

IT-02-54-T  
D 28575 - D 28572  
26 January 2004

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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: 26 January 2004  
Original: ENGLISH

**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. Hans Holthuis

**Decision:** 26 January 2004

**PROSECUTOR**

v.

**SLOBODAN MILOŠEVIĆ**

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**DECISION ON PROSECUTION SUBMISSION OF ADDENDUM TO THE  
EXPERT REPORT OF PHILIP COO**

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**Office of the Prosecutor:**

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

**Amici Curiae:**

Mr. Steven Kay  
Mr. Branislav Tapušković  
Prof. Timothy McCormack

**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 Submission of an Addendum to the Expert Report of Philip Coo”, filed by the Office of the Prosecutor (“Prosecution”) on 08 December 2003 (“Motion”), requesting that the Trial Chamber admit into evidence, under Rule 94*bis* of the Rules of Procedure and Evidence (“Rules”) (or, in the alternative, Rule 89 of the Rules), documentation in the form of an addendum to the expert report of Witness Philip Coo (“witness”), consisting of further opinions, research, and materials relating to the Joint Command for Kosovo and Metohija,<sup>1</sup>

**NOTING** the “Amici Curiae Reply to Prosecution Submission of an Addendum to the Expert Report of Philip Coo Dated 8 December 2003”, filed 12 December 2003 (“Response”),

**NOTING** the “Prosecution Reply to Amici Curiae Response to Prosecution Submission of an Addendum to the Expert Report of Philip Coo”, filed 17 December 2003 (“Reply”), which was filed without authorisation of the Trial Chamber under Rule 126*bis* of the Rules,

**CONSIDERING** the Prosecution’s arguments, as set forth in the Motion and the Reply, including the following: (1) the material in the addendum was made available to the Prosecution only after the relevant deadline set out in the Trial Chamber’s “Scheduling Order”, issued 24 May 2002;<sup>2</sup> (2) some of the material was only provided in the Summer of 2003 as a result of the on-going Rule 54*bis* litigation with the Government of Serbia and Montenegro; (3) some of the material was only permitted to be used as evidence pursuant to Rule 70 of the Rules in November 2003; and (4) some of the material was only translated (and thus available for expert analysis) in August 2003,

**CONSIDERING** the *Amicorum* arguments, as set out in the Response, including the following: (1) the addendum is inadmissible under the Rules; and (2) the Motion is inconsistent with the Trial Chamber’s jurisprudence<sup>3</sup> and Scheduling Order,

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<sup>1</sup> The addendum of Mr. Coo is dated 26 November 2003, is entitled “Forces of the FRY & Serbia in Kosovo (1998-1999), An Analysis of Their Organisation, Command & Control, and Operations, Addendum for Case No. IT-02-54-T, *The Prosecutor of the Tribunal Against Slobodan Milošević*”, and shall be referred to herein as “addendum”.

<sup>2</sup> *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, “Scheduling Order”, 24 May 2002 (ordering Prosecution “no later than . . . 29 May 2002 . . . to provide to the Trial Chamber . . . the identity and statements of all expert witnesses to be called in this case”).

<sup>3</sup> *See, e.g., infra*, note 4.

**NOTING** prior decisions by the Trial Chamber on the admission of “additional” material relating to expert witnesses,<sup>4</sup>

**CONSIDERING** that the addendum consists of (1) material that has been admitted into evidence (“admitted material”);<sup>5</sup> (2) material that has not been admitted into evidence (“additional material”); and (3) the witness’ analysis of material from both of the foregoing categories,

**CONSIDERING** that (1) the Prosecution has demonstrated sufficient grounds for the admission into evidence of some of the additional material,<sup>6</sup> but not of the remainder of the additional material;<sup>7</sup> and (2) it is thus appropriate for the witness to (a) submit a revised report, which excludes reference to and/or analysis of the additional material denied admission, and (b) appear for cross-examination on the revised report and any material upon which it relies,

**PURSUANT** to Rules 54, 89, and 126*bis* of the Rules,

**HEREBY ORDERS** as follows:

1. The Prosecution may, within seven (7) days from the date of this Decision, file a revised report of the witness, which excludes reference to and/or analysis of tabs 4, 8, and 9 of the addendum, provided that the witness appear for cross-examination on the revised report and any material upon which it relies.

<sup>4</sup> See, e.g., *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, “Decision on Prosecution’s Submission of the Expert Reports of Helge Brunborg Pursuant to Rule 94 *bis* and Motion for the Admission of Transcripts Pursuant to Rule 92 *bis* (D)”, 30 October 2003 (admitting expert reports relating to both Kosovo and Srebrenica that had been filed after 29 May 2002 deadline, but prior to expert’s testimony); *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, “Decision on Prosecutor’s Submission of Corrigendum to Expert Report of Dr. Patrick Ball”, 25 February 2003 (admitting corrigendum to expert report under Rules 54 and 89 of the Rules, provided that expert was made available for additional cross-examination on new material); *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, “Decision on Prosecution’s Submission of an Addendum to the Expert Report of Colonel Ivan Grujić”, 06 November 2003 (denying permission for Prosecution to file addendum to expert report because expert had already testified, motion for admission was past 29 May 2002 deadline, no legal authority was cited in support of motion, and significance of additional material had not been established).


<sup>5</sup> See addendum, tabs 2, 3, 6, 10, and 11.

<sup>6</sup> See addendum, tab 1 (Order from the Joint Command for Kosovo and Metohija for destroying Albanian terrorist groups in the Region of Rugovo, dated 15 April 1999); tab 5 (Rule on Official Correspondence and Office Administration in the Army of Yugoslavia, dated 04 October 1994); and tab 7 (Federal Republic of Yugoslavia Federal Ministry of Justice response to Prosecution request for assistance No. 174, dated 12 July 2002).

<sup>7</sup> See addendum, tabs 4, 8, and 9.

2. The Prosecution is granted leave to file the Reply.

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



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Richard May  
Presiding

Dated this 26th day of January 2004  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**