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**UNITED
NATIONS**



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

Case No. IT-95-11-A
Date: 29 May 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrézia Vaz
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Order of: 29 May 2008

PROSECUTOR

v.

MILAN MARTIĆ

PUBLIC

ORDER FOR PREPARATION OF APPEAL HEARING

The Office of the Prosecutor:

Ms. Michelle Jarvis

Counsel for Milan Martić:

Mr. Predrag Milovančević
Mr. Nikola Perović

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THE APPEALS 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 (“Appeals Chamber” and “Tribunal”, respectively);

RECALLING the Scheduling Order issued by the Appeals Chamber on 15 May 2008, which set the dates for the hearing of the merits of the appeals in this case as Wednesday, 25 June and Thursday, 26 June 2008 including the timetable for the hearing;¹

CONSIDERING the need to ensure that the time allotted for the appeal hearing is used as efficiently as possible;

EMPHASISING that the present order in no way expresses the Appeals Chamber’s views on the merits of the appeal, which will be set forth in the Appeal Judgement;

HEREBY INFORMS the parties that, during the course of the appeal hearing and without prejudice to any other matter which the parties or the Appeals Chamber may wish to address, they are invited to develop their submissions with regard, *inter alia*, to the following issues:

(1) Issue of victims of crimes under Article 5 of the Statute (Crimes against humanity)

As an alternative to its submissions under Ground 1, the Prosecution argues that, even if the Appeals Chamber were to find that *hors de combat* victims do not constitute civilians for the purposes of Article 5 of the Statute, it should nevertheless find that persons *hors de combat* are covered by that Article (Prosecution Appeal Brief, para. 60 and Prosecution Reply Brief, paras 6-11). The Appeals Chamber invites the parties to elaborate on this issue, especially in light of the *chapeau* of Article 5 of the Statute and the relevant jurisprudence.

(2) JCE: Martić’s link to the principal perpetrators under Joint criminal enterprise (JCE)

Martić alleges that the Trial Chamber erred on various occasions in reaching the conclusion that crimes were attributable to him, because no connection with him can be established (see, for example, Defence Appeal Brief, paras 188, 190, 199). Taking into account the legal findings in paras 442-455 of the Trial Judgement, the Appeals Chamber invites the parties to elaborate in law on the required connection, if any, between Martić and the principal perpetrators of the crimes (paras 173-301 of the Trial Judgement) in light of the discussion in the *Brdanin* Appeal Judgement (in particular, paras 413, 418 and 430) on the requisite link in a joint criminal enterprise.

(3) Crimes of Deportation and Forcible Transfer

Martić argues in his Appeal Brief (para. 203) that the Trial Chamber erred in finding that he was aware of the forcible removal of the non-Serb population and that, in fact, he actively promoted the

¹ Scheduling Order for Appeals Hearing, 15 May 2008.

coexistence of Croats and Serbs in the RSK and took measures to that effect. The Appeals Chamber invites the parties to elaborate on this assertion.

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



Judge Fausto Pocar
Presiding Judge

Dated this 29th day of May 2008,
At The Hague,
The Netherlands

[Seal of the Tribunal]

