

## VIEW FROM THE HAGUE

### MILOŠEVIĆ HAS TO DEFEND HIMSELF ON ALL COUNTS OF THE INDICTMENT

Last week, the Trial Chamber in the case against Slobodan Milošević decided that the Prosecution submitted sufficient evidence on all major charges in the indictment to merit a presentation of the defence case. The decision came in response to a motion submitted by "friends of the court" requesting that some of the major charges from the indictment be dropped.

In accordance with the Tribunal's rules of procedure, the process is driven by the two parties: in all cases before the ICTY, the evidence is presented first by the prosecution and then the defence. The burden of proof is on the Prosecution while the defence is not required to prove anything – it only has to refute the allegations by challenging the evidence presented by the Prosecution. However, this only applies to evidence that meets the necessary requirement. This means that the evidence presented by the Prosecution has to be such that, *if accepted*, the Trial Chamber *could* be satisfied beyond a reasonable doubt of the guilt of the accused on the particular charge in question. What does that mean?

This means that prior to presenting a defence, an accused charged with a crime is entitled to know exactly which allegations he or she has to answer. The accused should not be called upon to answer a charge if the prosecution did not present sufficient evidence on which a judge acting reasonably could convict him.

This is why, after the presentation of the prosecution case, the defence can submit what is called "a motion for judgement of acquittal". (This motion is often referred to as 'the 98bis motion' after the rule that regulates it.) The purpose of this motion is to prompt the Judges to conduct a preliminary evaluation of certain evidence to determine whether this evidence would be sufficient to prove certain charges beyond a reasonable doubt. In such cases where the Trial Chamber believes that the Prosecution has not submitted sufficient evidence, the accused will be acquitted on those charges and will not have to challenge them in his defence.

In the Milošević case, because the accused is defending himself, at the outset of his case the Trial Chamber appointed three lawyers who would assist the court by raising arguments that they should consider that may be important to the case. These lawyers are known as "friends of the court" (*amici curiae*). Since Mr. Milošević refused to make any submissions on his behalf, the *amici curiae* requested acquittal of the accused on a number of charges against him.

Specifically, the *amici* argued that the Prosecution failed to present sufficient evidence in relation to 185 separate allegations in the indictments against Slobodan Milošević for crimes committed in Kosovo, Croatia and Bosnia and Herzegovina. They argued that there was no evidence of Milošević's intent to commit genocide in Bosnia and Herzegovina and that the Prosecution failed to prove that the Tribunal had jurisdiction over certain crimes committed in Kosovo and Croatia. It should be noted that the *amici* did not challenge every allegation in the indictment.

Finally, in their decision, the Trial Chamber did dismiss a number of factual allegations from the Croatia and Bosnia indictments which they believed the Prosecution's evidence failed to support. They did not dismiss any of the allegations from the Kosovo indictment. As a result, while the Trial Chamber did dismiss some of the allegations, it did not drop any of the 66 counts of the three indictments.

Most significantly, the Judges ruled that the Prosecution had produced sufficient evidence, if not adequately contested, to support its charge that a joint criminal enterprise existed, whose aim was to destroy a part of the Bosnian Muslims, and that its participants committed genocide in Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ and Bosanski Novi.

Judges Robinson and O-Gon Kwon appended separate and dissenting opinions, respectively, but these did not alter the final finding.

It is very important to note that the Trial Chamber's decision is not a conviction. The decision only indicates that the Trial Chamber has found sufficient evidence at this stage on which it could convict Slobodan Milošević of the crimes with which the Prosecution charged him. As the Judges stated in their decision this does not mean that the Trial Chamber should convict him, nor that it will convict him. The Trial Chamber will

only issue its verdict well after it has examined all the defence evidence admitted in court and heard all the witnesses Mr. Milosevic brings forward. The defence case will begin on 5 July 2004.

**Outreach Programme**

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