with the plan to murder all the able-bodied men of Srebrenica. Paragraph 9 of the Indictment alleges that, by 1 November 1995, the entire Bosnian Muslim population had either been removed or had fled from Srebrenica and Žepa, and that over 7,000 Muslim men and boys from Srebrenica had been murdered. The Trial Chamber further notes that the Indictment states that the time period during which the Accused is alleged to have committed genocide was between 11 July and 1 November 1995.[132] Moreover, the Trial Chamber notes that paragraph 18 alleges that, in the evening hours of 11 July and morning of 12 July—at the same time the plan to forcibly transport the Bosnian Muslim population from Potočari was developed—Ratko Mladić and members of his staff developed the plan to murder the hundreds of able-bodied men identified from the crowd of Muslims in Potočari. This paragraph further identifies the responsibilities of the Accused and others in relation to the execution of the plan to murder these men. In paragraph 19 the Prosecution alleges that on the afternoon of 12 July the plan to murder the able-bodied men of Srebrenica began to be carried out.

---

[129] *Tadić* Appeal Judgement, para. 220.

[130] *Prosecutor v. Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006, para. 62, referring to *Kvočka* Appeal Judgement, para. 79; *Prosecutor v. Vasiljević*, Case No. IT-98-32-A, Judgement, 25 February 2004, para. 95; *Prosecutor v. Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, paras. 79–134; *Prosecutor v. Milutinović, Šainović, Ojdanić*, Case No. IT-99-37-AR72, Decision on *Dragoljub Ojdanić*'s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, paras. 20, 43; *Prosecutor v. Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, para. 119; *Krnojelac* Appeal Judgement paras. 29-32; *Prosecutor v. Delalić, Mucić, a.k.a. "Pavo", Delić, Landžo, a.k.a. "Zenga"*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 366; *Tadić* Appeal Judgement, para. 220, *Prosecutor v. Brđanin and Talić*, Case No: IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 24; *Prosecutor v. Babić*, Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005, paras. 27, 38, 40. *See also*, *Popović et al.* Decision Challenging Indictment, para. 44.

[131] *See* Indictment, para. 35.

[132] *See* Indictment, para. 10.

55. In relation specifically to the JCE to kill the all the able-bodied Bosnian Muslim men, paragraph 27 explicitly deals with the Conspiracy and the JCE to murder the able-bodied Bosnian Muslim men from Srebrenica. It states that, on or about 12 July 1995, this JCE was implemented, and further specifies that the initial plan was to summarily execute around 1,000 Bosnian Muslim men who had been separated in Potočari on 12 and 13 July, but that in the same days this plan was broadened to include the summary execution of more than 6,000 men who were captured from the column of Bosnian Muslim men escaping the Srebrenica enclave. The plan is alleged to have extended in duration from 12 July through about 1 November 1995.

56. As to the JCE to forcibly remove the Bosnian Muslim population, paragraph 35 states that the Accused, together with other VRS and MUP (the Ministry of the Interior) officers and units and RS officials, were members of and knowingly participated in a JCE, the common purpose of which was to force the Bosnian Muslim population out of the Srebrenica and Žepa enclaves to areas outside the control of the RS, from about 8 March 1995 through the end of August 1995.

57. At paragraphs 71 and 72, the Prosecution identifies a number of officers within these JCEs, as well as various other individuals and military and police units who participated in the implementation of the two JCEs.

58. The Trial Chamber therefore considers that, with the above cited allegations in the Indictment, the Prosecution has pleaded with enough detail the purpose, the periods of the existence of the two JCEs, and the identification of their alleged members. Furthermore, the Trial Chamber observes that the paragraphs which describe the actions of the Accused in the two JCEs provide sufficient information as to when his actions took place.[133]

59. Finally, the Trial Chamber notes that paragraph 66 of the Indictment alleges that the Accused "committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation, and execution of these charged crimes, as set out in detail in this indictment". It is further alleged that the term "committing" does include participation in a JCE. As mentioned above, the Trial Chamber is satisfied that the crimes charged have been pleaded with sufficient detail. Moreover, the acts and omissions ascribed to the Accused are described in the eight counts and in particular in paragraphs 29 and 60 of the Indictment.

60. In paragraph 29, the Prosecution alleges with regard to the JCE to kill the Bosnian Muslim men that the Accused committed acts in furtherance of the JCE and Conspiracy as described in paragraphs 25–28 and the following acts: (1) "[w]ith full knowledge of the plan to summarily

---

[133] *See* Indictment, paras. 29, 60.

execute the able-bodied men from Srebrenica, he assisted in and facilitated the forcible transfer and deportation of the Muslim population of Srebrenica, as described in paragraphs 61 to 64 of this Indictment"; (2) "[o]n 13 July 1995, he assisted in the JCE to detain and execute the able-bodied men from Srebrenica by proposing to his commander Ratko Mladić that the hundreds of Muslim prisoners being detained along the Konjević Polje-Bratunac road be secreted from international forces by being placed in buildings so they could not be viewed from the air; (3) [h]e supervised the 10th Sabotage Detachment on 16 July 1995 when elements of this unit summarily executed more than 1,700 Muslim men and boys at the Branjevo Military Farm and the Pilica Cultural Centre; and (4) "[a]s Assistant Commander for Intelligence and Security of the Main Staff, and by virtue of the authority vested in him by his commander, Ratko Mladić, he had responsibility for the handling of all of the Bosnian Muslim prisoners taken after the fall of the Srebrenica enclave and to ensure their safety and welfare. He failed to do so".[134]

61. In paragraph 60, the Prosecution alleges, with regard to the Accused's role in the JCE to forcibly remove the Bosnian Muslims, that he committed acts in furtherance of the JCE as described in paragraphs 34–37 and as well as the following acts: (1) "[m]aking life unbearable for the inhabitants of the Žepa enclave: [...] in July 1995 he proposed to General Radivoje Miletić that the refugee columns comprised of the Muslim population from Žepa be attacked"; (2) "[d]efeating the Muslim forces militarily: [...] he communicated with the Drina Corps Forward Command Post and RS President Radovan Karadžić about combat operations around Srebrenica and the decision to take over Srebrenica; and [...] in July 1995 he proposed to General Radivoje Miletić to destroy the remaining Muslim army from Žepa by using chemical weapons"; (3) "[d]isabling the local UN forces militarily: [...] he assisted in disabling UNPROFOR in the attack on Srebrenica through his communications with UNPROFOR, specifically by lying to UNPROFOR, and coordinating lies with subordinate units"; (4) "[p]reventing and controlling outside international protection of the enclaves, including air strikes and international monitoring: [...] he organised and led the psychological and propaganda activities related to the operations in Žepa and Srebrenica"; and (5) "[c]ontrolling the movement of the Muslim population out of the enclaves: [...] he gave orders related to and coordinated the forcible transfer of men, including civilians, from the Srebrenica and Žepa enclaves; [...] he helped to coordinate the detention of prisoners from Srebrenica; [...] he took part in negotiations with Muslim representatives at Žepa and gave them the choice between "evacuation" or VRS "military action"; and, [...] he helped to organise and oversee the

[134] Indictment, para. 29.

transportation of the population of Žepa, including by assembling the buses and loading people onto the buses".[135]

62. The Trial Chamber notes that the Indictment must be considered as a whole, to the extent that the pleading of different forms of individual criminal liability in the alternative is substantiated by the allegations made throughout the entire Indictment.[136] The Trial Chamber is satisfied that the material facts to support each of those modes are adequately pleaded in the Indictment in order to allow the Accused to prepare his defence.

IV. MOTION ON SEVERANCE OF COUNTS

A. Submissions of the parties

1. Motion

63. The Accused requests severance of the counts joined in the Indictment for Srebrenica and Žepa in accordance with "time and place", as this would facilitate his analysis of the numerous aspects of the Indictment.[137] He asserts that "it is unusual to join the counts of an indictment only because of the classification of crimes"[138] and that [p]revious practice at the Tribunal through the trials of the co-accused for Srebrenica and Žepa confirms the justification for the severance and the non-existence of the casual link which would necessitate a joinder, which opens up a possibility of making wrong conclusions, and presenting or failing to present evidence important for the fairness of the proceedings and establishment of the truth."[139]

---

[135] Indictment, para. 60.

[136] *See also*, *Popović et al.* Decision Challenging Indictment, para. 26.

[137] Preliminary Motions, p. 13, para. 3.1–3.2. The Accused numerates the following aspects: "the material truth of the existence of crimes; individual crimes charged; circumstances which led to the commission of crimes described; the formal evidence of my individual or conscious participation; the role of individual participations in a non-existent 'joint criminal enterprise'; the role of the instigator and main perpetrator; premeditation on the part of the instigator; elements, relationship and circumstances which confirm or deny criminal responsibility; the personal relationship between the perpetrator and victims; the difference in the degree of suspicion; the precise description of the crimes in respect of which the accused is charged with individual responsibility; avoidance of the possibility of the Prosecution's individualising the charges against [him] for alternative criminal responsibility; prevention and systematic application of international humanitarian law, or its violation; and a number of other elements of the substance of the crime charged for both locations, that is, both for Srebrenica and Žepa at the same time, but with different participants in the events." *Ibid.*, p. 13, para. 3.1.

[138] *Ibid.*, p. 14, para. 3.2.

[139] *Ibid.* The Accused however failed to refer to any case-law of the Tribunal.

2. Response

64. The Prosecution submits that the request for severance of the joined count should be denied in light of Rule 49.[140] The charges clearly qualify, argues the Prosecution, "as forming the same transaction and may properly be joined in the Indictment" because they concern the events in Srebrenica and Žepa in Eastern Bosnia in 1995 and similar groups of persons participated in the two JCEs.[141]

B. Discussion

65. Rule 49 allows the joinder of two or more crimes in one indictment "if the series of acts committed together form the same transaction, and the said crimes were committed by the same accused." Rule 2(A) sets forth the definition of "transaction": "A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan."

66. In the present case, the charges against the Accused are related to events that took place in Srebrenica and Žepa, which is part of Eastern Bosnia and in 1995. The crimes have therefore been allegedly committed in the same geographical area during substantially the same time period. Moreover, the Indictment alleges that similar groups belonging to the armed forces of the RS participated in the JCE to murder the able-bodied men from Srebrenica and the JCE to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa. The Indictment alleges that the crimes committed in the two enclaves were part of a common scheme, strategy or plan. The Trial Chamber further notes that the Indictment in the *Popović et al.* case charges the seven accused in that case with the same events.

67. For the reasons above, the Trial Chamber finds that the fairness of the trial will not be affected by not severing the charges in the Indictment and that the Accused will not be prejudiced in the preparation of his defence. In fact, the Trial Chamber believes that it is in the interests of justice that the events related to crimes allegedly committed in Srebrenica and Žepa in July 1995 be considered in one single indictment. This Motion is therefore denied.

68. Lastly, the Trial Chamber notes that in the Preliminary Motions the Accused raises two other separate issues, namely, disclosure of the Indictment and the supporting material in the

---

[140] Response, para. 29.
[141] *Ibid.*

Serbian language in the Cyrillic script,[142] and the appointment of his legal adviser and defence team.[143] The Trial Chamber notes that on 16 November 2007, the Accused submitted a separate motion on the very same issues.[144] During the second status conference held on 11 December 2007, the Pre-Trial Judge orally ruled on this motion.[145] Accordingly, the Trial Chamber will not address these matters in the present decision.

V. DISPOSITION

For these reasons, pursuant to Articles 20 and 21 of the Statute and Rules 49 and 72 of the Rules, the Trial Chamber hereby

(1) **DENIES** the Motion on Jurisdiction,

(2) **DENIES** the Motion on the form of the Indictment, and

(3) **DENIES** the Motion on severance of counts.

Done in English and French, the English text being authoritative.

Carmel Agius
Presiding

Dated this fourteenth day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

[142] The Accused requests that the Indictment and the supporting material under Rule 66 (A)(ii) be disclosed in Serbian and in the Cyrillic script. Preliminary Motions, pp.12–13, paras. 2.16–2.18 and p. 14, paras. 4.3–4.4. The Prosecution responds that it is not obliged to provide documents to the Accused in the Cyrillic script and it has already set out its position in the "Prosecution's Response to Submission by the Accused dated 25 September 2007 with Appendix", filed on 10 October 2007. Response, para. 28. *See also ibid.*, para. 30.

[143] Preliminary Motions, pp. 14–15 [4]. The Prosecution submits that it cannot comment on the arrangements for the Accused's representation as it is not aware of communications between the Accused and the Registry, but that "if the Accused is unwilling or unable to conduct his own defence in a competent manner, he should be assigned counsel." Response, para. 30.

[144] Motion to the Pre-Trial Chamber and the Registrar Concerning Assistance in Appointing a Legal Advisor, Disclosure of Material in a Language the Accused Understands and Notification of Special Defence on the Charges in the Indictment, 16 November 2007 (BCS original), 20 November 2007 (English translation).

[145] Status Conference, T. 112–117 (11 December 2007).