

UNITED  
NATIONS



**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: IT-00-39-T**

**Date: 24 April 2006**

**Original: English**

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**IN TRIAL CHAMBER I**

**Before: Judge Alphons Orie, presiding  
Judge Joaquín Martín Canivell  
Judge Claude Hanoteau**

**Registrar: Mr Hans Holthuis**

**Decision of: 24 April 2006**

**PROSECUTOR**

**v.**

**MOMČILO KRAJIŠNIK**

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**FINALIZED PROCEDURE ON CHAMBER WITNESSES;  
DECISIONS AND ORDERS ON SEVERAL  
EVIDENTIARY AND PROCEDURAL MATTERS**

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**Office of the Prosecutor**

**Mr Mark Harmon  
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**Counsel for the Defence**

**Mr Nicholas Stewart, QC  
Mr David Josse**

Procedure on Chamber witnesses

1. By order dated 7 April 2006, the Chamber requested the parties to comment on the Chamber's draft procedure – annexed to that order – on calling and examining Chamber witnesses. The parties' comments were heard in court on 11 April. The Chamber is grateful to the parties for their input. We have amended the procedure in light of the parties' remarks and our own reconsideration of some of its elements. The main changes are highlighted in the finalized procedure found in the Annex to the present decision.

2. While many of the parties' suggested improvements were implemented, we did not agree with all criticisms of the draft procedure, as explained below.

3. The Defence objected to paragraph 2 of the draft procedure ("The parties or their agents are not to have any contact with the prospective Chamber witnesses from the time that their names are announced to the parties") as a restriction that is not "proper and reasonable".<sup>1</sup> We do not agree, and have not amended this part of the procedure, since in principle the parties are to be given adequate notice of the expected testimony of a Chamber witness, thus removing the main reason for a party wanting to make contact with the witness. Another consideration is that the persons who have been identified by the Chamber as potential Chamber witnesses have been considered by one or both of the parties as potential witnesses, and it was entirely predictable to the parties that the Chamber would wish to hear them, due to the pre-eminent positions they held at the time.

4. We cannot, of course, rule out very exceptional circumstances in which it would be appropriate for a party, or perhaps both parties, to have preliminary contact with a prospective Chamber witness. Such requests will be dealt with by the Chamber on a case-by-case basis.

5. The Defence argued that paragraphs 5, 7, and 13 of the draft procedure entailed "judicial decision[s] involving judicial discretion and should therefore at least provide the opportunity for submissions by the parties."<sup>2</sup> The Chamber will decide, on a case-by-case basis, whether the parties will be invited to make submissions in the circumstances referred to in those paragraphs of the procedure.

6. In relation to step 11 of the procedure (the preliminary interview, which according to the procedure is to be conducted by a legal officer of the Chamber), the Defence raised "a

<sup>1</sup> T. 22839.

fundamental objection to a Legal Officer being involved in this sort of interview with a witness or a prospective interview if he or she is then to have any further role in the case at all.”<sup>3</sup> The Prosecution seemed less concerned about the proposed role of the legal officer.<sup>4</sup> The Chamber, having deliberated, denied the Defence’s objection, and summarily decided not to modify the legal officer’s role.<sup>5</sup> We promised to give reasons.

7. The issue is about the deontology of the Chamber’s working practices. The Defence appears to be concerned that the legal officer might form a bias for or against a witness based on information gained during the preliminary interview with the witness – information that is not accessible to the judges. (Such information can only be visual, since the audio-recording of the interview is available to the judges.) This bias, the Defence suggests, might creep into the advice the legal officer gives to the judges, or into written drafts prepared by the legal officer.<sup>6</sup> One assumption here is that a legal officer advises the judges on questions of credibility or reliability of witnesses – which is simply wrong. Advice of this kind goes precisely in the opposite direction (as, for example, when the judges give drafting instructions to a legal officer). In this operating model there is a clear and heavily guarded demarcation of responsibilities between the judges and the legal officers of the Chamber. The ethic leaves no room for improper influence to be exerted upon the judges by a legal officer, as the legal officer is always acting under the direction of the judges. The Defence’s allegation that these lines are “blurred” therefore betrays a misconception on its part.

8. As for justice being seen to be done – a point raised by the Defence<sup>7</sup> – an informed member of the public would not, in our estimation, apprehend a risk that the judges in the present case would be exposed to improper influence as a result of the implementation of the procedure involving the legal officer. Quite apart from certain basic presumptions working in favour of the bench, there are enough checks built into the strictly defined interview procedure to eliminate the apprehension of risk.

9. The Defence’s next objection related to the disclosure deadline for witness statements contained in step 14 of the procedure (“The Chamber is to provide the parties with the English version of the statement immediately after it is prepared, as a rule no less than seven working

<sup>2</sup> T. 22839.

<sup>3</sup> T. 22840.

<sup>4</sup> T. 22845.

<sup>5</sup> T. 22878.

<sup>6</sup> T. 22846-22848.

<sup>7</sup> T. 22848.

days prior to the date on which the testimony of the witness is scheduled”). The Defence asserted that this constituted insufficient notice.<sup>8</sup> The Chamber will leave the minimum notice at seven working days, which we deem sufficient, but aim to give the parties at least two weeks’ notice in practice.

10. The Defence asked<sup>9</sup> for clarification of the provision in the draft procedure which stated that “Chamber witnesses will not normally be proofed by Chamber staff prior to giving testimony.” The Chamber has decided to delete this sentence because the proximity in time of the preliminary interview and the testimony of a Chamber witness renders the proofing of the witness unnecessary.

11. Step 16 (d) of the procedure, in its final version, states that “The witness is to be cross-examined by the parties, first by the Prosecution and then by the Defence. The scope of the parties’ cross-examination shall be limited to the subject-matter of the witness’s statement, the witness’s answers to the judges’ questions, matters raised by answers elicited by one of the cross-examining parties, and questions going to the credibility of the witness.” The Defence submitted<sup>10</sup> that this provision should be expanded to include the words of Rule 90 (H) (i) of the Tribunal’s Rules of Procedure and Evidence, that “...where the witness is able to give evidence relevant to the case for the cross-examining party, [cross-examination may go] to the subject-matter of that case.” The Prosecution made a concordant comment, to the effect that “the general terms of 90 (H) should be met in this case and that the parties should be able to inquire about issues relevant to the party’s case.”<sup>11</sup>

12. The parties’ concerns can be adequately addressed by the discretionary powers given to the Chamber under Rule 90 (H) (iii).

13. In conclusion, the Chamber adopts the amended procedure on calling and examining Chamber witnesses as shown in the Annex to this decision.

#### Prosecution material on prospective Chamber witnesses

14. The Prosecution and the Defence are hereby invited to file confidentially, within four days of the date of this decision, a list of material suitable for disclosure in the form of

<sup>8</sup> T. 22842.

<sup>9</sup> T. 22842.

<sup>10</sup> T. 22842.

<sup>11</sup> T. 22848.

interview records or witness statements relating to the four prospective Chamber witnesses whose names were announced to the parties in closed session on 11 April 2006.<sup>12</sup> A brief description of the subject-matter of each document, as well as its length in pages, should be given in the list. The Chamber will thereby be in a position to decide which of the material referred to in the list it wishes to receive, pursuant to step 7 of the procedure on calling and examining Chamber witnesses (annexed to the present decision).

#### Reasons for grant of three days to Defence

15. On 11 April 2006 the Chamber granted the Defence three days to use as it wished, in compensation for an error in the Chamber's database reports on the time spent with witnesses in court.<sup>13</sup> The error was made by a legal officer while entering into the Chamber's database the time recordings supplied to him by the Registry's Court Officer. The Chamber consults these time reports when making decisions on scheduling, thus it is important that they are accurate. The error was detected by lead counsel for the Defence, and we are very grateful to him for bringing it to our attention. We responded by reviewing all the time recordings in our database, by comparing them with the Registry's records. The only serious errors were in the Defence phase of the case.

16. As at the end of the twentieth Defence witness (Krsman), we had informed the parties that the total testimony time for Defence witnesses was 134 hours, when it was 148, and that the cross-examination of Defence witnesses had taken 64 per cent of the time-in-chief, when the real figure was closer to 76 per cent. With the Chamber misinformed about the proportion of time being consumed in cross-examination, the Prosecution was inadvertently allowed to run above the cross-examination guideline of 60 per cent. Had the Prosecution been held at 60 per cent, the Defence would have had at its disposal 10 additional hours for the Defence phase of the case (60 per cent of 63.9 hours of in-chief testimony is 38.3 hours, as opposed to the 48.4 hours the Prosecution enjoyed). This translates into about three days in court.

17. Mr Krajišnik's testimony had been scheduled to start on 20 April 2006.<sup>14</sup> The Defence opted to use its three additional days for further preparation of his testimony, which shall now

<sup>12</sup> T. 22938.

<sup>13</sup> T. 22868-22870.

<sup>14</sup> T. 21944-21946.

start on 25 April. A maximum of seven weeks has been allocated for Mr Krajišnik's testimony, which means that it must come to a close on or before **13 June 2006**.

#### Deadline for final briefs

18. Counsel for the Defence informed the Chamber that the Defence would need six weeks from the date of the last evidentiary hearing to submit a final trial brief in accordance with Rule 86 of the Tribunal's Rules. Counsel submitted that although the Defence brief had been in progress (the project was described in a report addressed to the Chamber<sup>15</sup> entitled "Krajišnik Defence Team since 22 July 2005", signed by counsel for the Defence and dated 28 October 2005), the project was being carried out by a junior member of the Defence team. Neither lead counsel nor co-counsel for Mr Krajišnik has been able to spend any significant amount of time on the project.<sup>16</sup>

19. The Chamber's scheduling order of 26 April 2005, which in this respect has not been modified by later orders, gave the parties eleven working days from the date of the last evidentiary hearing to submit their final trial briefs. This, in our view, is sufficient time in which to finalize a trial brief, as a party must allocate its resources in such a way as to allow for the development of the brief over the course of the trial.

20. That counsel for the Defence has not found time to work on the brief may be due to Mr Krajišnik's non-payment, since the start of the trial, of his assessed contribution to his defence fund, which is a significant proportion of the whole. The Chamber has had cause to note on several occasions that it would run contrary to the interests of justice, and make a mockery of the Tribunal's legal aid programme, to dole out grants of the Tribunal's precious time to compensate for the Accused's decision to keep his defence team underfunded.

21. The Chamber does not expect the deadline for final briefs to be later than 14 July 2006.<sup>17</sup> The date of the last evidentiary hearing shall fall at least eleven working days prior to the deadline, which the Chamber will be in a position to determine once it has decided whether it will call Chamber witnesses.

<sup>15</sup> T. 17889 (for the proceedings which led to the production of this report).

<sup>16</sup> T. 22866-22867.

<sup>17</sup> The length of final trial briefs is provided for in the "Practice direction on the length of briefs and motions", 16 September 2005, clause 4.

22. The April 2005 scheduling order gave the parties seven working days to prepare their closing oral arguments, and two days to present them. The time for preparation shall remain the same, only now it will come at the end of a three-week summer recess.

23. We have decided to grant a third day for the presentation of the parties' closing oral arguments. Thus there will be plenty of opportunity for the parties to elaborate orally the arguments in their final briefs.

24. The Chamber will deliver its judgement in the case on or before **29 September 2006**.

B/C/S transcript of Mr Krajišnik's testimony

25. By motion dated 20 April 2006, the Defence requested that Mr Krajišnik be supplied with a B/C/S transcript of his testimony. The Chamber denied an earlier Defence motion to have all transcripts of the proceedings in this case translated into B/C/S.<sup>18</sup> We understand that the present request is different, insofar as it does not demand translation, but rather the production of a B/C/S transcript.

26. The Chamber observes that Mr Krajišnik has requested to be a witness in his case. He shall be considered like other witnesses. He has spent many months preparing for his testimony, during which he and his counsel have had the opportunity to review in detail the subject-matter and material to be used in the course of his testimony.

27. During the many weeks Mr Krajišnik is expected to be on the stand, he will not be without records of his testimony. He is entitled to receive audio-recordings of the proceedings. He may take notes in relation to his testimony during adjournments in the proceedings. He may, if appropriate, ask the Chamber to read back to him answers he gave to earlier questions. The Chamber would not object were Defence counsel (and Prosecution counsel, if willing) to provide Mr Krajišnik with a daily list of topics they wish to examine him on, to assist with Mr Krajišnik's note-keeping.

28. The Chamber therefore denies the Defence motion.

<sup>18</sup> T. 4993-4999.

Accused as witness: initiating contact

29. Like any witness who has made a solemn declaration pursuant to Rule 90 (B) of the Tribunal's Rules, Mr Krajišnik may not speak to anyone with respect to testimony he has given, is giving, or is about to give.

30. The Chamber hereby directs Mr McFadden, commanding officer of the UNDU, to disconnect Mr Krajišnik's two privileged-communication telephone lines from 25 April 2006 until the end of his testimony.

31. While there shall be no communication between Mr Krajišnik and his counsel during the course of Mr Krajišnik's testimony, exceptions may be made for matters not related to the Accused's evidence, but only after the Chamber has given permission for such contact. If counsel for the Defence wish to initiate the contact, they must address the bench directly or through a legal officer. Should Mr Krajišnik wish to initiate contact with his counsel during his testimony, the procedure shall be as follows:

- (a) He shall write a brief note addressed to the Chamber stating the reasons for his wish to make contact with his counsel.
- (b) Whether he is at the Tribunal or at the UNDU, Mr Krajišnik is to give the note to a security officer. Security officers present at the Tribunal or at the UNDU are to be informed that during this period such notes are to be sent immediately to the Court Officer, Mr Riaz Haider, Tribunal extension 5689.
- (c) The Court Officer shall send the note to CLSS for immediate translation.
- (d) The original and the translation shall be provided to the Chamber, which is to inform the parties that it has received a request for communication, without revealing the content of the note.
- (e) The Chamber will decide whether Mr Krajišnik is to be allowed communication with his Defence team and will issue instructions concerning the communication.



### Admission of P1118

32. Item P1118, allegedly a Tanjug agency report, was tendered by the Prosecution on 22 March. The Defence objected to its admission on 23 March, due to its unclear source<sup>19</sup> and the fact that Witness Maričić denied having knowledge of the contents of the report.<sup>20</sup>

33. Since certain parts of this document thought relevant by the Prosecution were read into the record, there is no reason to admit the report into evidence, especially considering that it seems to have been printed off the Internet in English, there is no B/C/S copy, and the original source, author, and language of the alleged report are uncertain.

### Admission of Savkić exhibits

34. With respect to items introduced during the testimony of Witness Savkić, the Defence withdrew its objections to P1055 on 13 March 2006,<sup>21</sup> withdrew its objections to P1056 and P1057 on 17 March,<sup>22</sup> and does not oppose the admission of P1059 and P1060.<sup>23</sup> Therefore, the Chamber admits these items into evidence.

### Admission of Bjeliča exhibits

35. With respect to the items introduced during the testimony of Witness Bjeliča – namely P1152 through P1162, P1164, D160 through D166, and D168 – the parties have informed the Chamber that they have no objections. These items are therefore admitted into evidence.

36. With respect to item P1163, the Chamber, in view of an agreement between the parties, of which the Chamber has been informed, admits only that portion of the document which appears above the heading “Statement” on the first page.

<sup>19</sup> T. 21895-21896.

<sup>20</sup> T. 21784-21785.

<sup>21</sup> T. 21181.

<sup>22</sup> T. 21538.

<sup>23</sup> T. 21538.

Admission of minutes of Presidency sessions

37. With respect to the minutes of meetings of the Bosnian-Serb Presidency, presented by the Prosecution on 5 April, the Defence had no objections.<sup>24</sup> The Chamber therefore admits into evidence:

- Minutes of the 13th session, dated 2 July 1992;
- Minutes of the 16th session, dated 7 July 1992;
- Minutes of the 18th session, dated 12 July 1992;
- Minutes of the 20th session, dated 20 July 1992;
- Minutes of the 26th session, dated 23 August 1992;
- Minutes of the 28th session, dated 1 September 1992;
- Minutes of the 29th session, dated 3 September 1992.

The Chamber requests the Registrar to assign Prosecution exhibit numbers to these exhibits and to inform the Chamber and the parties accordingly.

Admission of other exhibits

38. With respect to item P1138, a bundle of documents relating to the death of Mr. Hottić, which was discussed in court on 28 March 2006,<sup>25</sup> there have been no objections. The Chamber admits this item into evidence.

39. With respect to item D109, consisting of five photographs of destroyed buildings, there have been no objections. The Chamber admits this item into evidence.

40. With respect to item D114,<sup>26</sup> namely pages 246 and 247 from David Owen's book *Balkan Odyssey*, the required translation was tendered on 24 March 2006. There have been no objections, and the Chamber admits this item into evidence.

41. With respect to item D123,<sup>27</sup> consisting of pages 1 to 12 and 34 to 42 of a 1990 manual written by Dragan Kapetina, the required translation was tendered on 27 March 2006. There have been no objections, and the Chamber admits this item into evidence.

<sup>24</sup> T. 22565.

<sup>25</sup> T. 22153.

<sup>26</sup> T. 19533.

42. With respect to item D167, a report prepared by the Federal Republic of Yugoslavia on preparations by Muslims and Croats for forcible secession, the Chamber has considered the submissions of the parties<sup>28</sup> and decides to admit the whole of the document into evidence.

#### Items D147 and D149

43. With respect to item D147, a letter written by Branko Đeric, and item D149, a decision of the Government of the Bosnian-Serb Republic, the required translations were received by the Registry on 4 April and 30 March, respectively. The Prosecution has until **Thursday 27 April 2006** to raise any objections, or they shall be admitted, without more, into evidence.

#### Status of P1135

44. With respect to item P1135, an intercept of a telephone conversation introduced and discussed on 27 March 2006,<sup>29</sup> the Chamber grants the parties **until Friday 28 April 2006** to agree on whether to admit into evidence only the portion referred to during cross-examination or the complete transcript of the conversation. By that deadline, the parties are expected to report to the Chamber on whether a solution has been found. If the parties fail to agree, the Chamber will decide the matter itself.

#### Translations

45. The following items were submitted by the Defence without English translations:
- item D146, minutes of the 77th session on the Bosnian Presidency, tendered on 16 March 2006;
  - item D158, minutes of a Bosnia-Herzegovina Presidency meeting dated 20 June 1992, tendered on 5 April 2006;
  - item D159, an extract from Sefer Halilović's book, tendered on 5 April 2006.

<sup>27</sup> T. 20109.

<sup>28</sup> T. 22855-22858.

<sup>29</sup> T. 22024, 22041-22046.

If the English translations of these items are not ready for immediate submission, the Defence is instructed to contact a legal officer of the Chamber with information about the date the item was submitted to CLSS and the expected date of the completed translation.

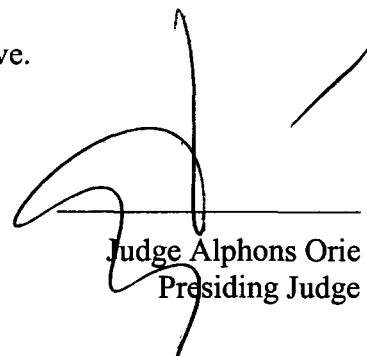
46. Items P1077, P1079, P1081, P1082, and P1084 were tendered by the Prosecution on 9 March 2006. The Chamber reminded the Prosecution on 21 March 2006 that these items still lack B/C/S translations.<sup>30</sup> If the B/C/S translations of these items are not ready for immediate submission, the Prosecution is instructed to contact a legal officer of the Chamber with information about the date the item was submitted to CLSS and the expected date of the completed translations.

47. Item P1147, a newspaper article dated 19 March 1992, was tendered by the Prosecution on 4 April 2006 without an English translation. If the English translation of this item is not ready for immediate submission, the Prosecution is instructed to contact a legal officer of the Chamber and with information about the date the item was submitted to CLSS and the expected date of the completed translation.

Compact disk of item D139

48. With respect to item D139, on 16 March 2006 the Defence was ordered to provide the interview played in court on a compact disk by 27 March 2006.<sup>31</sup> Having missed this deadline, the Defence is now instructed to submit the compact disk **by Friday 28 April 2006**.

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



Judge Alphons Orie  
Presiding Judge

Dated this 24th day of April 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

<sup>30</sup> T. 21728.

<sup>31</sup> T. 21535.

## ANNEX

Finalized procedure on calling and examining Chamber witnesses

(Changes from 7 April 2006 version indicated in **bold**)

1. A final decision by the Chamber on whether to call persons to testify as Chamber witnesses will be made at the close of the defence case. Until that time, preparatory steps in respect of potential Chamber witnesses will be undertaken by the Chamber, assisted by the Registry and the parties, in accordance with the procedure set out below. The procedure may not be applied in the same manner in all circumstances. For example, it may not be necessary to undertake step 11 of the procedure (the preliminary interview) with witnesses of relatively minor importance. Moreover, the procedure may have to be substantially modified in cases where the prospective witness is in legal custody.
2. The parties or their agents are not to have any contact with the prospective Chamber witnesses (“witnesses”) from the time that their names are announced to the parties. **The parties may apply for relief from this rule in exceptional circumstances.**
3. The Chamber is to locate the witnesses and arrange for them to be informed that they are being considered as Chamber witnesses in the case. To this end:
  - (a) The parties may be requested to supply the Chamber with any information they may have about the whereabouts, health, and custody status of the witnesses.
  - (b) The Chamber may issue a request for state cooperation, pursuant to Article 29 of the Tribunal’s Statute, in relation to each witness. The state may be requested to locate the witness, inform the witness that he or she may be contacted by a legal officer of the Tribunal for the purpose of giving evidence in the case, gather the witness’s contact information, and report back to the Chamber with the contact information.
4. Once the witness information has been obtained, a legal officer of the Chamber is to conduct a telephone conference with the witness at a suitably equipped facility at the Tribunal:
  - (a) The telephone conference is to be conducted by the Chamber’s legal officer in the presence of a Court Officer (who will minute the procedure and provide other support

consistent with the Registry's neutral role) and a CLSS interpreter (to translate between the legal officer and the witness).

(b) The telephone conference is to be audio-recorded (but not transcribed). **The recording will be made available by the Chamber to a party.**

(c) The first objective of the telephone conference is to determine the prospective witness's **willingness and availability** ~~and initial reaction to giving to give~~ evidence **as a Chamber witness** at the Tribunal.

(d) Should the witness refuse to speak to the legal officer before obtaining legal advice, the legal officer will offer to reschedule the telephone conference to give the witness an opportunity to obtain legal advice. The legal officer is to inform the witness that, should the witness refuse to cooperate further, the Chamber may decide to subpoena the witness to testify before the Chamber.

(e) The second objective of the telephone conference is to complete the VWS's Witness Information Sheet. This is to be done by the legal officer in consultation with the witness.

(f) The witness will be informed that he or she may be brought to The Hague at the Tribunal's expense in order to give a statement to the legal officer of his or her prospective testimony (see step 11, "preliminary interview"). Should the witness express concern about prosecution or arrest, the legal officer may inform the witness about guarantees which may be provided by the Tribunal to prevent detention or prosecution of the witness during travel to The Hague (e.g. safe conducts), as well as Rule 90 protection against self-incrimination while testifying before the Chamber.

**(g) Upon completion of the telephone conference, the legal officer is to report to the Chamber, which shall in turn inform the parties that the telephone conference has been completed.**

5. Should the witness refuse to cooperate in the course of step 4, or refuse to cooperate after having received independent legal advice, the Chamber may decide to subpoena the witness to testify before the Chamber. In such a case there will be no preliminary interview, and the remainder of this procedure shall be modified accordingly.

6. As provided for in step 4, for each witness, the Chamber is to complete a Witness Information Sheet for the VWS. The Chamber is to specify the date of the preliminary

interview and (should the Chamber decide to call the witness) the expected date of testimony. The VWS shall implement standard procedures for bringing witnesses to The Hague.

7. If the Prosecution has conducted interviews with a prospective Chamber witness, the Chamber may order the production of the record of the interviews to the extent that the materials are not covered by Rule 70 of the Tribunal's Rules of Procedure and Evidence. **The same applies to the Defence, except that a Chamber will not order but only request the Defence to produce interview records which may be of assistance to the Chamber.**

8. The Chamber is to prepare a list of topics for each witness, with specific questions under each topic, and assemble and organize under the topics the documentary material to be presented to the witness. The parties have no role in these preparations.

9. On the basis of the work described in step 8, the Chamber is to prepare a list of questions for the preliminary interview with the witness. **The parties are not involved in this stage.** CLSS is to translate these questions into the witness's language in advance of the interview.

10. The witness is to be brought to The Hague by the VWS for the preliminary interview. When contacting the witness, the VWS is to deliver to the witness, on behalf of the Chamber, a letter from the legal officer addressed to the witness to which are attached the questions referred to in step 9 and any exhibits relevant to understanding the questions. The letter will request the witness to bring to The Hague for the preliminary interview any documents (e.g. diary entries, copies of correspondence, official documents) which may be relevant to answering the attached questions. The usual VWS support for testifying witnesses will be provided to the witness during the period of his or her preliminary interview. This includes alerting the legal officer to any issues raised by the witness which may affect the capacity of the witness to participate in the preliminary interview, e.g. health issues or security threats to the witness or to his or her family.

11. Preliminary interview, to be held at a suitably equipped facility at the Tribunal:

(a) The preliminary interview is to be conducted by a legal officer of the Chamber in the presence of a Court Officer (who will minute the procedure and provide other support consistent with the Registry's neutral role), a CLSS interpreter, and a CLSS court reporter. No other persons shall be present at the preliminary interview, unless the Chamber has given permission for the witness's lawyer to be present.

(b) The preliminary interview is to be audio-recorded (both B/C/S and English channels) **and an English transcript produced. The recording or the English transcript will be made available by the Chamber to a party.**

(c) Practical arrangements and other needs of the witness (e.g. protective measures) will be discussed between the legal officer and the witness in the course of the preliminary interview. At the appropriate time, the parties will be invited to make submissions on any protective measures proposed by the Chamber for its witnesses.

(d) Should the witness express concerns about self-incrimination during the preliminary interview, the legal officer is to suspend the interview, seek the Chamber's advice, and convey the Chamber's written response to the witness.

(e) The questions referred to at step 9 are to be put to the witness by the legal officer through the interpreter, and the translation of the witness's answers is to be recorded by the court reporter.

(f) Documents that the Chamber is considering to use with the witness in the course of his or her testimony may be presented by the legal officer to the witness in the course of the preliminary interview. If a document is an exhibit under seal, the legal officer is to instruct the witness not to disclose its contents.

(g) The legal officer is to compile the witness's translated answers to the questions into a statement, which a CLSS interpreter, in the presence of the legal officer and the Court Officer, will read back to the witness. The legal officer shall incorporate any corrections made by the witness, and the witness and the legal officer shall sign the English version of the statement and initial its pages. The witness is to receive a copy of the signed statement.

(h) Standard guidelines for interviewing witnesses and taking statements are to be followed. These are summarized at the end of the procedure.

**(i) Upon completion of the preliminary interview, the legal officer is to transmit to the Chamber the witness statement, the transcript of the interview, and any documents received from the witness. The Chamber shall inform the parties that the preliminary interview has been completed.**

12. In the case of a witness who is in custody and cannot have his or her preliminary interview in The Hague, steps 10 and 11 are to be modified so as to achieve as far as possible



the same outcomes. The main modification is likely to be that the Chamber will send a legal officer to conduct the preliminary interview at the place where the witness is being held. An interpreter and an audio-typist, who is to rely on the audio-recording of the interview for the production of the transcript, are to accompany the legal officer, or be hired locally. (See also paragraph 7 of the guidelines for interviewing witnesses, below.)

13. After the conclusion of the preliminary interview, the Chamber may issue the witness a formal summons (or, if need be, a subpoena) to appear to testify.

14. The witness's statement and any other material provided by the witness are to be translated into B/C/S or English (as required) by CLSS. The Chamber is to provide the parties with the English version of the statement immediately after it is prepared, and as a rule no less than seven working days prior to the date on which the testimony of the witness is scheduled (or provisionally scheduled). The VWS is to forward a B/C/S-speaking witness a copy of the translation of the witness's statement in B/C/S. The parties are also to receive this translation.

15. Upon further instructions from the Chamber, the VWS is to bring the witness to The Hague for testimony. ~~Chamber witnesses will not normally be proofed by Chamber staff prior to giving testimony.~~ Chamber staff are not to have any contact with the witness during the course of the witness's testimony. The usual VWS support will be provided to the witness.

16. Testimony of the witness:

(a) The witness will be asked whether he or she adopts the statement given at the preliminary interview and whether he or she would like to add something to it. The statement is to be entered into evidence pursuant to Rule 89(F).

(b) A summary of the statement, prepared by the Chamber, will be read out by the Presiding Judge for the purposes of informing the public about the contents of the statement. The witness will be asked whether the summary is correct.

(c) The witness will be examined by the judges in relation to the subject-matter of the statement, and in relation to other matters raised by answers elicited by the Chamber. The constraints on questioning a witness which are placed upon the party calling the witness shall not apply to the judges. Exhibits will be presented to the witness and admitted in the usual manner, with an opportunity given to the parties to object.

(d) The witness is to be cross-examined by the parties, first by the Prosecution and then by the Defence, **within the time-limits set by the Chamber**. The scope of the parties'

cross-examination shall be limited to the subject-matter of the witness's statement, ~~his or her answers to the judges' questions, and to questions going to the credibility of the witness~~ the witness's answers to the judges' questions, matters raised by answers elicited by one of the cross-examining parties, and questions going to the credibility of the witness.

(e) The witness may be re-examined by the judges.

(f) Further cross-examination by the parties will be allowed.

17. The time-limits and notice requirements set or implied by this procedure may be modified by the Chamber in exceptional circumstances.

*Guidelines for interviewing witnesses and taking statements (step 11 of procedure):*

1. The witness is to be brought to the Tribunal interview facility by a VWS officer, who will accompany the witness during any breaks in the preliminary interview, and who will lead the witness away when the interview is finished.

2. The witness will be informed that the Chamber's legal officer is conducting the interview for the purpose of producing a statement of the witness's expected testimony signed by the witness, and that the signed statement will be given to the Chamber and the parties, and may be entered into evidence in the course of the proceedings.

3. The witness will be informed that he or she may be called to testify before the Tribunal, and, if so, that his or her identity will be made public, unless protective measures are sought and granted, but that in any case the identity of the witness will be disclosed to the Prosecution and the Defence.

4. The legal officer may seek to clarify a question which the witness does not appear to understand, and may ask the witness for more information where the answer is inadequate (e.g. too brief) or unclear.

5. The legal officer may additionally inform the witness about the purpose of the trial and its procedure. This may include the role of the persons present in the courtroom. The legal officer may explain the form in which questions are likely be asked by the judges and the parties, and the form in which they are expected to be answered.

6. During any breaks in the interview, those participating in the interview are not to discuss any matter that goes to the substance of the interview.
7. In those cases where the preliminary interview is not being conducted at the Tribunal, in conditions of simultaneous interpretation, ~~the legal officer will arrange for the interpreter to translate one sentence at a time.~~ ~~T~~ the witness is to be asked to speak only when the interpreter has finished the translation. The interpreter shall be reminded that the interpretation must be verbatim. If the witness asks for clarification, the interpreter is to convey the request to the legal officer. The interpreter is not to provide the clarification himself or herself. An audio-recording **is as well as a backup recording** are to be made, and an audio-typist employed to produce the English transcript.
8. As to the format of the statement, the paragraphs of the statement are to be numbered, the last page of the statement is to be signed and dated by both the witness and the legal officer. Each page of the statement is to be initialled by the witness and by the legal officer. The cover page of the statement shall record the date, time, and place of the interview, the persons present, the language spoken by the witness, and any other relevant information. The Court Officer may assist with these matters.
9. Any documentary evidence produced by the witness to the legal officer is to be fully described in the body of the statement. Copies of this material, and English translations where needed, shall be provided to the parties together with the signed statement, as mentioned in step 14 of the procedure.