



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-98-30/1-T

Date 5 December 2000

Original: English  
French

**IN THE TRIAL CHAMBER**

**Before:** Judge Almiro Rodrigues, Presiding  
Judge Fouad Riad  
Judge Patricia Wald

**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh

**Decision of:** 5 December 2000

**THE PROSECUTOR**

v.

**MIROSLAV KVOČKA  
MILOJICA KOS  
MLAĐO RADIĆ  
ZORAN ŽIGIĆ  
DRAGOLJUB PRCAĆ**

**DECISION ON THE DEFENSE "MOTION REGARDING CONCURRENT  
PROCEDURES BEFORE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE  
FORMER YUGOSLAVIA AND INTERNATIONAL COURT OF JUSTICE ON THE  
SAME QUESTIONS"**

**The Office of the Prosecutor:**

**Ms. Brenda Hollis  
Mr. Michael Keegan  
Mr. Kapila Waidyaratne**

**Defence Counsels:**

**Mr. Krstan Simić for Miroslav Kvočka  
Mr. Zarko Nikolić for Milojica Kos  
Mr. Toma Fila for Mlado Radić  
Mr. Slobodan Stojanović for Zoran Žigić  
Mr. Jovan Simić for Dragoljub Prcać**

**TRIAL CHAMBER I** (“the 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 (“the Tribunal”);

**BEING SEISED** of the “Motion regarding concurrent procedures before International Criminal Tribunal for the former Yugoslavia and International Court of Justice on the same questions” (“the Motion”) filed by the defense counsel for Zoran Žigić (“the Accused”) on 24 October 2000, in which he requests the Chamber to suspend decision on questions pending before the International Court of Justice (“the ICJ”), or to rule that such questions will not be decided and to request an advisory opinion from the ICJ;

**NOTING** the “Prosecution’s response to Zoran Žigić’s ‘Motion regarding concurrent procedures before International Criminal Tribunal for the former Yugoslavia and International Court of Justice on the same questions’” filed on 16 November 2000 objecting to the Motion, and the corrigendum filed on 27 November 2000;

**NOTING** the annex to the Motion<sup>1</sup>;

**NOTING** that Bosnia and Herzegovina filed an application on 20 March 1993 at the Registry of the ICJ<sup>2</sup>, alleging violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”) and of several other international obligations by the Federal Republic of Yugoslavia (“the application of Bosnia and Herzegovina”), and that a Judgement was issued by the ICJ on the 11 July 1996, confirming that it has jurisdiction in the matter on the basis of Article IX of the Genocide Convention<sup>3</sup>;

**NOTING** the Accused’s submission that such questions as the nature of the armed conflict in Bosnia and Herzegovina, the identity of the parties to the conflict, and whether crimes were

---

<sup>1</sup> The Motion describes this annex as “a copy of Application instituting proceedings edited by the Agent for the Republic BiH before ICJ taken from the book ‘The Bosnian people charge genocide’ by F. A. Boyle, Alethia press, Amherst, Massachussets, 1996”.

<sup>2</sup> *Application instituting Proceedings filed in the Registry of the Court on 20 March 1993, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia (Serbia and Montenegro))*.

<sup>3</sup> *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia), Preliminary objections*, 11 July 1996.

committed in the course of that conflict are subject to determination both by the Tribunal in the current matter and by the ICJ in the application of Bosnia and Herzegovina;

**NOTING** the Accused's submissions that the ICJ and the Tribunal should not hold opposing views on the same factual or legal questions, and that the Tribunal should follow the decisions of the ICJ, because the ICJ is the principal judiciary organ of the United Nations while the Tribunal is a subsidiary organ;

**NOTING** the Prosecutor's submission that the Motion is in reality a motion challenging the jurisdiction of the Tribunal, and should thus be dismissed as untimely in accordance with Rule 72(A), and further that the measures requested by the Accused would, if taken, deprive the Tribunal of its independence;

**CONSIDERING** that the ICJ, the principal judicial organ of the United Nations, deals with State responsibility, while the Tribunal, established by the Security Council on the basis of Chapter VII of the United Nations Charter, deals with individual criminal responsibility;

**CONSIDERING** that "[t]he Security Council's decision in resolution 808 (1993) to establish an international tribunal is limited in scope and purpose: the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991"<sup>4</sup>;

**CONSIDERING** that many of the issues identified by the Accused as subject to determination by both judicial organs have already been pronounced upon by the Tribunal;

**CONSIDERING** that the application of Bosnia and Herzegovina is still pending and that, consequently, no factual or legal finding has been made in the matter by the ICJ;

**CONSIDERING** therefore that the question of whether there might be a contradiction between the findings of the Tribunal and the findings of the ICJ must, at this stage, be based purely on speculation;

---

<sup>4</sup> As emphasised by the Secretary General in his Report Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, para. 12.


**CONSIDERING FURTHER** that staying the proceedings in this case until the ICJ makes a final determination in the application of Bosnia and Herzegovina would both run contrary to the purpose of the establishment of this Tribunal and deprive the Accused of his right to a fair and expeditious trial;

**FOR THE FOREGOING REASONS**

**DISMISSES** the Motion.

Done in English and French.

Dated this 5th day of December 2000,  
At The Hague  
The Netherlands.

  
\_\_\_\_\_  
Almiro Rodrigues  
Presiding Judge

**[Seal of the Tribunal]**