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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-05-88/2-PT Date: 5 October 2007 Original: English

IN TRIAL CHAMBER II

Before: **Judge Carmel Agius, Presiding**
Judge O-Gon Kwon
Judge Kimberly Prost, Pre-Trial Judge

Registrar: **Mr. Hans Holthuis**

Submission Date: **5 October 2007**

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC with CONFIDENTIAL EX PARTE ANNEXES I to III

REGISTRAR'S SUBMISSION ON THE ACCUSED'S SUBMISSION OF 7 SEPTEMBER 2007

The Office of the Prosecutor:

Peter McCloskey

The Accused:

Zdravko Tolimir

1. Pursuant to the Rule 33(B) of the Rules of Procedure and Evidence ("Rules") of the International Criminal Tribunal for the former Yugoslavia ("Tribunal"), the Registrar hereby respectfully makes his submission regarding "The Accused's Submission to the Registrar and the Pre-Trial Chamber to review the facts and reasons for the violation of guaranteed and discretionary rights of the Accused before the International Tribunal" filed by Mr. Zdravko Tolimir ("Accused") on 7 September 2007 ("Submission").

2. At the outset, the Registrar apologizes for the delay in filing his comments on the Accused's Submission. Given that the issues raised by the Accused are largely medically-related, and that the Accused's main arguments rest on the notion that he is in good health, the Registrar deemed it was both necessary from the Registry's perspective and would prove helpful to the Chamber if the Registrar were to obtain an up-to-date status report on the medical condition of the Accused. To this end, the Registrar has attached a report from the Medical Officer at the United Nations Detention Unit ("UNDU") which outlines the present physical and mental health situation of the Accused.[1] The Registrar notes that consultation amongst various medical specialists was required in order to prepare the report. The Registrar notes further that at the time of the Accused's Submission, the results from several medical tests performed on the Accused were not yet available. It is as a result of the foregoing consultations and medical tests, and the time needed for their completion, that there has been some delay in responding to the Submission.

3. In his Submission, the Accused alleges, *inter alia*, that the Registry has "grossly violated the discretionary rights of detained persons awaiting trial before the International Tribunal [...] and [...] exerted pressure, manipulated and interfered in the internal rights of states [...]".[2] More specifically, the Accused claims that "the Registry has, without [the Accused's] knowledge and approval, [...] arranged for neurosurgeon Colonel Dr. Ljubo Minić, [...] to come to The Hague, bringing with him and disclosing without [the Accused's] approval all [his] old medical records [...]".[3] According to the Accused, the Registry "tricked" Dr. Minić into coming to The Hague by "telling [Dr. Minić] that [the Accused] had agreed to his coming",[4] the Registry's intention being to "forc[e] the

[1] Confidential Annex I.
[2] "The Accused's Submission to the Registrar and the Pre-Trial Chamber to review the facts and reasons for the violation of guaranteed and discretionary rights of the Accused before the International Tribunal" filed on 7 September 2007, para. 1.
[3] *Ibid*, para. 2.
[4] *Ibid*, para. 5.

doctors of the Belgrade Military Medical Academy, on the basis of outdated medical records and diseases [he] suffered from in 1993 which have been cured, to write a diagnosis which they would use to declare [him] procedurally incapable of defending [himself] and to impose counsel".[5]

4. In addition to the above, the Accused complains about two other medically-related incidents in his Submission. First, the Accused states that "[t]he Registry attempted, without [his] knowledge and approval, to arrange an examination [of him] in the UNDU Infirmary by a neurologist [...]".[6] This complaint is also the subject of a submission by the Accused filed on 17 August 2007, in which the Accused argued that said neurological examination "took place without [his] knowledge, against [his] will and without any possibility for [him] to express [his] objection", and for such reasons, "unnecessarily and gravely violated [his] discretionary rights and freedoms".[7] Secondly, he states that "[t]he Registry attempted, without [the Accused's] knowledge and approval, and disregarding the Trial Chamber trying [his] case, before Duty Judge Theodor Meron appointed for this occasion, to arrange a status conference on [his] medical condition although [he is] not ill, [he is] not being treated for any disease and [he does] not take any medication".[8] This latter contention, i.e., that he is actually in "very good" health,[9] underlies what would appear to be one of the Accused's main arguments, which is that the medical examinations performed on him have been entirely unnecessary.

5. The Registrar respectfully submits that the Accused's statements do not reflect the reality of the Accused's medical situation. Based on information before the Registrar,[10] it is the Registrar's submission that the Accused's health condition is grave, fragile and highly alarming, despite the Accused's assurances otherwise, and that the examinations

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[5] *Ibid.*, para. 5.
[6] *Ibid.*, para. 6(D).
[7] "Submission by the accused for the violation of the guaranteed and discretionary rights and freedoms of detained persons awaiting trial before the International Tribunal" dated 17 August 2007 ("17 August Submission"), paras. 1 and 5.
[8] Submission, para. 6(B). This issue was also raised by the Accused in the "Submission by the accused because of the convening of an interim status conference in order to discuss the medical condition of the accused without his knowledge, notification and agreement" dated 31 July 2007 ("31 July Submission"), in which the Accused alleges that the scheduling by the Duty Judge of an interim status conference to discuss the Accused's medical situation was a violation of the Rules.
[9] Submission, para. 6. The Accused has made similar statements as to his "good" or "exceptional" physical condition in previous submissions. See also, for example, 17 August Submission, para. 6 and 31 July Submission, para. 7.
[10] See confidential Annex I. The Registrar has also relied on confidential memoranda from the Medical Officer to the Registry dated 20 July, 27 July, 30 July and 1 August, 2007 and a report by the Accused's previous treating physician, Dr. Ljubo Minić, dated 6 September 2007.

performed on him to date have been absolutely necessary to ensure the Accused's health and well-being. Indeed, the medical advice before the Registrar is that the Accused fails to appreciate the dangers posed by his various medical conditions, so it is not surprising that the Accused continuingly claims to be in good health. That is simply not the case.

6. The medical advice before the Registrar is that the Accused suffers from a significant aneurism in his brain. This is an inoperable, high-risk condition which can be controlled to some extent by appropriate medications aimed at keeping the Accused's blood pressure low. In addition, the medical advice before the Registrar is that the Accused suffers from a serious heart condition, with indications of long-term high blood pressure, and there is evidence that the Accused has previously experienced heart infarctions and arteriosclerosis and that he may have suffered from a small number of minor strokes. In light of the above, the Accused has been diagnosed as falling in the "high risk cardiovascular category." The Registrar notes that the Accused was already known to suffer from serious medical problems when he was first transferred to the UNDU, and this was widely reported by the media upon the Accused's arrest.[11] However, the Registrar is gravely concerned that since being transferred to the UNDU the Accused's medical situation has been growing increasingly problematic. The Registrar understands that the Accused has steadfastly refused to take any prescribed medication for his conditions since coming to The Hague. The medical advice before the Registrar is that the Accused's refusal to accept any treatment increases the risk of an acute heart or cerebral incident. It is the Registrar's view, therefore, based on the evidence before him, and considering that there is no indication at the present time that the Accused will start taking his prescribed medications any time soon, that there is a very real and serious risk of the Accused experiencing a life-threatening episode at any time and without warning.

7. Despite the foregoing, the Accused alleges that the Registry's medical examinations are a violation of his so-called "discretionary rights". In response, the Registrar respectfully submits that it is the Registrar's fundamental duty and obligation to safeguard the health and well-being of the Accused, and indeed, each and every detainee at the UNDU. Responsibility for the physical and mental health of detainees is given to the UNDU Medical Officer, and by extension, the Registrar, through the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the International Tribunal or

[11] See, for instance, "Mladic's Security Chief Arrested", *Politika*, 1 June 2007; "General Tolimir Arrested", *Kurir*, 1 June 2007; and "Betrayed by Friends", *Pravda*, 2 June 2007.

Otherwise Detained on the Authority of the Tribunal ("Rules of Detention").[12] It is respectfully submitted that the Registrar does not take his responsibilities in this regard lightly. This is particularly the case in circumstances such as these, where the Accused's continued refusal to take his medication poses serious threats to his life. To date, a number of measures have been taken at the UNDU in order to mitigate the risks posed by the Accused's refusal of treatment. For example, UNDU staff have been made aware of the Accused's weakened health situation and have been trained in the procedures and use of an Automatic External Defibrillator ("AED"), a portable device that automatically diagnoses the potentially life-threatening cardiac conditions of a patient and which is able to treat the patient by application of electrical therapy. In addition, the Accused's cell has been situated closest to the AED, allowing for swift intervention should a cardiovascular event occur, and thirty-minute interval checks are performed daily on the Accused, throughout both the day and night. The Registrar has also taken the step of inquiring with the UNDU Medical Officer whether it would be necessary to place the Accused in a hospital. The medical advice received by the Registrar was that the Accused's conditions did not necessarily require hospitalisation.

8. With regard to the Accused's allegations surrounding the visit by Dr. Minić on 5 September 2007, the Registrar submits that Dr. Minić, a neurosurgeon who previously treated the Accused in Belgrade, was invited to come to The Hague by way of a conference call on 6 August 2007 involving the Commanding Officer of the UNDU, the UNDU Medical Officer and the Accused (through an interpreter).[13] The call came about as a result of the fact that the Accused had stated that he would undergo no further diagnostics until contact had been made with his treating physician, Dr. Minić. Indeed, the Registrar submits that it was the Accused himself who provided both the name and telephone number for Dr. Minić, and that the call was made to Dr. Minić with the Accused's full consent. Given that under Rule 31(A) of the Rules Governing Detention, detainees are permitted to consult with a doctor of their choice at their own expense, it is respectfully submitted that the Medical Officer and the UNDU were in fact duty bound to comply with the Accused's wishes, and to contact Dr. Minić.

9. During the conference call on 6 August 2007, the Medical Officer discussed with Dr. Minić the state of the Accused's health. As to a proposed visit, Dr. Minić and the UNDU

[12] Rule 34 of the Rules of Detention states that "the medical officer shall have care of the physical and mental health of detainees".
[13] See confidential Annex II.

Medical Officer agreed that the tests and examinations that had been performed on the Accused to date were not yet sufficient to justify a trip to The Hague. Instead, Dr. Minić requested that two further tests be conducted on the Accused (a three dimensional CT scan and 24-hour blood pressure monitoring) to ensure that an accurate assessment of the Accused's medical status could be obtained. Dr. Minić then indicated that when the results from those tests were available, he would come to The Hague to meet with the UNDU Medical Officer and other relevant specialists and, if necessary, to visit with the Accused.[14] The Registrar submits that the Accused was party to this entire conversation with Dr. Minić and expressed no objections to the arrangements that were made that day. The Accused's contention that he had no knowledge of and did not consent to the visit, therefore, is simply unsustainable. The Registrar submits, based on the information before him, that the Accused participated in these tests voluntarily.

10. The Registrar submits further that the Accused was also well aware that the Medical Officer would be consulting with Dr. Minić about the Accused's medical history and would therefore have access to the Accused's medical records. At the very least, consent was implicit upon the acquiescence by the Accused during the conference call of 6 August 2007 to Dr. Minić's coming to The Hague. The Registrar also submits that medical records are shared as a matter of course between consulting physicians, and in any event, such decisions fall within the discretion of the relevant physician. In this case, the Registrar submits that consultation between Dr. Minić and the UNDU Medical Officer regarding the Accused's medical records was absolutely necessary in order to enable both physicians to properly assess the Accused's condition.

11. Additionally, the Registrar notes that soon after Dr. Minić was invited to The Hague, Registry staff notified the President of the National Council of the Republic of Serbia for Cooperation with the ICTY and the General-Major at the military hospital at which Dr. Minić worked of the proposed visit and its general purpose.[15] This was simply to facilitate Dr. Minić's visit. The Accused's allegation that the Registry somehow "exerted pressure, manipulated and interfered in the internal rights of states" is entirely without merit.

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[14] The Registrar notes that the Accused has submitted a Declaration of Means pursuant to Article 8 of the Directive on the Assignment of Defence Counsel claiming that he is indigent. The Registry agreed to cover Dr. Minić's travel costs and facilitated his trip to The Hague.

[15] See letters attached as confidential Annex III.

12. With regard to the Accused's complaint about the neurological examination conducted on 17 August 2007, the Registrar submits that this examination was an integral part of the examinations requested by Dr. Minić and was effectively consented to by the Accused during the conference call on 6 August 2007. In any event, the Registrar understands that the Accused had actually initially agreed to the examination being performed (albeit, apparently reluctantly), and only thereafter did he raise complaints by way of written submission to the Chamber.[16]

13. A status conference was originally scheduled to be held on 1 August 2007, and then cancelled by Order of the Duty Judge on 31 July 2007.[17] Contrary to the Accused's Submission, the Registrar notes that the Chamber acted in accordance with the authority vested in it by the Statute and the Rules. Under Rule 65*bis*(A) of the Rules, the Chamber may convene status conferences to allow an accused to raise issues in relation to his case, including his mental and physical condition. On 27 July 2007, the Duty Judge ordered that a status conference be held the following week, in consideration of the "urgent health considerations" present in the case.[18] These "urgent health considerations" no doubt included statements made by the Accused at his initial appearances that his "health is very bad" and that he has "refused to take medicine as a form of protest".[19] Only when the Accused later recanted such health complaints, and protested the scheduling of a status conference before the Duty Judge, did the Duty Judge order that the status conference be cancelled. In the Registrar's view, however, none of the actions taken by either of the Duty Judges was inappropriate or a violation of the rights of the Accused. The Registrar submits that the Chamber has the inherent authority to take appropriate and necessary measures to ensure the health and well-being of each and every accused in the custody of the Tribunal, and this clearly includes convening status conferences in order to consider and discuss urgent health issues such as those which manifestly exist in this case.

14. Concerns over the Accused's health remain exceedingly high, and it is submitted will only become more so the longer the Accused refuses to cooperate with his physicians and begins to take his prescribed medication. Such concerns have recently been compounded by the fact that the Accused has now elected to represent himself at trial.

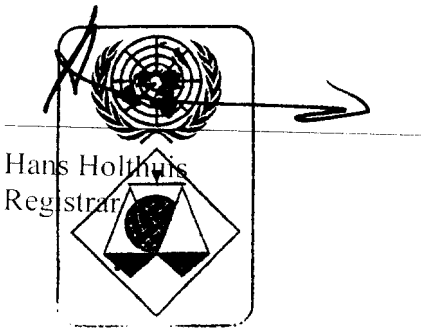
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[16] See confidential Annex II.
[17] Order Scheduling a Status Conference, 27 July 2007, and Order Cancelling a Status Conference, 31 July 2007.
[18] Order Scheduling a Status Conference, 27 July 2007.
[19] T.18 (Initial Appearance of 4 June 2007, Open Session) and T.48 (Further Appearance of 3 July 2007, Open Session).

The Registrar submits, based on consultations with the UNDU Medical Officer and other physicians, that the stresses involved in running a trial are certain to have a detrimental impact on the Accused's medical situation. The Registrar understands that it is his duty to bring to the attention of the Chamber these very real and serious concerns, and it is the Registrar's view that the circumstances in this case have progressed to the point where the Chamber's immediate consideration is warranted. Ultimately it is the Chamber which has the overall responsibility for the proper conduct of the Accused's trial and the Accused's participation in it.

15. The Registrar would therefore request the Chamber to take any and all appropriate measures to further and more completely assess the medical condition of the Accused, including ordering a medical examination of the Accused pursuant to Rule 74*bis* of the Rules or, if the Accused refuses to be examined, ordering an analysis of the test results that are already available by an independent medical expert, with a view to helping the Chamber determine whether the Accused is truly capable of representing himself before this Tribunal.

16. The Registrar remains available should the Chamber seek further information or advice.



Dated this fifth day of October 2007,
At The Hague,
The Netherlands.