THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-A

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Date Filed: 23 September 2009

THE PROSECUTOR

v.

NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PUBLIC
ANNEX TO GENERAL PAVKOVIĆ'S APPEAL BRIEF

The Office of the Prosecutor

Mr. Paul Rogers

Counsel for the Accused
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Ćepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

ANNEX A

Collegiums of the General Staff

Date	Exhibit Number
26-Sep-97	3D1074
12-Dec-97	3D1075
15-Dec-97	3D1076
10-Apr-98	3D657
17-Apr-98	3D658
4-May-98	3D659
8-Jun-98	3D666
22-Jun-98	P923
29-Jun-98	P927
20-Jul-98	P922
23-Oct-98	3D645
26-Oct-98	3D646
28-Oct-98	P926
30-Oct-98	2D389
3-Nov-98	3D663
6-Nov-98	3D664
27-Nov-98	P925
3-Dec-98	3D557
10-Dec-98	3D484
14-Dec-98	3D485
17-Dec-98	3D494
24-Dec-98	P924
30-Dec-98	P928
6-Jan-99	3D558
14-Jan-99	P936
21-Jan-99	P939
28-Jan-99	3D559
1-Feb-99	P930
2-Feb-99	P931
4-Feb-99	P932
11-Feb-99	P934
18-Feb-99	P937
21-Feb-99	P940
25-Feb-99	P941
4-Mar-99	P933
11-Mar-99	P935
18-Mar-99	P938
9-Apr-99	P929

ANNEX B

Daily Briefings

Exhibit Number	Date
3D578	24 March 1999
3D579	25 March 1999
3D580	26 March 1999
3D581	28 March 1999
3D582	29 March 1999
3D583	30 March 1999
3D584	31 March 1999
3D719	1 April 1999
3D721	3 April 1999
3D722	4 April 1999
3D723	5 April 1999
3D724	6 April 1999
3D639	7 April 1999
3D725	8 April 1999
3D728	11 April 1999
3D729	12 April 1999
3D730	13 April 1999
3D585	14 April 1999
3D586	15 April 1999
3D587	16 April 1999
3D588	17 April 1999
3D589	18 April 1999
3D590	19 April 1999
3D591	21 April 1999
3D592	22 April 1999
3D593	23 April 1999
3D594	24 April 1999
3D595	25 April 1999
3D596	26 April 1999
3D597	27 April 1999
3D598	28 April 1999
3D599	29 April 1999
3D600	30 April 1999
3D601	1 May 1999
3D602	2 May 1999
3D603	3 May 1999
3D604	4 May 1999

3D605	5 May 1999
3D606	6 May 1999
3D607	7 May 1999
3D608	8 May 1999
3D609	9 May 1999
3D610	10 May 1999
3D611	11 May 1999
3D612	12 May 1999
3D613	13 May 1999
3D614	14 May 1999
3D615	15 May 1999
3D616	16 May 1999
3D617	17 May 1999
3D618	18 May 1999
3D619	19 May 1999
3D620	20 May 1999
3D621	21 May 1999
3D622	22 May 1999
3D623	23 May 1999
3D624	24 May 1999
3D625	25 May 1999
3D626	26 May 1999
3D627	27 May 1999
3D628	28 May 1999
3D629	29 May 1999
3D630	30 May 1999
3D631	31 May 1999
3D632	1 June 1999
3D633	2 June 1999
3D634	3 June 1999
3D635	4 June 1999
3D636	5 June 1999
3D637	6 June 1999
3D638	7 June 1999
3D493	8 June 1999

ANNEX C

Intelligence Administration Briefings

Exhibit Number	Date
3D894	26 March 1999
3D898	28 March 1999
3D783	29 March 1999
3D902	30 March 1999
3D906	1 April 1999
3D911	3 April 1999
3D782	3 April 1999
3D913	4 April 1999
3D781	5 April 1999
3D918	7 April 1999
3D779	13 April 1999
3D778	14 April 1999
3D928	15 April 1999
3D934	21 April 1999
3D938	25 April 1999
3D940	27 April 1999
3D772	4 May 1999
3D955	12 May 1999
3D769	12 May 1999
3D1055	13 May 1999
3D758	19 May 1999
3D968	25 May 1999
3D969	26 May 1999
3D762	29 May 1999
3D760	31 May 1999
3D978	4 June 1999

ANNEX D

Orders regarding International Humanitarian Law

Ojdanić		Pavković		Lazarević	
Exhibit Number	**Date**	**Exhibit Number**	**Date**	**Exhibit Number**	**Date**
		4D300	26 Apr 1998		
		P1535, 4D289	29 Apr 1998		
		4D183	16 May 1998		
		4D428	27 May 1998		
		4D355	4 Jun 1998		
3D712	3 Feb 1998	4D201	7 Aug1998		
3D711	15 Nov 1998	5D249	1 Feb 1999		
		4D103	23 Mar 1999	P2029	1 Apr 1999
P1475/3D480	2 Apr 1999	4D170	27 Mar 1999		
P1477	3 Apr 1999	4D20	3 Apr1999		
		4D324	4 Apr 1999		
		4D411	5 Apr 1999		
P1481	9 Apr 1999	4D308	10 Apr 1999	5D176	8 Apr 1999
P1486/3D482/ 4D216	16 Apr 1999	4D176	17 Apr 1999	5D198	18 Apr 1999
3D488	19 Apr 1999				
P1944	23 Apr 1999				
4D221	26 Apr 1999	4D372	26 Apr 1999		
		4D203	27 Apr 1999	5D385	29 Apr 1999
		4D242	30 Apr 1999	5D396	6 May 1999
		4D198	7 May 1999	5D398	7 May 1999
4D305	10 May 1999	4D189	12 May 1999		
		4D246 (List of 11 IHL orders given)	17 May 1999		
				5D417	21 May 1999
				4D250	25 May 1999
		4D158	27 May 1999		

ANNEX E

Date	Title
8-07-2005	*Milutinović et al;.* IT-99-37-PT*, Pavković et al*.IT-03-70-PT Decision on Prosecution Motion for Joinder
20-07-2005	*Ori, IT-03-68-AR73.2,* Interlocutory Decision on Length of Defence Case
16-08-2005	*Milutinović et al.* IT-05-87-PT, Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance
19-08-2005	*Milutinović et al.* IT-05-87-PT, Addendum to Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance
7-09-2005	*Milutinović et al.* IT-05-87-PT, Trial Chamber Decision on Pavkovic Motion to Set Aside Joinder or in the Alternative to Grant Severance
07-11-2005	*Milutinović et al.* IT-05-87-PT, Pavković Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance
02-12-2005	*Milutinović et al.* IT-05-87-PT, Decision on Pavković to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance
13-04-2006	*Milutinović et al.* IT-05-87-PT, Renewal of and Supplement to 7 November Pavković Motion Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance
28-04-2006	*Milutinović et al.* IT-05-87-PT, Second Decision on Motions to Delay Proposed Date for Start of Trial
05-05-2006	*Milutinović et al.* IT-05-87-PT, Pavković Motion for Leave to Appeal the Second Decision on Motions to Delay Proposed Date for Start of Trial
12-05-2006	*Milutinović et al.* IT-05-87-PT, Decision on Defence Request for Certification of an Interlocutory Appeal of Second Decision Denying Motion for Delay of Trial
13-07-2006	*Milutinović et al.* IT-05-87-T, Pavković Objection to Trial Proceeding in absence of his lead counsel
09-10-2006	*Milutinović et al.* IT-05-87-T, Decision on Use of Time
02-11-2006	*Milutinović et al.* IT-05-87-T, Joint Defence Objection to Trial Scheduling Order for week beginning 27 November 2006
15-11-2006	*Milutinović et al.* IT-05-87-T, Scheduling Order

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-99-37-PT
IT-03-70-PT

Date: 8 July 2005

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Mr. Hans Holthuis**

Decision of: **8 July 2005**

THE PROSECUTOR v. MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ & DRAGOLJUB OJDANIĆ
(IT-99-37-PT)

THE PROSECUTOR v. NEBOJŠA PAVKOVIĆ, VLADIMIR LAZAREVIĆ,
VLASTIMIR ĐORĐEVIĆ & SRETEN LUKIĆ
(IT-03-70-PT)

DECISION ON PROSECUTION MOTION FOR JOINDER

The Office of the Prosecutor

Mr. Thomas Hannis
Ms. Christina Moeller
Ms. Carolyn Edgerton

Counsel for the Accused
Mr. Eugine O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihaljo Bakrać for Mr. Vladimir Lazarević
Mr. Theodore Scudder for Mr. Sreten Lukić

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 ("International Tribunal"),

BEING SEISED of the "Prosecution Motion for Joinder" ("the Motion"), dated 1 April 2005, seeking to join the three accused in *Prosecutor v. Milan Milutinović, Dragoljub Ojdanić and Nikola Šainović*, Case No. IT-99-37-PT ("*Milutinović et al.*"), with the four persons accused in *Prosecutor v. Nebojša Pavoković, Vladimir Lazarević, Vlastimir Đorđević and Sreten Lukić*, Case No. IT-03-70-PT ("*Pavković et al.*"), and for all seven Accused to be jointly charged and tried under one joint indictment,

NOTING that an amended indictment in the *Milutinović et al.* case was confirmed by Judge David Hunt on 29 June 2001 and, since that time, this Trial Chamber has granted leave to amend the Indictment on 20 October 2001 and on 5 September 2002, and that the Indictment in the *Pavković et al.* case was confirmed by Judge O-Gon Kwon on 2 October 2003,

NOTING that the Indictments in both cases charge each Accused with crimes against humanity (deportation, other inhumane acts, murder and persecutions on political, racial and religious grounds), punishable under Article 5 of the Statute, and with violations of the laws or customs of war (murder), punishable under Article 3 of the Statue, and that all Accused are charged as being individually criminally responsible under Article 7 (1) and on the basis of superior responsibility under Article 7 (3) of the Statute,

CONSIDERING the Trial Chamber is seised of the proceedings in both cases pursuant to an order made on 29 June 2001 with respect to the case of *Milutinović et al.*[1] and an order made on 24 February 2005 with respect to the case of *Pavković et al.*,[2]

NOTING that the Prosecution submits in the Motion that (i) the legal requirements of Rule 48 of the Rules are met;[3] (ii) a joint trial would be in the interests of justice; and (iii) a joint trial would not interfere with the rights of the Accused to a fair and expeditious trial,[4]

[1] *Prosecutor v. Milutinović, Ojdanić & Šainović*, Case No. IT-99-37-I, "Order Assigning a Case to a Trial Chamber", 29 June 2001.
[2] *Prosecutor v. Pavković, Lazarević, Đorđević & Lukić*, Case No. IT-03-70-PT, "Order re-assigning a case to a Trial Chamber", 24 February 2005.
[3] Motion, para. 24.
[4] Motion, para. 4.

NOTING the following with respect to the responses to the Motion filed by the defence in both cases:

(i) the Defence for Milutinović responded on 8 April 2005, stating that he does not oppose the Motion;[5]

(ii) the Defence for Ojdanić responded on 11 April 2005, agreeing to the Motion;[6]

(iii) the Defence for Šainović indicated at the Rule 65 *ter* Conference on 11 May 2005 that no response would be filed on his behalf ;[7]

(iv) the Defence for Lukić responded on 6 June 2005, following the enlargement of time in which to file a response to the Motion granted by the pre-trial Judge,[8] objecting to joinder on the basis that (i) joinder would be improper as it would prejudice the rights of the Accused, given the substantial differences in the levels of preparation of the two cases, and (ii) joinder would result in a long and difficult to manage trial with 7 defendants which would violate the rights of the Accused to have a fair and expeditious trial;[9]

(v) no other responses have been received from the defence in the *Pavković et al.* case, the time for the filing thereof having expired,

NOTING that the Prosecution previously filed a Motion for Joinder of the *Milutinović et al.* case and the *Pavković et al.* case on 5 November 2003, which this Trial Chamber denied on 4 December 2003 as being premature, given that the Trial Chamber was not seized of the *Pavković et al.* case and that none of the Accused in the *Pavković et al.* case had surrendered to the International Tribunal at that time,[10]

CONSIDERING that subsequently Lazarević surrendered to the International Tribunal on 3 February 2005, Lukić surrendered on 4 April 2005 and Pavković surrendered on 25 April 2005,

[5] "Response by Mr. Milan Milutinović to the Prosecution Motion for Joinder", 8 April 2005
[6] "General Ojdanić's Response to Prosecution Motion for Joinder", 11 April 2005
[7] Rule 65 *ter* Conference, 11 May 2005, T.421
[8] "Decision on Sreten Lukić's Motion for Enlargement of Time to File a Response to the Prosecution's Motion for Joinder, and to File a Preliminary Motion", 24 May 2005
[9] "Defendant, Sreten Lukić's Response Brief in Opposition to Motion for Joinder", 6 June 2005
[10] *Prosecutor v. Milutinović, Ojdanić & Šainović*, Case No. IT-99-37-PT, Decision on Prosecution Motion for Joinder, 4 December 2003

CONSIDERING that Rule 48 gives the Trial Chamber discretion to grant a motion for joinder of, "[p]ersons accused of the same or different crimes committed in the course of the same transaction [...]",[11]

CONSIDERING the following with regard to Rule 48:

(i) that the Accused are charged with the same crimes, allegedly committed during the same period and in the same geographical area; [12]

(ii) that the indictments demonstrate *prima facie* that the crimes charged against all the Accused were committed in the course of the same transaction,[13] in that all the Accused are alleged to have participated in one Joint Criminal Enterprise ("JCE") whose purpose was "*inter alia*, the expulsion of a substantial portion of the Kosovo Albanian population from the territory of the province of Kosovo in an effort to ensure continued Serbian control over the province;"[14]

(iii) that the joinder of the Accused would avoid duplication of the presentation of evidence related to underlying crimes and to some extent to the criminal responsibility of several of the Accused; minimise hardship to witnesses; and would be in the interests of judicial economy,[15] since, on the basis of the Prosecution's submissions, the length of one joint trial is likely to be significantly shorter than the combined period necessary for two separate trials;[16]

(iv) that no basis has been identified for concluding that joinder would create a conflict of interest or otherwise prejudice the right of any of the Accused to a fair and expeditious trial, and no basis has been advanced to persuade the Trial

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[11] *Prosecutor v. Dragoljub Kunarac and Radomir Kovać*, Decision on Joinder of Trials, Case No. IT-96-23-PT, 9 February 2000, para. 9; *Prosecutor v. Željko Meakić, Momčilo Gruban, Duško Knezević* and *Prosecutor v. Dušan Fustar, Predrag Banović and Duško Knezević*, Decision on Prosecution's Motion for Joinder of Accused, Case No. IT-95-8/4-PT, IT-95-8/1-PT.

[12] *Prosecutor v. Rahim Ademi* and *Prosecutor v. Mirko* Norac, Case No. IT-01-46-PT and Case No. IT-04-76-I, Decision on Motion for Joinder of Accused, 30 July 2004.

[13] *Prosecutor v. Slobodan Milošević*, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, Case No. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, 18 April 2002, para. 19 ("*Milošević* Appeal Decision on Joinder"). While this Decision ultimately dealt with Rule 49, it was noted that this provision has necessarily to be considered in conjunction with Rule 48 ("Joinder of Accused"), as each is based upon events which must form "the same transaction". *Ibid*, para.13

[14] Indictment, para. 5.

[15] *Prosecutor v. Rahim Ademi* and *Prosecutor v. Mirko* Norac, Case No. IT-01-46-PT and Case No. IT-04-76-I, Decision on Motion for Joinder of Accused, 30 July 2004. See also the reasoning in *Prosecutor v. Brđanin & Talić*, Decision on Motions by Momir Talić for a Separate Trial And for Leave to File a Reply, Case No. IT-99-36-PT, 9 March 2000, paras 24-25, 29.

[16] Motion, para. 26, 32 and 36.

Chamber that it is not able to manage the conduct of a joint trial adequately; moreover, the Trial Chamber is confident that by applying existing Rules of Procedure and Evidence, it will be able to ensure to the Accused a fair and expeditious trial;

(v) that there is no indication that a joint trial could not start in December 2005 or January 2006, the anticipated date for the start of trial in the *Milutinović et al.* case; and

CONSIDERING that on the basis of the foregoing factors, when taken together, it is in the interests of justice that the Accused be tried in a single trial,

PURSUANT to Rule 48 of the Rules of Procedure and Evidence,

HEREBY GRANTS leave to the Prosecution to file a Motion which exceeds the regular page limit and **ACCEPTS** the number of pages in the Motion as filed;

GRANTS the Motion for the Accused Milutinović, Ojdanić, Šainović, Pavković, Lazarević, Đorđević and Lukić to be jointly charged and tried on one joint indictment;

ORDERS the Prosecution to submit a consolidated indictment to the Trial Chamber by Monday 15 August 2005, taking into account such decision or order that the Trial Chamber may make in relation to the three separate Preliminary Motions filed by the Accused Lazarević, Lukić and Pavković;

AND REQUESTS the Registry to designate one unified case number to the joined case forthwith.

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

Judge Patrick Robinson
Presiding

Dated this eighth day of July 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

UNITED NATIONS

IT-03-68-AR73.2
A90 - A82
20 July 2005

90 VF

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-03-68-AR73.2

Date: 20 July 2005

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding**
Judge Fausto Pocar
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Wolfgang Schomburg

Registrar: **Mr Hans Holthuis**

Decision: **20 July 2005**

PROSECUTOR

v.

Naser ORIĆ

INTERLOCUTORY DECISION ON LENGTH OF DEFENCE CASE

Counsel for the Defense
Vasvija Vidović
John Jones

Prosecution
Jan Wubben

1. The Appeals Chamber of the International Criminal 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 seized of the "*Urgent* Appeal of Trial Chamber's Decision on Length of Defence Case," filed by Naser Orić on 7 July 2005.

Background

2. According to the Third Amended Indictment,[1] Orić was named the commanding officer of all Bosnia and Herzegovina (BiH) forces in Srebrenica municipality in May 1992. In November of that year, he was promoted to Commander of the Joint Armed Forces of BiH in the "Sub-Region Srebrenica," an area in Eastern Bosnia encompassing Srebrenica, Bratunac, Vlasenica, and Zvornik municipalities.[2] Orić remained in that position until August 1995, when he left the BiH Army.[3] He currently faces four separate criminal charges in connection with his military service. Counts 1 and 2 of the Third Amended Indictment rely on Orić's position of command to charge him with the murder of six Serbs and the cruel treatment of ten more Serbs in the Srebrenica Police Station.[4] Counts 3 and 5 of the Third Amended Indictment rely on both direct culpability and command responsibility to charge him with wanton destruction of at least fifty predominantly Serb villages and hamlets during military operations by Bosnian Muslims against Bosnian Serb forces in the area.[5]

3. This interlocutory appeal arises from a dispute regarding the framework for the presentation of the Defence case. After the Prosecution rested, Orić served notice of his intention to call 73 witnesses in his defense and estimated that his examination-in-chief

[1] Third Amended Indictment, 30 June 2005 ("Third Amended Indictment").
[2] Third Amended Indictment, paras. 5-10.
[3] Third Amended Indictment, para. 10.
[4] Third Amended Indictment, paras. 22-26

would take 249 hours.[6] He contended that this was a reasonable allotment in light of the fact that the Prosecution had called 50 witnesses and had taken roughly 260 hours of court time.[7]

4. The Trial Chamber rejected Orić's proposed framework. The Trial Chamber found that a number of "areas of evidence" had been "sufficiently addressed during the Prosecution case in a manner and to an extent which in the Trial Chamber's opinion does not require any further evidence on the part of the Defence."[8] These areas were:

> "- The historical and political background which led to the armed conflict in Bosnia-Herzegovina in April 1992;
>
> "- The large number of attacks by Bosnian Serb forces on Bosnian Muslim villages within the geographical scope of the Indictment, including the wanton destruction and plunder of Bosnian Muslim villages and hamlets and the laying of mines by Bosnian Serb forces in and around destroyed Bosnian Muslim villages and hamlets;
>
> "- The killing and inhumane treatment of Bosnian Muslims, whether civilians or non-civilians, by Bosnian Serbs or Bosnian Serb forces;
>
> "- The policy of 'ethnic cleansing' by Bosnian Serb political or military authorities before, during and after the crimes charged in the Indictment, in and around Srebrenica;
>
> "- The positive treatment of Serbs – whether civilians or non-civilians, hostages or wounded, in Bosnian Muslim hospitals – by Bosnian Muslims, unless relating to persons identified in Counts 1 and 2 of the Indictment;
>
> "- The situation of Srebrenica during the period relevant to the Indictment, namely the positioning of Bosnian Serb forces in and around Srebrenica, and the isolation of Srebrenica from the rest of Bosnia and Herzegovina while being under constant siege and suffering from air and artillery bombardment;
>
> "- The influx of refugees in Srebrenica and the critical condition under which the population of Srebrenica had to live during the period relevant to the

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[5] Third Amended Indictment, paras. 27-37.
[6] Defence Filing Pursuant to Scheduling Order, 17 June 2005; Second Defence Filing Pursuant to Scheduling Order, 28 June 2005.
[7] *Urgent* Appeal of Trial Chamber's Decision on Length of Defence Case, 7 July 2005, paras. 10, 22 ("Orić's Brief").
[8] Decision on First and Second Defence Filings Pursuant to Scheduling Order, 4 July 2005, p. 3 ("Trial Chamber Decision").

Indictment, to include food and medical shortages, hygiene issues, security concerns, sporadic electricity and telecommunications shortages;

"- The genocide committed against Bosnian Muslims in Srebrenica in 1995;

"- The military superiority of the Bosnian Serbs at the time relevant to the Indictment, namely that the Bosnian Serbs were better equipped militarily than the Bosnian Muslims and that, in addition, the Bosnian Serbs benefited from the support of the former JNA and from Serbia;

"- The Bosnian Military capacity in Srebrenica was largely dependent on weapons that could be captured from the Bosnian Serb forces; and

"- The urgent necessity for Bosnian Muslims to attack villages and hamlets named in the Indictment in order to try and secure food, medicine and weapons, for the purpose of the survival of the Muslim population in Srebrenica. (This limitation does not in any way mean that the Trial Chamber does not require any further evidence that the Defence may wish to adduce in relation to the aspect of military necessity to engage in wanton destruction as alleged in Counts 3 and 5 of the Indictment);"[9]

The Trial Chamber went on to decide that, "in view of [its] conclusions [regarding the above topics]," "the Defence case can be concluded" with a much shorter presentation of evidence than the schedule proposed by Orić. The Trial Chamber ordered Orić to file a new witness list with no more than 30 witnesses, and ordered that the Defense case must finish on 30 September 2005.[10]

5. Orić filed an oral request for certification to appeal the decision[11] and a written motion for a stay of proceedings pending appeal.[12] The Trial Chamber determined that this issue "would significantly affect the fair and expeditious conduct of the proceedings in this case" and that "an immediate resolution by the Appeals Chamber may materially advance the proceedings."[13] The Trial Chamber therefore granted certification for an interlocutory appeal of its scheduling order under Rule 73(B) of the Tribunal's Rules of Procedure and Evidence

[9] Trial Chamber Decision, pp. 3-4.
[10] Trial Chamber Decision, p. 5. The Trial Chamber Decision allows for an additional three days at the end of that time, if the Defense chooses, to present mitigating evidence.
[11] *See* Decision on Request for Certification to Appeal Trial Chamber's Decision on Defence Filings, 4 July 2005, p. 1 ("Certification of Appeal").
[12] Urgent Defence Motion for a Stay of Proceedings Pending Appeal, 4 July 2005.

("Rules").[14] In an oral decision rendered on 4 July 2005, however, the Trial Chamber declined to stay the proceedings and refused to certify this latter issue for appeal.[15]

Analysis: Restrictions on Subject Matter

6. In his Appeal, Orić challenges both the Trial Chamber's allocation of time and witnesses and its limitation of the subject matter he may address while presenting his case. The Appeals Chamber turns first to the limitations on subject matter. Some of the topical restrictions, such as those on evidence regarding the general historical and political background of the Balkan conflict, are defensible as a reasonable exercise of the Trial Chamber's Rule 73 *ter* responsibility to "set the number of witnesses the defence may call" and "determine the time available to the defense for presenting evidence." Others, however, are unreasonable in light of the fact that the defense of military necessity may play a central role in Orić's defense on Counts 3 and 5 of the indictment.[16] Unless the Trial Chamber decides in his favor on those counts and issues a formal acquittal under Rule 98 *bis*, there is simply no way to justify restricting Orić from presenting information regarding, at a minimum:

- The military situation, broadly construed, throughout the Srebrenica region, including the placement of Bosnian Serb forces, equipment, and artillery; the isolation of Bosnian Muslim forces; and the alleged military superiority of Bosnian Serbs at the time relevant to the indictment
- The allegedly desperate situation of the region's Bosnian Muslim population
- The alleged reliance of Bosnian Muslims on weapons that could be captured from Bosnian Serb forces

[13] Certification of Appeal, p. 1.
[14] Certification of Appeal, p. 1.
[15] T. 4 July 2005, pp. 9148-9149, 9152-9153 (unofficial and uncorrected transcript).
[16] *See, e.g.*, Orić's Brief, para. 28.

- Any facts that could cast non-trivial doubt on the credibility of Prosecution witnesses

This is not to say, of course, that Orić is free to present unnecessarily repetitive or irrelevant evidence just because it arguably fits within these categories. But unless the Trial Chamber is prepared to reconsider its Rule 98 *bis* ruling and grant a partial judgment of acquittal, it must give Orić a reasonable opportunity to present reliable and relevant evidence on at least these issues.

Analysis: Restrictions on Witnesses and Time

7. The question of time limits and witness allocation is somewhat less straightforward. The Appeals Chamber has long recognized that "the principle of equality of arms between the prosecutor and accused in a criminal trial goes to the heart of the fair trial guarantee."[17] At a minimum, "equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case," certainly in terms of procedural equity.[18] This is not to say, however, that an Accused is necessarily entitled to precisely the same amount of time or the same number of witnesses as the Prosecution. The Prosecution has the burden of telling an entire story, of putting together a coherent narrative and proving every necessary element of the crimes charged beyond a reasonable doubt. Defense strategy, by contrast, often focuses on poking specifically targeted holes in the Prosecution's case, an endeavor which may require less time and fewer witnesses. This is sufficient reason to explain why a principle of basic proportionality, rather than a strict principle of mathematical equality, generally governs the relationship between the time and witnesses allocated to the two sides.

[17] *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, para. 44 ("*Tadić* Appeal Judgement").
[18] *Tadić* Appeal Judgement, paras. 48, 50 (discussing principles laid down by the European Court of Human Rights and by the Human Rights Committee); *see also id.* at para. 52 ("[U]nder the Statute of the International Tribunal the principle of equality of arms must be given a more liberal interpretation than that normally upheld

8. In addition, it should be noted that although Rule 73 *ter* gives the Trial Chamber the authority to limit the length of time and number of witnesses allocated to the defense case, such restrictions are always subject to the general requirement that the rights of the accused pursuant to Article 21 of the Statute of the International Tribunal be respected. Thus, in addition to the question whether, relative to the time allocated to the Prosecution, the time given to the Accused is reasonably proportional, a Trial Chamber must also consider whether the amount of time is objectively adequate to permit the Accused to set forth his case in a manner consistent with his rights.[19]

9. The question, then, is whether, taking into account the complexity of the remaining issues, the amount of time and the number of witnesses allocated to Orić's defense are reasonably proportional to the Prosecution's allocation and sufficient to permit Orić a fair opportunity to present his case. The Trial Chamber's order leaves Orić nine weeks to present 30 witnesses.[20] In an effort to make a rough comparison between the respective allotments for his case and for the Prosecution's case, Orić offers the following analysis:

> The Prosecution case in *Orić* lasted 15,491 minutes. Dividing this figure by the number of days when witnesses were heard (i.e. excluding opening speeches and Rule 98 *bis* submissions), *i.e.* 100 days, gives an average of 2.5 hours per day of sitting. The Trial Chamber also sat only 3 days on average over the 35 weeks of the trial during the Prosecution case. This means that if the Chamber were to sit as it has been doing during the Prosecution case (and there is no reason to suppose otherwise), that over the 9 weeks scheduled for the Defence case, there would only be 67.5 available hours. Assuming that the Defence would have approximately half of that time to examine its witnesses in chief (the rest of the time being occupied by cross-examination, judges' questions and administrative matters), the Defence will have 33.75 hours to examine in chief its allotted

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with regard to proceedings before domestic courts."); *see generally* Antonio Cassese, *International Criminal Law*, pp. 395-397.

[19] Plainly, it may not be possible to predict with precision before the Defense begins how much time will be necessary; thus, as the Trial Chamber correctly noted, Rule 73 *ter* allows for additional time to be granted later "in the interests of justice."

[20] Orić's Brief, para. 4; *see also* T. 4 July 2005, p. 9148 (unofficial and uncorrected transcript) (noting that the 30 September 2005 deadline leaves the Defense nine weeks to present its case).

> 30 witnesses. This comes to little more than one hour to examine in chief each of its 30 witnesses[.][21]

If Orić's calculations are correct – and the Prosecutor does not seriously contest them[22] – Orić can expect to be allotted only 30 witnesses and 27 days of testimony, as compared to the 50 witnesses and 100 days of testimony that were allotted to the Prosecution. This allocation is not remotely proportional to the time that was allotted to the Prosecution. The Prosecution is of course correct that the Defense must ordinarily articulate specific prejudice in challenging a Trial Chamber's order.[23] But since the Appeals Chamber has struck down most of the subject matter restrictions imposed by the Trial Chamber,[24] the disparity in this instance is so great that no specific prejudice need be shown.[25] Given the complexity of the issues at stake, particularly regarding military necessity, such disproportion cannot be justified.[26]

10. In recalculating the period of time and the number of witnesses that will be allocated to the Defense case, the Trial Chamber should include enough time to allow Orić to begin presenting his case again, if he so chooses. As the Appeals Chamber has previously discussed,[27] Orić's case has proceeded under a cloud of uncertainty while this appeal has been

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[21] Orić's Brief, para. 22 (emphasis eliminated).
[22] The Prosecution claims that "the 9 weeks allocated to the Defence to present its case is exclusive of administrative matters." Prosecution Response to the Defence Urgent Appeal of the Trial Chamber's Decision on the Length of the Defence Case, 12 July 2005, para. 14 ("Prosecution Response"). Its citations, however, do not support this proposition, *see id.* (citing T. 1 July 2005, p. 97, lines 7-14; T. 4 July 2005, pp. 1-2; T. 4 July 2005, pp. 11-12), and in any case it is not clear what it would mean for the September 30th deadline to be "exclusive of administrative matters."
[23] Prosecution's Response, para. 11.
[24] *Supra*, para. 6.
[25] Assuming that the Trial Chamber's forthcoming allocation of time and witnesses does not replicate the extreme disparity of the Trial Chamber Decision, any future challenge should rest on specific allegations of prejudice: *i.e.*, a list of specific witnesses and specific documentary evidence precluded by the Trial Chamber ruling, and the reasons that excluding those witnesses would be prejudicial to the Defense case.
[26] The Appeals Chamber does note that in its oral ruling on Orić's Rule 98 *bis* motion, the Trial Chamber entered a judgement of acquittal as to two counts of plunder, one alleged murder, one alleged episode of cruel treatment, and the alleged wanton destruction of two villages. *See* T. 8 June 2005, pp. 9032. This certainly supports some reduction in the time that the Defense might otherwise have expected to present its case. But it does not appear from the Trial Chamber's oral ruling that evidence on these charges accounted for a major portion of the evidence presented by the Prosecution; indeed, the paucity of evidence on these counts was part of the reason for the acquittals. *See* T. 8 June 2005, pp. 8993, 9003, 9012, 9028-9029. In any event, the Prosecution did not raise this point in the Prosecution Response, so any argument on this basis has been waived.
[27] Order Varying Time Limits for Filings in Interlocutory Appeal, 7 July 2005, para. 4.

pending. If the Trial Chamber had allocated more time for Orić's case in the first instance, his strategy with the witnesses presented so far – both in terms of the subject matter discussed and in terms of the amount of time taken for examination – might have been very different. It is therefore only fair to allow Orić, should he so choose, to put these witnesses on again in order to fully address all issues that he deems necessary. While such re-examinations will very likely re-cover some old ground, the Appeals Chamber cautions the Defense that it should not abuse this right, but should focus on the relevant issues of its case.

Disposition

11. The Trial Chamber's decision is reversed, and the case is remanded to the Trial Chamber for further proceedings not inconsistent with this decision.

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

Dated this 20th day of July 2005,
At The Hague,
The Netherlands.

Judge Theodor Meron
Presiding Judge

[Seal of the International Tribunal]

IT-05-87-PT
D 478- D 473
16 AUGUST 2005

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THE INTERNATIONAL CRIMINAL TRIBUNAL

FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-PT

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Hans Holthuis**

Filed: 16 August 2005

THE PROSECUTOR

vs.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJSA PAVKOVIC
VLADIMIR LAZAREVIC
VLASTIMIR DJORDJEVIC
SRETEN LUKIC

PAVKOVIĆ MOTION TO SET ASIDE JOINDER ORDER OR IN THE ALTERNATIVE TO GRANT A SEVERANCE

The Prosecutor:

Mr. Thomas Hannis
Ms. Christina Moeller

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Aleksandar Aleksić *for Nebojsa Pavkovic*
Mr. Mihailo Bakrac *for Vladimir Lazarevic*
Mr. Theodore Scudder and Mr. Dragan Ivetic *for Sreten Lukic*

IT-05-87-PT 477

1. On 8 July 2005 this Chamber granted the Motion of the Prosecutor to join the Milutinović, *et al* cases with the Pavković, *et al* cases.

2. The motion was granted in the absence of any submission on behalf of Defendant Pavković and should therefore be set aside as to the Defendant Pavković.

3. Permanent counsel, John E Ackerman was assigned to General Pavković by the Registrar on 13 June 2005. Following the assignment the Registry advised counsel that the Chamber had requested at any Motion regarding the indictment should be filed no later than 1 July 2005. The Motion for Joinder was not served upon counsel for the accused nor was the new counsel advised that such a motion was pending and needed to be answered within a stated period of time.

4. The document assigning John E Ackerman to General Pavković provided that duty counsel Chrissa Loukas should hand over to Mr. Ackerman "any case-related materials she received during her assignment as duty counsel." No documents were received from Ms. Loukas.

5. Counsel has learned that Ms. Loukas did file with the Chamber a pleading entitled "Application for Order Regarding Service of Supporting Material by the Prosecutor." Although this Application was directed specifically at the service of supporting material it consisted of fair communication to the Chamber that Ms. Loukas was unable or unwilling to deal with substantive matters such as Supporting Material, and more importantly Motions such as a Joinder Motion.

6. Article 21 of the Statute of the Tribunal provides that the accused shall be entitled "to have adequate time and facilities for the preparation of his defence *and to communicate with counsel of his own choosing.*

7. Counsel Ackerman is the first lawyer assigned to General

Pavković who could be described as *counsel of his own choosing.* In the determination of the Motion for Joinder the accused was denied his right, under the Statute to communicate with counsel of his own choosing regarding the response to be made to such motion. As a result no response was filed on behalf of Pavković.

8. No joinder decision should have been issued by the Trial Chamber which involved the accused Pavković until such time as a counsel of his choosing had been assigned and given an opportunity to reply to the Prosecutor's Motion for Joinder. Such a decision is null and void as to Pavković due the Chamber's failure to provide to Pavković the opportunity to communicate with counsel of his own choosing regarding the very important issue of joinder of his indictment with that of other accused.

9. In the alternative, the accused Pavković, pursuant to Rule 82(B) requests that he be tried separately on the grounds that being tried jointly with other defendants under this Indictment would cause him serious prejudice and would not be in the interests of justice as explained herein.

10. The Chamber's Joinder Decision provides "that there is no indication that a joint trial could not start in December 2005 or January 2006, the anticipated date for the start of trial in the *Milutinovic, et al* case."

11. It is simply not possible to start a trial against the accused Pavković as early as December 2005 or January 2006. Pavković's defence team started working on his case near the end of June 2005. So far the team has had about six weeks preparation time. During this time counsel has just begun to scratch the surface of the voluminous discovery provided. The Prosecution has provided the Pavković defence with more than 200 CDs. So far the defence has been able to determine the probable content of 80 of these CDs, but has not absorbed them in detail. Many of them are video materials ranging in length from 30 minutes to 1 ½ hours. Many of

them contain various forms of documentary material.

12. In addition three large databases have been made available through the electronic discovery system. It is unknown at this point the number of pages of material that has been supplied through this method. Counsels have not yet begun the task of viewing and analyzing this data. Based up estimates made earlier in the case by other counsel this material surely exceeds 250,000 pages.[1] As counsel understands it, these materials consist primarily of materials which the Prosecutor has determined may be exculpatory of the alleged guilt of the accused. It would be an ethical violation and legal malpractice for counsel to fail to review, in detail, all of this material.

13. In addition, counsel must review all the testimony and exhibits produced in the Kosovo segment of the Milosević trial. Again the volume of this material is unknown. Pavković has filed a motion to obtain this material that is currently pending before this Chamber. Other counsels in the case have estimated that approximately six months preparation time would be needed just to review this material. Many witnesses who will testify in the Pavković trial have given evidence and have been cross-examined in the Milosević trial. Witnesses have testified in the Milosević trial who may not be called by the OTP, but may be very helpful to the defence of the accused in this case. The result is that it would be legal malpractice and a violation of ethical responsibilities for counsel to fail to review all this material in detail.

14. General Pavković cannot be properly defended unless counsel is allotted time to conduct a thorough investigation of the charges

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[1] The Registrar has determined that counsel should be able to read discovery materials at a rate of two minutes per page. If there are only 250,000 pages to review and if the 2 minute per page estimate holds true, 208 counsel weeks, at 40 hours per week would be needed for the review. With two counsel assigned this task would require two years of full-time effort.

lodged against him.[2] It makes no sense to initiate any serious investigation until counsel is thoroughly familiar with the material at hand. Otherwise witness interviews may very well need to be repeated, wasting valuable time and resources.

15. The Trial Chamber's failure to provide accused Pavković with the time necessary to accomplish the above tasks, and others which will inevitably arise would be an egregious violation of his Article 21 rights to a fair trial and his rights to "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."[3]

16. Requiring the accused Pavković to be ready for trial as early as December 2005 or January 2006 is a violation of equality of arms. The Prosecution has spent several years, at least four years, preparing its case against the accused and his co-accused. To require this accused to be prepared for trial within five months puts him in a position extreme inequality with the Prosecutor in terms of time for preparation of his defence.

17. The accused Pavković thus requests that the Joinder decision be set aside as it affects him or in the alternative that he be severed from other accused in this case so that he can have adequate time and facilities to prepare his defence. Based upon the information set out above regarding the amount of material and work to be done in the preparation of this case, counsel estimates that the case could be ready for trial in September of 2007. Pursuant to Rule 82, the accused would clearly be prejudiced by being forced to trial in 2005 or 2006; forcing him to trial against the clear dictates of the Statute of the Tribunal would be a manifest

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[2] Counsel understands that these charges could change with the filing of the new consolidated Indictment, dramatically increasing his preparation responsibilities.

[3] As to the issue of communication with counsel, it is obvious that numerous hours will be needed to discuss the provided discovery with the accused. The current Registry policy only permits one counsel, one trip per month to the Hague for the purposed of communicating with the accused. This issue could be ameliorated, of course, if the Chamber grants the pending Pretrial Release motion.

injustice and thus not in the interests of justice.

18. It would also work a manifest injustice against those accused currently joined in this case who have been awaiting trial for two or more years to force them to wait another two years while the accused Pavković can be ready for trial.

19. The solution then, is clear. Either the joinder should be set aside as to Pavković or he should be severed from other accused in the indictment. Fairness would permit no other remedy.

Respectfully submitted,

John E Ackerman
Counsel for Nebojša Pavković

IT-05-87-PT
D490 - D489
19 AUGUST 2005

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THE INTERNATIONAL CRIMINAL TRIBUNAL

FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-PT

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Hans Holthuis**

Filed: 19 August 2005

THE PROSECUTOR

vs.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJSA PAVKOVIC
VLADIMIR LAZAREVIC
VLASTIMIR DJORDJEVIC
SRETEN LUKIC

ADDENDUM TO PAVKOVIĆ MOTION TO SET ASIDE JOINDER OR IN THE ALTERNATIVE TO GRANT A SEVERANCE

The Prosecutor:

Mr. Thomas Hannis
Ms. Christina Moeller

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Aleksandar Aleksić *for Nebojsa Pavkovic*
Mr. Mihailo Bakrac *for Vladimir Lazarevic*
Mr. Theodore Scudder and Mr. Dragan Ivetic *for Sreten Lukic*

1. On 16 August 2005, Pavković filed his Motion to Set Aside Joinder or in the Alternative to Grant a Severance.

2. In paragraphs 11 through 16 of the Motion, Pavković sets out the currently-known tasks necessary to be performed so as to be ready for trial and estimates that he can be ready by September 2007.

3. In footnote number 2 in paragraph 14 of the Motion, counsel cautions that the filing of the new indictment in the case could "dramatically increase his preparation responsibilities."

4. This event has come to pass. The Amended Joinder Indictment has added allegations concerning events in 1998 in Kosovo. As currently understood by counsel, these 1998 events are very complicated. It is believed that such allegations will require additional discovery. They will certainly require significant additional investigation.

5. Although it is extraordinarily difficult to predict the impact that the new allegation will have on preparation time, conservatively the additional time required could not be less than six months. Thus, counsel now informs the Chamber that the case will be ready for trial from a defence standpoint no earlier than March, 2008. This amount of time is absolutely necessary to give the accused equality of arms parity with the prosecution in terms of preparation time.

Respectfully Submitted

John E. Ackerman
Counsel for Nebojša Pavković

IT-05-87-PT
D 534- D 531
07 SEPTEMBER 2005

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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 the Former Yugoslavia since 1991

Case No.: IT-05-87-PT

Date: 7 September 2005

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Mr. Hans Holthuis**

Decision of: **7 September 2005**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ,
VLASTIMIR ĐORĐEVIĆ

DECISION ON PAVKOVIĆ MOTION TO SET ASIDE JOINDER OR IN THE ALTERNATIVE TO GRANT SEVERANCE

The Office of the Prosecutor

Mr. Thomas Hannis
Ms. Christina Moeller
Ms. Carolyn Edgerton

Counsel for the Accused
Mr. Eugine O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihaljo Bakrać for Mr. Vladimir Lazarević
Mr. Theodore Scudder for Mr. Sreten Lukić

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 ("International Tribunal"),

BEING SEIZED of the "Pavković Motion to Set Aside Joinder Order or in the Alternative to Grant a Severance," dated 16 August 2005 ("Motion"),

NOTING the "Addendum to Pavković Motion to Set Aside Joinder or in the Alternative to Grant a Severance," dated 19 August 2005 ("Addendum"), and the additional oral submissions made by counsel for the Accused, Nebojša Pavoković ("the Accused"), at the Status Conference held on 25 August 2005 ("Status Conference"),

NOTING the "Decision on Prosecution Motion for Joinder," issued by this Trial Chamber on 8 July 2005 ("Joinder Decision"), which granted a "Motion for Joinder" filed by the Prosecution on 1 April 2005 ("Joinder Motion"), seeking to join the three accused in *Prosecutor v. Milan Milutinović, Dragoljub Ojdanić and Nikola Šainović*, Case No. IT-99-37-PT, with the four persons accused in *Prosecutor v. Nebojša Pavoković, Vladimir Lazarević, Vlastimir Đorđević and Sreten Lukić*, Case No. IT-03-70-PT, and for all seven accused to be jointly charged and tried under one joint indictment,

NOTING that counsel for the Accused agreed at the Status Conference that the Trial Chamber could consider the Motion, the Addendum, and the additional oral submissions as the substance of his objections to the Joinder Motion,

NOTING ALSO that the Accused states in his Motion that the Joinder Motion was not served upon his counsel, Mr. John Ackerman, who was appointed on 13 June 2005,[1] and that Mr. Ackerman received no documents from the duty counsel who had been assigned by the Deputy Registrar to represent the Accused for his initial appearance on 28 April 2005 "and in such other matters as may be necessary until a permanent counsel is assigned,"[2]

NOTING FURTHER that the Accused submits in his Motion that

(1) no joinder decision should have been issued by the Trial Chamber until such time as counsel of his choosing had been assigned and given the opportunity to respond,

[1] *Prosecutor v. Nebojša Pavković*, Case No. IT-03-70-PT, Decision of the Deputy Registrar, 13 June 2005.
[2] *Prosecutor v. Nebojša Pavković*, Case No. IT-03-70-PT, Decision of the Deputy Registrar, 28 April 2005.

(2) in the alternative, pursuant to Rule 82(B), he should be tried separately on the grounds that being tried jointly with the other defendants would cause him serious prejudice and that it would not be in the interests of justice,

(3) his defence team started working on the case near the end of June 2005, and that they need a considerable amount of time to review and analyse all of the material provided by the Prosecution in order to prepare for trial,

(4) requiring him to be ready for trial as early as December 2005 or January 2006 is a violation of equality of arms,

NOTING that in his Addendum the Accused submits that added allegations concerning events in Kosovo in 1998 have been added by the Prosecution in its Amended Joinder Indictment, filed on 16 August 2005,

NOTING ALSO that the additional oral submissions made by counsel for the Accused at the Status Conference simply restated his position that the defence team requires a significant amount of time to prepare for trial,

CONSIDERING that at the Status Conference the Prosecution clarified that it does not intend to charge the Accused with crimes committed in 1998,

CONSIDERING that the following factors were taken into account by the Trial Chamber in its Joinder Decision:

(i) whether the accused are charged with the same crimes, allegedly committed during the same period and in the same geographical area,[3]

(ii) whether the indictments demonstrate *prima facie* that the crimes charged against all the accused were committed in the course of the same transaction,[4]

(iii) whether joinder would avoid duplication of the presentation of evidence related to underlying crimes, would minimise hardship to witnesses, and would be in the interests of judicial economy,[5]

[3] *Prosecutor v. Rahim Ademi* and *Prosecutor v. Mirko Norac*, Case No. IT-01-46-PT and Case No. IT-04-76-I, Decision on Motion for Joinder of Accused, 30 July 2004.
[4] *Prosecutor v. Slobodan Milošević*, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, Case No. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, 18 April 2002, para. 19.
[5] *Prosecutor v. Rahim Ademi* and *Prosecutor v. Mirko Norac*, Case No. IT-01-46-PT and Case No. IT-04-76-I, Decision on Motion for Joinder of Accused, 30 July 2004. See also the reasoning in *Prosecutor v. Brđanin & Talić*, Decision on Motions by Momir Talić for a Separate Trial And for Leave to File a Reply, Case No. IT-99-36-PT, 9 March 2000, paras 24-25, 29.

(iv) whether joinder would create a conflict of interest or otherwise prejudice the right of any of the accused to a fair and expeditious trial,

CONSIDERING ALSO that:

(1) no date has yet been set for trial in the present case and that the Accused will have adequate time and facilities for the preparation of his defence,

(2) no basis has been identified for concluding that joinder would create a conflict of interest or otherwise prejudice the right of the Accused to a fair and expeditious trial,

(3) the Trial Chamber is satisfied that it is in the interests of justice that all seven accused persons be tried in a single trial and that, had the arguments put forward by the Accused opposing joinder been submitted prior to the Trial Chamber's Joinder Decision, they would not have altered its Decision,

PURSUANT to Rules 54 and 82 of the Rules of Procedure and Evidence,

HEREBY DENIES the Motion.

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

Judge Patrick Robinson
Presiding

Dated this seventh day of September 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

THE INTERNATIONAL CRIMINAL TRIBUNAL

FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-PT

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Hans Holthuis**

Filed: 7 November 2005

THE PROSECUTOR

VS.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJSA PAVKOVIC
VLADIMIR LAZAREVIC
VLASTIMIR DJORDJEVIC
SRETEN LUKIC

MOTION TO DELAY START OF TRIAL OR IN THE ALTERNATIVE TO RECONSIDER AND GRANT PREVIOUS MOTION FOR SEVERANCE

The Prosecutor:

Mr. Thomas Hannis
Ms. Christina Moeller

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Aleksandar Aleksić *for Nebojsa Pavkovic*
Mr. Mihailo Bakrac *for Vladimir Lazarevic*
Mr. Theodore Scudder and Mr. Dragan Ivetic *for Sreten Lukic*

1. On 16 August 2005, Pavković filed his "Motion to Set Aside Joinder Order or in the Alternative to Grant a Severance."
2. In this Motion Pavković's counsel set out the enormous task ahead in preparing for the trial of this very complicated case with it voluminous discovery.
3. On 19 August 2005 Pavković filed an Addendum to the previous Motion setting out the additional preparation that would likely be required if the Chamber were to allow the new Amended Joinder Indictment.
4. On 25 August 2005 a Status Conference was held before Judge Bonomy where there was discussion regarding the preparation issues and outstanding discovery issues.

MILOSEVIĆ MATERIALS

5. One of the matters discussed was the disclosure of Transcripts and exhibits from the Milosevic Trial as it pertains to the Kosovo issues. Counsel Ackerman was advised by Judge Bonomy of an existing order which would require counsel to liaise with the Registry to obtain all the public transcripts and exhibits.[1] With regard to the closed session transcripts and the non-public exhibits the Judge reminded the Prosecution of its obligation in that regard. Although Prosecutor Hannis suggested that this was a Registry responsibility the Judge made it clear that it was the responsibility of the Prosecutor to "ensure that the material was disclosed."[2]
6. An additional issue with regard to the Milosević disclosure was also discussed, dealing with exhibits marked for identification but not yet admitted (MFI Documents). In

[1] Transcript, Status Conference, p. 51, 52.
[2] *Id.* at p. 53.

response to Judge Bonomy, Prosecutor Hannis indicated that he had no argument why these should not be disclosed.

7. Beginning at page 82 of the Transcript of the Status Conference, counsel Ackerman discussed in detail the daunting task ahead of him and his associates in trying to prepare for trial in this case. He spoke in detail about some of the materials already made available to him and their extent and the time required to review them. Other matters regarding future disclosures were unknown at that time.

8. Since the Status Conference very serious problems have arisen with regard to disclosure and the opportunity to prepare for trial in this matter. These problems will be detailed herein.

9. On 31 August 2005, Counsel Ackerman addressed an E-Mail to Chuqing Chen of the Registry seeking disclosure of Milosevic matters as suggested by Judge Bonomy in the hearing. A copy was sent to the Prosecutor through Ms. Grogan and to Ms. Marchi-Uhel. The request was that Ackerman be provided with all the transcripts from the Kosovo portion of the Milosevic Trial including the closed and private session transcripts. The request also included all the exhibits in the case, whether public or private including those marked for identification and not yet admitted. As mentioned a copy of this e-mail was sent to the Prosecutor so that coordination between the Prosecutor and the Registry could be initiated to facilitate the release of the closed session transcripts and the private exhibits.

10. The Chamber is now informed that since that date the only materials received by the Pavković Defence are public session transcripts from the trial. No private session transcripts have been provided. No exhibits have been provided, public or private. No MFI exhibits have been provided. More than 60

days has passed with no real compliance with Judge Bonomy's directives from the Status Conference.

11. An e-mail response to the communication to Chen was received on 1 September 2005. Copies of this e-mail went to the Prosecutor, through Ms. Grogan, to Ms. Marchi-Uhel and to David Pimentel in the Registry. The communication referred to the Chamber's decision of 14 June 2002 regarding disclosure of Milosević materials. Based that order the Registrar accepted responsibility for providing only *public* transcripts and exhibits. Counsel was told that the method of such disclosure would be discussed and that he would be advised of the results of that discussion in the following week.
12. On 1 September 2005, the date this communication was received, counsel sent an e-mail to Ms. Marchi-Uhel which said with regard to the Chen communication that "If we have to put up with this kind of obstruction we will never be able to get this case ready for trial." Counsel opined that the Registry response was certainly not in the spirit of Judge Bonomy's directives at the Status Conference. This e-mail was clarified on the same day in an additional e-mail to Ms. Marchi-Uhel explaining that receiving the public transcripts and the private transcripts in separate disclosures makes it very difficult to work through the transcripts in any kind of systematic manner. The same is true of exhibits. It is very frustrating to read a transcript and not be able to see the exhibit which is the subject of the testimony. Likewise it is difficult to read a transcripts with closed-session gaps and then need to return later to try to fill in those gaps. It makes for very disjointed preparation. In this communication counsel opined that is was clear from the Status Conference that Judge Bonomy was trying to expedite matters, not complicate them.
13. Ms. Marchi-Uhel responded to counsel on 2 September 2005.

She announced that she would meet with the Registry on 5 September to make sure an acceptable solution be found with regard to concerns raised by counsels Ackerman and O'Sullivan.

14. As indicated, Ms. Marchi-Uhel responded on 6 September following the meeting with Registry representatives. The Registry advised Ms. Marchi-Uhel that all access problems would be solved by giving counsel access to the Judicial Database (JDB) which was to happen soon. This would provide access to all public materials. Counsel was reminded of the obligation of the Prosecutor to provide the non-public materials.

15. On the same date, 6 September, counsel expressed his frustration with disclosure delays in his response to Ms. Marchi-Uhel. A copy of this response is attached here to as Annex A.

16. On 8 September 2005, a response was received from Chen as promised. The response indicated that the public transcripts in Milosević would be prepared and provided to Ackerman. There was a suggestion that they be shared among defence teams which is very impractical. Ms. Chen indicated that most public exhibits had been provided to Mr. O'Sullivan and rather than go through the process of supplying them to Ackerman, the Registry suggested that O'Sullivan supply them to Ackerman. It was noted that most of the public exhibits were available on JDB. It was suggested that Ackerman and O'Sullivan would have internet access to JDB by the end of September. As to the MFI documents, the matter remained complicated; the Registry was contacting the OTP for possible help in this regard.

17. On 13 September 2005, counsel Ackerman directed an additional e-mail to Ms. Marchi-Uhel regarding these matters.

This communication sets out in detail what has happened since the Status Conference in getting access to the Milosević materials. It expresses the frustration of counsel with further delays and suggests that Judge Bonomy may very well need to assist. An addendum was sent later speaking of the impracticality of the Registry's suggestion that it should be the obligation of Mr. O'Sullivan to supply other counsel with the Milosević materials that has been supplied to him. These communications are attached hereto as Annex B.

18. As suggested the JDB became available on the internet by the end of September. All that was needed for counsel to access it was a JDB "key". Counsel authorized the Association of Defence Counsel head of office Joeri Maas to sign for him with regard to this key and requested that it be sent to him in Texas by express courier. On 28 September the Registry declined to send the key as requested, *stating that counsel could only receive the key in person, when he next returned to The Hague.* Although promised access to JDB by the end of September, now in early November the access has not been achieved because of the problem with sending a key to Texas. More than 30 days of access to important material has thus been lost.

19. On 30 September 2005, Counsel sent another e-mail to Chen advising that he had not yet received the Milosević exhibits and requesting that she expedite the sending of the exhibits to Texas. This communication was answered on 3 October 2005 by Ms. Chen. She advised that the difficulties regarding the MFI documents had been overcome and that the first batch should be available on 13 October. This would happen through JDB. Importantly Chen indicated that the Registry tried to negotiate with the OTP for providing complete and comprehensive transcripts as requested. She

advised that the OTP refused to cooperate in this regard and "insisted on reviewing all parts in private session and "determine if and how to disclose them." As of the date of this pleading the OTP has failed to provide even one closed session transcript.

RULE 68 MATERIALS

20. Counsel received a letter from the Prosecutor dated 31 August 2005 stating in summary form that certain Rule 68 material was in the possession of the OTP. On 13 September 2005, Counsel addressed a communication to Mr. Hannis through Ms. Grogan requesting all the underlying Rule 68 material from which the summaries were prepared. This would largely, it is suspected, consist of statements of witnesses. It is totally unhelpful to advise counsel of the existence of evidence without supplying that evidence. Rule 68(i) provides that the "material" be supplied, not a summary of the material. As of the date of this pleading no response has been received from the Prosecutor.

CONCLUSIONS AND CURRENT STATUS AND PRAYER

21. This is where the matter stands as we approach the November 65 *ter* Conference. The result of all these communications and efforts is that counsel has been supplied with the public transcripts from the Milosević trial, nothing more. Presumably he will have access to the public exhibits once he arrives in The Hague and is given his JDB key.
22. Counsel has been informed that this case could be set for trial in either April or June 2006. It is the respectful submission of counsel for Pavković that trial on either of those

dates is impossible. The delays in providing needed materials have been set out above, herein. They are significant. In addition, since the Status Conference much has been learned regarding the breadth of the material which needs to be read and compiled before counsel can be "ready" for trial.

23. As of 2 September2005 the following existed. The OTP phase of the Kosovo case in Milosević generated 10,154 pages of transcript not including the testimony of Zoran Lilic and Wesley Clark who testified after the 11 September 2002 conclusion of the Kosovo phase. As of 23 August the Defence case had generated 10,926 pages of transcript and continues. 2,114 exhibits from Milosevic have been delivered to O'Sullivan - not to Ackerman - containing an unknown number of pages. To counsel's knowledge the MFI Exhibits have not been made available and it is unclear as to the number of exhibits and pages involved.
24. In the "Prosecution's Submission Regarding the Order of Pre-Trial Judge Arising from Status Conference," filed on 30 September 2005, the Prosecution set out the material available to the Defence on EDS or otherwise supplied.
25. The Prosecutor indicates that the EDS material relevant to this case is to be found in the Kosovo and the Evidence Day Forward collections.
26. Paragraph 17 of the Prosecutor's submission indicates that an additional 6,000 pages of Rule 70 material will be provided when permission has been received.
27. In paragraph 18 the Prosecutor estimates that the witness material disclosed and to be disclosed will be approximately 40,000 pages.
28. In paragraph 19 the Prosecutor indicates that Rule 68 material provided to counsel in separate folders on EDS amounts to 58,726 pages This material is also included in

other EDS files as set out above and thus does not add to the page total.

29. The Prosecution has disclosed 362 CDs to the accused, according to the submission, containing 41,538 pages of documentary material. 267 of the CDs contain video material. 87 contain BCS audio of witness testimony. It must be noted here that counsel for Pavkovic has received no more than 345 CDs. This discrepancy is being taken up with the OTP at the present time.

30. At this point counsel is unaware of the nature and content of the 2,200 exhibits the Prosecution intends to use at trial. It may be that these exhibits, or some of them are identified in a pleading preceding the joinder, however this is unknown to counsel at the present time.

31. A total of the documentary material known to be relevant to the case at the present time extends to approximately 1,755,372 pages.

32. There is no escaping the fact that there are 1,755,372 pages of material believed by the Prosecutor to be relevant to the issues in this case. At a reading rate of 2 minutes per page it would require 58,512 counsel hours just to read the material. This allows no time for compiling it in some meaningful way so that it can be accessed again when needed in the case. A defence team of four persons devoting 120 hours per week to simply reading the materials would require 487 weeks just to get through it one time without any kind of compilation or organisation. This is basically 10 years worth of work for four persons. It is unrealistic to expect the Trial Chamber to delay the start of this trial for 10 years. It is likewise unrealistic to suggest that the requirement of adequate time and facilities for preparation of the defence would permit a trial as early as April or June of 2006.

33. To get through this material by 1 June 2006, considering a start date 1 July 2005, counsel would have approximately 48 weeks of preparation time. In this time each one of four counsel or associates would need to read one page every 11.82 seconds for 30 hours per week for 48 weeks.

34. Clearly, counsel must determine that much of the "relevant" material simply cannot be read or even looked at. How one makes such a decision consistent with his or her ethical responsibilities to the Court and to the client is a frightening and difficult question. Clearly, the decision must be an arbitrary one. Counsel must simply refuse to even look at large swathes of material. It seems that this certainly cannot include material regarding the witnesses. It cannot include Rule 68 material which the Prosecutor has identified as being exculpatory to the client. It clearly cannot include relevant testimony from the Milosević case which is dealing with the same issues and where witnesses have been examined and cross-examined. It can only deal with that broader base of material which the Prosecutor classifies as "relevant." How can a trial where as much as 80% of the relevant material must be totally ignored by counsel for the accused be a fair trial?

35. Any reasonable assessment of the task ahead, considering the difficulties being encountered in acquiring materials, would make it clear that counsel cannot be ready for trial before April or June of 2007, not April or June of 2006.

36. In its "Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance," the Chamber determined that Pavković "will have adequate time and facilities for the preparation of his defence." This determination must be made real. Pavković must really have "adequate time and facilities for the preparation of his defence." The case is

clearly set out herein that this requirement cannot be met by beginning his trial in April or June of 2006. His trial must not start before mid-2007.

37. Whether this motion is treated as a motion to delay the beginning of the trial until mid-2007 or a motion for severance to accomplish that purpose is irrelevant to the movant. What is highly relevant to the movant is that he be truly given "adequate time and facilities for the preparation of his defence." Pavković is entitled to a fair trial, not just any trial. The Statute of this Tribunal permits nothing less.

Word Count: 2,849

Respectfully Submitted

John E Ackerman
Counsel for Nebojša Pavković

IT-05-87-PT
D1549-D1547
02 December 2005

1549
AT

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-05-87-PT

Date: 2 December 2005

Original: ENGLISH

IN TRIAL CHAMBER III

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Mr. Hans Holthuis**

Order of: **2 December 2005**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ,
VLADIMIR LAZAREVIĆ,
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ

DECISION ON NEBOJŠA PAVKOVIĆ'S MOTION TO DELAY START OF TRIAL OR IN THE ALTERNATIVE TO RECONSIDER AND GRANT PREVIOUS MOTION FOR SEVERANCE

The Office of the Prosecutor:
Mr. Thomas Hannis
Ms. Christina Moeller
Ms. Carolyn Edgerton

Counsel for the Accused:
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihaljo Bakrać for Mr. Vladimir Lazarević
Mr. Theodore Scudder for Mr. Sreten Lukić

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,

BEING SEIZED OF a "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance," filed on 7 November 2005 (the "Motion") by Nebojša Pavković (the "Accused"),[1] which seeks an order delaying the start of trial in this case until mid-2007 or, in the alternative, an order severing the Accused from the case and delaying his trial until mid-2007,

NOTING the Accused's argument that he will not be ready for trial before mid-2007 given (1) his continued lack of access to transcripts and exhibits relating to the Kosovo portion of the trial in *Prosecutor v. Milošević*, Case No. IT-02-54-T, which the Accused says were previously ordered to be given to him;[2] (2) the Prosecution's non-compliance with Rule 68 of the Rules of Procedure and Evidence (the "Rules"), evident from the Prosecution's providing the Accused with a summary of certain Rule 68 material in the Prosecution's possession, rather than the material itself;[3] and (3) the length of time required to review the enormous amount of material in this case,[4]

NOTING "Sreten Lukić's Response in Support of Pavković's Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance," filed on 8 November 2005, which joins Pavković's Motion and adds that the Lukić defence team, which lacks co-counsel, had to wait until September 2005 to have two of its investigators approved, which Lukić contends hampered the preparation of his defence,[5]

NOTING the "Prosecution's Response to Pavković's 'Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance,'" filed on 21 November 2005, which opposes the Motion as premature in light of the fact that no trial date

[1] The Trial Chamber denied a previous motion of Pavković's to sever him from the rest of the Accused. *See* Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance, 7 September 2005.

[2] *See* Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, paras. 5-19.

[3] *See ibid.*, para. 20.

[4] *See ibid.*, paras. 21-36.

[5] *See* Sreten Lukić's Response in Support of Pavković's Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, paras. 1-9.

has been set yet in this case, and argues that (1) Pavković's estimates of the length of time required to prepare for trial are speculative and unrealistic;[6] and (2) the Accused's complaints regarding access to certain *Milošević* and Rule 68 materials were addressed at the Rule 65 *ter* meeting presided over by Judge Bonomy on 8 November 2005;[7]

NOTING the "Prosecution's Response to Lukić's Joinder in Pavković's 'Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance,'" filed on 21 November 2005, which opposes Lukić's submission on the same grounds as the Prosecution's opposition to Pavković's Motion,[8]

CONSIDERING that a trial date has not been set, that none of the events that indicate the impending start of trial – such as the ordering or filing of the Pre-Trial Brief required by Rule 65 *ter*(E) or the occurrence of the Pre-Trial Conference required by Rule 73 *bis*(A) – has taken place and that the Motion is therefore premature,

PURSUANT TO Rule 54 of the Rules,

HEREBY DISMISSES the Motion.

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

Judge Patrick Robinson
Presiding

Dated this second day of December 2005.
At The Hague,
The Netherlands.

[Seal of the Tribunal]

[6] *See* Prosecution's Response to Pavković's "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance," paras. 3, 5.

[7] *See ibid.*, para. 4. The Trial Chamber notes its Order Arising from Prosecution's Submission Regarding the Order of Pre-Trial Judge from Status Conference, 21 November 2005.

[8] *See* Prosecution's Response to Lukić's Joinder in Pavković's "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance," para. 3.

IT-05-87-PT
D4101 - D4084
13 APRIL 2006

4101 AT

THE INTERNATIONAL CRIMINAL TRIBUNAL

FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-PT

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Hans Holthuis**

Filed: 12 April 2006

THE PROSECUTOR

VS.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJSA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
VLASTIMIR DJORDJEVIĆ
SRETEN LUKIĆ

RENEWAL OF AND SUPPLEMENT TO 7 NOVEMBER PAVKOVIĆ "MOTION TO DELAY START OF TRIAL OR IN THE ALTERNATIVE TO RECONSIDER AND GRANT PREVIOUS MOTION FOR SEVERANCE"

The Prosecutor:

Mr. Thomas Hannis
Ms. Christina Moeller

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Aleksandar Aleksić *for Nebojsa Pavković*
Mr. Mihailo Bakrac *for Vladimir Lazarević*
Mr. Theodore Scudder and Mr. Dragan Ivetic *for Sreten Lukić*

1. This Motion both renews and supplements the Pavković "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance" filed on 4 November 2005.
2. On 30 March 2006 a 65 *Ter* Conference was held in this case. On 31 March 2006 and Pre-Trial Conference was held in this case.
3. At the beginning of the 65 *Ter* Conference the Pre-Trial Judge indicated that due to the death of Slobodan Milošević, *"circumstances have changed fairly dramatically."* The result of these dramatically changed circumstances is that this trial is now scheduled to start on 10 July 2006, much earlier than originally contemplated by the parties hereto. The parties to this case did not see this dramatic change in circumstances coming just like other segments of the Tribunal. As was pointed out to the Judge in the Status Conference the Registry had refused to appoint a co-counsel for Lukić because he was not entitled to a co-counsel until five months before the start of the trial. Since under Rule 62(v) the Registrar is responsible for setting trial dates, this was reliable information. All parties were working on a schedule that contemplated a start-up in December of this year or early next year. No one envisioned a July trial date. That resulted from fairly dramatically changed circumstances. The death of Slobodan Milošević cannot be permitted to operate to deprive others of a fair trial.
4. On 6 August 2005, Pavković filed his "Pavković Motion to Set Aside Joinder Order or in the Alternative to Grant a Severance." This Motion brought to the Chamber's attention the extreme difficulty faced by the Pavković defence in preparing for trial considering the voluminous

nature of the material available and to be made available. At that point counsel estimated that the case could be ready for trial from a defence standpoint no earlier than September, 2007. Counsel expressed concern that he would not be permitted adequate time and facilities to prepare a defence.

5. On 7 September the Trial Chamber issued its "Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance." The Trial Chamber assured Pavković that he would have adequate time and facilities for the preparation of his defence." At that point the Chamber was unable to find any indication that the Accused was in danger of being denied the right to a fair trial.

6. Following this Decision, the Pavković defence experienced significant difficulties and expended significant time in trying to access materials from the Milošević case. In addition an additional 30 days was lost when the Registry refused to send the key for JDB access to Texas and instead required counsel to personally appear in The Hague.[1] These problems had not been resolved by November, 2006.

7. On 4 November 2005, Pavković filed his "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance. As of the date of the Motion, Counsel was faced with over 21,000 pages of transcript from the Milošević case relevant to Kosovo; 2,114 Milošević Exhibits; 6,000 pages of Rule 70 material were yet to be provided;[2] Witness material would eventually exceed 40,000 pages; Rule 68 material on EDS

[1] Counsel for Lukić have encountered a similar, but more egregious, problem with regard to the JDB key as set out in remarks at the recent Pre-Trial Conference.
[2] Some portion of this material remains outstanding.

amounted to 58,726 pages; CDs supplied by the OTP contained 41,538 pages of material, much of which is in BCS only.

8. A Decision on this Motion was issued by the Trial Chamber on 2 December 2005. The Decision concluded that "a trial date has not been set, that none of the events that indicate the impending start of trial – such as ordering or filing of the Pre-Trial Brief required by Rule 65 *ter* (E) or the occurrence of the Pre-Trial Conference required by Rule 73 *bis* (A) – has taken place and that the Motion is therefore premature.

9. On 5 April 2006 the Pre-Trial Judge filed his "Pre-Trial Order and Appended Work Plan" ordering the events the absence of which caused the prior Motion to be deemed premature. The matter now seems ripe for consideration and decision.

10. Since 4 November 2005, when the last Motion was filed, significant other materials have been received including all the MFI exhibits from Milosevic, totaling 1,700 documents of various lengths; and, approximately 10,000 pages of additional Rule 68 material. This is more Rule 68 material than counsel has had an opportunity to consult since his beginning of the representation of the accused. In other words, the task ahead is larger than it was in November, 2005.

11. On 30 and 31 March it was learned that the Prosecution would be calling either *viva voce* or through 92 *bis* an additional 50 witnesses for whom material had not yet been disclosed.

12. On 10 April, this counsel received additional disclosure. It consists of 11 CD Roms containing an unknown amount of new material. Some is Rule 66 and some is Rule 68.

According to the transmittal document the CDs contain statements of 11 new witnesses. Two videos and a witness statement are disclosed under Rule 68. In addition the Prosecution has provided summaries of the testimony of an additional 6 witnesses for whom protection will sought. An additional 6-10 witnesses remain to be dealt with. If they are to be called the information will be supplied at a later time.

13. It is unknown at this point how much investigation will be needed with regard to the new witnesses for whom the defence received notice in the 10 April material.

14. On 22 March 2006 the Chamber issued its "Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment." This Decision required two major actions on the part of the Prosecutor, as follows:

> b. if the Prosecution intends to rely at trial on the alleged crimes of 1998, the Prosecution must identify the dates and locations of the crimes, the connection to each Accused and supporting material for the allegations.
> c. If the Prosecution intends to rely at trial on the allegations concerning the Joint Command, it must identify supporting material for such allegations

15. This order made it clear that additional specific allegations would be forthcoming along with their supporting material requiring a new round of investigations and, perhaps, a re-evaluation of the various defence strategies. Each defence team was confronted with new possibilities and tasks which would take significant time to resolve. Almost immediately after adding these burdens to the defence preparation it was suggested that the trial could start as early as 10 July.

16. During the 65 *ter* and Status Conferences of 30 and 31 March the parties all expressed varied reasons why they could not be ready for trial by 10 July. Some, but not all, of these reasons were set out in the 5 April Order of the Pre-Trial Judge. On behalf of Pavković, his counsel pointed out that the Prosecution had take seven years to prepare the case and he had been working on the case for little more than seven months. This disparity violated the accused's rights in that it denied equality of arms. Counsel pointed out that he would be committing malpractice and violating the disciplinary rules of his home jurisdiction if he were to be forced to trial without having read and studied the Rule 68 material. The Judge pointed out that there was "indefinite opportunities in the Rules of this Tribunal for review of the situation should there be an injustice."[3] It was brought to the Judge's attention that the law of the tribunal would prohibit later consideration of evidence that was in the possession of the counsel for the accused during the trial. There is no jurisprudence of the Tribunal that would excuse the failure to read the material and seek its admission on those grounds. Counsel for Milutinović stated unequivocally that this case cannot and must not begin this summer. His reason were many. There is not indictment in the case. New material facts are being added to the next indictment to be presented. The new indictment will likely open up significant issues with regard to events in 1998. The Haradinaj and Limaj cases will now need to be reviewed in detail to counter the 1998 allegations. It is not *de minimis* when the Prosecution argues that the purpose of the 1998 crimes is to establish the basis for proving a

[3] 65 Ter Conference, pg. 179.

joint criminal enterprise. Counsel pointed out that it was learned only on 31 March that there were to be 50 new witnesses with the voluminous material that will accompany their disclosure. This represents one-third of the witnesses that the prosecution intends to call. Clearly there will need to be significant investigation of these witnesses. The parties recently, finally, received the MFI documents from the Milošević case. Counsel for Sainović supported and joined the remarks of counsel for Milutinović. He added that two days before the Status Conference the Prosecutor, while visiting Belgrade signed a document giving the Prosecutor full access to all archive material in Bosnia and Montenegro regarding the Kosovo war for the first time. This could generate voluminous additional material. Counsel for Ojdanić also joined the remarks of counsel for Milutinović. Counsel for Pavković, responding to an invitation from the Judge at the previous day's hearing, advised the Judge of the names of several potentially exculpatory witness found while plodding through the Rule 68 material. It was clear that significant and productive material is to be found in the Rule 68 material is time is allotted to peruse it. It was also pointed out that there was a problem in visiting Kosovo and that efforts had been made and were being made to solve that problem. Counsel for Lazarević adopted the submissions of other counsel especially joining the submission of counsel for Pavković regarding the plight of the new accused. He also pointed out that he is having a difficult time getting cooperation from the Government of Serbia in the acquisition of crucial documents. Counsel for Lukić outlined several serious matters. The Lukić team had yet to achieve remote access to the Judicial Database, the

source of much relevant material in preparing a defence. The Lukić team had been denied the appointment of a co-counsel complicating the preparation of the case in Serbia due to travel restrictions. The Lukić team was not provided the Milošević exhibits until the day preceding the 65 *ter* conference. Counsel also expressed difficulty in acquiring documents in Serbia from the MUP archives which are very exculpatory of the accused, Lukić. This material, when finally received will encompass 30-40 thousand pages and be in BCS, presumably needing translation. Counsel for Pavković then pointed out that he was only temporarily assigned to the case awaiting a determination by the Registrar of the financial ability of Pavković to contribute to his own defence. Counsel pointed out the potential problem with the U.S. Treasury Department – that he is prohibited from receiving funds from those charged at the Tribunal.

17. An accused at the ICTY is entitled to a number of rights. He is to have the effective assistance of counsel in his defence. He is to have adequate time and facilities for the preparation of his defence. He is entitled to equality of arms with the Prosecution. He is entitled to be informed of the nature and cause of the accusation against him. He is entitled to a fair trial. All these rights will be violated if the case goes to trial on 10 July or anytime in the summer of 2006. As has been set out repeatedly, the defence of General Pavković needs until the early summer of 2007 to be prepared to proceed to trial.

18. In Prosecutor v. Tadić, IT-94-1-A, Judgement, 15 July 1999, the Chamber pointed out that the "fair trial" provisions of Articles 20 and 21 mirror similar guarantees found in international and regional human rights

instruments including the ICCPR, the European Convention on Human Rights and the American Convention on Human Rights. "The right to a fair trial is central to the rule of law; it upholds the due process of law."[4] Included within the panoply of rights guaranteed under the fair trial provisions of the Statute is the principle of equality of arms between the prosecutor and the accused.[5] As the *Tadić* Appeals Chamber determined, at "*a minimum*, a fair trial must entitle the accused to adequate time and facilities for his defence."[6] [emphasis supplied] This means that a party must have a reasonable opportunity to defend their interests "under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent."[7]

19. The Chamber must bear in mind that the defence case is not one that begins after the close of the Prosecutor's evidence. The defence case begins with the cross-examination of the first witness. It is on cross-examination that much of the defence of the case is developed. That cannot happen if counsel is not familiar with all material which the accused is entitled to receive under the Rules of Procedure and Evidence for these proceedings, namely inculpatory material, materials from related proceedings at the Tribunal, to wit Milosevic, Limaj, and Haradinaj, and Rule 68 material. It is not a remedy to the disparity pointed out herein that the defence will have the entire time during the presentation of the evidence of the Prosecutor to properly prepare its defence.

20. In one case the defence was granted a continuance

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[4] Tadić, at para. 43.;
[5] *Id.* At para. 44.
[6] *Id.* At para. 47
[7] *Id.*, para. 48, quoting, with approval, from *Kaufman v. Belgium*, 50 DR 98, European Commission on Human Rights. See also, *Prosecutor v. Kordić*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 175.

because of the untimely provision of discovery materials by the Prosecutor, the obvious reasoning being that the defence was entitled to adequate time to read the material provided. The Chamber said:

> The Trial Chamber is cognizant of the fact that unless there is prompt and proper disclosure to the Defence, the Defence cannot make a decision on what evidence it will use at trial, and cannot therefore be adequately prepared for trial. This is especially so in this case where the disclosure was in English, making translation into the language of the accused necessary. (paragraph 22).[8]

21. Clearly, the remedy chosen by the Chamber was not to punish the Prosecutor for late disclosure but to give life to the requirement of a fair trail and the right to have adequate time and facilities for the preparation of the defence. The attempt was to avoid one of the parties being put at a disadvantage to the other.

22. In the *Naletilić* case an equality of arms argument was raised based upon the fact that while the Prosecutor had five years to prepare for trial the Defence had only one year. Clearly parity could never be achieved since any additional time granted to the defence provides additional time to the Prosecutor. As the Chamber pointed out it is not equal time that is the issue but whether the accused is put at a disadvantage when presenting his case.[9] It was determined that in a rather uncomplicated case the defence had been provided with sufficient time and resources to prepare. One year preparation time was deemed sufficient. It must be pointed out that the

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[8] *Prosecutor v. Delalić, et al*, Case No. IT-96-21-PT, Decision on the Application for Adjournment of the Trial Date, 3 February 1997. Much of the material in this case is in BCS and, therefore, cannot be read by lead counsel.

[9] *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-324-PT, Decision on the Accused Naletilić's Motion to Continue Trial Date, 31 August 2001, para. 7.

document load, especially the Rule 68 material in this case was substantially less than in the instant case.

23. The Appeals Chamber in the *Krstić* case dealt with issues surrounding Rule 68 disclosures. The importance of Rule 68 was highlighted by the Appeals Chamber when it was written: "The right of an accused to a fair trial is a fundamental right, protected by the Statute, and Rule 68 is essential for the conduct of fair trials before the Tribunal."[10] In explaining the meaning and force of the plain language of Rule 68 and the requirement of disclosing material that affects the credibility of the Prosecution's case, the Chamber opined that, "Material will affect the credibility of the Prosecution's case if it undermines the case presented by the Prosecution at trial . . ."[11] Clearly Rule 68 material must not just be made available to the accused, he must be given time to peruse that material so that he can use it, if possible, to undermine the case presented by the Prosecution *at trial*. The Appeals Chamber was clearly implying a right to carefully peruse and analyze such material when it said that "The disclosure of exculpatory material is fundamental to the fairness of proceedings before the Tribunal, and considerations of fairness are the overriding factor in any determination of whether the governing Rule has been breached."[12] Clearly, the rule can be breached in at least two ways: failure of the Prosecution to abide by its clear terms and failure by the Trial Chamber to permit adequate time to use the material to prepare a defence. Either breach implicates the fundamental fairness of the proceeding. The Chamber

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[10] Prosecutor v. Krstić, IT-98-33-A, *Judgement*, 19 April 2004, para. 211.
[11] *Id.* At para. 178.
[12] *Id.* At para. 180.

ultimate concluded in *Krstić* that there had been no Rule 68 violation because "The Defence had both *sufficient time in which to analyze the material*, and the *opportunity to challenge it during cross-examination.*"[13] [emphasis supplied] This, then, goes to the very heart of the matter raised by this Motion. The essence of the Rule is that the Defence have *sufficient time in which to analyze the material and to use it during cross-examination.* Failure to be granted this opportunity results in manifest prejudice and renders the trial unfair under Article 21 of the Statute. No other conclusion is possible.

24. Clearly, the opportunity to review and assess material is fundamental. In the context of determining which material should be disclosed under Rule 68 the Appeal Chamber pointed out that the Prosecution is not expected to disclose material that it has not had the opportunity to review and assess.[14]

25. At the 30 March 65 *ter* Conference, when counsel for Pavković expressed concern that he had not had time to "review and assess" the Rule 68 material, the Pre-Trial Judge made the following comments:

> . . . there's nothing in what you've said that indicates that you have been, for example, building up a case based on Rule 68 material that you are studying at great length which suggests that you have to continue this exercise on the same time-scale so far. You have to make judgements along the way about how productive an exercise is going to be. My experience of this Tribunal so far suggests to me that the Prosecution do not actually apply strictly Rule 68(i) that requires them to disclose material which, in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt.

[13] *Id.* At para. 192.
[14] *Id.* At para. 197.

> What seems to be happen something they protect their back by disclosing everything under the sun, giving you, I accept, a difficulty, which you may not be able entirely reassure yourself you have resolved.[15]

26. This is a rather shocking comment coming from a Trial Chamber Judge whose primary obligation is to see that Justice is done. What the Judge is suggesting is that because the Prosecutor, in effect, violates her obligation under Rule 68 by providing "everything under the sun" the Defence should not expend valuable preparation time reviewing and assessing that material. The Judge said that counsel needed to "make judgements" about the value of such an exercise. Clearly, in the opinion of the Judge such an exercise was valueless and that the Defence should not be given time to pursue that exercise as he then later by Order set the trial for 10 July, knowing full well that the defence of General Pavković would be unable to review and assess all the Rule 68 material plus all the inculpatory material, plus all the witness material, plus all the Rule 70 material, plus all the material from related trials. If prejudice is not established by such an Order, then prejudice cannot be established in this Tribunal.

27. The clear remedy to the situation described by the Pre-Trial Judge is not to take away the opportunity of the defence to review and assess the material, but to extend time to do so, or Order the Prosecutor, with her superior resources, to strictly comply with the Rule by identifying the material provided under Rule 68 which is actually relevant to issues in the case. When the Prosecutor impliedly says, by providing Rule 68 material, that they are giving the

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[15] 65 *ter* Conference Transcript, pg. 178,l 179.

defence material that suggests the innocence or mitigates the guilt of the accused or affects the credibility of the Prosecution's evidence, the defence ignores such evidence at it peril and the Chamber errs egregiously by suggesting to the Defence that it may not be a productive exercise to review and analyze it. Any ruling by a Trial Chamber that would prohibit the defence from reviewing and analyzing this material is prejudicial on its face. As the *Krstić* Appeals Judgement pointed out it is sufficient time in which to analyze the material and the opportunity to challenge the Prosecution's case on cross-examination as a result that is the essence of Rule 68.[16]

28. In another case, the Appeals Chamber has dealt with the issue of Equality of Arms in the context of the time allowed to the defence to present its case in comparison with the time allowed to the Prosecution.[17] Although the issue is different the principle involved is virtually identical. In the Orić case the Judge severely limited the time for the defence to present its case in comparison with the time allowed the prosecution. The first proposition announced by the Appeals Chamber is that "equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case."[18] The case was remanded to the Trial Chamber with instruction to allow the defence significantly more time to present its case and significantly, in a case where the defence had commenced, the defence was to be permitted to start again at the beginning if it so chose. An appropriate decision by the Trial Chamber in the first instance would have saved,

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[16] Prosecutor v. Krstić, para. 192.
[17] Prosecutor v. Orić, IT-03-68-AR73.2, *Interlocutory Decision on Length of Defence Case*, 20 July 2005.
[18] *Id.* At para. 7.

rather then used up time. The second lesson from this case is that the Appeals Chamber should be permitted to review legitimate equality of arms claims. Appellate review in this case likely saved a completely new trial.

29. In the instant case the Prosecutor has greater resources in terms of staff available for preparation of its case. The Prosecutor has had about seven years to prepare this case for trial and unaccountably is just now, on 10 April 2006, supplying the defence with the names of new witnesses and all their statements and information. On the other hand General Pavković has had approximately nine months, much of which was taken up with discovery issues and delays, to prepare for trial. Three of his co-defendants have had more than two years to prepare for trial. Isn't it simply axiomatic that where the Prosecutor has had ample time to become familiar with all the documents in the case while the defence has only had time to become familiar with less than 10% of those documents that equality of arms is being egregiously violated? As the Appeals Chamber has said, "*At a minimum,*" neither party must be put at a disadvantage when presenting its case." Isn't it a severe disadvantage to General Pavković when his counsel has not been given time to investigate the witnesses against him; when his counsel has not been given time to read the Rule 68 material provided by the Prosecution which could be used to impeach the witnesses against him? Severe prejudice clearly results to General Pavković when his counsel is not permitted to peruse all inculpatory material, all material from related cases, all Rule 68 material which could be used to impeach witnesses against him and which could reveal witnesses and exhibits in his behalf, and the right to investigate the allegations against

him. The Rule 68 material alone now exceeds 70,000 pages. If at the Registry determined rate of 2 minutes per page, counsel had done nothing for 40 hours per week since his assignment to the case but read the Rule 68 material, he would, as of the date of this motion, have an additional 28,000 pages to read. This would exclude all the 20,000 plus pages of the Milošević transcript relevant to Kosovo. It would exclude all the Milošević exhibits relevant to Kosovo. It would exclude all the Rule 66 material. It would exclude all the Rule 70 material. The new material facts from 1998 now require the perusal of the transcripts and material from the Haradinaj and Limaj cases. This adds an additional huge burden to the already severely over-burdened Pavković defence team. How can there even be a suggestion that the requirement of equality of arms is satisfied when the accused is forced to trial under these circumstances? There simply cannot.

30. Rule 68 provides: "The Prosecutor shall, as soon as practicable, disclose to the Defence any material which in the actual knowledge of the Prosecutor may *suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.*" [emphasis supplied]. Presumably there are approximately 70,000 pages of material available to the Pavković defence which either suggests the innocence, mitigates the guilt or affects the credibility of Prosecution evidence. If material is provided under Rule 68 which "*in the actual knowledge of the Prosecutor*" does not suggest the innocence, mitigate the guilt or affect the credibility of the Prosecution evidence, then the Prosecutor is simply forcing the defence to waste time reviewing irrelevant material. Since that would not be typical of the professional prosecutors who work at this

Tribunal, the Chamber must presume that all 70,000 pages of the material provided suggests the innocence, mitigates the guilt or affects the credibility of the Prosecution evidence as it relates to this case. Any contrary presumption would be totally inappropriate.

31. Article 20 of the Statute provides the "The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, *with full respect for the rights of the accused* and due regard for the protection of victims and witnesses." [emphasis supplied] A trial simply cannot be conducted with "full respect for the rights of the accused" where that accused has not been give the opportunity to read the exculpatory material provided by the prosecutor. This would be a clear violation not only of the principle of equality of arms, but of the requirement of Article 20 that the trial be conducted "in accordance with the rules of procedure and evidence." It cannot accord with the Rules to require the Prosecutor to supply the accused with evidence that suggests his innocence or mitigates his guilt or affects the credibility of prosecution evidence and then deny the accused the opportunity to read that material. The Rule is not one which requires the Prosecutor to perform some action as an academic exercise of sorts. It is one which seeks to provide an accused with material to assist him in his defence, if such material is known to the Prosecutor. If the accused is prohibited from using that evidence then the provisions of Rule 68 become meaningless. No Chamber, Trial or Appeal in this Tribunal has ever treated the requirements of Rule 68 as meaningless. It goes to the very heart of a fair trial.

32. Based upon all the foregoing arguments, explanations and

submission, the Defence of General Pavković respectfully requests that this Chamber grant him a remedy so that he can have a fair trial before this Tribunal. If the Tribunal is unable, for various considerations, to give him a fair trial the Indictment against him should be dismissed and/or he should be returned to Serbia under the provisions of Rule 11 *bis*.

33. If he is to be tried before this Tribunal, then two remedies are apparent. The case could be continued with a presumptive trial date in the early summer of 2007, which would allow adequate time for preparation, or his case could be severed with a presumptive trial date at approximately the same time. If there is a determination to try all accused together then a continuance is the remedy, if not, then a severance is the remedy.

34. As was pointed out to the Pre-Trial Judge at the 65 *ter* Conference, trial preparation involves two components, time and resources. If resources are increased time may be decreased, if resources are decreased then time must be increased. The preparation issues in this case deal with time and resources. If the death of Slobodan Milošević has any impact at all on this case it should be the availability of additional resources previously earmarked for that case. Perhaps a remedy can be found in this sphere.

Respectfully Submitted

John E. Ackerman
Counsel for Nebojša Pavković

IT-05-87-PT
D4236-D4234
28 APRIL 2006

4236 FFT

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-05-87-PT

Date: 28 April 2006

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Mr. Hans Holthuis**

Decision of: **28 April 2006**

PROSECUTOR

v.

MILAN MILUTINOVIČ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ

SECOND DECISION ON MOTIONS TO DELAY PROPOSED DATE FOR START OF TRIAL

Office of the Prosecutor
Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

Counsel for the Accused
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihaljo Bakrać for Mr. Vladimir Lazarević
Mr. Theodore Scudder and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 seized of several motions seeking the delay of the proposed date for the start of the trial or, in the alternative, severance of the accused from the indictment and hereby renders its decision thereon.

1. On 7 September 2005, the Chamber denied Pavković's motion to set aside the joinder of the cases or, in the alternative, to grant severance.[1] On 2 December 2005, the Chamber dismissed as premature a motion by Pavković to delay the proposed date for the start of the trial or, in the alternative, to sever him from the indictment.[2]

2. On 13 April 2006, Pavković requested the following: "that this Chamber grant him a remedy so that he can have a fair trial before this Tribunal. If the Tribunal is unable, for various considerations, to give him a fair trial the Indictment against him should be dismissed and/or he should be returned to Serbia under the provisions of Rue 11 *bis*"; "[i]f he is to be tried before this Tribunal" and "[i]f there is a determination to try all accused together", that the Chamber delay the start of the trial until early summer 2007 or sever him from the indictment and set a start date for his trial for early summer 2007. Pavković also seems to request additional resources in order to prepare his defence.[3]

3. Šainović and Lazarević have joined the Pavković Motion, thereby adopting all the arguments regarding the postponement of the trial as set forth therein.[4] Ojdanić has joined the Pavković Motion and fully supports the arguments set forth by Pavković in support of a delay in the start of the trial.[5] Milutinović joined the Pavković Motion to delay the start of the trial, and advances further arguments for the delay of the proposed start date.[6] Lukić joins the Pavković Motion, requests the Chamber to delay the start of the trial or, in the alternative, reconsider and

[1] Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance, 7 September 2005.
[2] Decision on Nebojša Pavković's Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, 2 December 2005. The motion was joined by Lukić.
[3] Renewal of and Supplement to 7 November Pavković "Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance", 13 April 2006, paras 32–34.
[4] Defence Motion Joining: "Renewal of and Supplement to 7 November Pavković 'Motion to Delay Start of Trial or In the Alternative to Reconsider and Grant Previous Motion for Severance'", 18 April 2006.
[5] General Ojdanić's Joinder in Pavković Motion, 20 April 2006.
[6] Mr. Milutinović's Joinder in the Renewed Motion Filed by Nebojša Pavković on 12 April 2006 to Delay Start of Trial, 18 April 2006.

grant severance of Lukić from the indictment, and advances additional arguments in support of his request for relief.[7]

4. The Chamber has carefully considered each and every argument of the accused, as has been set forth in their motions, and is satisfied that the accused will have adequate time and resources to prepare for the trial scheduled to commence on the date proposed in the work plan.[8] Throughout the pre-trial phase of the proceedings, the Chamber has been continuously alert so that unfair prejudice will not be caused to the accused due to the lack of adequate time and resources for the preparation of their defences, and the Chamber will continue to monitor the progress of the case throughout the remainder of the pre-trial phase. Moreover, the Prosecution has offered to assist the Defence in relation to some of the issues raised in the motions,[9] and the Chamber encourages the parties to continue to cooperate in this regard.

5. The Chamber notes that the Prosecution has not opposed the motions.

6. Pursuant to Articles 20 and 21 of the Statute of the Tribunal, Rule 54 of the Rules of Procedure and Evidence, and paragraph 7 of the Practice Direction on the Length of Briefs and Motions (IT/184/Rev. 2), the Chamber hereby DISMISSES the motions; GRANTS *proprio motu* an extension of the word limit to Pavković and Lukić; and DIRECTS the parties in future filings to comply with paragraphs 5, 7, and 8 of the Practice Direction on the Length of Briefs and Motions.

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

Judge Robinson
Presiding

Dated this twenty-eighth day of April 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

[7] Sreten Lukić's Motion to Delay Start of Trial or in the Alternative to Grant a Severance of the Proceedings Against this Accused, 25 April 2006.

[8] Pre-trial Order and Appended Work Plan, 5 April 2006.

[9] *E.g.*, Rule 65 *ter* Conference, 30 March 2006, T. 167 (closed session); Rule 65 *ter* Conference, 26 April 2006, T. 203 (closed session).

IT-05-87-PT
D4315 - D4313
05 MAY 2006.

4315 AF

THE INTERNATIONAL CRIMINAL TRIBUNAL

FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-PT

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Hans Holthuis**

Filed: 5 May 2006

THE PROSECUTOR

vs.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJSA PAVKOVIC
VLADIMIR LAZAREVIC
VLASTIMIR DJORDJEVIC
SRETEN LUKIC

MOTION FOR LEAVE TO APPEAL SECOND DECISION ON MOTIONS TO DELAY PROPOSED DATE FOR START OF TRIAL

The Prosecutor:

Mr. Thomas Hannis
Ms. Christina Moeller

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
Mr. John Ackerman and Aleksandar Aleksić *for Nebojsa Pavkovic*
Mr. Mihailo Bakrac *for Vladimir Lazarevic*
Mr. Theodore Scudder and Mr. Dragan Ivetic *for Sreten Lukic*

1. NEBOJŠA PAVKOVIĆ hereby files his motion for leave to appeal from the Second Decision on Motions to Delay Proposed Date for Start of Trial entered herein on the 28th day of April, 2006.
2. This Motion is filed pursuant to the provisions of Rule 73.
3. Any reading of the Motion filed by the Accused for a delay in the start of the trial or a severance of the case reveals that it contains issues that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. An immediate resolution of this issue may materially advance these proceedings.
4. The record in this case upon the motion for delay or severance contains numerous references to the huge volume of material supplied to the defence by the OTP. Nearly 70,000 pages of this material is described by the OTP as Rule 68(i) material. Forcing an accused to trial without adequate opportunity to review this material, plus all other relevant material supplied by the OTP, plus the opportunity to conduct an independent investigation would significantly affect the fairness of the proceedings.
5. This issue raises very serious concerns dealing with the application of the principle of equality of arms. This accused is clearly being put at a significant disadvantage to the Prosecutor and to other accused who have been given much longer to prepare their defences.
6. It is clear that an immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings. This case is to be a long and complicated case consuming many resources of this tribunal. If there is even a possibility that the Appeals Chamber would see this matter differently than has the Trial Chamber and would order that the accused be given additional and adequate time

and facilities for the preparation of his defence, it may very well be that a future re-trial can be avoided and huge and unnecessary expense and waste of time to the Tribunal.

7. An example of the facility of an interlocutory appeal in such a situation is the situation that developed in the Orić case. There the Trial Chamber, fairly it believed, sought to expedite the trial by limiting the time for the presentation of the defence case. Wisely, the Chamber granted leave to appeal and issued a certificate. The Appeals Chamber disagreed and ordered that the defence be given additional time to put on its case. This simple and expeditious procedure likely avoided a complete re-trial of the case thus saving the Tribunal countless resources in both time and expenditure that would otherwise have been wasted.

8. This Trial should grant this Motion and issue a certificate permitting appeal of the issues raised in Pavković's "Renewal of and Supplement to 7 November Pavković 'Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance.

Word Count: 626

Respectfully Submitted,

John E Ackerman
Counsel for Nebojša Pavković

IT-05-87-PT
D5207 - D5206
12 MAY 2006

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-05-87-PT

Date: 12 May 2006

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: **Mr. Hans Holthuis**

Decision of: **12 May 2006**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ

DECISION ON DEFENCE REQUEST FOR CERTIFICATION OF AN INTERLOCUTORY APPEAL OF SECOND DECISION DENYING MOTION FOR DELAY OF TRIAL

Office of the Prosecutor
Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

Counsel for the Accused
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrać for Mr. Vladimir Lazarević
Mr. Theodore Scudder and Mr. Dragan Ivetić for Mr. Sreten Lukić

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"),

BEING SEIZED of a "Motion for Leave to Appeal Second Decision on Motions to Delay Proposed Date for Start of Trial", filed by Nebojša Pavković on 5 May 2006 ("Motion"), requesting that the Trial Chamber certify an interlocutory appeal of its "Second Decision on Motions to Delay Proposed Date for Start of Trial", issued 28 April 2006, or, in the alternative, reconsider the Accused's "Renewal of and Supplement to 7 November Pavković Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance", filed 13 April 2006;

NOTING that the Motion is joined by Milan Milutinović,[1] Nikola Šainović, Vladimir Lazarević,[2] and Dragoljub Ojdanić;[3]

CONSIDERING that the Motion does not meet the standards set out in the Rules of Procedure and Evidence and jurisprudence of the Tribunal for either certification or reconsideration;

PURSUANT TO Rules 54 and 73(B) of the Rules of Procedure and Evidence, the Trial Chamber hereby **DENIES** the Motion.

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

Judge Robinson
Presiding

Dated this twelfth day of May 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

[1] Submission by Mr. Milan Milutinović to Join the Motion for Leave to Appeal Second Decision on Motions to Delay Proposed Date for Start of Trial, 8 May 2006.

[2] Joint Defence Motion: Submission by Mr. Nikola Šainović and Mr. Vladimir Lazarević to Join the Motion for Leave to Appeal Second Decision on Motions to Delay Proposed Date for Start of Trial, 9 May 2006.

[3] General Ojdanić's Joinder in Pavković Application for Certification to Appeal, 10 May 2006.

IT-05-87-T
D 6874 - D 6872
13 July 2006

6874
HB.

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-PT

IN THE TRIAL CHAMBER

Before: **Judge Iain Bonomy, Presiding**
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova

Registrar: Mr. Hans Holthuis

Date Filed: 13 July 2006

THE PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PAVKOVIĆ OBJECTION TO TRIAL PROCEEDING IN ABSENCE OF HIS LEAD COUNSEL

The Office of the Prosecutor

Mr. Thomas Hannis – Mr. Chester Stamp – Ms. Christina Moeller
Ms. Patricia Fikrini – Mr. Mathias Marcussen

Counsel for the Accused
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač for Mr. Vladimir Lazarević
Mr. Branko Lukić for Mr. Sreten Lukić

IT-05-87-T 6873

1. The Chamber is aware of the health situation regarding General Pavković's Lead Counsel, John Ackerman, and his inability to be present during the early stages of the trial.
2. Previous motions have been made requesting delays in the start of the trial for reasons of insufficient preparation time and for reasons of the impending medical procedures being faced by the lead counsel.
3. On 8 July, lead counsel Ackerman requested Co-Counsel Aleksić to read the following objection into the record prior to any testimony being taken:

> On behalf of General Pavkovic, I would like to enter an objection. First of all, we want to renew our previously filed motions seeking delay in the trial due to inadequate time to properly prepare for the trial. It remains the case that we have not had time to even get through the Rule 68 material provided by the prosecutor. In addition, as the Court is aware, Mr. Ackerman is unable for medical reasons to appear at this time. This has been known to the Chamber for some time. We object to going forward in the absence of lead counsel Ackerman. It violates the Accused Pavkovic's right to counsel to be deprived of his designated lead counsel at this critical stage in the proceedings. Once it has been determined that a case is of sufficient complexity that it requires both a Lead and a Co-counsel, it violates the right to counsel to deprive an accused of his lead counsel for an extended period which is the case here. If this objection is overruled, I would request that it be treated as a continuing objection throughout the absence of Lead Counsel Ackerman.

4. For good and sufficient reasons, Co-Counsel Aleksić was unable to present this objection prior to the taking of testimony from the first witness, Sandra Mitchell.
5. On the afternoon of 12 July 2006, Co-Counsel Aleksić attempted to place this objection on the record and was instructed by the presiding Judge that it should be presented in writing.

IT-05-87-T 6872

6. Therefore, the accused Pavković, by and through his counsel, now request that this objection be taken into consideration, that it should be granted and the trial should be immediately stopped to resume on or after 1 September 2006 so that Pavković can have his interests represented by his lead counsel of choice.

7. Should the Chamber not grant this objection but continue with the trial, counsel respectfully requests that this objection be treated as a continuing objection throughout the absence of counsel Ackerman from this trial.

8. Under no circumstances has General Pavković in any manner waived his right to have Mr. Ackerman present during his trial and objects continually to the trial going forward in the absence of Mr. Ackerman.

Respectfully Submitted,

John E Ackerman
Lead Counsel for Nebojša Pavković

IT-05-87-T
D8188-D8182
09 OCTOBER 2006

D8188 AT

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-05-87-T

Date: 9 October 2006

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Iain Bonomy, Presiding**
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: **Mr. Hans Holthuis**

Decision of: **9 October 2006**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

DECISION ON USE OF TIME

Office of the Prosecutor
Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

Counsel for the Accused
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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");

Ex proprio motu;

CONSIDERING that, pursuant to Article 20 of the Statute of the Tribunal, Trial Chambers have the duty to ensure that a trial is both fair and expeditious;

CONSIDERING that Article 21 of the Statute, which sets forth the rights of the Accused before the Tribunal, provides in relevant part:

> 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 witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

CONSIDERING that Rule 90(F) of the Rules of Procedure and Evidence of the Tribunal ("Rules") provides:

> (F) The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to
>
> (i) make the interrogation and presentation effective for the ascertainment of the truth; and
>
> (ii) avoid needless consumption of time[;]

CONSIDERING that, in a recent decision on interlocutory appeal in the *Prlić* case, the Appeals Chamber held that the right of the accused to be tried without undue delay, as recognised in Article 21, extends to all stages of the trial and imposes upon a Trial Chamber an obligation "to ensure ... that the trial is completed within a reasonable time";[1]

[1] *See Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel's Request for Leave to File an *Amicus Curiae* Brief, 4 July 2006, p. 4 (noting that this right "is recognized as a fundamental right of due process under international human rights law" and citing international human rights treaties and authoritative interpretations thereof).

CONSIDERING that the Chamber has the power, both before the trial commences[2] and once it is under way,[3] to determine the time available to the parties for the presentation of their respective cases;

NOTING that, although the Chamber decided not to impose time limits upon the parties at the outset of the trial, relying instead upon the professional judgement of counsel,[4] it had always in mind the possibility that it would be necessary to do so and, in that event, wished to so proceed in light of experience gained from the conduct of the trial;

NOTING that the Chamber has indicated in recent court sessions that it was considering setting time limits in order to ensure that the trial is completed within a reasonable time;[5]

NOTING that the Chamber issued a Scheduling Order for the week of trial between 25 and 29 September 2006 actually imposing such limits on the parties on a trial basis;[6]

NOTING that, at the end of that week, the parties made submissions to the Chamber expressing their concerns that the extended sitting schedule had adversely impacted upon their ongoing trial preparations;[7]

NOTING that the Prosecution's initial estimate of the total time required for the presentation of its case, as required by Rule 65 *ter* (E)(ii)(f), was 280 hours;[8]

NOTING that this estimate did not include any time for the examination of witnesses then proposed under Rule 92 *bis*, that the Chamber later ordered that "the Accused shall have an opportunity to cross-examine each witness whose written material is admitted into evidence" pursuant to Rule 92 *bis*,[9] and that the Prosecution has since led hours of oral evidence from witnesses initially scheduled only as Rule 92 *bis* witnesses;

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[2] *See* Rules 73 *bis* (C)(ii), 73 *ter* (E).

[3] *See Prosecutor v. Milošević*, Case No. IT-02-54-AR73, Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limits, 17 May 2002, para. 10.

[4] *See Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, and Lukić*, Case No. IT-05-87-T ("*Milutinović et al.*"), T. 359–360 (7 July 2006).

[5] T. 3448 (14 September 2006).

[6] *Milutinović et al.*, Scheduling Order and Decision on Joint Defence Motion to Modify Trial Schedule for Trial Week Beginning 25 September 2006, 15 September 2006 ("Scheduling Order"), para. 12.

[7] *Milutinović et al.*, T. 4429–4441 (29 September 2006).

[8] *Milutinović et al.*, Case No. IT-05-87-PT, T. 253 (17 May 2006); *see also* Prosecution's Submissions Pursuant to Rule 65*ter*(E), 10 May 2006.

[9] *Milutinović et al.*, Decision on Prosecution's Rule 92 *bis* Motion, 4 July 2006, para. 23(4). The evidence of such witnesses is now tendered under new Rule 92 *ter*, which codifies the existing jurisprudence on admission of evidence

NOTING that, as of the adjournment on 29 September 2006, the evidence of 48 witnesses had already been heard by the Chamber;[10]

NOTING that the Chamber's Order on Procedure and Evidence decided, *inter alia*, that "[t]he Chamber shall continually monitor the use of time, and may make further orders, as it considers necessary, concerning time used by the Prosecution or the Defence";[11]

CONSIDERING that, according to the recently received finalised records of the Registry, the use of time in the trial between its commencement on 10 July 2006 and the adjournment on 29 September 2006 was as follows:

Total time elapsed:	173 hours, 52 minutes [10,432 minutes]
Prosecution examination in chief and re-examination:	40 hours, 39 minutes [2,439 minutes]
Defence cross-examination:	90 hours, 33 minutes [5,433 minutes]
Questioning by Chamber, administrative time, and procedural and other matters:	42 hours, 40 minutes [2,560 minutes]

CONSIDERING that, if current trends in the use of time continue, even if the Chamber imposes general time limits on the oral testimony adduced from all future Rule 92 *ter* witnesses identical to those imposed for the week commencing 25 September 2006,[12] the Prosecution's total use of time will exceed its original estimate of 280 hours;[13]

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under Rule 89(F). *See* IT/250, 15 September 2006 (announcing most recent amendments to Rules); *Milutinović et al.*, Decision on Evidence Adduced Through Sandra Mitchell and Frederick Abrahams, 1 September 2006, paras. 8–16 (explaining previous jurisprudence on Rules 89(F) and 92 *bis*).

[10] This number includes the Rule 92 *bis* (C) (now Rule 92 *quater*) statement of Antonio Russo, but not the incomplete testimony of Shefqet Zogaj.

[11] *Milutinović et al.*, Order on Procedure and Evidence, 11 July 2006, para. 2.

[12] *See* Scheduling Order, *supra* note 6, para. 12(c) ("For witnesses whose evidence is brought pursuant to Rule[] 92 *ter*, the Prosecution shall have a maximum of 30 minutes to conduct both direct examination and re-examination.... The Defence collectively shall have a maximum of 90 minutes for cross-examination for such witnesses.").

[13] This conclusion is based upon the estimates for the Prosecution's *viva voce* witnesses still to be called, as provided in the current Rule 65 *ter* witness list. *Milutinović et al.*, Notice of Filing of Revised 65 *ter* Witness List, 6 July 2006. To this total (just over 235 hours) is added time for the remaining Rule 92 *ter* witnesses (just over 16 hours), bringing the total time for Prosecution examination of its remaining witnesses to approximately 251 hours. Added to the elapsed total Prosecution time of 40 hours and 39 minutes, this would mean that the total time for the presentation of the Prosecution's case would be almost 292 hours. The distinction between this total and the Prosecution's original estimate of 280 hours is not insignificant: it translates to over three days of sitting time when the Chamber sits for half-days, and does not include time for cross-examination, questions by the Chamber, procedural discussions, and administrative matters, which could significantly increase the additional time such overrun would cause.

NOTING that, in the Scheduling Order referenced above, the Chamber noted that

> it has on several occasions commented upon the inadequate progress of the proceedings, both in respect of the Prosecution's presentation of its case-in-chief and the Defence's use of time during cross-examination. The Chamber also notes that, thus far, it has in general refrained from temporally circumscribing the cross-examination of the Defence, and has instead sought to assist the Defence in increasing the efficiency thereof [;][14]

CONSIDERING that, although the parties have since endeavoured to tailor their examination of witnesses to be more efficient, the Chamber is of the view that fixing temporal limitations based upon its experience of the trial so far would be conducive to ensuring that the conduct of the case is both fair and expeditious;

CONSIDERING that, when there are six trials proceeding concurrently before the Tribunal, this Trial Chamber can sit for only half of each sitting day, sitting effectively between three and three-quarter hours and four hours, and that it is appropriate to sit longer when courtroom availability permits;

CONSIDERING that the Chamber is of the view that 220 hours is a reasonable estimate for the total time for presentation of the remainder of the Prosecution's case in chief from 9 October 2006, having regard to the original estimate of 280 hours, but also taking account of the Chamber's decision restricting the scope of the Prosecution's case-in-chief,[15] recent submissions by the Prosecution clarifying the precise charges against the Accused, and a subsequent decision by the Chamber not to hear evidence that does not go to those precise charges;[16] and bearing in mind recent changes to the Rules, which now explicitly permit the presentation of evidence in writing that goes to the acts and conduct of the Accused;[17]

CONSIDERING that, although the Chamber has previously ordered that certain trial delays would be counted against the Prosecution's time,[18] it now considers it appropriate, in light of its decision to impose general time limits upon the parties, to wipe the slate clean; as such, the time records set forth above do not include any such "lost" time, as counted against a party;

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[14] Scheduling Order, *supra* note 6, para. 5 (footnotes omitted).

[15] *Milutinović et al.*, Decision on Application of Rule 73 *bis*, 11 July 2006.

[16] *Milutinović et al.*, T. 3513 (19 September 2006); Decision on Evidence Tendered Through Witness K82, 3 October 2006.

[17] *See* IT/250, 15 September 2006 (setting forth text of new Rule 92 *ter*, which provides, in subparagraph (B): "Evidence admitted under [the Rule] may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.").

[18] *See, e.g.*, *Milutinović et al.*, T. 3443 (14 September 2006).

CONSIDERING that the experience of the trial week between 25 and 29 September 2006 has shown that it is unnecessary to have a maximum collective time limit of 90 minutes for cross-examination of Rule 92 *ter* witnesses by the Defence, and that a 60-minute limit would be sufficient, bearing in mind that the Chamber will allow the Defence to request more time for the cross-examination of particular witnesses on a case-by-case basis and on good cause having been shown;

CONSIDERING also that it is not always necessary to put the defence case, in all its detail, to each and every witness called by the Prosecution, because such an approach risks being the "needless consumption of time" censured by Rule 90(F)(ii);

PURSUANT TO Articles 20 and 21 of the Statute and Rules 54 and 90(F) of the Rules;

HEREBY ORDERS AS FOLLOWS:

1. If the parties dispute the calculations or time records set forth in this Decision, which are based upon the records kept by the Registry, they shall file any such challenge in the form of a written application to the Chamber within fourteen days of this Decision.

2. The Prosecution shall have 220 hours in total for the presentation of the remainder of its case, which shall be counted from 9 October 2006.

3. For *viva voce* witnesses, the Defence shall have collectively the same amount of time as the Prosecution has taken for the cross-examination of a witness. The Defence shall consult amongst themselves to decide upon the apportionment of this time.

4. For witnesses whose evidence primarily and in accordance with the practice of the Prosecution followed in the trial so far is brought pursuant to Rule 92 *ter*, the Prosecution shall have a maximum of 30 minutes to conduct both direct examination and re-examination, and may decide how to apportion this time between direct examination and re-examination. The Defence collectively shall have a maximum of 60 minutes for cross-examination of such witnesses. The Defence shall consult amongst themselves to decide upon the apportionment of this time.

5. The Chamber will sit longer hours when courtroom availability permits and the Chamber deems it appropriate, but such sittings will generally not exceed five hours per day, and any period of extended hours normally will be followed by an equivalent period when the Chamber sits only half-days.

6. As ordered in the Order on Procedure and Evidence, regular reports on the use of time shall by compiled by the Registry in conjunction with the Chamber, and shall be provided periodically to the parties. Any challenge to the information contained within the report shall be filed in the form of a written application to the Chamber within seven days of the provision of the report.

7. The Trial Chamber may alter any of the orders set out above on a case-by-case basis, on good cause having been shown by a party, and will issue additional orders in due course, as it deems appropriate. In deciding on such an application, the Trial Chamber may take account of the effectiveness of the moving party's previous use of time.

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

Judge Iain Bonomy
Presiding

Dated this ninth day of October 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

D8619

United Nations
Nations Unies

International Criminal Tribunal for the Former Yugoslavia

Court Management and Support Services Section

Tribunal Pénal International pour l'ex-Yougoslavie

Section des Services d'administration et d'appui judiciaire

CASE/*AFFAIRE* NO.	**IT-05-87-T**	**DATE**	**02 November 2006**

FROM/*DE* **SYED RIAZ HAIDER, COURT OFFICER**

TO/*A*

0 President/*Président*	X Prosecutor/*Procureur*	X Defense Counsel/*Conseil de la Défense*	cc
0 Appeals Chamber/ *Chambre d'appel*	X Case Manager/ *Commis aux affaires*	**Mr. Fila/Mr. Petrović** **Mr.Visnjić/Mr. Sepenuk** **Mr. O'Sullivan/Mr. Zecević** **Mr. Ackerman / Mr. Aleksić** **Mr. Bakrač / Mr. Čepić** **Mr. Lukic/Mr Ivetic**	
0 Trial Chamber I/ *Chambre de 1ère instance I*	0 Chief of Investigations/ *Chef des enquêtes*		
0 Trial Chamber II/ *Chambre de 1ère instance II*	.....		
X Trial Chamber III/ (4) *Chambre de 1ère instance III*	.....		

0 Embassy/*Ambassade*	
0 Other/*Autre*	
X 0 Registrar/Deputy Registrar/*Greffier/Greffier adjoint* **MR. A. DE WITT**	X 0 VWS Coordinator/*Coordinateur de la SVT* **MS. W. LOBWEIN**
X 0 Senior Legal Officer/*Juriste hors-classe* **MS. L. DAVIDSON/ MR. G. DAWSON**	0 UNDU Commanding Officer/*Commandant du QPNU*
X PTV/~~MOW~~	X 0 OLAD

PLEASE FIND ATTACHED/*VEUILLEZ TROUVER CI-JOINT*

0 Order/Warrant/decision issued by Appeals Chamber or Trial Chamber or a Judge on/
Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le ____/____/____

0 Order/Decision issued by the President on/*Ordonnance/Décision émise par le Président le* ____/____/____

X 0 ~~Motion/Request/Application~~ submitted by ~~Prosecution/~~Defence Counsel on/
Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le 02 / 11 / 2006
OBJECTION

0 Response/reply/brief submitted by Prosecution/Defence Counsel on/
Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense le ____/____/____

0 Decision of the Registrar on/*Décision du Greffier le* ____/____/____

0 Other/*Autre*

RECEIVED/RECU	**FILED/ENREGISTRE**
X 0 Office hours/*heures ouvrables* Date: **02/11/06** **11 :15hrs**	X Office hours/*heures ouvrables* Date: **02/11/2006**
0 Outside Office hours/*en dehors des heures ouvrables* Date: ____/____/____. Time/*Heure*: ____h____.	0 Outside Office hours/*en dehors des heures ouvrables* Date: ____/____/____. Time/*Heure*: ____h____.

Article 27.2- Directive for the Registry: A party anticipating a late filing will call the Registry during office hours to request permission of the Registrar and instruction for after hour filing.
Article 27.2-Directive pour le Greffe: une partie prévoyant un dépôt hors des heures ouvrables se mettra en rapport avec le personnel du Greffe durant les heures de bureau pour solliciter l'autorisation du Greffier et les instructions nécessaires.

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas
Tel.: 31-70-416 5000 Fax: 31-70-416 8637

IT-05-87-T
D8618 - D8614
02 NOVEMBER 2006

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Case No. IT-05-87-T

IN THE TRIAL CHAMBER

Before: **Judge Iain Bonomy, Presiding**
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve

Registrar: **Mr. Hans Holthuis**

Date Filed: **2 November 2006**

THE PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

JOINT DEFENCE OBJECTION TO TRIAL SCHEDULE FOR WEEK COMMENCING 27 NOVEMBER 2006

The Office of the Prosecutor

Mr. Thomas Hannis **Mr. Chester Stamp** **Ms. Christina Moeller**
Ms. Patricia Fikirini **Mr. Mathias Marcussen**

Counsel for the Accused
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Aleksander Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Dragan Ivetić for Mr. Sreten Lukić

JOINT DEFENCE
OBJECTION TO TRIAL SCHEDULE FOR WEEK COMMENCING
27 NOVEMBER 2006

1. According to the most recent trial schedule, the Chamber has scheduled "full day" sittings for the week of 27 November 2006 with the exception of 30 November 2006.

2. In its "Decision on the Use of Time"[1] the Chamber spoke of the last week of "full day" sittings, noting in that Decision that the parties had advised the Chamber that the "extended sitting schedule had adversely impacted upon their ongoing trial preparations.

3. As was argued extensively in written submissions and otherwise, the parties and especially the three "new" parties had very little time to prepare for trial and were not ready as the trial commenced. Counsel for these parties have had to rely on out-of-court time to continue trial preparation activities.

4. When the Chamber sits for full days these extra preparation activities must cease.[2] The only use of time is preparation of cross-examination of current witnesses, study of testimony given and preparation for the next day.[3]

5. As the trial shifts from crime-base witnesses to more significant witnesses, the preparation time increases and becomes more burdensome. Based upon the current November witness schedule such witnesses will be presented throughout the month.

6. The primary obligation of defence counsel in a criminal case is to render effective assistance to the accused. The primary obligation of Judges in a criminal case is to create

[1] *Prosecutor v. Milutinovic et. al.*, Decision on Use of Time, IT-05-87-T, 9 October 2006.
[2] These activities include, but are not limited to the following: Continuing the perusal of rule 68 material in EDS; organizing the defence case, choosing witnesses, reviewing potential exhibits; submitting materials to CLSS for translation; reviewing materials provided during trial by the OTP; preparing submissions on matters arising during trial; reading and categorizing exhibits admitted by the Chamber; meeting with and taking instructions from the accused; conducting legal research into matters arising in the trial or which will be significant at submission time revealed by the evidence; analyzing and organizing testimony and exhibits received to date; and more.
[3] It is not unusual, based on experience, for members of trial teams to work late into the night, expending as much as 18 to 20 hours per day during full-day periods.

an atmosphere of fairness that permits defence counsel to perform their obligations to their accused. The speed at which a case is tried has never been seen as synonymous with Justice, but only with expediency. Expediency must always surrender to Justice. Justice must prevail.

7. In the "Decision on Use of Time", the Chamber determined that although it may be necessary on occasion to sit for extended hours, that "such sittings will generally not exceed five hours per day." The proposed November 27 schedule provides for 6 hour days – days which dominate the time of counsel by spreading the hours of sitting over a period of 8 ½ hours. The 1 ½ hour lunch period is largely wasted time since counsel cannot return to their respective offices and perform any meaningful preparation work.

8. This Chamber should adopt a reasonable and reliable trial schedule which takes into consideration many variables including the matters previously mentioned herein. It must also be considered that "full-day" schedules have additional impacts. Pursuing a schedule that exhausts the participants creates significant and sometimes lasting health problems. Stress can produce significant cardiac and other health problems.

9. There must be a reasonable and reliable trial schedule that balances the need for the trial to proceed efficiently with the demands of Justice and the health and well-being of the participants. This is not the only "mega trial' proceeding at the Tribunal at this time. The other such trials are not proceeding at the pace that this trial has assumed so far. Consideration is given to the need for justice to prevail and the health and well-being of the participants.

10. This trial appears to be significantly ahead of schedule and significantly ahead of other mega trial going on at the Tribunal

11. The normally-followed ½ day procedure is reasonable and allows the trial to proceed at an adequate rate so that it can finish in a reasonable period of time. The Chamber is urged, in the interest of justice to all parties to adopt the ½ day sitting

schedule as the rule of the case and no longer consider sitting for additional hours when possible.

Word count: 595

Respectfully submitted:

Counsel for Mr. Milutinović

Eugene O'Sullivan

Slobodan Zečević

Counsel for Mr. Šainović

Toma Fila

Vladimir Petrović

Counsel for General Ojdanić

Tomislav Višnjić

Norman Sepanuk

Counsel for General Pavković

John Ackerman

Aleksandar Aleksić

Counsel for General Lazarević

Mihajlo Bakrač

Đuro Čepić

Counsel for General Lukić

Branko Lukić

Dragan Ivetić

IT-05-87-T
D8861 - D8858
15 NOVEMBER 2006

8861 AT

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-05-87-T

Date: 15 November 2006

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Iain Bonomy, Presiding**
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: **Mr. Hans Holthuis**

Order of: **15 November 2006**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

SCHEDULING ORDER

Office of the Prosecutor
Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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") hereby issues, *ex proprio motu*, this scheduling order for the trial.

1. Article 20 of the Statute of the Tribunal charges the Chamber with, *inter alia*, the responsibility of ensuring "that [the] trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence." Article 21 sets forth the rights of the Accused, including the right "to have adequate time and facilities for the preparation of his defence" and the right "to be tried without undue delay." In a recent decision on interlocutory appeal in the *Prlić* case, the Appeals Chamber held that the right of the accused to be tried without undue delay, as recognised in Article 21, extends to all stages of the trial and imposes upon a Trial Chamber an obligation "to ensure ... that the trial is completed within a reasonable time."[1]

2. In discharging these above responsibilities, the Chamber, from the beginning of the trial,[2] has utilised several different methods, such as the application of temporal demarcations upon the Prosecution's case-in-chief, as well as upon the length of the examination of witnesses.[3] The Chamber also has found it appropriate to sit for full days, rather than half days, on certain weeks, while still ensuring that adequate rest periods are built into the trial schedule so that the parties have adequate time to prepare their cases, especially the Defence.[4] To this end, the Chamber ordered, in the Decision on Use of Time, that the Trial Chamber would "sit longer hours when courtroom availability permits and the Chamber deems it appropriate, but such sittings will generally not

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[1] *See Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel's Request for Leave to File an *Amicus Curiae* Brief, 4 July 2006, p. 4 (noting that this right "is recognized as a fundamental right of due process under international human rights law" and citing international human rights treaties and authoritative interpretations thereof).

[2] Order on Procedure and Evidence, 11 July 2006, para. 2 ("The Chamber shall continually monitor the use of time, and may make further orders, as it considers necessary, concerning time used by the Prosecution or the Defence."); *see* Memorandum re *Prosecutor v. Milutinović et al.*: Report on Use of Time in the Trial Period Ending 31 October 2006, 9 November 2006.

[3] *See* Scheduling Order and Decision on Joint Defence Motion to Modify Trial Schedule for Trial Week Beginning 25 September 2006, 15 September 2006 ("Scheduling Order of 15 September 2006"); Decision on Use of Time, 9 October 2006.

[4] *See, e.g.*, Scheduling Order of 15 September 2006, para. 9 ("The Chamber notes the following breaks in the trial: (1) there is no hearing today, 15 September 2006, as a result of witness scheduling issues; (2) the discretionary week of recess is being used so that the trial is not sitting during the week of 2 October 2006; and (3) the trial will not be sitting on Friday, 20 October and Monday–Tuesday, 23–24 October, due to an appeal hearing and the United Nations holiday.").

exceed five hours per day, and any period of extended hours normally will be followed by an equivalent period when the Chamber sits only half-days."[5]

3. Moreover, as already intimated to the parties,[6] the Chamber has decided to extend the winter recess to four weeks in order to take account of the Orthodox New Year, and also notes that there will most likely be a two-week break in April 2007 and a four-week summer recess in 2007.

4. Pursuant to Articles 20 and 21 of the Statute and Rule 54 of the Rules of Procedure and Evidence of the Tribunal, the Chamber hereby ORDERS as follows:

a. Hearings in the trial will proceed as follows:

i. 20 to 24 November 2006, from 2:15 p.m. to 7:00 p.m.

ii. 27 November 2006,

1. from 9:00 a.m. to 10:45 a.m.

2. from 11:15 a.m. to 12:45 p.m.

3. from 1:45 p.m. to 3:30 p.m.

iii. 28 November 2006,

1. from 10:30 a.m. to 12:15 p.m.

2. from 1:15 p.m. to 2:45 p.m.

3. from 3:15 p.m. to 5:00 p.m.

iv. 29 November to 30 November 2006,

1. from 9:00 a.m. to 10:45 a.m.

2. from 11:15 a.m. to 12:45 p.m.

3. from 1:45 p.m. to 3:30 p.m.

v. 1 December 2006, from 9:00 a.m. to 1:45 p.m.

[5] Decision on Use of Time, 9 October 2006, p. 6.
[6] Scheduling Order of 15 September 2006, para. 11.

vi. 4 December 2006,

1. from 9:00 a.m. to 10:45 a.m.

2. from 11:15 a.m. to 12:45 p.m.

3. from 1:45 p.m. to 3:30 p.m.

vii. 5–8 December 2006, from 2:15 p.m. to 7:00 p.m.[7]

viii. 11 to 15 December 2006,

1. from 9:00 a.m. to 10:45 a.m.

2. from 11:15 a.m. to 12:45 p.m.

3. from 1:45 p.m. to 3:30 p.m.

ix. The winter recess shall be from 16 December 2006 to 15 January 2007.

b. The Registry is REQUESTED to schedule tentatively full five-hour days for hearings in this trial during the weeks of 16 January 2007, 29 January 2007, 12 February 2007, and 26 February 2007.

c. The Trial Chamber may alter any of the orders set forth above and will issue additional orders in due course, as it deems appropriate.

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

Judge Iain Bonomy
Presiding

Dated this fifteenth day of November 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

[7] On Friday, 8 December 2006, the hearing will be held in Courtroom III.

ANNEX F

Table of Authorities

Babić Appeal Judgement	*Prosecutor v. Babić*, Case No. IT-03-72-A, Judgement on Sentencing Appeal 18 July 2005
Boškoski Trial Judgement	*Prosecutor v Boškoski & Tarčulovski*, No. IT-04-82-T, *Judgement* 10 July 2008
Blagojević & Jokić Appeal Judgement	*Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-A, Judgement 9 May 2007
Blaskić Appeal Judgement	*Prosecutor v. Blaskić*, Case No. IT-95-14-A, Judgement 29 July 2004
Blaskić Trial Judgement	*Prosecutor v. Blaskić*, Case No. IT-95-14-T, Judgement 3 March 2000
Brđanin Appeal Judgement	*Prosecutor v. Brđanin*, Case No. 99-36-A, Judgement 3 April 2007
Brđanin Trial Judgement	*Prosecutor v. Brđanin*, Case No. 99-36-T, Judgement 1 September 2004
Čelebici Appeal Judgement	*Prosecutor v. Delalic, Mucic,* Delić*, and Landzo ("Čelebici")*, Case No. IT-96-21-A, Judgement 20 February 2001
Čelebici Trial Judgement	*Prosecutor v. Delalic, Mucic,* Delić*, and Landzo ("Čelebici")*, Case No. IT-96-21-T, Judgement 16 November 1998
Furundžija Appeal Judgement	Prosecutor v *Furundžija,* Case No.IT-95-17/1-A, Judgement 21 July 2000
Galić Appeal Judgement	*Prosecutor v. Galić*, Case No. IT-98-29-A, Judgement 30 November 2006
Galić Trial Judgement	*Prosecutor v. Galić*, Case No. IT-98-29-T, Judgement 5 December 2003
Hadžihasanović Appeal Judgement	*Prosecutor v. Hadžihasanović & Kubura*, Case No. IT-01-47-A, Judgement 22 April 2008

Hadžihasanović Trial Judgement	*Prosecutor v. Hadžihasanović & Kubura*, Case No. IT-01-47-T, Judgement 15 March 2006
Halilović Appeal Judgement	*Prosecutor v. Halilović* Case No. IT-01-48-A, Judgement 16 October 2007
Kayishema Appeal Judgement	*Prosecutor v. Kayishema & Ruzindana*, Case No. ICTR-95-1-A, Judgement (1 June 2001).
Kordić Appeal Judgement	*Prosecutor v. Kordić & Čerkez*, Case No. IT-65-14/2-A, Judgement 17 December 2004
Krajišnik Appeal Judgement	Prosecutor v *Krajišnik,* Case No. IT-00-39-A, Judgement 17 March 2009
Krajišnik Trial Judgement	*Prosecutor v. Krajišnik & Plavsic*, Case No. IT-00-39&40/1, Judgement 27 February 2003
Krnojelac Appeal Judgement	*Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Judgement 17 September 2003
Krstić Appeal Judgement	*Prosecutor v. Krstic*, Case No. IT-98-33-A, Judgement 19 April 2004
Kupreškić Appeal Judgement	*Prosecutor v Kupreškić et al*, Case No. IT-95-16-A, Judgement 23 October 2001
Kunarac Appeal Judgement	*Prosecutor v. Kunarac et al*, Case No. IT-96-23&23/1-A Judgement 12 June 2002
Kunarac Trial Judgement	*Prosecutor v. Kunarac et al*, Case No. IT-96-23&23/1, Judgement 22 February 2001
Kvočka Appeal Judgement	*Prosecutor v. Kvočka et al*, Case No. IT-98-30/1-A, Judgement 28 February 2005
Limaj Appeal Judgement	*Prosecutor v. Limaj et al*, Case No. IT-03-66-A, Judgement 27 September 2007

Martić Appeal Judgement	*Prosecutor v Martić.,* Case No.IT-95-11-A, Judgement 8 October 2008
Musema Appeal Judgement	*Musema v. Prosecutor*, Case No. ICTR-96-13-A 16 November 2001
Niyitegeka Appeal Judgement	Prosecutor v *Niyitegeka,* Case No. ICTR-96-14 A, Judgement, 9 July 2004
Naletilić Appeal Judgment	Prosecutor v Naletilić and Martinović, Case No. IT-38-94-A, Judgement 3 May 2006
Ntagerura Appeal Judgement	*Prosecutor v. Ntagerura et al*, Case No. ICTR-99-46-A, Judgement 7 July 2006
Orić Appeal Judgement	*Prosecutor v. Orić*, Case No. IT-03-68-A, Judgement 3 July 2008
Serushago Sentencing Appeal Judgement	*Prosecutor v. Serushago*, Case No. ICTR-98-39-A, Reasons for Judgement 6 April 2000
Simba Appeal Judgement	*Simba v. Prosecutor*, Case No. ICTR-2001-76-A, Judgement 27 November 2007
Stakić Appeal Judgement	*Prosecutor v. Stakić*, Case No. IT-97-24-A, Judgement 22 March 2006
Tadić Appeal Judgement	*Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement 30 July 2002
Vasiljević Appeal Judgement	*Prosecutor v. Vasiljević*, Case No. IT 98-32-A, Judgement, 25 February 2004