

REPORT TO THE PRESIDENT

DEATH OF MILAN BABIC

JUDGE KEVIN PARKER VICE-PRESIDENT

8 JUNE 2006

To H.E. Judge Fausto Pocar
President

Milan Babic died in his cell at the United Nations Detention Unit in the Scheveningen Penitentiary Facility on Sunday evening, 5 March 2006. By an order dated 6 March 2006, pursuant to Rule 33 of the Rules of Detention, you assigned me to conduct a full inquiry into the circumstances surrounding his death and to report my findings to you. The terms of inquiry were without restriction.

I was assisted by Catherine Marchi-Uhel, Head of Chambers, Robert Reid, Deputy Chief of Investigation, Philip Berikoff, Deputy Chief of Security, and Pascale Chifflet, my Legal Officer. Their efficiency and commitment has been outstanding.

I submit my report.

The Hague Judge K.H. Parker
8 June 2006 Vice-President

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REPORT

Milan Babic was found dead in his cell at the United Nations Detention Unit ("UNDU") in the Scheveningen Penitentiary Facility on Sunday evening, 5 March 2006.

Coronial and police investigations were undertaken by the authorities of The Netherlands. An autopsy, including pathological and toxicological investigations, was conducted by the Netherlands Forensic Institute. The results of these investigations have been reviewed by the District Office of the Public Prosecutor in The Hague. This Inquiry relies on the reports and findings of those investigations, which were conducted entirely independently of this Tribunal. There has also been an independent audit of UNDU by a specialist Swedish Team.

Events of 5 March 2006

On Sunday 5 March 2006, shortly after 1828 hours, Mr Babic was found dead in his locked cell. His body was hanging by a leather belt around his neck. A noose had been formed by threading the belt through its buckle and the other end of the belt had been secured around a metal hinge fitting attached to a wooden window-frame beam or transom. The noose was hanging at a height of about 154 cm from the ground. There was also a plastic bag covering his head. This was a bin liner for the rubbish bin in the cell. The noose formed by the belt was fitted around his neck on the outside of this plastic bag. Mr Babic was hanging against the window with his feet partly resting on a chair.

Mr Babic was found when a guard looked through an observation window in the cell door in the course of a regular check. The guard immediately ran to an adjacent guards' room and telephoned other guards on duty for assistance. In unusual situations such as this, it is a standard practice that at least two guards must be present when a cell door is opened. Two other guards responded immediately. The three men opened the door of the cell. Once in the cell, a check was made for pulse and signs of life. There were none. In the meantime, one of the guards returned to the guards' room and called for the assistance of a fourth guard, who ran to the cell. This fourth guard also checked for a pulse beat of Mr Babic, to no avail.

The third guard also telephoned Dr Paul Falke, the medical officer of UNDU, and informed him. Dr Falke gave instructions for Mr Babic to be taken down immediately. He said he would come to UNDU straight away. The third guard conveyed the instructions of the medical officer to his colleagues. The fourth guard released the belt from the hinge and three guards lowered Mr Babic's body onto the bed. The second guard loosened the belt around Mr Babic's neck and the plastic bag was removed from his mouth and nose.

Shortly before 1845 hours, Dr Falke, the medical officer, arrived at UNDU and was taken to the cell by the first guard. Dr Falke found Mr Babic lying on his bed; a plastic bag was half removed from his head and the belt around his neck had been loosened. Dr Paul Falke examined Mr Babic's body. Having confirmed that there were no signs of life, he did not attempt resuscitation. He pronounced Mr Babic dead at 1845 hours. Dr Falke having a second time confirmed there was no signs of life, the cell was sealed to await the arrival of Dutch investigative authorities.

Background

Mr Babic was born on 26 February 1956 in Kukar, Croatia. He was of Serbian ethnicity. He was married and had two adult children. He was a dentist by profession. He testified for the Prosecution as a protected witness in several trials before the Tribunal. Because of his concerns for their safety, he and his family were relocated to The Netherlands.

On 17 November 2003, an Indictment was issued against him, charging him with five counts of crimes against humanity and violations of the laws or customs of war in relation to crimes alleged to have been committed against the Croat and other non-Serb civilian population between 1 August 1991 and 15 February 1992 in the Krajina region of Croatia. Mr Babic was then the President of the Serbian Autonomous District of Krajina. On 26 November 2003 Mr Babic voluntarily surrendered to the Tribunal. A plea agreement was filed, and Mr Babic pleaded guilty to one count of persecution on 27 January 2004 before Trial Chamber I, which accepted the plea and entered a finding of guilty against him. All four remaining counts were withdrawn. On 29 June 2004, Mr Babic was sentenced to 13 years imprisonment. On 3 September 2004

Mr Babic filed an appeal against this sentence. This was supported by the Prosecution but, on 18 July 2005, the Appeals Chamber confirmed the sentence of 13 years imprisonment.

On 19 September 2005 Mr Babic was transferred from UNDU to another country to serve his sentence ("third country"). On 13 January 2006 Trial Chamber I ordered that Mr Babic be transferred back from the prison facility in the third country to UNDU for a period not exceeding 15 days with a view to his giving evidence, once again as a Prosecution witness, in the case of *Prosecutor v. Milan Martić* (IT-95-11-T). Accordingly, Mr Babic was returned to UNDU on 7 February 2006. He testified in that case on 15, 16, 17, 20 and 21 February 2006 and on 2 and 3 March 2006. His evidence was to continue on 6 March 2006. On 24 February 2006 Trial Chamber I had extended the stay of Mr Babic at UNDU until 10 March 2006 to allow for the completion of his evidence.

Dutch investigations

The authorities of The Netherlands conducted their own investigations into the death. On Sunday 5 March 2006 at 1915 hours, Dr Falke had contacted the Dutch judicial coroner. A coroner attended UNDU that evening. On the instructions of Mr McFadden, Commanding Officer of UNDU, the duty officer had also notified the Dutch police. At around 1930 hours, Dutch police officers arrived at UNDU on the instructions of the duty officer of the Scheveningen Police Bureau. They in turn contacted the Public Prosecutor's Office. The cell door, which had been sealed, was opened to enable the various Dutch authorities to pursue their investigations. That evening, Dr Falke and the guards who had been involved were interviewed and technical investigation staff of the Haaglanden Police undertook an examination of the cell.

At 2245 hours on 5 March 2006 Dr E.J.M. Coster from the office of the Municipal Coroner for The Hague examined the body of Mr Babic. Dr Coster concluded that the death was not natural and rather, "very probably... a consequence of suicide by hanging, possibly supplemented by lack of oxygen as a result of use of a plastic bag placed over the head." The examination revealed no injuries to the head, no signs of strangulation on the neck, no signs or resistance or punctures on the arms, and no abnormalities on the back, stomach and legs. An indentation on the neck was found, the width of which matched, in the opinion of the Dr Coster, the leather belt around the neck. Dr Coster concluded that "[t] here are no medical indications of a crime". At around 2350 hours the body of Mr Babic was transported to the mortuary of the Leyenburg hospital. The cell was then resealed.

On 7 March 2006 the cell was unsealed in my presence and two Dutch police officers, who were also present, took possession of the leather belt and the plastic bag from the cell of Mr Babic at the request of the pathologists conducting the autopsy.

An autopsy was conducted at the Netherlands Forensic Institute at the request of the family of Mr Babic. A preliminary result revealed that Mr Babic had also suffered a heart attack at about the same time as the hanging. A question was also raised concerning the consistency of a ligature mark on the neck with the belt provided to the pathologists by the investigative police. Further detailed investigations were undertaken of a technical nature and by the Regional Investigation Bureau. The Netherlands Forensic Institute also carried out neuro-pathological and toxicological investigations.

The final autopsy conclusion discloses that the precise cause of the death of Mr Babic has not be determined. This is because, at about the same time, there was both a hanging and a heart attack. It could not be determined as a matter of timing whether a heart attack or the hanging was the actual cause of the death. Further, if a heart attack caused his death, the heart attack could have occurred as

a bodily reaction to the process of hanging or by a process in which a viral infection of the muscle tissue of the heart, which was identified in the autopsy, had a significant part, possibly in combination with a thickening of the walls of the intramyocardial vessels.

A toxicological investigation revealed no indications of a toxicological contribution to Mr Babic's death. Traces of diazepam and desmethyldiazepam and an indication of salbutamol were found. These were findings consistent with medications Mr Babic had used at UNDU. He had medication for asthma, an infected tooth and to assist when he had difficulty sleeping. None of these made any contribution to the death. It is noted that UNDU medical records confirm that Mr Babic had received an antibiotic for a tooth infection for which a dentist had been consulted shortly after he arrived at UNDU in February 2006, and tranquilisers. There is no formal record of the ongoing treatment he was receiving for his asthma which had been established in the prison of the third country.

Thus, the autopsy findings indicate that Mr Babic died as a consequence of hanging, or as a consequence of a heart attack, or from a combination of the two.

The police technical investigation had found disturbed dust on the underside of the transom of the window-frame to which the hinge was fitted consistent with the fastening of the belt. There were also dents from the hinge in the belt. The Regional Investigation Bureau's investigations confirmed that the belt provided to the pathologists was indeed the belt which was around Mr Babic's neck on 5 March 2006 when he was found hanging in his cell.

A question raised by the pathologists about some difference between the width of a ligature mark on the neck by the time of the autopsy and the width of the belt is, nevertheless, the subject of further consideration by the Netherlands Forensic Institute. It is expected that a report on this issue will not be available for some weeks. If anything of significance emerges from this, I will provide a supplementary report. As has been mentioned earlier in this report, it was the opinion of the Coroner who examined the body of Mr Babic in the cell, on 5 March 2006, at a time when the belt had been loosened but not removed from the neck of Mr Babic, that the width of the belt corresponded with the ligature mark as it was at that time.

No indications were found by the police investigations of any involvement of third parties in the death of Mr Babic in any way. The Chief Public Prosecutor has advised the Inquiry, by a letter dated 22 May 2006, with an enclosed report, that from the investigations that have been conducted, there are no indications of a crime and the criminal investigation has been closed.

This inquiry

This inquiry commenced on 7 March 2006. Altogether, some 40 witnesses were interviewed and statements or reports were obtained from them; these included Mr Babic's wife and two adult children. Most significantly, statements were obtained from the guard who last saw Mr Babic alive when his cell was checked just after 1754 hours, the guard who saw the body of Mr Babic hanging by the neck shortly after 1828 hours and the other three guards who rushed to the cell after the body was found. The medical officer, the psychiatrist and the two nurses of UNDU were also interviewed, as well as the language assistants and all guards who had contact with Mr Babic between his return to UNDU on 7 February 2006 and his death. The Judges of the Trial Chamber, before which Mr Babic was testifying, provided a written memorandum of their observations of him, and the court staff and counsel in the trial, including his own lawyer, provided statements or reports.

The inquiry revealed that, on Sunday 5 March 2006, Mr Babic's cell was opened at 0900 hours and

remained open all day save for one hour during lunch time. In the course of the day, Mr Babic was offered the opportunity to take some fresh air and to make use of the gym but declined both suggestions, as he often would. He was locked alone in his cell at around 1715 hours and was last seen alive by a fifth guard, who checked on him in his cell some half an hour before his dead body was found. This guard stated that he did his round of the D2 wing in which Mr Babic's cell was located at "around 1750 hours" on Sunday 5 March 2006. He looked through the viewing window in the door of Mr Babic's cell and saw him lying on the bed with his feet resting on the desk. Mr Babic lifted his hand acknowledging the guard's presence. Mr Babic was then alone in his locked cell. The light in the cell was off at the time. The electronic security system shows that the actual time when this fifth guard entered D2 wing was 1754 hours.

Because of Mr Babic's concern for his personal security, Trial Chamber I had ordered that during his stay at UNDU from 7 February 2006, "Mr Babic shall not have any contact with other accused persons detained at the Detention Unit". In accordance with this order, Mr Babic was segregated from other detainees and was in fact the sole detainee in D2 wing. While he had been able to move freely around the wing during the day, at the relevant period of time he was secured alone in his locked cell. The door of his cell was locked when his body was found. There was no possibility for anyone, aside from guards, to have had contact with Mr Babic in the time between 1754 hours and shortly after 1828 hours when his body was found on Sunday 5 March 2006.

Heart condition

As already discussed, the autopsy revealed that the death of Mr Babic may have been the consequence of a heart condition attributable in part to a viral infection of the muscular tissue of the heart (lymphocytic myocarditis), possibly in combination with a thickening of the walls of the intramyocardial vessels. This inquiry has confirmed that on the arrival of Mr Babic at UNDU on 7 February 2006, the medical officer reviewed his condition. Mr Babic did not complain of any pain in the chest, fever, shortness of breath or other symptom that could suggest the existence of such a viral infection and no such symptoms were apparent to the medical officer. At no time after 7 February 2006 did he complain of, or seek medical assistance for, any such condition, nor were any indications apparent to those who saw him at UNDU or at the Tribunal that he had a viral infection or a heart problem of any type. He suffered from asthma, for which he had an established treatment routine, he reported an infection affecting a tooth for which a dentist was consulted and this was treated with an antibiotic. At times, he experienced some difficulty with sleep and a light tranquiliser was provided. On Thursday 2 March and Friday 3 March 2006, it was noted by those familiar with him that he showed signs apparently of tiredness, and he drank some more water than usual on Friday. His appearance did not suggest illness or a chest or heart problem to anyone who had contact with him. Over Saturday 4 March and Sunday 5 March 2006 he did not participate in any particular physical activity but no sign of illness or physical distress was noticed by guards and no complaint was made by Mr Babic. The medical examination Mr Babic had undergone in September 2005 at the prison facility in the third country did not reveal any such condition. Mr Babic was then found to suffer from asthma and allergies and mentioned some indigestion. Nothing is recorded of any possible problem with his heart, or of an infection, in the medical records of that prison. Throughout his earlier detention at UNDU, before 19 September 2005, there is no record of any complaint of any symptom which might indicate such a condition. On his first admission to UNDU in November 2003, Mr Babic was found to have a slightly high blood pressure. He did not, however, remain at UNDU at the time. When he returned to UNDU in June 2004, his blood pressure had normalised. It is apparent, therefore, that in the absence of a complaint or apparent symptoms, the existence of a viral infection or any other heart problem was unknown to those treating Mr Babic. Indeed, it appears it was unknown to Mr Babic himself.

Suicide note

When I inspected Mr Babic's cell on 7 March 2006 possession was taken by those assisting me of a number of documents from a small book case and the desk in the cell. A hand-written note was found inside the front cover of Mr Babic's personal Bible in the cell.

The text of the note was brief and personal. It was intended, it appears, for his wife. Because of this, I would not normally have set out its text in this Report but, in view of entirely false allegations as to its content which have been given significant attention in some elements of the media, I quote the entire text of the note (translated into English). It read:

My beloved,

Find peace for yourself and don't mourn me. I need peace.

Your Milan.

On Sunday, 5 March 2006. Let the God forgive.

To be certain of its authorship, the note was submitted for examination by an expert on document and handwriting analysis, together with a range of reference material from the cell and Tribunal records which were known to have been written by Mr Babic. The expert concluded that the suicide note found in the cell had been written by the same person as the reference material provided, *i.e.* by Mr Babic. The wife and two adult children of Mr Babic, who were shown the note, also indicated that they recognised his handwriting on the note, although they did not wish to formally attest that the note was in his handwriting. The effect of this note which is confirmed to have been written by Mr Babic and which is dated on the day of his death, provides an insight into his state of mind on that day. It indicates that he then intended to take his own life. He sought peace.

On 27 March 2006, the Secretary General of the Serb Radical Party Aleksandar Vučić was reported in some elements of the media to have stated that another detainee, Vojislav [e{elj], had obtained reliable information to the effect that Mr Babic had left a suicide note accusing the Tribunal of having exerted pressure on him to falsely testify against other Serbian accused. The full the text of the only note found in Mr Babic's cell has been set out. This allegation as to the content of the note left by Mr Babic is entirely false.

Risk of suicide

A number of circumstances have been identified in the course of this inquiry which may well have had a bearing upon Mr Babic's actions in taking his own life or seeking to do so.

Difficulties about detention

Upon his original transfer to the Tribunal on 26 November 2003, Mr Babic was detained on remand at UNDU for an initial period of three days. The Prosecution immediately requested, pursuant to Rule 40 of the Rules of Detention, that Mr Babic be segregated from all other detainees. On 26 November 2003, the Deputy Registrar decided that, as Mr Babic had testified for the Prosecution in the *Milofevic* case and was expected to testify in future cases, it was necessary that he be segregated from all other detainees to ensure his safety. The Deputy Registrar noted that UNDU medical officer had confirmed the physical and mental fitness of the detainee for such segregation.

On 1 December 2003, following approval from the Dutch authorities, the President of the Tribunal granted a joint application for modification of the conditions of detention of Mr Babic and ordered that Mr Babic be detained in the house where he had been living until then as a protected witness. These conditions of detention were extended until he was sentenced to serve 13 years imprisonment on 29 June 2004.

On 5 March 2004, a psychological examination of Mr Babic, made at the request of the Office of Legal Aid and Detention of the Tribunal, identified "a mild stress-related disorder with depressive features as a reaction to continuing separation from... familiar ties and activities". There was, however, no indication of any underlying pathology or incapacity to cope with the usual detention regime.

After he was sentenced to 13 years imprisonment by the Trial Chamber on 29 June 2004, Mr Babic returned to UNDU pending the finalisation of arrangements for his transfer to a third country to serve his sentence. Mr Babic remained detained at UNDU until he was transferred on 19 September 2005. During this period, a regime of half-hourly visual observation of Mr Babic was in place as ordered by the Deputy Commanding Officer and staff members were instructed to immediately report any change in the behaviour of Mr Babic which suggested that further measures should be implemented. While Mr Babic was not then entirely segregated from others, he was segregated from a number of identified detainees.

During this time, Mr Babic experienced a number of difficulties. Both of his children stated that this was a particularly difficult time for him as some other detainees considered him to be a traitor and he felt threatened. According to his Defence counsel, Mr Müller, Mr Babic had suggested that he was the subject of insults, threats and even physical assault by some other detainees. On 30 August 2004, Mr Müller raised these concerns with the Prosecutor, who in turn informed the Registrar. On 9 September 2004, the Commanding Officer of UNDU reported to the Deputy Registrar that he had investigated all suggestions that Mr Babic was being threatened but found no substance in any of them. While he then had no concerns about the safety of Mr Babic, he did undertake to move one particular detainee from the floor. Mr Mc Fadden's overall conclusion was that what Mr Babic was experiencing was the common reaction of a person who had to adjust to being in detention. In reaching this conclusion, Mr Mc Fadden was also able to rely on a limited assessment of Mr Babic made by the UNDU psychiatrist, Dr Vera Petrovic. This assessment was limited because, at that stage, Mr Babic declined to meet her. Both the nurse and the psychiatrist of UNDU had noted that Mr Babic was very nervous when he was first detained at UNDU after receiving his sentence, but neither of them regarded this feeling of uneasiness as uncommon or abnormal.

On 30 September 2004, Mr Babic's counsel, Mr Müller, alerted the Prosecutor to some further difficulties experienced at UNDU by Mr Babic. He reported that his client had lost 15 kg since his last visit less than two months before, that he was suffering from insomnia as a result of the regime in place whereby he was observed every 30 minutes day and night, and that Mr Babic had some concerns as to the intentions of the psychiatrist of UNDU, Dr Vera Petrovic.

Mr Müller also advised this Inquiry that, on what he thought was a third occasion on 25 April 2005, when Mr Babic was awaiting the decision of the Appeals Chamber, Mr Babic revealed to him that he was considering committing suicide. It is Mr Müller's recollection that he immediately met Prosecution counsel Ms Uertz-Reztloff and the Prosecutor herself to inform them of these matters. No written record confirming any such third meeting has been located by Mr Müller or in the Office of the Prosecutor. The Prosecutor recalls various meetings with Mr Müller but does not have any record of any meeting on 25 April 2005. Ms Uertz-Reztloff recalls only two meetings and that, in fact, it was in the course of the second of these meetings on 30 September 2004 that Mr Müller

mentioned that Mr Babic might be suicidal. There is some confirmation of her recollection provided by a short letter Mr Müller sent to the Prosecutor on the day following 30 September 2004, in which Mr Müller expressly made it clear that his personal impression was that his client was not suicidal.

On one other occasion in the same period, on 17 December 2004, Mr Babic expressed concern for his safety at UNDU during a Status Conference before the pre-appeal Judge, Judge Mumba, who reminded him of the complaint procedures available to him, including applications to the President of the Tribunal. No such application, however, was made by Mr Babic.

Despite these concerns in the early months of his detention, by the end of his stay at UNDU, immediately before he was transferred to the third country, Mr Babic did meet with the psychiatrist at UNDU, Dr Petrovic, who concluded that he had "completely adapted to prison life".

On 19 September 2005, Mr Babic was transferred to the third country to serve his sentence. Upon arrival in the third country, Mr Babic underwent a medical examination. From that examination, no referral to the mental health services of the prison was deemed necessary. According to his family, Mr Babic was initially placed under a very strict regime. During the first two months he was not allowed to contact his family; afterwards, they could exchange short telephone calls and a few letters. He joined a religious group there, which he said gave him strength. Mr Babic's prison file from the third country does not reveal any concern that Mr Babic was at risk of self-harm. Mr Babic himself stated during a medical evaluation that he was not experiencing feelings of self-harm. The prison officers who had dealings with him recorded that there was nothing unusual to report and that Mr Babic was an exemplary prisoner.

On 7 February 2006, on his arrival back at UNDU from the third country to give evidence in the *Martic* trial, Mr Babic was seen by the medical officer of UNDU, Dr Falke. Dr Falke did not identify any reason for concern about Mr Babic's mental well-being and was satisfied he could remain in segregation. No special report was received from the prison in the third country where Mr Babic was serving his sentence. Nevertheless, given Mr Babic's circumstances, a special regime was ordered by the Deputy Commanding Officer of UNDU, who also assessed Mr Babic on his arrival. He, too, did not identify any reason for concern about Mr Babic's mental well-being, but in keeping with the Trial Chamber's order, he ordered segregation from all other detainees. The Deputy Commanding Officer of UNDU also discussed with Mr Babic whether he wished to receive visits from any other detainees, should the Trial Chamber allow it. However, the detainees with whom Mr Babic had previously had a good rapport had left UNDU so that Mr Babic did not wish any visits to be organised. Further, in accordance with standard procedures for detainees who are segregated from others, the Deputy Commander also ordered a regime of visual observation checks at 30 minute intervals day and night and instructed that staff should report immediately any behavioural change. No such reports were made. Nothing of concern was raised concerning Mr Babic's behaviour or mental attitude at the weekly staff meetings when his situation was reviewed.

It was the impression of his immediate family that, during this period of detention at UNDU from 7 February 2006, Mr Babic was more at ease. The guards who were in contact with him during that time reported similar impressions. In particular, one of these guards, who had particular past experience in another facility with the supervision of suicidal detainees, observed "absolutely no indicators that anything was wrong, so far as suicidal tendencies, with Mr Babic". None of the guards who had contact with him at UNDU, nor the security guards at ICTY who guarded him when he came to give evidence, noticed anything unusual or which gave reason for concern about his behaviour. Specifically, this included all guards who had contact with him during the last few days before his death. When Mr Babic arrived at the Tribunal to testify on Thursday 2 March and Friday 3 March 2006, and was asked by the security officers how he was feeling (something that is

required in accordance with internal operating procedures), his answer on each occasion was always that he was fine. Mr Babic was being cross-examined by counsel for the Accused Martić on those days. The only different behaviour noted by ICTY security guards was that Mr Babic drank more water than usual during the court sessions on Friday 3 March 2006. It was noticed by those more familiar with him that he seemed particularly tired and not quite himself on that day. The Judges of the Trial Chamber before which he was giving evidence have advised that it was noticed that, on a number of occasions on Friday 3 March 2006, Mr Babic covered his face with his hands during cross-examination, but this was not seen to warrant an intervention by the Trial Chamber as Mr Babic otherwise looked fine. Mr Müller who was in court on both days representing Mr Babic has noted nothing in his statement to the Inquiry that gave him any cause for concern about Mr Babic. The guards who had contact with Mr Babic on Saturday 4 March and Sunday 5 March 2006 did not notice any unusual behaviour by Mr Babic or any conduct which gave cause for concern.

Family situation and relocation process

It is apparent that separation from his wife and two children and concerns about their long-term future particularly worried Mr Babic. In August 2002, Mr Babic and his family had been placed in the Tribunal's witness protection program. They were temporarily relocated pending the finalisation of arrangements for a permanent relocation. Aside from a brief period in detention at UNDU between 26 and 28 November 2003, Mr Babic and his family remained living together until he was sentenced on 29 June 2004. While detained at UNDU after that, Mr Babic could have daily telephone contact with his family and received visits from them on a weekly basis. When Mr Babic was transferred to the third country to serve his sentence on 19 September 2005, his family remained in their temporary place of relocation pending final arrangements for their placement. They were eventually relocated permanently on 23 February 2006 and arrangements were completed to enable future regular visits between Mr Babic and his family. In the meantime, however, the Inquiry is told that the combined effect of these circumstances and of the initial regime of detention in the third country by which Mr Babic had no contact with his family for a period of two months, and thereafter only a few telephone calls and letters, caused Mr Babic and his family to regard this period from 19 September 2005 as involving particular hardship.

It is also reported to this Inquiry that, after Mr Babic returned to UNDU on 7 February 2006 to testify in the *Martić* case, he told his family and counsel that he felt humiliated when he was required by the authorities of the third country, in accordance with their policy to mitigate the risk of escape during transfer, to travel back from the third country by air to The Netherlands in orange prison clothing.

Between Mr Babic's return to UNDU on 7 February 2006 and the relocation of his family on 23 February 2006, two family visits took place at UNDU, on 13 and 22 February 2006. It is said that there was some degree of tension, resulting from the perception his family had at that time of Mr Babic's revived religious faith, in particular during the first visit. The second visit occurred the day before his family was to be relocated and Mr Babic expressed a number of concerns as to their ability to permanently remain in their country of relocation. Of particular concern to him was that his family had just received visas limited to a stay of six months. While there was an expectation that these visas would be renewed each six months, Mr Babic was concerned that there was no guarantee of this so that his children might not be able to further their education in their relocation country. Before the family was relocated, they met with protection officers from both the Tribunal and their relocation country and received a briefing as to the conditions of their relocation. Mention was made to the family that Mr Babic might not be able to be with them in their relocation country after having served his sentence. This was a matter about which no commitment would be given by the relocation country at that stage. These difficulties were aggravated by Mr Babic's concern as to

his own future. A document, handed to him by the authorities of the third country on his arrival there, indicated that he might not be allowed to remain in that third country after having served his sentence. This document reflected the policy of that country not to allow residence rights and benefits to accrue during a period of incarceration; the question of his remaining in the third country being deferred until completion of the sentence. While there was an expectation that he could be allowed to stay, he had no guarantee of this. In the days preceding his death, Mr Babic raised these matters with his family and the protection officers of the Victims and Witnesses Section of the Tribunal. This conversation was recorded. Mr Babic apparently was extremely worried about these matters. Arrangements were to be made for Mr Babic to discuss his situation with protection officers from the third country; this had not taken place when Mr Babic died.

The relocation process for both Mr Babic and his family had been long and difficult. Only a limited number of countries have been prepared to enter into relocation agreements with the Tribunal. Some of these countries will not accept the relocation of high profile witnesses or indicted or convicted war criminals. Further, his wife and children had specific wishes as to the language spoken in their place of relocation. The resulting considerable difficulty and delays in finding a country which would accept Mr Babic as a prisoner, and a country of relocation for his family, caused much distress to Mr Babic at the time, and also to his family. After initial refusals by other countries, he was accepted as a prisoner by the third country and was transferred there on 19 September 2005. That was some 15 months after he was sentenced. A final response in respect of Mr Babic's family was not received until January 2006 and the family was relocated on 23 February 2006.

His concerns may well have been further exacerbated by the initial difficulties his family experienced settling in their relocation country. Mr Babic talked to his family by telephone on two occasions after their departure for their relocation country. The first conversation took place the day following their arrival there, *i.e.* on 24 February 2006, at a time when his wife and children were feeling particularly isolated and unsettled. The second conversation took place a few days later, on 28 February 2006, which was Mr Babic's birthday. The tone of the second conversation was more positive.

Mr Babic's relocation was dealt with separately from that of his wife and children because he had to be placed in a prison. Approaches were made to a number of countries before relocation was agreed. Mr Babic had to be placed first because his wife and children needed to be in a country from which they could conveniently visit Mr Babic in prison. No assurances of long term residence could be obtained for Mr Babic because of the policy of the country which had agreed to accept him as a prisoner. A policy to similar effect was applied by the country which accepted Mrs Babic and her children as residents. The experience demonstrates the need for care on the part of the staff of the Office of the Prosecutor and of the Victims and Witnesses Section to guard against unrealistic expectations being built up by detainees, other witnesses, and members of their families. It should not be inferred from these comments that there was a failure to do so in this case as Mr Babic's concern and anxiety may have arisen because of the nature of the process and despite the explanations given to him.

Despite these obvious matters of concern, Mr Babic's suicide came as a complete shock to those most familiar with him. His own wife and children described how, initially, they could not believe he had taken his own life. His wider family in Serbia, including his mother and sister, who talked with him by telephone on two occasions between 24 February and 1 March 2006, also reported to his wife that "he sound[ed] perfectly normal".

Difficulties in the *Martic* trial

Mr Babic gave evidence in the trial of *Prosecutor v. Milan Martić* on 15, 16, 17, 20, 21 February 2006 and on 2 and 3 March 2006. His testimony was due to continue on Monday 6 March 2006. He had given evidence in two previous trials and there was a prospect of yet another trial in the future. According to his son, Mr Babic indicated that he found it very difficult to go back over the events during the war yet another time. Indeed, his son concluded that Mr Babic felt he was being "used" by the Office of the Prosecutor. The Trial Chamber hearing his evidence noticed that Mr Babic appeared unsettled at times on the last two days of his evidence when he was being cross-examined at length by the Defence counsel, in particular at one stage during the hearing on Thursday 2 March 2006. One of the guards in court also noted that on Friday 3 March 2006 Mr Babic drank more water than usual. Video-recordings of the hearings of 2 and 3 March 2006 have been viewed. They do not reveal, however, any significant tension or prolonged embarrassment or difficulty on the part of Mr Babic during his cross-examination. Mr Babic does indeed appear somewhat tired on Friday 3 March 2006, but no conduct is apparent which suggests reason for concern about his behaviour.

Submissions were also made to the Trial Chamber by the accused Milan Martić following the death of Mr Babic. Mr Martić indicated in court that he had seen Mr Babic being driven away from UNDU in a car some time before he died. He seemed to suggest, albeit not directly, that pressures about his evidence had been exerted on Mr Babic by representatives of the Prosecution. When interviewed, however, Mr Martić stated that he never saw Mr Babic entering a car and leaving UNDU on any occasion other than when he was being transported to the Tribunal to testify in the *Martić* case. Mr Martić also said that the specific incident he raised in court had in fact occurred on 22 February 2006. However, on that occasion, he did not see Mr Babic enter a car, but rather he saw him waiting in the entrance of UNDU, carrying a box. This is consistent with both the circumstances and the timing of an actual visit to Mr Babic by his wife and one of his two children. The fact that Mr Babic was then seen to carry a box is in keeping with the usual procedure for the exchange of goods between detainees and visitors. No support has been found for the initial suggestion made by Mr Martić in court of an involvement of the Prosecution in his transport and of some pressure on Mr Babic about his evidence, suggestions which Mr Martić has subsequently expressly disavowed.

Assessment of risk of suicide

It may well be the case that some or all of the concerns detailed above weighed heavily on Mr Babic. Despite this, in the days and weeks preceding his death, no one noticed any signs suggesting that he might commit suicide. This includes, in particular his family, the staff of UNDU who had dealings with him on a daily basis, the medical officer and nurse of UNDU, the protection officers of the Tribunal who worked closely with him and his family, security guards at the Tribunal, and the counsel who spent long hours with him in proofing sessions and observed him during his evidence in the *Martić* trial, including his own lawyer, Mr Müller. In these circumstances, no matter has been identified that provides any basis for concluding that in the weeks preceding his death, there was neglect on the part of the staff of UNDU in assessing whether there was a risk of suicide or self-harm.

Monitoring of Mr Babic

As has been indicated, Mr Babic was segregated from other prisoners for his own safety. This occurred at his request and was ordered by the Trial Chamber. A system of monitoring his situation by visual checks at intervals of 30 minutes had been established and guards were required to report any change in behaviour. This was an appropriate precautionary regime because of his segregation. The known circumstances did not warrant any more intrusive regime.

Personal property including belt in cell

Mr Babic was allowed to retain usual personal items in his cell, including the belt used to hang himself from the window beam. This belt was worn, in particular, with the suit he wore in court. The retention of personal items is in accordance with the Rules of Detention. Rule 13 provides that on admission, "the Commanding Officer shall order that a detainee's body and clothes be searched for articles that may constitute a danger to the security and proper running of the Detention Unit, or the detainee, any other detainee or any member of the staff of the Detention Unit. Such items shall be removed." Rule 24 provides that detainees "may wear their own civilian clothing if, in the opinion of the Commanding Officer, it is clean and suitable." That is and has always been, the normal practice at UNDU. Prison uniforms are not usually worn. Rule 74 provides that a "detainee may keep in his possession all clothing and personal items for his own use or consumption unless, in the opinion of the Commanding Officer or the General Director, such items constitute a threat to the security or good order of the Detention Unit or the host prison, or to the health or safety of any person therein." These provisions are also reflected in the House Rules for Detainees of UNDU.

These provisions are not unique in their effect. It is apparent that, in recent years, there has been a general trend in prison management in Europe and many other parts of the world for detainees to retain ordinary items and wear their own clothing to the extent that it is possible and compatible with safety considerations. The most recent European Prison Rules adopted by the Committee of Ministers of the Council of Europe on 11 January 2006 ("European Rules") do not provide specific guidelines with regard to clothing and personal items. With respect to property in general, the European Rules refer back to the rules governing the individual prison. With respect to clothing the expectations of the European Rules are that prisoners who do not have adequate clothing of their own shall be provided with suitable clothing. These provisions are essentially the same as those set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners. That being so, a growing number of domestic prison facilities in Europe allow detainees to retain their own clothing, including belts and ties, and other items of ordinary and daily use. In Denmark, for instance, the general rule is that detainees may bring and retain their private belongings unless this conflicts with prison order and security regulations. This rule has been interpreted as giving detainees a right to bring and wear their own clothes unless concrete circumstances or observations indicate that the detainee may be at risk of committing suicide, in which case items which could be used to inflict self-harm may be removed. In the United Kingdom, as a general rule, detainees are allowed to have sufficient property in their possession to lead "as normal and individual an existence as possible" within the constraints of the prison environment. There is, however, also a policy of volumetric control to ensure that cells do not become overly cluttered. Items which are commonly allowed in cells include a combined sound system, a computer, smoking materials, approved electronic games and players, an electric shaver etc. Most particularly, it appears that even where a risk of self-harm has been identified, the applicable Prison Service Order in the United Kingdom provides that "[p]ersonal items such as shoelaces and belts must not be removed from at-risk prisoners as a matter of course" and prisoners "shall not be punished for self-harming or unnecessarily denied such items as razor blades for normal activities". In the Dutch Penitentiary Facility in Scheveningen, within which UNDU is housed, the detainees normally wear their own clothes. In a significant number of other national prison systems, this issue is left to the appreciation of the authorities of each prison facility. There are, of course, many prisons in which uniform prison clothing is still required. There is, however, no predominant practice in Europe by which items such as belts, ties, shoelaces, electrical chords and similar items which might be used to attempt suicide may not be kept in a cell.

In light of this clear trend, of which only a few examples have been given, and the circumstances of this case as set out in the report, it cannot be concluded that the standard procedure at UNDU by which personal clothing was permitted in Mr Babic's cell, or the decision that there were no circumstances to warrant the removal of items such as his leather belt, were unreasonable or evidenced any neglect or lack of due care.

In this case, a plastic rubbish-bin liner from the rubbish bin in his cell was also used by Mr Babic to assist in his efforts to suicide. The convenience and the hygiene advantages of a plastic bin liner are obvious. There is no justification for proposing that plastic bin liners should not be used in cells. It should be left to assessment in each particular case, where a risk that a detainee will self harm is identified, whether there is a need to remove the plastic bin liner from the cell.

For essentially the same reasons, the death of Mr Babic does not provide justification for introducing a more restrictive regime about personal property of detainees including items of property which could be used to inflict self-harm. This death should be viewed in the context of the history of self-harm in UNDU since its establishment in 1994. Despite the significant number of detainees who have been held in UNDU, often for prolonged periods and during periods of particular personal stress, there has only been one previous incident of suicide, which was in 1998. This incident did not involve the use of a belt. The present regime with respect to personal property has been in place throughout that time. As reflected in the growing trend in prison management in many national systems, the policy in these matters which is presently followed at UNDU has many advantages in the complex process of assisting detainees to cope with what are often long periods of detention, which usually involve prolonged separation from close family members, in a setting in which former political and military opponents must coexist.

Medical records

Under existing procedures, any medication ordered by the UNDU psychiatrist is prescribed by the medical officer and is recorded in the medical records at UNDU. However, the Inquiry noted that it is not usual for a record of other psychiatric treatment or assessments of detainees by the UNDU psychiatrist to be kept in the medical records. This information is typically retained by the psychiatrist. The present psychiatrist only visits The Hague from Belgrade for a part of each month. She can be called to UNDU if a need arises, but this involves delay. This arrangement is less than satisfactory. There is a need for information of this nature to be readily available to the medical officer and the Commanding Officer, for example, if there is a need to review the condition of a detainee or if some disturbance in a detainee's mental condition arises or is suspected. It will be apparent, from the factual situation concerning Mr Babic set out in this report, that this matter had no relevance to his treatment and supervision in UNDU or to his death. It is a situation which could well be important in another case and which calls for change.

With an exception, the medications used by Mr Babic during his detention at UNDU from 7 February 2006 until his death were recorded in the medical records. He was accustomed, however, to use an inhaler for his asthma. He had with him an inhaler on his arrival on 7 February 2006. This had been prescribed and provided to him in the prison of the third country in which he was serving his sentence. Although the use of the inhaler at UNDU had been approved by the medical officer, no record of this was made in the medical records.

Compliance with Rules of Detention

Except in one incidental matter, the Rules of Detention relevant to Mr Babic's health and detention arrangements were adequately implemented. Rule 34 provides that upon admission to UNDU, a detainee shall be examined by the medical officer or his deputy. With respect to segregation from other detainees, Rule 42 requires the Commanding Officer to seek the advice of the medical officer to determine whether such segregation is medically acceptable. Mr Babic was seen by the medical officer Dr Falke on the day of his return to UNDU on 7 February 2006. No reason was seen by Dr Falke to consider that segregation would be injurious to the mental or physical health of Mr Babic or to consider that he was in danger of suicide or self harm, and for the reasons detailed, this position

did not change thereafter. Rule 43 of the Rules of Detention requires the Commanding Officer to review cases of segregation at least once a week and to report to the Registrar thereon. The Commanding Officer confirmed that, as he was segregated, Mr Babic was reviewed on a weekly basis during UNDU staff meetings. No report to the Registrar was made, however, as there was no change to report. The Rule requires a report to be made.

In accordance with Rules 30 and 34 of the Rules of Detention, medical care, including psychiatric and dental care, shall be fully available to the detainees, subject to any practical arrangements. This care was available to Mr Babic. The details of the treatment provided to Mr Babic, between his return to UNDU on 7 February 2006 and the time of his death, have already been discussed. No difficulty in respect of his heart was reported by Mr Babic and nothing was observed by the medical officer, the nurse or any other staff member to suggest there might be any health issue concerning his heart.

FINDINGS AND RECOMMENDATIONS

In view of the matters set out in this report, the following findings and recommendations are made:

- a. Milan Babic died at the United Nations Detention Unit at Scheveningen on Sunday, 5 March 2006, at a time between 1754 hours and shortly after 1828 hours.
- b. He was alone in a locked cell at the time of his death.
- c. Entirely independently of this Inquiry, full investigations by the Dutch authorities have determined that no other person was present when he died and there is no evidence of criminal conduct by any other person. On 22 May 2006, the Chief Public Prosecutor informed me that the criminal investigation had been closed.
- d. Nothing has been found to support reported allegations that Mr Babic had been murdered.
- e. Mr Babic had hung himself by his leather belt around his neck and had also secured a plastic bag around his neck to restrict air flow to his mouth and nose. He was found dead by a guard shortly after 1828 hours. He was last seen alive by a guard at about 1754 hours.
- f. A note written by Mr Babic, apparently intended for his wife, was found in the cell inside the cover of his personal bible. Its text, which is fully set out in the report, indicates an intention to take his own life. He sought peace. Allegations that this note disclosed that Mr Babic had been under pressure to falsely testify against other Serbian accused are entirely false.
- g. At about the same time as the hanging took effect, Mr Babic also suffered a heart attack.
- h. A full autopsy conducted by the Netherlands Forensic Institute has not been able to determine whether, as a matter of timing, it was the hanging or a heart attack that was the actual cause of death of Mr Babic.
- i. The heart attack may have occurred as a bodily reaction to the effects of the hanging, or by

a process in which a viral infection of the muscle tissue of Mr Babic's heart, which was identified in the autopsy, had a significant part, possibly in combination with a thickening of the walls of the intramyocardial vessels.

- j. When Mr Babic was found hanging by his neck, the reaction of UNDU staff to the emergency situation was prompt and appropriate. The procedures for a medical emergency were followed.
- k. It had not been foreseen at UNDU that Mr Babic was at risk of suicide. This does not reveal any lack of proper care in the circumstances. Medical and other staff's assessments at UNDU had not identified any reason to consider that he was at risk of suicide. That is also the position revealed by the records of the prison in the third country in which he had been serving his sentence before 7 February 2006. No person, including family members and his lawyer, who had contact with Mr Babic between 7 February 2006 and his death, had detected reason for concern that he might commit suicide or self-harm.
- l. There was no knowledge at UNDU of the existence of a viral infection of the muscle tissue of Mr Babic's heart at the time of his death. This does not reveal any lack of proper care in the circumstances. Mr Babic had not complained of any symptoms which would suggest such a condition. No such symptoms had been found on medical examination on 7 February 2006, and none had been recorded in the medical records of the prison in the third country in which he had been serving his sentence before 7 February 2006. No medical or other staff member at UNDU, and no person at the Tribunal where he was giving evidence, had noticed symptoms which would suggest such a condition or any form of infection or illness before he died. It appears that Mr Babic was not aware of the viral infection or of any heart problem.
- m. The presence of personal clothing and other items, including his leather belt, in the cell of Mr Babic was in accordance with the Rules of Detention. By these Rules, an item such as a belt can be removed if it constitutes a threat to security, or good order, or to the health or safety of any person. There was no reason in this case to identify such a threat. In this respect, the Rules of Detention reflect a policy that is well established in prison management in Europe and many other parts of the world and is followed in many prisons. The events of this case are isolated and provide no justification for a change to the policy in this respect of the present Rules of Detention.
- n. Mr Babic was segregated from other prisoners for his own safety, and at his own request. This segregation had been ordered by the Trial Chamber. The system of monitoring by visual checks at intervals of 30 minutes, and the requirement that guards report any change in his behaviour, which had been ordered in writing by the Deputy Commanding Officer, was an appropriate precaution because of the segregation of Mr Babic. The known circumstances did not warrant any more intrusive monitoring regime.
- o. It is recommended that a record be maintained in the medical records of a detainee at UNDU of any assessment, whether formal or informal, or treatment of a detainee by the UNDU psychiatrist. That is not the present practice. It is also recommended that there should be a note in the medical records of any medication which a detainee is using on arrival at UNDU, the continued use of which is approved by the medical officer. It should be made clear that neither of these was of any relevance to the death of Mr Babic or to his treatment and supervision.

- p. The Rules of Detention relevant to Mr Babic's health and detention arrangements were correctly implemented. There was, however, one incidental deficiency affecting Rule 43. Mr Babic's condition was reviewed every week, as required for a segregated detainee, but no consequential report was made to the Registrar as required by the Rule. No report was made because there was no change in Mr Babic's circumstances. Hence the deficiency was of no consequence in this case. Nevertheless, the procedure followed should be adjusted to comply with the Rule.

- q. The events of this case emphasize the importance to detainees of the arrangements made for the service of sentences and, in cases where family protection has been found necessary, of the arrangements for relocation of families. These matters depend on the decisions of governments. It is also in the hands of governments what long-term assurances can be given. Care should be taken that these difficulties are fully explained to the detainees and their families so that unrealistic expectations are not built up.

The Hague K.H. PARKER

8 June 2006 VICE-PRESIDENT