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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
Former Yugoslavia since 1991

Case No. IT-02-54-T
Date: 15 September 2003
Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 15 September 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

PUBLIC VERSION

**FIFTH DECISION ON APPLICATIONS PURSUANT TO RULE 54bis
OF PROSECUTION AND SERBIA AND MONTENEGRO**

Office of the Prosecutor:

Mr. Geoffrey Nice
Ms. Hildergaard Uertz-Retzlaff
Mr. Dermot Groome

Amici Curiae:

Mr. Steven Kay
Mr. Branislav Tapušковиć
Mr. Timothy McCormack

Government of Serbia and Montenegro:

Mr. Vladimir Đerić

The Accused:

Mr. Slobodan Milošević

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 a Prosecution’s Application for an Order Pursuant to Rule 54 *bis* Directing the Federal Republic of Yugoslavia to Comply With Outstanding Requests for Assistance, filed by the Office of the Prosecutor (“Prosecution”) on 13 December 2002,

NOTING the subsequent filings of the parties, the arguments made in oral hearings before the Trial Chamber on 10 March 2003 and 03 June 2003, as well as the procedural Orders issued by the Trial Chamber,¹

NOTING the following decisions of the Trial Chamber: Decision in Part on Prosecution Motion for Orders pursuant to Rule 54*bis* against Serbia and Montenegro, issued on 05 June 2003 (“**First Decision**”);² Second Decision on Prosecution Motion for Orders Pursuant to Rule 54*bis* against Serbia and Montenegro, issued 12 June 2003 (“**Second Decision**”);³ Third Decision on Prosecution Motion for Orders Pursuant to Rule 54*bis* against Serbia and Montenegro, issued 18 June 2003 (“**Third Decision**”); and [redacted],⁴

HAVING CONSIDERED the filings of the Prosecution and the Government of Serbia and Montenegro (“Serbia and Montenegro”) pursuant to the Second Decision,⁵ including the

¹ Scheduling Order for Hearing on Prosecution Motion for Binding Order, dated 10 January 2003; Written Response of Serbia and Montenegro to “Prosecution’s Application for an Order pursuant to Rule 54 *bis* Directing the Federal Republic of Yugoslavia to Comply with Outstanding Requests for Assistance”, dated 07 February 2003; Prosecution’s Request for Leave to File a Reply Regarding Outstanding Requests for Assistance, dated 14 February 2003; Order on Prosecution Request for Leave to File Reply, dated 19 February 2003; Prosecution’s Reply to the Serbia and Montenegro Response to the Prosecution’s Application for an Order Pursuant to Rule 54 *bis* Directing the Federal Republic of Yugoslavia to Comply with Outstanding Requests for Assistance, dated 27 February 2003; Submission of Serbia and Montenegro pursuant to the Chamber Order Issued at the Oral Hearing of 10 March 2003 concerning the “Prosecution’s Application for an Order pursuant to Rule 54 *bis* Directing the Federal Republic of Yugoslavia to Comply with Outstanding Requests for Assistance”, dated 06 May 2003; Prosecution Response to the 6 May 2003 Submission by Serbia and Montenegro regarding Outstanding Requests for Assistance, dated 20 May 2003; Confidential Supplemental Information to the Prosecution Response to the 6 May 2003 Submission by Serbia and Montenegro regarding Outstanding Requests for Assistance, dated 05 June 2003.

² The First Decision was initially issued on a confidential basis, but was subsequently made public.

³ The Second Decision was initially issued on a confidential basis, but was subsequently made public.

⁴ [Redacted.]

⁵ Request for Assistance from the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia to the Authorities of the Government of Serbia and Montenegro, dated 10 July 2003; confidential Prosecution’s Submission pursuant to the Trial Chamber’s Decision of 12 June 2003, filed 12 August 2003 and

Prosecution's representations regarding the existence of entities designated the "Supreme Command" and the "Supreme Command Staff",⁶

CONSIDERING the provisions of Rule 54*bis* of the Rules of Procedure and Evidence ("Rules") and the jurisprudence of the International Tribunal concerning the obligation of States to provide assistance,⁷

annexing the Prosecution's Request for Assistance 119D, dated 08 August 2003; confidential Prosecution's Supplement to the "Prosecution's Submission pursuant to the Trial Chamber's Decision of 12 June 2003", filed 21 August 2003 and annexing Serbia and Montenegro's cover letter to its production of documents relating to the Supreme Defence Council, dated 06 August 2003; confidential Report of Serbia and Montenegro pursuant to Rulings Nos. 11 and 12 of the "Second Decision on Prosecution Motion for Orders pursuant to Rule 54 *bis* against Serbia and Montenegro" dated 12 June 2003, filed 19 August 2003.

⁶ The Prosecution has adduced evidence that (1) an entity designated the "Supreme Command" existed during times of war and was the highest civilian leadership responsible for national security and (2) an entity designated the "Supreme Command Staff" existed and was a subordinate component of the Supreme Command and a wartime formation of the General Staff of the Army of the Federal Republic of Yugoslavia. *See, e.g.*, Transcript of Testimony on 17 June 2003 of Zoran Lilić, President of the Federal Republic of Yugoslavia from 1993 to 1997, at T. 22569-22570 ("The Supreme Command exists only in times of war. The Supreme Command Staff is the most qualified body implementing decisions taken by the Supreme Command. The Supreme Command is formed on the basis of the strategy of armed struggle and the doctrine of the defence for the Federal Republic of Yugoslavia. The Supreme Command consists of members of the Supreme Defence Council and then, only then, is the president of the Supreme Defence Council at the same time the Supreme Commander of the armed forces, and then the armed forces act together by certain units of the MUP joining them. Which those units are, I cannot talk about them. In addition to permanent members of the Supreme Defence Council, the Supreme Command also includes the Minister of Internal Affairs, the Minister of Foreign Affairs, the presidents of both chambers of the Federal Assembly, and the Supreme Command Staff is in fact the general staff that takes over the role of the Supreme Command Staff."). Lilić also testified that the Supreme Command includes "[t]he Minister of Defence". (T. 22569-22570.) The Prosecution elicited testimony that the mandate and obligations of the Supreme Command and the Supreme Command Staff are located in "two documents [that] are adopted by the Supreme Defence Council". (T. 22570.) Lilić continued, "[S]o I assume that as the NATO bombing began on the 24th, that a state of emergency and state of war was introduced that same day, so I assume that by decision of President Milosevic the Supreme Command was set up on the strategy of armed struggle and the military doctrine of the Federal Republic of Yugoslavia. Those are the two documents. And you'll be able to find them in the federal government -- or rather, the Federal Ministry of Defence, the military doctrine and strategy of armed struggle or battle". (T. 22570.) *See also, e.g.*, Transcript of Testimony on 12 February 2003 of General Aleksandar Vasiljević, at T. 15960 ("Q: During the extraordinary states, as we've heard, the General Staff becomes known as the Supreme Command Staff, and the President of the FRY, as the Commander-in-Chief of the VJ, commands the VJ through the Supreme Command. Would that be correct? A: Yes. Q: Now, the term "Supreme Commander" gets used from time to time. To your knowledge, did it actually exist in the legislation? A: I don't know exactly how things stand in -- on paper, but in fact, this is the Supreme Commander if the person concerned commands the army. Q: And was that title appropriate for the accused? A: Yes. Q: The Supreme Command comprised the Supreme Command Staff and what else or who else? A: Well, the Supreme Defence Council. That's the way it should be. Q: Did this incorporate the Minister of Defence? A: Yes.").

Serbia and Montenegro has made representations indicating the existence of the "Supreme Command". *See* Transcript of Hearing on 10 March 2003, at T. 17564 (Representative of Serbia and Montenegro stated that Prosecution's request for Supreme Command documentation "involves thousands of documents, and basically the whole archives of the Supreme Command for that period").

⁷ *See Prosecutor v. Tihomir Blaškić*, Judgement on the Request of the Republic of Croatia for Review of Trial Chamber II of 18 July 1997, Appeals Chamber, Case No. IT-95-14-A R108 *bis* (29 October 1997), para. 32 (holding that any request for order for production of documents issued under Article 29, para. 2 of Statute must identify specific documents and not broad categories, set out succinctly reasons why such documents are deemed relevant to trial, not be unduly onerous, and give requested State sufficient time for compliance).

PURSUANT to Article 29 of the Statute of the International Tribunal and Rule 54*bis* of the Rules,

HEREBY ORDERS the following:

- (1) (a) Serbia and Montenegro, within one week from the date of this Decision, shall inform the Prosecution whether or not meetings of the Supreme Defence Council of the Federal Republic of Yugoslavia were held between 23 March 1999 and 05 October 2000.
 - (b) In the event that any such meetings were held, Serbia and Montenegro, within two weeks from the date of this Decision, shall produce to the Prosecution the minutes and stenographic notes pertaining to such meetings. (*See* First Decision, at 3; Second Decision, Ruling No. 1; [redacted]; Prosecution Request for Assistance (“RFA”) 117, dated 15 August 2001; RFA 219, dated 25 June 2002.)
 - (c) In the event that any such meetings were not held, Serbia and Montenegro, within one week from the date of this Decision, shall so stipulate by means of a public, written, and *inter partes* filing with the Trial Chamber.
 - (d) In the event that Serbia and Montenegro is unable to so stipulate, Serbia and Montenegro, within one week from the date of this Decision, shall inform the Trial Chamber by means of a public, written, and *inter partes* filing the reasons for its inability.
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- (2) (a) Serbia and Montenegro, within one week from the date of this Decision, shall inform the Prosecution whether or not meetings were held by the Assembly of the Republic of Serbia and the Council for Harmonisation of Positions on State Policy between April 1990 and June 1997, excluding meetings on 02 April 1991, 08 April 1991, 12 December 1991, 13 December 1991, and 17 December 1991.
 - (b) In the event that any such meetings were held, Serbia and Montenegro, within two weeks from the date of this Decision, shall produce to the Prosecution the minutes and stenographic notes pertaining to such meetings. (*See* Second Decision, Ruling No. 7; RFA 203, dated 17 May 2002; RFA 279, dated 16 September 2002.)
 - (c) In the event that any such meetings were not held, Serbia and Montenegro, within one week from the date of this Decision, shall so stipulate by means of a public, written, and *inter partes* filing with the Trial Chamber.
 - (d) In the event that Serbia and Montenegro is unable to so stipulate, Serbia and Montenegro, within one week from the date of this Decision, shall inform the Trial Chamber by means of a public, written, and *inter partes* filing the reasons for its inability.

- (3) (a) Serbia and Montenegro, within two weeks from the date of this Decision, shall produce to the Prosecution the documentation requested by the Prosecution related to the Supreme Command and the Supreme Command Staff, including *but not limited to* the two documents entitled “Strategy of Armed Battle” and “Military Doctrine of the Federal Republic of Yugoslavia”. (*See* Second Decision, Rulings Nos. 8-9; RFA 118, dated 15 August 2001; RFA 118B, dated 25 March 2003; RFA 119B, dated 16 October 2002; RFA 119C, dated 16 October 2002; RFA 119D, dated 08 August 2003.)
- (b) In the event that Serbia and Montenegro maintains that the entities designated the “Supreme Command” and the “Supreme Command Staff”, or any other entity, irrespective of its nomenclature, that performed functions similar to those carried out by the entities described in this Decision, did not exist — entities, for example, (i) exercising responsibility for national security during a time of war or control over armed organisations engaged in national defence during the state of war in effect in the Federal Republic of Yugoslavia from 24 March 1999 to 10 June 1999, (ii) consisting of the voting and non-voting members of the Supreme Defence Council and any other individuals who were called upon by law or other legal instrument, order, or invitation to attend meetings of any such entities, or (iii) consisting of the General Staff of the Army of the Federal Republic of Yugoslavia during a time of war (*see, e.g.*, Footnote No. 6, above; RFA 118, dated 15 August 2001; RFA 118B, dated 25 March 2003; RFA 119B, dated 16 October 2002; RFA 119C, dated 16 October 2002; RFA 119D, dated 08 August 2003) — Serbia and Montenegro, within one week from the date of this Decision, shall so stipulate by means of a public, written, and *inter partes* filing with the Trial Chamber.

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


Richard May
Presiding

Dated this 15th day of September 2003
At The Hague
The Netherlands