



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: 25 February 2003  
Original: English

**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. Hans Holthuis

**Order of:** 25 February 2003

**PROSECUTOR**

v.

**SLOBODAN MILOŠEVIĆ**

**DECISION ON PROSECUTOR'S SUBMISSION OF CORRIGENDUM TO EXPERT  
REPORT OF PATRICK BALL**

**The Office of the Prosecutor**

**Mr. Geoffrey Nice**

**The Accused**

**Slobodan Milošević**

**Amicus Curiae**

**Mr. Steven Kay**

**Mr. Branislav Tapušković**

**Mr. Timothy McCormack**

**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 (“the International Tribunal”),

**BEING SEISED** of (i) the Prosecutor’s Submission of Corrigendum to Expert Report of Patrick Ball (“Corrigendum”), filed on 25 November 2002; (ii) the Amici Curiae’s Observations on the Prosecution’s Submission of Corrigendum to Expert Report of Patrick Ball, filed on 25<sup>th</sup> November 2002 (“Observations”), filed on 12 December 2002; and (iii) the Prosecution’s Response to Amici Curiae’s Observations on the Prosecution’s Submission of Corrigendum to Expert Report of Patrick Ball, filed on 25<sup>th</sup> November 2002 (“Response”), filed on 28 January 2003,

**NOTING** that pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence (“Rules”), the Prosecution submitted the Notice of Filing of Expert Report of Patrick Ball (“Report”),<sup>1</sup> on 15 February 2002, and that Patrick Ball testified before the Trial Chamber on 13-14 March 2002,

**NOTING** that (i) the Corrigendum contains additional data about the NATO airstrikes which occurred between early May and early June 1999, (ii) three KLA activity records have been removed pursuant to Rule 70, (iii) a number of graphs contained in the Report have been revised, (iv) the authors performed recalculations according to the adjusted Pearson chi-square statistic, and (v) the Corrigendum contains new findings, which strengthen the Report’s conclusion rejecting the hypothesis that NATO attacks could have caused the killing of ethnic Albanians,

**NOTING** that according to the Observations, the Accused and the Amici Curiae cross-examined Patrick Ball on the basis of the Report, which did not contain the new findings,<sup>2</sup>

**NOTING** that according to the Observations, Pursuant to Article 21(e) of the Statute, the Accused is entitled to “examine, or have examined, the witnesses against him”; while under Article 20 of the Statute, the Trial Chamber has a duty to ensure that the “trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused”,<sup>3</sup>

---

<sup>1</sup> Ex. 67.

<sup>2</sup> Observations, paras. 11 (ii) and (iii).

<sup>3</sup> Observations, paras. 11 (iv) and (v).

**NOTING** that according to the Observations, since Rule 94*bis* does not expressly provide for the submission of a post-testimony written Corrigendum by an expert to his original report; that pursuant to Rule 89(B), the Trial Chamber must apply those Rule “which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law”,<sup>4</sup> and therefore, the admission of the Corrigendum pursuant to Rule 89 of the Rules, without providing the Accused with the opportunity for cross-examination would constitute a breach of the Accused’s right to a fair trial,<sup>5</sup>

**NOTING** that according to the Observations, if the Trial Chamber were to introduce the Corrigendum into evidence, then Patrick Ball should be recalled by the Prosecution and the Accused be granted the opportunity to cross-examine him on new matters arising,<sup>6</sup>

**NOTING** that the Response was filed after the time allowed under Rule 126 *bis* had expired, but that the Prosecution had indicated its intent to file a response,<sup>7</sup>

**NOTING** that according to the Response, while none of the new corrections contained in the Corrigendum warrant further time for cross-examination,<sup>8</sup> the Prosecution accepts the Observations regarding Rules 89 and 94*bis*,<sup>9</sup> and as a consequence, the Prosecution requests that the corrigendum be admitted into evidence under Rule 89 and for Patrick Ball not to be re-called to give additional oral evidence,<sup>10</sup>

**NOTING** that according to the Response, should however the Trial Chamber be of the view that the Accused should be allowed to ask Patrick Ball additional questions, the Prosecution requests that the Accused ask his questions in writing and Patrick Ball to provide written responses,<sup>11</sup>

---

<sup>4</sup> Observations, para. 11 (vi).

<sup>5</sup> Observations, para. 11 (ix).

<sup>6</sup> Observations, paras. 11 (vii) and (viii).

<sup>7</sup> Supplement to the Report by the Prosecution Concerning the Time Remaining for the Prosecution Case and Request for Hearing filed on 10 January 2003; also the Prosecution indicates that it received additional information from Dr. Patrick Ball on 24 January, see Response para. 3.

<sup>8</sup> Response, paras. 12, 15-17.

<sup>9</sup> Response, para. 4.

<sup>10</sup> Response, para. 4 and Conclusion.

<sup>11</sup> The Prosecution argues that the witness’ credibility has been tested during cross-examination, and so the “Trial Chamber has nothing to gain from seeing the witness live”, Response, para. 20.

**CONSIDERING** that both the Amici Curiae and the Prosecution are of the opinion that the present situation cannot be addressed under Rule 94bis,


**CONSIDERING** that Rule 94bis uses the words “full statement” of an expert witness to be “called”; and the possibility for the opposing party to call the expert witness for cross-examination, or to accept the statement; that only in this latter case, may the statement be admitted into evidence by the Chamber without calling the witness to testify in person,

**PURSUANT TO** Rules 54 and 89 of the Rules,

**HEREBY DEICDES** that the Corrigendum is admissible under Rule 89 provided Patrick Ball is made available for cross-examination on the following issues:

- (i) the source, authenticity and reliability of the new data;
- (ii) the reason for (and the precise effects of) using the adjusted Pearson Chi-Square statistic method; and
- (iii) the basis for the different figures provided in the revised tables at pages 3-13 of the Corrigendum.

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



Richard May  
Presiding

Dated this twenty-fifth day of February 2003  
At The Hague  
The Netherlands

[Seal of the Tribunal]