



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-02-54-T
Date: 5 June 2002
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Order of: 5 June 2002

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION'S MOTION FOR JUDICIAL NOTICE OF
ADJUDICATED FACTS RELEVANT TO THE MUNICIPALITY OF BRCKO**

The Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Geoffrey Nice

Ms. Hildegard Uertz-Retzlaff
Mr. Dermot Groome

The Accused

Slobodan Milošević

Amici Curiae

Mr. Steven Kay, QC
Mr. Branislav Tapušković
Prof. Mischa Wladimiroff

THIS TRIAL 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 (“International Tribunal”),

BEING SEISED of the “Prosecution’s Motion for Judicial Notice of Adjudicated Facts Relevant to the Municipality of Brcko”, filed by the Office of the Prosecutor (“Prosecution”) on 25 April 2002 (“the Motion”), in which the Prosecution requests the Trial Chamber to take judicial notice of facts related to events which occurred in the municipality of Brcko during a time relevant to the period in the indictment pursuant to Rules 94 (B) of the Rules,¹ submitting the following:

- (a) The principle of judicial economy is an important consideration in the conduct of trials and in particular given the time limitations imposed on the Prosecution in this trial;
- (b) Taking judicial notice of previously adjudicated facts will serve the interests of judicial economy in this case by permitting the focus on those disputed facts which have not been the subject of other trials;
- (c) Whilst the parties must be heard, Rule 94 does not require the consent of the parties;
- (d) The use of judicial notice has the added advantage of not requiring witnesses to repeatedly travel to the Tribunal to give their evidence;
- (e) A fully litigated fact, ultimately disposed of by another Chamber, should be accepted by a Chamber faced with the same fact, and the right to be heard affords a party an opportunity to raise any new or additional evidence regarding the fact proposed to be admitted under Rule 94; and
- (f) If admission of the facts under Rule 94 (B) is not ordered, nothing would prevent the Chamber from admitting evidence it deemed probative under Rule 89 (C), ordering the Prosecution to produce additional evidence under Rule 98 or subsequently excluding the evidential value of the adjudicated facts under Rule 89 (D),

NOTING the “Response by the Amici Curiae to Prosecution’s Motion for Judicial Notice of Adjudicated Facts Relevant to the Municipality of Brcko”, filed by the *amici curiae* on 9 May 2002, in which the Trial Chamber is requested to deny the application for admission of adjudicated facts set out in the Motion on the basis of the following:

¹ These facts are taken from *Prosecutor v. Jelisić*, “Judgment”, Case No. IT-95-10-T, 14 December 1999).
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- (a) The jurisprudence of the ICTY and ICTR interprets Rule 94 as covering only “facts not subject to reasonable dispute”;
- (b) The facts are based on witness statements and descriptions contained in the factual basis to the plea arranged between the parties. If the facts emanate from voluntary admissions made by Jelisić then they are not the proper subject of judicial notice, as such admissions speak neither to the “general currency of the fact nor to its indisputable character”;
- (c) It is likely that the accused will dispute these facts;
- (d) Articles 21.2 and 21.4(e) indicate the accused’s right to a fair trial and to examine or have examined Prosecution evidence, and the accused has a general right to an independent determination of the facts in issue; and
- (e) The submission of the Prosecution that evidence could be called in rebuttal of the judicially noticed facts would tend to undermine the very nature of the Rule.

CONSIDERING that for a fact to be capable of admission under Rule 94 (B) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) it should be truly adjudicated and not based upon an agreement between parties to previous proceedings, such as agreed facts underpinning a plea agreement,²

CONSIDERING that whilst some of the facts set out in Annex A to the Prosecution’s Motion may have been derived from evidence led at trial (as opposed to facts agreed by the parties), those facts concerned the genocidal intent of the accused in those proceedings and were led in respect of that limited issue,

CONSIDERING that, whilst the Trial Chamber is willing to consider the admission of truly adjudicated facts, particularly where such facts are extracted from cases for which the Appeals Chamber has ruled on the merits or has not been called upon to do so, it does not consider the facts presented under the circumstances of the *Jelisić* case to be properly susceptible of judicial notice,


CONSIDERING that it is not appropriate to consider the admission of such material under Rule 89 (C) of the Rules,

² The Trial Chamber is persuaded that the position taken in the ICTR case, *Prosecutor v. Semanza*, “Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Fact Pursuant to Rules 94 and 54”, 3 November 2000, was correct when the Chamber stated: “[F]acts that are voluntarily admitted by an accused in the context of a proceeding are not the proper subject of judicial notice because such admissions speak neither to the general currency of the fact nor to its indisputable character”.

PURSUANT TO Rule 94 of the Rules

HEREBY DENIES the Motion.

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



Richard May
Presiding Judge

Dated this fifth day of June 2002
At The Hague
The Netherlands

[Seal of the Tribunal]