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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-03-67-PT

Date: 21 August 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Patrick Robinson
Judge Bakone Justice Moloto

Registrar: Mr Hans Holthuis

Order of: 21 August 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

DECISION ON ASSIGNMENT OF COUNSEL

Office of the Prosecutor

Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Müssemeyer

The Accused

Mr Vojislav Šešelj

Standby Counsel

Mr Tjarda Eduard van der Spoel

I. Introduction

1. Trial Chamber I ("Chamber") of the International Criminal Tribunal for the Former Yugoslavia ("Tribunal") is seised of a number of motions and submissions relating to the modalities of the defence of Vojislav Šešelj ("Accused").

2. On 28 February 2003 the Office of the Prosecutor ("Prosecution") filed a motion to appoint Counsel for the Accused. On 9 May 2003 Trial Chamber II issued a Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence ("First Decision") and, due to the Accused's obstructionist behaviour up to that point,[1] appointed Standby Counsel for him with the following role:

- to assist the Accused in the preparation of his case during the pre-trial phase whenever so requested by the Accused;
- to assist the Accused in the preparation and presentation of his case at trial whenever so requested by the Accused;
- to receive copies of all court documents, filings and disclosed materials that are received by or sent to the Accused;
- to be present in the courtroom during the proceedings;
- to be engaged actively in the substantive preparation of the case and to participate in the proceedings, in order always to be prepared to take over from the Accused at trial;
- to address the Court whenever so requested by the Accused or the Chamber;
- to offer advice or make suggestions to the Accused as counsel sees fit, in particular on evidential and procedural issues;
- as a protective measure in the event of abusive conduct by the Accused, to put questions to witnesses, in particular sensitive or protected witnesses, on behalf of the Accused if so ordered by the Trial Chamber, without depriving the Accused of his right to control the content of the examination;
- in exceptional circumstances to take over the defence from the Accused at trial should the Trial Chamber find, following a warning, that the Accused is engaging in disruptive conduct or conduct requiring his removal from the courtroom under Rule 80(B).[2]

3. On 3 January 2006 the Accused filed Submission no. 125 (Request of Dr. Vojislav Šešelj for the Revocation of the Decision to Assign Standby Counsel), wherein he requests the Chamber to review and rescind the First Decision. In this submission the Accused argues that the First Decision contravenes Rules 44 and 45 of the Tribunal's Rules of Procedure and Evidence ("Rules"), Articles 20 and 21 of the Statute of the Tribunal ("Statute"), Articles 7, 11, and 14 of the Directive on the Assignment of Defence Counsel, and his right to defend himself in person as set down in Article 6 of the European Convention on Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political

[1] First Decision, para. 26.

Rights ("ICCPR"). The Accused also submits that the appointment of Mr Tjarda Eduard van der Spoel as Standby Counsel is in violation of Rules 44 and 45 of the Rules and Articles 14 and 15 of the Directive on Assignment of Defence Counsel, since the appointment was made against the will of the Accused and Standby Counsel does not speak the language of the Accused.[3] The Chamber finds that Submission no. 125 does not raise any new argument or circumstance that would warrant a reconsideration of the First Decision. In particular, the complaints against the lack of knowledge of Serbo-Croatian on the part of Standby Counsel were addressed by Trial Chamber II on 1 June 2005.[4]

4. On 19 May 2006, the Accused made an oral request to the pre-trial Judge that, upon commencement of trial, there be only three hearing days per week for reasons having to do with the Accused's health and the fact that he is representing himself.[5]

5. On 22 May 2006 the Prosecution filed its second motion seeking an order from the Chamber to appoint defence counsel to assist the Accused with his defence and to give counsel the exclusive right to file submissions[6] ("Prosecution Motion"). In its motion, the Prosecution submitted that according to the Tribunal's jurisprudence the right to self-representation is not absolute;[7] that it is in the Tribunal's interest to ensure a fair and expeditious trial;[8] that the Accused's behaviour and unwillingness to comply with the Rules obstruct the proceedings;[9] that the Accused has repeatedly threatened and intimidated witnesses;[10] and that the Accused has demonstrated an inability to prepare and organize his defence.[11]

6. On 29 May 2006 the Accused sent the Registry his Submission no. 161, in response to the Prosecution Motion. The Chamber ordered the Registry to return it to the Accused without

[2] Ibid., para. 30.
[3] This last argument was reiterated by the Accused during the Status Conference of 19 May 2006, T. 518-519. Trial Chamber II already considered the issue of the Accused's Standby Counsel in the Decision on the Accused's Motion to Re-examine the Decision to Assign Standby Counsel, of 1 March 2005, and in the Decision on the Request of the Accused to Revoke the Ruling of the Trial Chamber to Appoint Standby Counsel (Submissions no. 81, 82, and 84), of 3 May 2005. It further denied the Accused's Request for Certification to Appeal its Decision of 3 May 2005 in its Decision on Request for Certification to Appeal (Submission no. 85), of 13 May 2005.
[4] Decision on the Accused's Motion to Re-examine the Decision to Assign Standby Counsel, 1 June 2005.
[5] T. 506.
[6] Partly Confidential Prosecution's Second Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence, with Confidential Annexes, 22 May 2006, para. 27.
[7] Prosecution Motion, para. 4.
[8] Ibid., para. 5.
[9] Ibid., paras 7-15.
[10] Ibid., paras 5, 16-19.
[11] Ibid., paras 20-24.

filing it, since it did not comply with the Practice Direction on the Length of Briefs and Motions or with the oral instructions given in court on 19 May 2006 by the pre-trial Judge.[12]

7. On 8 June 2006 the Registry filed a Registry Submission Pursuant to Rule 33(B) on the Facilities and Services that May be Available to Vojislav Šešelj to Conduct his Defence ("Registry Submission"). The Registry distinguished between the facilities and services available to the Accused were he to continue to represent himself, on the one hand, and those available to him were he to be represented by assigned counsel, on the other. The Registry submitted that, if counsel were to be assigned, "the facilities provided to other accused persons represented by counsel would be sufficient to meet the needs of the Accused".[13]

8. Regarding the Accused's access to legal assistance, the Registry stated that, as long as the Accused represents himself, he is entitled to legal assistance by persons fulfilling the requirements under Rule 44 of the Rules.[14] To date, the Registry has not recognized any legal advisors designated by the Accused to act in that capacity because the Accused has not submitted the necessary documentation.[15]

9. As for the Accused's access to facilities, the Registry submitted that, while self-represented, the Accused is entitled to an "archive" cell at the United Nations Detention Unit ("UNDU"), in addition to his "residential" cell, for the preparation and conduct of his case. He is also entitled to request a desktop computer.[16]

10. Regarding the administrative management of the Accused's case, the Registry submitted that, in case the Accused continues to represent himself, the necessary coordination between him and various sections of the Registry (i.e. Victims and Witnesses Section, Conference and Language Services Section, Office of Document Management, UNDU management, and Security) could be facilitated by a Registry liaison officer or by a case manager selected by the Accused.[17]

11. Moreover, the Registry noted the conclusions of the internal inquiry panel appointed by the President of the Tribunal to investigate and report on the circumstances surrounding Slobodan Milošević's death, and concluded that "if the Accused is permitted to continue to be

[12] Decision on the Filing of Motions, 19 June 2006; T. 491-492.
[13] Registry Submission, para. 14.
[14] Ibid., para. 2.
[15] Ibid., para. 3.
[16] Ibid., para. 4.
[17] Ibid., paras 8-11.

self-represented, then the provision of facilities to him at the UNDU for this purpose must not compromise the security of the UNDU".[18]

12. On 12 July 2006 the Registry filed an additional submission stating that, at the request of Standby Counsel, it had appointed three legal assistants on 14 March 2006 remunerated from the allotment of counsel and support staff hours. Their assignment is to terminate upon the conclusion of the case or upon withdrawal.[19]

II. Applicable Law

13. According to the Tribunal's Appeals Chamber in the case *Prosecutor v. Slobodan Milošević*, defendants before this Tribunal "have the presumptive right to represent themselves notwithstanding a Trial Chamber's judgment that they would be better off if represented by counsel."[20] This right stems from Article 21 of the Statute, which closely follows Article 14 of the ICCPR,[21] and states that a defendant is entitled to a basic set of "minimum guarantees, in full equality," including the right "to defend himself in person or through legal assistance of his own choosing ... and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".[22] The Appeals Chamber stated that

> [t]he drafters of the Statute clearly viewed the right to self-representation as an indispensable cornerstone of justice, placing it on a structural par with defendants' right to remain silent, to confront the witnesses against them, to a speedy trial, and even to demand a court-appointed attorney if they cannot afford one themselves.[23]

It went on to say that

> existing precedent from contemporary war crimes tribunals is unanimous in concluding that the right to self-representation "is a qualified and not an absolute right."[24]

[18] Ibid., para. 13.
[19] Registry Submission Pursuant to Rule 33(B) of the Rules of Procedure and Evidence on the Resources Available to Standby Counsel, 12 July 2006, p. 2.
[20] Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, *Prosecutor v. Slobodan Milošević*, 1 November 2004 ("*Milošević* Appeal Decision"), para. 11.
[21] See Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808, 3 May 1993, S/25704, para. 106.
[22] Art. 21, para. 4 of the Statute.
[23] *Milošević* Appeal Decision, para. 11 (internal citations, referring to Art. 21, paras 4(c)-(e) and (g) of the Statute, omitted).
[24] Ibid., para. 12.

14. On several occasions, the Accused has made reference to two decisions of the UN Human Rights Committee that he claims are relevant to the issues of self-representation, assignment of counsel, and contact between an accused and his lawyers: Communication no. 74/1980 (case of *Miguel Angel Estrella v. Uruguay*)[25] and Communication no. 49/1979 (case of *Dave Marais v. Madagascar*).[26] In the first decision, Uruguay was found to be in violation, inter alia, of Article 14 of the ICCPR. Mr Estrella, a national of Argentina, was required to select a lawyer to represent him before a Uruguayan military court from a list of two persons. Both lawyers on the list were employees of the armed forces. The second decision found Madagascar in violation of the same provision of the ICCPR, albeit on different grounds. Mr Marais's first chosen lawyer was refused entry into Madagascar. Mr Marais's second choice of lawyer was repeatedly prevented from seeing his client, was unable to communicate with him (except for two days during the trial itself), and was finally arrested, detained, and expelled from the country. The Chamber finds that these two cases are not relevant to the issue at hand, as they do not involve an accused who invoked his right to self-representation.

15. In the case of *Faretta v. California*, the US Supreme Court held that, in a criminal case, counsel may not be imposed on a defendant who knowingly waives his right to assistance of counsel, is "literate, competent, and understanding", and is willing to follow the "ground rules" of procedure.[27]

16. In *Milošević*, both the Trial Chamber and the Appeals Chamber considered the issue of potential disruption of proceedings stemming from the poor health of the Accused as a reason to deny self-representation.[28] The Appeals Chamber stated that this right may be curtailed on the ground that "a defendant's self-representation is substantially and persistently obstructing the proper and expeditious conduct of his trial".[29] In the Chamber's view, the basis for such a curtailment is the interests of justice, which include the interest of the international community in a fair and expeditious trial and in the effective presentation of evidence,[30] the protection of victims and witnesses,[31] the interest of the Tribunal in effectively

[25] Submission no. 90, 10 March 2005, p. 9; Submission no. 125, 3 January 2006, p. 9.
[26] Submission no. 46, 26 October 2004, p. 6; Submission no. 74, 11 February 2005, p. 5; Submission no. 106, 29 August 2005, pp. 4-5.
[27] *Faretta v. California*, 422 U.S. 806, at 835-836 (US Supreme Court, 1975).
[28] *Milošević* Appeal Decision, paras 13-14.
[29] Ibid., para. 13. At the Special Court for Sierra Leone, in the Decision on the Application of Samuel Hinga Norman for Self Representation under Article 17(4)(d) of the Statute of the Special Court, *Prosecutor v. Samuel Hinga Norman*, 8 June 2004, paras. 14-20, the Accused's application to represent himself, made immediately after the Prosecution's opening statement, was denied because it had the "potential" to impact negatively upon the right of the two co-accused in the case to a trial without undue delay.
[30] First Decision, para. 21.
[31] Arts 20 and 22 of the Statute and Rule 69 of the Rules.

discharging its judicial role,[32] the need to protect the authority of the judiciary,[33] and the interest of other accused persons in being tried without undue delay.[34]

17. The US Supreme Court in *Faretta* noted that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom" and, citing the case of *Illinois v. Allen*,[35] that a trial judge "may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct."[36] The Court also stated that "a State may – even over objection by the accused – appoint a 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary."[37]

18. In the post-*Faretta* case of *United States v. Brock*, the 7th Circuit Court of Appeals indicated that disruptive behaviour at the pre-trial stage, including the "steadfast refusal to answer the court's questions", which "made it extremely difficult to resolve threshold issues", justifies the revocation of a defendant's *pro se* status at trial.[38] Brock's behaviour "showed a lack of good faith cooperation with the court such that the proceedings were severely impeded."[39] As such, it "was sufficient to allow the district judge to conclude that there was a strong indication that Brock would continue to be disruptive at trial."[40] In the case of *United States v. Williams*, the 10th Circuit Court of Appeals stated that "bizarre" behaviour would not suffice for appointing Counsel; conscious disrespect for courtroom procedures by the accused would be necessary.[41]

19. In *McKaskle v. Wiggins*, the US Supreme Court upheld a lower court decision appointing standby counsel to assist a *pro se* defendant.[42] The *pro se* defendant was nevertheless to be allowed to control the organization of his own defence, submit motions,

[32] Appeals Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, *Prosecutor v. Tihomir Blaškić*, 29 October 1997, para. 33.
[33] *Kyprianou v. Cyprus* (Application no. 73797/01, Judgement of 15 December 2005) (European Court of Human Rights), paras 118-121.
[34] Reasons for Oral Decision Denying Mr Krajišnik's Request to Proceed Unrepresented by Counsel, *Prosecutor v. Momčilo Krajišnik*, 18 August 2005, para. 32.
[35] 397 U.S. 337 (US Supreme Court, 1970).
[36] *Faretta*, at 834-5, n. 46.
[37] Ibid., at 835, n. 46, citing *United States v. Dougherty*, 473 F.2d 1113, 1124-1126 (DC Cir. 1972) ("obstreperous behaviour may constitute waiver of the *pro se* right").
[38] *United States v. Brock*, 159 F.3d 1077, 1080-1 (7th Cir. 1998). At a pre-trial hearing, the defendant "repeatedly demanded a Bill of Particulars and challenged the court's authority. Unsatisfied with the court's responses, Brock 'refused to answer the [c]ourt's questions or to cooperate in any way with the proceedings.'" Ibid., at 1078.
[39] Ibid., fn. 3.
[40] Ibid., at 1080.
[41] *United States v. Williams*, 1999 U.S. App. LEXIS 32715 (10th Cir. 1999).
[42] *McKaskle v Wiggins*, 465 U.S. 168, 184 (US Supreme Court, 1984).

argue points of law, question witnesses, and address the court at appropriate points in the trial.[43] The *pro se* defendant was also to be "able and willing to abide by the rules of procedure and courtroom protocol."[44]

20. Many civil law systems provide for mandatory assignment of defence counsel in criminal cases, the rationale being that the interests of justice demand the accused to be assisted by counsel. Different systems tailor this mandatory assignment in different ways: some always require the presence of counsel, while others limit this requirement to proceedings related to serious crimes.[45] In these systems imposed counsel will not control an accused's defence in all circumstances.

21. In France, for example, counsel is imposed in all proceedings instituted for serious crimes if the accused does not choose one. However, Sections 274, 309, 312, and 320-322 of the French Code of Criminal Procedure allow an accused on whom counsel has been imposed substantial participation in the strategy of his or her own case, provided he or she does not disrupt the proceedings. In Italy, the presence of counsel is mandatory in all criminal proceedings. The Italian Constitutional Court has clarified that mandatory appointment of counsel does not infringe upon the right to defend oneself in person, i.e. to participate in the proceedings, since even the "assisted" defendant is allowed to speak and to question witnesses.[46] The German Code of Criminal Procedure provides for mandatory assignment of counsel if the accused is charged with serious crimes.[47] The presiding judge also has discretion to appoint counsel because of the difficult factual or legal situation in minor cases.[48] The accused may nevertheless put questions to witnesses and experts with permission of the presiding judge.[49] Codes in countries of the former Yugoslavia have substantially similar provisions.[50]

22. In *Milošević* the Appeals Chamber stated that "[t]he precise point at which that reshuffling of trial roles [between accused and imposed counsel] should occur will be up to the Trial Chamber."[51] In the *Krajišnik* case the Trial Chamber issued a decision granting the

[43] Ibid., at 174.
[44] Ibid., at 173, citing *Faretta*.
[45] See First Decision, paras 16 ff.
[46] Corte Constituzionale, 18 December 1997, Ordinanza no. 421.
[47] Strafprozessordnung, Section 140, para. 1.
[48] Ibid., Section 140, para. 2.
[49] Ibid., Section 240.
[50] Art. 69 of the Montenegro Criminal Procedural Code (Montenegro Official Gazette no. 79/2003 and 7/2004); Art. 59 of the Bosnia-Herzegovina Code (Bosnia and Herzegovina Official Gazette 35/2003); Art. 65 of the Croatia Code of Criminal Procedure (Republic of Croatia Official Gazette 100/97).
[51] *Milošević* Appeal Decision, para. 20.

represented accused the possibility of asking follow-up questions to witnesses and, under certain circumstances, requesting the Chamber to call witnesses that his Counsel did not decide to call.[52] This followed an "experimental" phase, when the accused was allowed to complement the cross-examination of prosecution witnesses by Counsel.[53]

23. In cases where an accused is represented by counsel over his objection, a Chamber may therefore take a number of measures related to the role of the Accused in the proceedings, but it must be "guided by some variant of a basic proportionality principle".[54] In some circumstances these measures may consist of merely disallowing irrelevant remarks, repetitions, undue interruptions, or other disruptions of proceedings. In other circumstances however, a Chamber may take stronger measures, even limiting the right of an accused to be tried in his presence. Article 21(4)(d) of the Statute enshrines not only the right of an accused to represent himself, but also his right to be tried in his presence. However, just as the former right is not absolute, the latter may also be restricted in cases of substantial trial disruption.[55] The Chamber agrees with the US Supreme Court, which held, in *Illinois v. Allen*, that "a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behaviour, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom."[56]

24. In addition, the European Court of Human Rights held that, while the composition and the functioning of a tribunal may be criticized, verbal attacks of a personal nature made against the judges, creating an atmosphere detrimental to the orderly administration of justice, may be subject to sanctions. The Court stated:

> La Cour rappelle que l'action des tribunaux, qui sont garants de la justice et dont la mission est fondamentale dans un État de droit, a besoin de la confiance du public et que les magistrats doivent, pour s'acquitter de leurs fonctions, bénéficier de cette confiance sans être perturbés. Il peut donc s'avérer nécessaire de les protéger contre des attaques verbales offensantes lorsqu'ils sont en service.[57]

[52] Oral decision of 28 September 2005, *Prosecutor v. Momčilo Krajišnik*, at T. 17205 (after self-representation was denied).
[53] Ibid.
[54] *Milošević* Appeal Decision, paras 17, 20.
[55] *Milošević* Appeal Decision, para. 13 (with reference to Rule 80(B) of the Rules).
[56] *Illinois v. Allen*, 397 U.S. 337, at 343 (US Supreme Court, 1970).
[57] *Saday v. Turkey* (Application no. 32458/96, Judgement of 30 March 2006) (European Court of Human Rights), para. 33. The accused had addressed the judges with, inter alia, the following remark: "the state would like that we be murdered by executioners in robes." However, the European Court went on to find that a six-month sentence of imprisonment by a special tribunal with no possibility of appeal constituted a disproportionate punishment for a defendant who limited himself to offensive allegations against the judges and the state.

25. In its consideration of the restrictions that may be placed on the right of the Accused to represent himself, including, if necessary, his removal from the courtroom, the Chamber cannot but endorse the assessment of Justice Douglas in *Allen*, that "[a] courtroom is a hallowed place where trials must proceed with dignity and not become occasions for entertainment by the participants".[58]

III. Facts

(a) Choice not to be represented by Counsel

26. The Accused in this case has unequivocally expressed his intention to represent himself with the assistance of "legal advisors".[59] There appears not to have been an explicit preliminary inquiry to determine whether the request was unequivocal, informed, and intelligent.[60] The Prosecution has not contested that this expression of will was voluntary.[61] There is no doubt that the Accused is literate.[62] The parties have not raised any issue relating to the standards to be applied for the acceptance of this expression of will. The Chamber finds no reasons to revisit this issue.

(b) Observations on the Accused's conduct in connection with the proceedings

27. According to the Prosecution Motion, the relevant behaviour of the Accused for the purpose of this matter is constituted by the Accused's submissions, his conduct in court, and public statements he gave and publications he authored before and after his arrival in The Hague.

[58] Dissenting opinion of Justice Douglas in *Illinois v. Allen*, 397 U.S. 337, 351. See also *U.S. v. Cauley*, 697 F.2d 486, 491 (2nd Cir., 1983) and *U.S. v. West*, 877 F.2d 281, 287 (4th Cir., 1989).
[59] See T. 5-6, 57, 67, 89-91, 97, 143, 179, 298, 422, 506. The Accused referred to himself as the best defence counsel he can have (for example, Submission no. 31, 10 June 2004, p. 2; Submission no. 33, 14 June 2004, p. 2; Submission no. 45, 26 October 2004, p. 4; Submission no. 81, 4 March 2005, p. 4; Submission no. 124, 3 January 2006, p. 3) and as "a person of supernormal legal talent ... with a maximum intelligence quotient" , a "legal genius" (Submission no. 82, 5 March 2005, p. 6). He has also said that "everyone expects him to provide a brilliant legal defence and unmask all the conspirators of the new world order." (Submission no. 179, 31 July 2006, p. 3).
[60] *Krajišnik* Decision, para. 5; *Faretta*, at 806. See also *Williams v. Bartlett*, 44 F.3d 95, 100-101 (2nd Cir., 1994).
[61] Neither of the two Prosecution's motions related to appointment of counsel suggests a mistake in the assessment of the Accused's expression of will.
[62] See T. 3; Indictment, p. 1.

28. The Chamber takes note of the remarks made by Trial Chamber II in the First Decision with respect to the Accused's obstructionist behaviour in the period prior to 9 May 2003.[63]

29. The Chamber considers that statements and publications of the Accused before his arrival in The Hague may be examined in order to understand his behaviour while in custody and to assess his intentions and his likely conduct at trial.

30. Since the Chamber was not provided with the books published by the Accused and mentioned in the Prosecution Motion, it will not consider them for the purposes of this decision, except for noting the clearly offensive nature of their titles: "Genocidal Israeli Diplomat Theodor Meron", "In the Jaws of the Whore Del Ponte", and "The Lying Hague Homosexual, Geoffrey Nice."[64] Moreover, the Prosecution adduced excerpts of interviews with the Accused, not contested by him, including one where he expressed his intent to "shatter the Tribunal in The Hague that even the Queen of Holland would not remain whole."[65]

31. The content of the Accused's written submissions is especially relevant to understanding his likely conduct during the remainder of the proceedings. Moreover, the 191 submissions to date constitute the bulk of the Accused's interaction with the Tribunal. They are therefore relevant as evidence of his capacity and degree of willingness to interact meaningfully with the Chamber.

32. The Chamber also takes into consideration the conduct of the Accused in court, that is, during his appearances in the pre-trial phase of the proceedings.[66] These appearances provide guidance in view of the fact that, once the trial starts, the Accused can be expected to be in court for a number of months.

33. The categories of behaviour identified by the Chamber overlap, and some of the examples cited below could be placed under more than one category of unacceptable conduct (thus, examples of deliberate disrespect for the rules also constitute disruptive behaviour).

[63] First Decision, paras 22, 23, 24, and 26.
[64] Prosecution Motion, Annex A.
[65] Ibid.
[66] Initial appearance (26 February 2003), T. 1-55; Further initial appearance (25 March 2003), T. 56-64; Status Conference (25 March 2003), T. 65-80; Status Conference (3 July 2003), T. 81-114; Status Conference (29 October 2003), T. 115-169; Status Conference (17 February 2004), T. 170-211; Status Conference (14 June 2004), T. 212-264; Status Conference (4 October 2004), T. 265-299; Status Conference (31 January 2005), T. 300-342; Status Conference (30 May 2005), T. 343-379; Status Conference (26 September 2005), T. 380-420.

i. Obstructionist behaviour

34. From the very beginning of the pre-trial proceedings, the Accused has raised irrelevant or specious matters amounting to obstructionist behaviour. For example, he has declared that he considers the attire of the Judges in Court inappropriate, since, in his view, it is reminiscent of the Catholic inquisition or of German SS or Gestapo uniforms.[67] On one of these instances, he stated:

> My EEG shows nervousness of the heart caused by the frustrations and the psychological sufferings I am undergoing looking at your robes, Your Honour. I insisted that the Judges should wear, at least in my proceedings, normal civilian clothes, because I am terribly irritated by your Roman Catholic inquisitorial clothing. I insist on this. I don't think Judge Schomburg understood me and took me seriously. I have lost 18 kilogrammes because of my psychological frustration due to your robes. I don't know how else to explain it.[68]

He has persisted in these submissions even after the pre-trial Judge stated that there would be no change in the attire of the judges,[69] and repeated such language as recently as 31 July 2006.[70]

35. On 3 July 2003 the Accused suggested that the pre-trial Judge was deliberately trying to irritate him with the intention of provoking him into committing an act that he did not want to commit.[71] On 17 February 2004 he further claimed that the conduct of the proceedings "changes and is not aligned with the law. It is sometimes aligned with personal interests, personal animosity, open hatred at times".[72]

36. The Accused has, on one occasion, misled Trial Chamber II on the treatment he was receiving in detention. At the Status Conference on 29 October 2003 he complained of health problems, adding that he had been waiting for a surgical operation for three months and that lack of medical attention amounted to intentional torture.[73] The pre-trial Judge immediately requested the UNDU Commanding Officer to report to the Trial Chamber on these complaints.[74] It turned out that on 29 October 2003 the Accused was fully aware that his

Further Appearance (3 October 2005), T. 421-462; Further Appearance (3 November 2005), T. 463-466; Status Conference (24 January 2006), T. 467-487; Status Conference (19 May 2006), T. 488-530; Status Conference (4 July 2006), T. 531-567.

[67] T. 54, 73-74, 82-83, 106-107, 150, 210, 298. This issue was also raised by the Accused in several written submissions. See, for example, Submission no. 144, 28 March 2006, p. 3.

[68] T. 150.

[69] T. 211.

[70] Submission no. 187, 31 July 2006, p. 3; Submission no. 190, 31 July 2006, p. 3.

[71] T. 98.

[72] T. 206.

[73] T. 150-151.

[74] T. 151.

health concerns were being addressed, and that a surgical operation had already been scheduled for the week after the Status Conference.[75] When confronted with this, the Accused stated that he had been told by a nurse only that the operation was forthcoming and that, in any event, he had not been "officially" made aware of the appointment.[76]

37. The Accused has often hinted at information in his possession allegedly demonstrating plots and machinations against him or against other individuals.[77] Unsubstantiated statements of this kind only result in a waste of the Tribunal's time and resources.

38. The Chamber also notes the testimony of the Accused in the *Milošević* case, that

> [t]here is no greater scandalmonger in Serbian political life than me over the past 15 years. When I needed this kind of scandal out of political interests, I was the one who could do that the most skillfully. I am so proud of that title of scandalmonger ... prouder than – of that than my doctorate...[78]

In the Chamber's view, this statement is a factor to be taken into account in the assessment of the Accused's likely conduct during the course of the trial.

39. On other issues, there have been some changes in the conduct of the Accused. For example, the Accused had at first refused to accept a laptop computer or a typewriter because he was "afraid of receiving an electric shock."[79] Although it is for the Accused to decide whether he wants to continue hand-writing his submissions, wasting the Chamber's time with such patently unjustified explanations amounts to frivolous and obstructionist behaviour. The Accused now holds that he will not use a computer because he is not proficient with the technology and because it is easier for him to concentrate when working with pen and paper. He further now explains that because his eyesight is poor, it is not possible for him to read off the computer screen for any extended period of time.[80]

[75] T. 172-173.
[76] T. 174.
[77] See, for example, Submission no. 13, 21 May 2003, p. 2 (regarding the bias of Judge Mumba and Agius purportedly due to their creed); Submission no. 90, 10 March 2005, p. 5 ("reliable information that Dutch intelligence services are planning to create a major bird flu epidemic in the Scheveningen detention unit") and p. 7 ("reliable sources claim that information was leaked from Holland that Vojislav Šešelj has died" with the "ultimate objective ... to destabilise Vojislav Šešelj and prevent him from normal preparation of his defence"); Submission no. 142, p. 5 (alleging that Milan Babić, before committing suicide, "left a farewell letter ... in which he described the pressure and acknowledged that he had had to give false testimony under pressure from the Prosecution"); Submission no. 159, 19 May 2006, p. 8 (alleging that the requirement that no visitor at the UNDU discloses the Accused's health status indicates that the Registry "expects his health to deteriorate").
[78] *Prosecutor v. Slobodan Milošević*, T. 43500 (31 August 2005).
[79] T. 66.
[80] T. 156-157.

40. Moreover, at the beginning of the pre-trial proceedings the Accused raised with Trial Chamber II his refusal to wear the bullet-proof jacket required for security reasons during his transfers to and from the UNDU.[81] Since then, he has not raised the matter with the Chamber again. And while the Accused had once categorically refused to have members of his family apply for visas in order to visit him at the UNDU, requesting instead that the United Nations issue such visas,[82] this matter has also not been revisited by the Accused again so far.

ii. Deliberate disrespect for the rules

41. In almost all of his submissions, the Accused has shown a degree of unwillingness to follow rules set by the Tribunal or its organs.

42. As an example, in Submission no. 93 of 21 March 2005, the Accused stated that "[t]he Prosecution has no authority to respond to my submissions to Trial Chamber II" despite the fact that both parties enjoy the right to respond under the procedure applicable before the Tribunal.[83]

43. On 14 November 2003 the Commanding Officer of the UNDU notified the Accused that his participation in a press conference and interviews with journalists related to the upcoming Serbian parliamentary elections were in breach of the Rules of Detention. The Commanding Officer warned that "in the case of another breach of the rules ... the disciplinary procedure of the detention unit will be invoked and applied."[84] Nonetheless, on 25 December 2003 the Accused used communication facilities in the Detention Unit to make statements to the press in advance of the aforementioned elections.[85] On 7 May 2004 the Deputy Registrar described the communication of the Accused with the deputy president of his political party as "a serious abuse of the opportunity afforded in ... previous decisions concerning his communication privileges".[86]

44. In Submission no. 66 the Accused declared that he had "no intention whatsoever of submitting" to the Registry documents related to his legal associates, despite the applicable rules explicitly requiring him to do so if he wished to have privileged contact with them.[87] He

[81] T. 50, 74.
[82] T. 52, 71-73, 106.
[83] Decision on Accused's Submission no. 93, 13 May 2005, p. 3.
[84] See Decision of the Deputy Registrar, 11 December 2003.
[85] Decision of the Registrar, 29 December 2003.
[86] Decision of the Deputy Registrar, 7 May 2004.
[87] The requirements set by the Registry are based upon those enumerated under Rule 44 of the Rules. See Registry Submission, para. 2.

went on to address the Registrar with the remark that requests of this type showed that "there are simply no limits to your stupidity and corruption".[88]

45. The Chamber recently ordered returned to the Accused, and declared null and void, nine of his submissions because they did not comply with the Practice Direction on the Length of Briefs and Motions[89] despite oral warnings to the Accused during the Status Conference of 19 May 2006.[90] Many submissions, in addition to not complying with this Practice Direction, also contained offensive language or were described as "offensive" in decisions and orders by the Tribunal.

46. In Submission no. 69 of 15 December 2004 the Accused requested certification to appeal the Decision on the Accused's Request for an Advisory Opinion of the International Court of Justice and cited an "old Serbian proverb" according to which "[n]obody will admit to being a whore's son" and adding that "we are talking about the international bastard of the great powers and the Security Council."[91]

47. To date, the Registry has returned to the Accused another ten submissions owing exclusively to their obscene or otherwise offensive language[92] following decisions by the Registrar or, after the President issued the Practice Direction on the Procedure for the Review of Written Submissions which Contain Obscene or otherwise Offensive Language on 14 November 2005, pursuant to this Practice Direction. The Chamber cites a sample of such cases.[93]

48. In Submission no. 73 of 7 February 2005 addressed to the Registry, the Accused wrote that, while he had accepted a specific person as his legal adviser, "you, all you members of the Hague Tribunal Registry, can only accept to suck my cock."

[88] Submission no. 66, 15 December 2004, p. 2.
[89] Decision re Submission no. 153, 19 June 2006; Decision on the Filing of Motions, 19 June 2006.
[90] T. 491-492, 523. On 4 July 2006 the Accused suggested to the pre-trial Judge that it is not for the Accused to count the words in his submissions and that "it is in the interests of justice that you assign a court official who will count the words himself and look through the document" (T. 537). On 29 May 2003 (Submission no. 16, p. 1), the Accused called the Practice Direction in question "a simple act of unscrupulous autocracy" by the President, not legally based on the Statute or the Rules.
[91] Submission no. 69, p. 2.
[92] Submission no. 73, 7 February 2005; Submission no. 91, 16 March 2005; Submission no. 92, 17 March 2005; Submission no. 83, 6 March 2005; Submission no. 86, 6 March 2005; Submission no. 88, 10 March 2005; Submission no. 130, 26 January 2006; Submission no. 132, 17 January 2006; Submission no. 160, 23 May 2006; Submission no. 181, 14 July 2006.
[93] Submissions returned by the Registry due to non-compliance with the Practice Direction on the Procedure for the Review of Written Submissions which Contain Obscene or otherwise Offensive Language are not on the case file. However, the Registry retains copies of them.

49. In Submission no. 91 of 16 March 2005 the Accused portrayed a named individual associated with the Tribunal as a "scumbag, a monster", "a pathetic and minute personality", a "scoundrel". In Submission no. 130, the same person was described thus:

> "Shit remains shit even if it is wrapped in gold." Therefore, if this slime were to remove the black garment in which he appears that makes him look like a raven and put on a golden uniform, he would still be what he is, shit in a human form.

The same individual was referred to as "[a] son of a bitch, [who] began showing the first signs of his inclination towards mafia-type activities [during his childhood]". In Submission no. 132, the Accused stated that this individual was "human trash and shit in human form (this, of course, is not an insult but a portrayal of his character)."

50. In Submission no. 92 of 17 March 2005 the Accused asked rhetorically:

> How to tell him [the named individual] to kneel down and start sucking Dr. Vojislav Šešelj's Orthodox dick, but only on cue 'bow and begin'?" How to simply tell him, monkey, eat shit, that's all you can?

51. The person and activities of another named individual related to the person associated with the Tribunal were set out in Submission no. 130 of 26 January 2006 in the following way:

> a prostitute at the local bus station, since the railway station was too far away from their house, which represented a real problem for them, as the fees that prostitutes charge at the railway station were far greater than those that they charged at the bus station.

52. In Submission no. 160 of 23 May 2006 addressed to the President, the Accused alleged that a named staff member "was suspended and removed from the Tribunal because he sexually assaulted a Tribunal official." This led him to suggest that

> all those people who are in custody, deprived of their liberty, are confronted with the danger of being raped by a prosecutor, judge, official, guard or another staff member.

53. The Accused has made general statements on several occasions to the effect that he does not intend to follow the Rules, Practice Directions, or specific rulings of the judges or of the Chamber. A recent example relates to the filing of submissions in excess of the allowed word limit. On 19 June 2006 the Chamber issued the Decision on Filing of Motions, in which it found that "by reason of the prolixity of the Accused's submissions, their patent lack of merit in general, the repetitiveness of their arguments, and the triviality of most of the issues raised, the Accused has abused the process of the Court" and that this abuse of process warranted limitations on his submissions. It thereby ordered that the Accused be "limited to filing submissions not exceeding eight hundred (800) words including, if he so wishes, a

request for authorization to exceed this limit by showing good cause, but in no case shall this limit be exceeded without prior authorization of the Trial Chamber". [94] On 31 July the Accused filed the "Motion to Trial Chamber I seeking authorization to exceed the word/page limit" (Submission no. 187) and another motion requesting the Chamber "to permit him to file an interlocutory appeal against the decision on filing submissions of 19 June 2006" (Submission no. 189). Despite the clear language of the Decision of 19 June 2006, the request to exceed the length was filed separately, and both submissions substantially exceeded 800 words.

54. Finally, the Chamber notes with great concern that the Accused has sent to members of his expert team confidential documents despite the fact that they are not entitled to have access to them.[95] This is a very significant event, particularly in light of the duty of the Chamber to ensure the protection of victims and witnesses and the integrity of the proceedings before the Tribunal. On 4 May 2006 the Accused still held that he was entitled to disclose confidential information to his self-appointed expert team.[96] The Chamber can only interpret this conduct as yet another egregious attempt by the Accused to circumvent the rules applicable to proceedings before the Tribunal, thus putting the proper administration of justice in jeopardy.

iii. Disruptive behaviour

55. On 21 May 2003 the Accused filed a motion for disqualification of the previous bench based on the nationality and the religious affiliation of the three judges. The motion contained, among other inappropriate phrases, insults directed at the Presiding Judge, such as the following statement: "The smell of crematoriums and gas chambers comes into the Hague courtroom with him."[97]

56. On 26 April 2006 the President issued a decision on the Accused's request for suspension of the judges of Trial Chamber III as well as for the dismissal of the Registrar and the UNDU medical doctor (based on the alleged responsibility of these individuals for the death of Slobodan Milošević). These statements included the allegation that the Registrar "is doing everything in his power to kill off all the Serbs".[98] The President rejected the Motion adding that it contained many phrases and statements that were "abusive and insulting" as well

[94] Decision on Filing of Motions, 19 June 2006, p. 3.
[95] Decision on Submission no. 115, 16 June 2006.
[96] Submission no. 149, 4 May 2006, p. 5.
[97] Submission no. 13, p. 2.
[98] Submission no. 146, p. 6.

as allegations that constituted "libel".[99] An allegation that the Tribunal practises "silent murder" against defendants choosing self-representation is found in Submission no. 189.[100]

57. In Submission no. 181 of 14 July 2006 addressed to the Bureau, the Accused made the unsubstantiated allegations that a government had bribed a Judge of the Tribunal.[101] On 10 August, this submission was returned to the Accused due to its non-compliance with the Practice Direction on the Procedure for the Review of Written Submissions which Contain Obscene or otherwise Offensive Language.

58. The Chamber also notes instances of disruptive behaviour in Court on the part of the Accused during the pre-trial proceedings. In particular, the Accused has used offensive language towards the participants in these proceedings as well as against other individuals.

59. For example, on 17 February 2004 the Accused stated that the Prosecution had made agreements with some accused persons that they would lie in Court and receive a shorter sentence.[102] On 26 September 2005 the Accused alleged that the Prosecution uses its resources to bribe "false witnesses"[103] and he apparently considers all Prosecution witnesses to fall within this category.[104] He further demanded

> that there be an immediate separation between all those who are Serbs and who have entered into a plea or an agreement with the Prosecution and who have agreed to testify falsely in other – in various proceedings. Otherwise, you may expect bloody showdowns. The problems are enormous, and you should remove all those false witnesses from our milieu.[105]

As the pre-trial Judge remarked during the Status Conference of 19 May 2006,[106] unsubstantiated allegations of this type do not make sense. They may even be construed as an attempt to intimidate witnesses.

60. The Accused has used unacceptable language in relation to his appointed Standby Counsel. On 29 October 2003 he alleged that the then Standby Counsel was a member of a "mafia" organization that might kill witnesses to be called by the Prosecution in order to frame the Accused for the killings.[107] On 31 January 2005 he stated:

[99] [President's] Decision on Motion for Suspension of Trial Chamber III and Removal of Registrar and Medical Officer, 16 April 2006.
[100] Submission no. 189, 31 July 2006, p. 4.
[101] Submission no. 181, pp. 4-7.
[102] T. 203.
[103] T. 397-398.
[104] T. 389.
[105] T. 492.
[106] T. 513.
[107] T. 130-131.

> I will never have anything to do with him [the present Standby Counsel], never any contact at all. I abhor him from a moral aspect as a man and I don't want to know or hear of him at all.

61. On 29 October 2003, the Accused also alleged criminal behaviour on behalf of the Registrar in the manner he decides on the allocation of funds for the Defence of indigent accused persons.[108] On the same day he further claimed that at least four persons detained at the UNDU had died due to deliberately inadequate medical assistance, and that the same intention existed in relation to him.[109]

62. On 30 May 2005 the Accused stated that the fact that he was moved to a different section of the UNDU was due to "revenge" and "retaliation" by the Registrar and the Commanding Officer for his complaints related to canteen prices.[110]

iv. Intimidation and slanderous comments in relation to witnesses

63. According to the Deputy Registrar's filing of 23 June 2005, the Accused, in violation of the applicable rules, shared the name of a protected witness over the phone with an unauthorized individual, who promised him to "disable" the potential witness. The transcript of the telephone conversation made available to Trial Chamber II shows that the Accused was aware of the protected status of that witness.[111]

64. In Submission no. 145 the Accused stated, inter alia, that "[a]ll the Prosecution witnesses in the case against Professor Vojislav Šešelj were forced to give false testimony and made false statements to the Prosecution because they were blackmailed". He went on to state that: "Milan Babić was a false witness who was being blackmailed by the Prosecution and in fear for his life agreed to all kinds of things"; "[f]alse witnesses are people who are solely or generally usable only once, after which they are discarded with disgust like a paper tissue full of mucus or dirty toilet paper"; "they become classic victims to the simultaneous blackmail and promises of the Prosecution's immoral officials"; "[t]he first message is that today you might be a witness, but tomorrow the Prosecution will indict you. The second message is that

[108] T. 120. This allegation is repeated in several submissions not filed in this case due to offensive language (for example, Submission no. 83, 6 March 2005, p. 7; Submission no. 86, 10 March 2005, p. 5; Submission no. 92, 17 March 2005, pp. 4 and 9).
[109] T. 150. Similar allegations are included in some of the Accused's filings, such as Submission no. 47, 26 October 2004, pp. 3-4.
[110] T. 375.
[111] [Confidential] Deputy Registrar's Notification to the Trial Chamber regarding the Accused Vojislav Šešelj, 23 June 2005 (and *ex parte* Annex thereof). Following this event, the Registry imposed restrictions on the Accused's communication privileges. Deputy Registrar's Confidential Decision, 23 June 2005 (made public as

you will have to lie so much in testifying that you will disgust even your nearest and dearest, to the extent that generations will be unable to say that you were their relative." Following such characterization, the Accused suggested that Prosecution witnesses would meet a terrible end, whether self-inflicted or otherwise: "Serbs do not like false witnesses; they are disgusted by them and therefore despise them. Serbs believe that God punishes false witnesses, and not just false witnesses, but also their families and descendants"; "Milan Babić was the first, but all the Prosecution's other false witnesses will follow him down that path". Finally, the Accused implied with the following words that he would attempt to denigrate any potential Prosecution witness: "a situation will arise in which all the Prosecution's false witnesses will have committed suicide and Professor Vojislav Šešelj will have failed to show them up and denigrate them".

65. The Chamber expresses its concern that the type of language contained in Submission no. 145, when read as a whole, is indeed intimidating towards potential witnesses called by the Prosecution.

v. Accused's ability to defend himself

66. The Prosecution finally submits that the Accused has clearly demonstrated that he is not capable of defending himself.[112] The Accused's unwillingness to understand and respect the "ground rules" of the proceedings has already been explored. As far as his ability to defend himself is concerned, Trial Chamber II found that "the complex legal, evidential and procedural issues that arise in a case of this magnitude may fall outside the competence of even a legally qualified accused, especially where that accused is in detention without access to all the facilities he may need"[113] and that the Accused was exhibiting both a tendency to act obstructively and the need for legal assistance.[114] This tendency has clearly not abated and the Chamber now expresses its concern that as a result of his ongoing disruptive conduct and unwillingness to follow the ground rules, the Accused is undermining his intention to present his defence. Increasingly, the Accused's submissions are returned due to his non-compliance with orders and directives, with the effect that he is ineffective in achieving his stated

per Note of 4 July 2005). The Accused later identified the unauthorized individual by name in one of his submissions (Submission no. 107, 16 September 2005, p. 1).
[112] Prosecution Motion, paras 20-24.
[113] First Decision, para. 21.
[114] Ibid., para. 23.

purposes.[115] He wilfully distracts all persons engaged in these proceedings with irrelevant allegations and material. These developments, particularly in light of the imminent start of the trial, trouble the Chamber and must be taken into account when deciding on the issue at hand.

vi. Warnings to the Accused

67. As stated above, in the First Decision Trial Chamber II observed that the Accused "is in fact increasingly demonstrating a tendency to act in an obstructionist fashion while at the same time revealing a need for legal assistance."[116] This warning (i.e., that obstructionist behaviour might lead to assignment of Counsel) was neither heeded nor accepted. The Appeals Chamber, the Bureau, and the President of the Tribunal, as well as the present Chamber, have had to caution the Accused over and over again.

68. For example, on 10 June 2003 the Bureau declared Submission no. 13 (requesting the disqualification of the Chamber) as "frivolous and an abuse of process"[117] on the basis that it contained "several phrases or statements that are abusive and insulting. Parties appearing before the Tribunal have great latitude in phrasing their pleadings. However, that latitude is not boundless. Insults are not arguments, and insults based on group identities, such as nationality, religion, and ethnicity, are particularly offensive."[118]

69. On 18 November 2003 Trial Chamber II declared that Submission no. 23 amounted to "a serious abuse of the opportunity afforded to him to have access to a public forum at this Tribunal" and cautioned the Accused that "the Chamber takes a very poor view of his conduct in this matter and that any future attempts to hijack public proceedings for the purpose of directing unsubstantiated accusations against staff members or other persons associated with this Tribunal is more than likely to meet with sanctions."[119] The Deputy Registrar reiterated this warning in his Decision of 7 May 2004 limiting the possibility of the Accused to communicate with the public.[120]

[115] A recent example is the Accused's request for certification pursuant to Rule 73(C) of the Rules (Submission no. 189, 31 July 2006) in relation to the Decision on Filing of Motions of 19 June 2006. Due to his non-compliance with the rules established in that decision, the Submission was returned to him, and he failed to obtain the certificate he sought in order to appeal.
[116] First Decision, para. 23.
[117] [Bureau] Decision on Motion for Disqualification, 10 June 2003, para. 6.
[118] Ibid., para. 5.
[119] Decision on Certain Allegations Made in Motion Number 23, 18 November 2003, p. 3.
[120] [Deputy Registrar's] Decision, 7 May 2004, p. 1.

70. On 10 December 2004 the pre-trial Judge issued an order relating to the Accused's Submission no. 58, inviting the Accused to, inter alia, "refile that submission, to omit from it any offensive language and to observe the relevant provision of the Practice Direction on the Length of Briefs and Motions."[121]

71. On 15 June 2006 the Appeals Chamber stated that the Accused's request for reconsideration of the Appeals Chamber's Decision on the Interlocutory Appeal Concerning Jurisdiction of 31 August 2004 was frivolous because it presented only arguments that were or could have been made before the previous decision was rendered. It cautioned the Accused against burdening the Chambers of the Tribunal with frivolous motions in the future.[122]

IV. Discussion

72. In dealing with the issues raised in the Prosecution Motion, the Chamber must first determine whether the conduct of the Accused warrants the imposition of restrictions on his right to represent himself in the interests of justice and, if it decides that question in the affirmative, it must then determine what kind of restrictions to impose, bearing in mind that any restrictions on his right to represent himself "must be limited to the minimum extent necessary to protect the Tribunal's interest in assuring a reasonably expeditious trial" (proportionality principle).[123]

73. In the *Milošević* case the Appeals Chamber held that in appropriate circumstances the right to self-representation may be restricted "on the grounds that a defendant's self-representation is substantially and persistently obstructing the proper and expeditious conduct of his trial."[124] In that case the question arose during trial, with the consequence that the *Milošević* Trial Chamber was able to make its determination on the basis of the health of the accused, and its impact on the conduct of the proceedings, during the trial. The present Prosecution Motion, however, is filed during the pre-trial phase, and the Chamber is called upon to make a determination as to whether to restrict the Accused's right to represent himself during the remainder of the proceedings on the basis of his conduct during the pre-trial phase.

[121] Order on Submission no. 58, 10 December 2004, p. 3.
[122] [Appeals Chamber] Decision on Motion for Reconsideration of the "Decision on the Interlocutory Appeal Concerning Jurisdiction" Dated 31 August 2004, 15 June 2006.
[123] *Milošević* Appeal Decision, para. 17.
[124] Ibid., para. 13.

In that regard, the Chamber is assisted by the approach taken in the *Brock* case – which also dealt with an accused's conduct at the pre-trial stage – where the United States' 7th Circuit Court of Appeal held that the conduct of the accused "was sufficient to allow the district judge to conclude that there was a strong indication that Brock would continue to be disruptive at trial."[125]

74. The Chamber concludes that, if it determines that restrictions are to be imposed on the right of the Accused to represent himself during the remainder of the proceedings, it must be satisfied that his behaviour, considered as a whole, provides a strong indication that self-representation may substantially and persistently obstruct the proper and expeditious conduct of the proceedings.

75. Despite change in limited areas, the Accused continues to exhibit deliberate disrespect for the rules applicable before the Tribunal, causing considerable disruption of the proceedings and an unquestionable waste of the Tribunal's resources in dealing with his conduct. In the Chamber's view, the frivolous and abusive nature of most of the Accused's 191 submissions to date is indicative of a person bent on following a path of persistent obstruction of the judicial process. Moreover, through this conduct, the Accused places a heavy burden on the resources of the Tribunal.

76. On a number of occasions the Accused has wilfully refused to follow the "ground rules" set by the Rules, by Practice Directions, by the Chamber, or required by the decorum and dignity necessary for court proceedings. Moreover, he has used abusive language in his submissions, and on some occasions even in the courtroom,[126] despite persistent warnings. This behaviour is wilful and not caused by ignorance.

77. While it is clear that the conduct of the Accused brings into question his willingness to follow the "ground rules" of the proceedings and to respect the decorum of the Court, more fundamentally, in the Chamber's view, this behaviour compromises the dignity of the Tribunal and jeopardises the very foundations upon which its proper functioning is based.

78. The Accused has been put on notice through a number of warnings, some specific and some general, about the appropriateness of his behaviour and the possible consequences stemming from it. He has nonetheless persisted in his tactic of trying to turn the Tribunal into a stage for his private, non-forensic purposes. The record shows that his conduct in general

[125] *Brock*, at 1080.
[126] See, for example, T. 120 (Registrar is involved in criminal activities); T. 397-398 (Prosecutor uses resources to "pay false witnesses and bribe them").

has not improved, and his attacks against persons affiliated with the Tribunal have become increasingly offensive.

79. The conduct of the Accused as a whole – obstructionist and disruptive behaviour; deliberate disrespect for the rules; intimidation of, and slanderous comments about, witnesses – leads the Chamber to conclude that there is a strong indication that his self-representation may substantially and persistently obstruct the proper and expeditious conduct of a fair trial. Accordingly, the Chamber finds that there is a proper basis for the exercise of its discretion to impose restrictions on the Accused's right to represent himself during the remainder of the proceedings.

80. The Chamber is mindful of the decision of the Appeals Chamber in *Milošević* supporting the right of the Trial Chamber to assign counsel in that case, but concluding that the Trial Chamber erred in not leaving Mr Milošević in control in the presentation of his case. That case is, however, distinguishable from the present in that the decision to assign counsel was predicated on the ill-health of Mr Milošević. In the instant case, the restriction of the right of self-representation is prompted by the persistent and wilful conduct of the Accused. That distinction, in the Chamber's view, provides a proper foundation for a firmer and stricter approach in determining the role of the Accused in the proceedings. The Chamber sees no alternative that would sufficiently protect the fairness and the integrity of the proceedings than to order that the Accused participate in the proceedings through Counsel only. The Chamber will consider on a case-by-case basis, taking into account all circumstances and having heard from Counsel, whether and to what extent the interests of justice would allow for any personal participation of the Accused in the proceedings.

81. In light of the above considerations, the Chamber resolves to assign Counsel to the Accused, effective immediately.

V. Disposition

For the foregoing reasons,

PURSUANT TO Rule 54 of the Rules,

the Chamber hereby:

GRANTS the Prosecution Motion;

REQUESTS the Registry to make the necessary arrangements for assigning, as soon as practicable, Counsel for the Accused;

INSTRUCTS current Standby Counsel to represent the Accused until the Registry has assigned Counsel to the Accused;

ORDERS that the Accused's participation in the proceedings will be through Counsel unless, having heard from Counsel, the Chamber determines otherwise;

DISMISSES as moot the Accused's request for a three-day-per-week hearing.

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

Judge Alphons Orie
Presiding Judge

Dated this 21st day of August 2006
The Hague
The Netherlands

[Seal of the Tribunal]