



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-98-29/1-T

Date: 5 April 2007

Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Frederik Harhoff

**Registrar:** Mr. Hans Holthuis

**Decision of:** 5 April 2007

**PROSECUTOR**

v.

**DRAGOMIR MILOŠEVIĆ**

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**DECISION ON PROSECUTION MOTION TO LIMIT  
DEFENCE EVIDENCE RELATING TO PRINCIPLES OF  
*TU QUOQUE* AND PROVOCATION**

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**The Office of the Prosecutor:**

Mr. Alex Whiting  
Mr. Stefan Waespi  
Ms. Carolyn Edgerton  
Mr. John Docherty

**Counsel for the Accused:**

Mr. Branislav Tapušković  
Ms. Branislava Isailović

**TRIAL CHAMBER III** (“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 (“Tribunal”);

**BEING SEISED** of the “Prosecution’s Motion to Limit Defence Evidence Relating to the Principles of *tu quoque* and Provocation” filed by the Office of the Prosecutor (“Prosecution”) on 19 March 2007 (“Motion”), in which the Prosecution requests the Trial Chamber to issue an order “precluding the Defence from adducing evidence in support of the defences of *tu quoque* and provocation”;<sup>1</sup>

**NOTING** that in the Motion, the Prosecution contends that, during cross-examination of Prosecution witnesses, the Defence asserted that members of the Army of Bosnia and Herzegovina (“ABiH”) also committed unlawful sniping and shelling as well as other atrocities or war crimes, and that attacks on civilian targets by the Bosnian Serb forces were provoked by ABiH attacks;<sup>2</sup>

**NOTING** that the Prosecution further submits that the Defence thereby attempts to invoke the defences of *tu quoque* and provocation which, according to Prosecution, are both invalid in international criminal law;<sup>3</sup>

**NOTING** that the Defence has not responded to the Motion;

**CONSIDERING** that the Prosecution seeks a general ruling of the Trial Chamber precluding the Defence from adducing evidence of a certain nature;

**CONSIDERING** that the Trial Chamber is always mindful of its duty to exclude evidence that, on the basis of the applicable law, is not admissible;

**CONSIDERING** therefore that, in the circumstances, such a general ruling is not warranted;

**CONSIDERING** that each party is entitled to present its case in a way it deems appropriate, provided it does so within the confines of the Tribunal’s Statute and the Rules of Procedure of Evidence (“Rules”);

**CONSIDERING** pursuant to Rule 89 (C), a Trial Chamber may admit any relevant evidence which it deems to have probative value;

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<sup>1</sup> Motion, para. 8.

<sup>2</sup> Motion, paras 2, 5.

<sup>3</sup> Motion, paras 3, 5.

**CONSIDERING** that Rule 90 (H) provides that cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of that case;

**CONSIDERING** that the Trial Chamber will, on the basis of the applicable law, decide on a case-by-case basis whether evidence adduced by any party in the present case is admissible;

**CONSIDERING** that there is no justification for the general ruling requested in the Motion;

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rule 54 of the Rules,

**HEREBY DISMISSES** the Motion.

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



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Judge Patrick Robinson  
Presiding

Dated this fifth day of April 2007

At The Hague

The Netherlands

**[Seal of the Tribunal]**