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CASE/AFFAIRE NO. IT-04-74-T **DATE** 20 September 2007

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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-04-74-T
Date: 13 September 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 13 September 2007

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC

**DECISION REGARDING SUBMISSION OF TWO EXPERT REPORTS OF
NICHOLAS J. MILLER PURSUANT TO RULE 94 *BIS* (A) AND (B)**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“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”),

SEIZED OF the “Prosecution Submission of the Expert Reports of Nicholas J. Miller” filed by the Office of the Prosecutor (“Prosecution”) on 14 June 2007 (“Submission”),

NOTING the two expert reports of Nicholas J. Miller annexed to the Submission (“Expert Reports”),

NOTING the “Notice of Bruno Stojić pursuant to Rule 94 *bis* (B) (Nicholas J. Miller)”, filed by the Defence for Bruno Stojić (“Stojić Defence”) on 20 June 2007 (“Stojić Notice”) in which the Stojić Defence states that it does not accept the Expert Reports of Nicholas J. Miller and that it wishes to cross-examine Expert Witness Nicholas J. Miller,

NOTING the “Joint Defence Opposition to Prosecution Submission of the Expert Reports of Nicholas J. Miller”, filed jointly by Counsel for the six Accused (“Defence”) on 3 July 2007 (“Joint Response”) in which the Defence requests, first, that the Chamber not admit the Expert Reports and not call Nicholas J. Miller to appear as an expert and, second, should the Chamber decide otherwise, leave to cross-examine him,

NOTING the “Prosecution Request for Leave to Reply and Proposed Reply to Joint Defence Opposition to Prosecution Submission of the Expert Reports of Nicholas J. Miller” filed on 10 July 2007 (“Reply”) in which the Prosecution requests the Chamber for leave to file a Reply to the Joint Response, to dismiss the Defence objections against the Expert Reports of Nicholas J. Miller, to admit the Expert Reports of Nicholas J. Miller into evidence, and to confirm that Nicholas J. Miller is qualified to be heard as an expert under Rule 94 *bis* of the Rules of Procedure and Evidence (“Rules”),

CONSIDERING that, as a preliminary remark, the Chamber notes a recurring practice according to which the Parties file the request for leave to file a reply at the same time as the reply itself,

CONSIDERING that although this practice contravenes Guideline 3 set out in the Decision of 13 July 2006, the Chamber considers that filing the request for leave to reply at the same time as the reply may save time and is of the opinion that it would be appropriate to relax the instructions of Guideline 3 in this respect,

CONSIDERING therefore that the Chamber henceforth allows the Parties to file the request for leave to file a reply at the same time as the reply but recalls that the Parties are required to specify what makes the circumstances sufficiently compelling for the Chamber to grant their request to file a reply,

CONSIDERING that Rule 94 *bis* (A) of the Rules provides only for the obligation to disclose the full report of any expert called by a party within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge, without compelling a party to provide grounds in support of its disclosure, the Chamber grants the Prosecution leave to file a Reply to the Joint Response,

CONSIDERING that in support of the Joint Response the Defence challenges the expert status of Nicholas J. Miller in respect of the Muslim-Croat conflict, Bosnia and Herzegovina or the Republic of Croatia¹ and further submits that the Expert Reports do not deal with the period covered by the Indictment and include conclusions which are exclusively within the province of the Chamber,²

CONSIDERING that, in its Notice, the Stojić Defence indicates that it does not challenge the qualifications of Nicholas J. Miller or the relevance of the Expert Reports³ but puts forth no specific reason justifying its opposition to the Expert Reports,

CONSIDERING that, in its Reply, the Prosecution states on the one hand that Nicholas J. Miller is a specialist on issues related to the recent events and history of the former Yugoslavia and, on the other hand, that the first Expert Report provides an

¹ Joint Response, para. 8.

² Joint Response, paras. 18 and 21.

historical context for the events concerning the case, different analytical frameworks and insights into the practices and conduct in 1993,⁴ and the second Expert Report provides an analysis on the nature of the Republic of Herceg Bosna and the underlying intentions behind its creation,⁵

CONSIDERING that the Prosecution does not object to the Defence alternative request to cross-examine Nicholas J. Miller should the Chamber decide to admit the Expert Reports,⁶

CONSIDERING that from a review of the Expert Reports and professional qualifications of Nicholas J. Miller, the Chamber considers that Nicholas J. Miller is fully qualified to testify as an expert on the subject matter raised in his reports,

CONSIDERING that the Chamber considers that Nicholas J. Miller will have to testify before the Tribunal *viva voce* to answer questions from the Prosecution and Defence in examination and cross-examination,

CONSIDERING that during the cross-examination, the Defence will have the opportunity to challenge the probative value, relevance and reliability of the conclusions in the Expert Reports and in particular in respect of the fact that these Reports purportedly do not concern the period covered by the Indictment,

CONSIDERING that it is in the light of the testimony of Expert Witness Nicholas J. Miller before this Tribunal that the Chamber will assess the relevance and probative value of the Expert Reports and rule upon the admission of these Reports,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 126 *bis* and 94 *bis* of the Rules,

GRANTS the Prosecution leave to file the Reply

³ Stojić Notice, para. 3.

⁴ Reply, para. 10.

⁵ Reply, paras. 26 and 27.

⁶ Joint Response, p. 1; Stojić Notice, para. 2; Reply para. 4.

DECIDES that Nicholas J. Miller will appear before the Chamber as an expert witness to be examined by the Parties and the Chamber, **AND**

ORDERS as follows:

- (1) Should the Prosecution wish to examine Nicholas J. Miller, the duration of this examination shall not exceed three hours,
- (2) Should the Defence wish to cross-examine Nicholas J. Miller, the duration of the cross-examination shall not exceed three hours, on the understanding that each Defence team will have 30 minutes for this, unless the Defence teams agree to divide the time for cross-examination differently.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirteenth day of September 2007

At The Hague

The Netherlands

[Seal of the Tribunal]