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 No.: IT-03-67-T

Date: 1 December 2008

Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, Presiding**
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: **Mr Hans Holthuis**

Decision of: **1 December 2008**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

REDACTED VERSION OF THE "DECISION ON MONITORING THE PRIVILEGED COMMUNICATIONS OF THE ACCUSED WITH DISSENTING OPINION BY JUDGE HARHOFF IN ANNEX" FILED ON 27 NOVEMBER 2008

The Accused

Mr Vojislav Šešelj

The Registrar

Mr Hans Holthuis

I. INTRODUCTION

1. Trial Chamber III ("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") is seized of an oral motion by Vojislav Šešelj ("Accused") dated 9 October 2008 – reiterated several times after the extension of the initial decision – concerning the Registry decision to monitor his communications with the members of his defence team who signed a confidentiality agreement with the Registrar of the Tribunal on 21 December 2006 ("privileged communications" and "privileged associates", respectively),[1]

II. PROCEDURAL BACKGROUND

2. In a letter dated 29 September 2008, the Registrar informed the Accused of his decision to monitor[2] the privileged communications of the Accused pursuant to Rule 65 (B) of the Rules of Detention[3] ("Decision of 29 September 2008").[4]

3. The Accused seized the Chamber by oral motion dated 9 October 2008, arguing that this measure was taken in violation of his defence rights.[5]

4. In a letter dated 29 October 2008, the Registrar informed the Accused of his decision to extend the monitoring of his privileged communications for a new period of 30 days based on the fact that there had been no substantial change in the circumstances that had justified the Decision of 29 September 2008 ("Decision of 29 October 2008").

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[1] Hearing of 9 October 2008, court transcript in French ("T(F)") 10584-10585. *See* the confidentiality agreement signed with the Registry on 21 December 2006 by Slavko Jerković, Zoran Krasić, Aleksandar Vučić and Marina Raguš.
[2] The Chamber notes the difference in terminology in the English and French versions of Rule 65 of the Rules of Detention, the English version using the term "monitoring" while the French versions uses "mise sur écoute".
[3] Rules Governing the Detention of Persons awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal ("Rules of Detention"), adopted on 15 May 1994, as amended on 21 July 2005.
[4] Registry Submission, Annex 1.
[5] Hearing of 9 October 2005, T(F) 10584.

5. The Accused then seized the Chamber orally on 4 November 2008 of the Decision of 29 October 2008.[6]

6. On 4 November 2008, the Registrar filed, pursuant to Rule 33 (B) of the Rules, a submission to the attention of the Chamber ("Registry Submission"),[7] in which he indicated that the measure to monitor the Accused's privileged line initially decided for a period of 30 days in the Decision of 29 October 2008 would be extended "at least until the matters raised in various submissions pending before the Trial Chamber are resolved."[8]

III. ARGUMENTS

A. Arguments of the Accused

7. The Accused considers that the monitoring of his privileged communications is an issue that raises problems about the fairness of the trial and for this reason falls within the jurisdiction of the Chamber.[9] Furthermore, the Accused alleges on the merits that monitoring his privileged communications prevents him from exercising his defence rights.[10]

B. Arguments of the Prosecution

8. The Office of the Prosecutor ("Prosecution"), invited by the Chamber to comment on this issue, submits that the Accused should have appealed the Decision of 29 September 2008 before the President of the Tribunal and that all the Chamber can do is refer any request from the Accused to the President for him to settle the matter.[11] The Prosecution therefore did not comment on the merits.

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[6] Hearing of 4 November 2008, T(F) 11307-11312.
[7] Registry Submission Pursuant to Rule 33 (B) Regarding the Monitoring of Vojislav Šešelj's Communications ("Registry Submission"), public with confidential and *ex parte* annex, 4 November 2008.
[8] Registry Submission, para. 41.
[9] Hearing of 9 October 2008, T(F) 10584.

C. Submissions of the Registrar

9. Since the Decision of 29 September 2008 was taken pursuant to Rule 65 (B) of the Rules of Detention, the Registrar considers that the President of the Tribunal alone is competent to hear and determine an appeal against this decision.[12] In support of his position, the Registrar refers to: Rule 65 (B) of the Rules of Detention that provides expressly for such jurisdiction, an Appeals Chamber decision in the case of *The Prosecutor v. Vidoje Blagojević,*[13] a decision by the Chamber dated 16 July 2004 in the present case,[14] and the words of the Presiding Judge in court.[15]

10. The Registrar accepts, however, that the Chamber may have limited jurisdiction in evaluating whether the modalities of implementation of the Decision of 29 September 2008 may have unduly restricted the Accused's ability to prepare his defence.[16]

11. The Registrar then gives a detailed description of the context in which the Decision of 29 September 2008 was taken, its legality and modalities of implementation and, finally, this decision's possible infringement of the rights of defence.[17] The Chamber does not deem it relevant to recall herein the first two aspects of the argumentation set out by the Registrar, since it has been seized solely of the question of the impact of the measure of monitoring the privileged communications of the Accused on his defence rights and not of its legality pursuant to Rule 65 (B) of the Rules of Detention, which is within the jurisdiction of the President of the Tribunal.

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[10] *Id.*
[11] Hearing of 9 October, T(F) 10585.
[12] Registry Submission, paras. 4-5.
[13] Registry Submission, paras. 6-7, citing *The Prosecutor v. Vidoje Blagojević,* Case No. IT-02-60-AR73.4, Decision entitled "Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team", *ex parte* and confidential, 7 November 2003.
[14] Registry Submission, para. 9 citing *The Prosecutor v. Šešelj,* Decision on Defence Motion for a Ruling on the Rights of the Accused to Communication and Visits while in Detention, 16 July 2004.
[15] Registry Submission, para. 5, citing the hearing of 1 October 2008 (T(F) 10101) and the hearing of 2 October 2008 (T(F) 10293, 10295 and 10296). The Chamber notes that when then indicating to the Accused that he could seize the Chamber of this matter, the Presiding Judge explained that he now understood that the Accused was challenging the Registrar's decision based on hindering his defence rights (*see* the hearing of 9 October 2008, T(F) 10584-10585).
[16] Registry Submission, paras. 10-11.
[17] Registry Submission, paras. 12-21 (for the context) and paras. 22-36 (for the modalities of implementation).

12. The Registrar finally states in his conclusions that the Accused's ability to prepare his defence has not been prejudiced and that it was the Accused's own choice to cut off communications with his privileged associates.[18] The Registrar considers that the Accused's cutting off all communication with his privileged associates until the monitoring ceases is manipulation bordering on blackmail.[19] The Registrar furthermore recalls that no one, including the Accused, can derive benefits from their own unlawful conduct.[20]

13. According to the Registrar, the right to confidential communications exists only between an attorney and his client and only with respect to questions covering the client's defence.[21] Such a right would not be applicable in relations between the Accused and his privileged associates and in any case would not apply to conversations not dealing with the Accused's defence but used for political purposes or to intimidate and harass witnesses.[22]

14. The Registrar bases his claim that the Accused uses his privileged communications for political purposes on certain articles that appeared in the Serbian press and on suspicions resulting from the monitoring of his non-privileged conversations.[23] In order to justify the monitoring of the Accused's privileged communications, the Registrar also uses the allegations of witness intimidation

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[18] Registry Submission, para. 39.
[19] Registry Submission, para. 38.
[20] Registry Submission, para. 38. On this point, the Registrar alleges that on 23 September 2008, the Accused admitted in court that the privileged telephone line had been used by unauthorized persons who had access to confidential documents in the present case: *see* Registry Submission, para. 20 referring to the hearing of 23 September 2008, T. 9834, l. 17-25 and T. 9835, l. 1-4 (references to the trial transcript in English). The Chamber notes in this regard that the Accused's statement in court was as follows: "I am in a situation that I can only call Slavko Jerković. When I call Slavko Jerković, usually the conversations are attended by other legal advisors, the case manager and the members of the professional team for preparing my defence. Then the investigators are there and some other lawyers who do not have the rank of legal advisers but who do carry out very important work for me." (Hearing of 23 September 2008, T(F) 9835). [redacted].
[21] Registry Submission, para. 39.
[22] Registry Submission, paras. 21 and 39. The Chamber notes on this point the contradiction between this statement and that made by the Registrar in paragraph 13 of the Registry Submission where he says that "the Registrar recognised that the Accused needed the assistance of persons with whom he could communicate in confidence in preparing his defence. Therefore, the Registrar recognised attorney-client privilege, which normally exists only between an attorney and his client, between the Accused and persons who were not his legal representatives in order to facilitate the preparation of the Accused's defence." The Chamber furthermore finds that the confidentiality agreement signed on 21 December 2006 by the Accused's privileged associates expressly provides that these persons are bound by the Code of Conduct for attorneys practicing before the Tribunal ("Code of Conduct").
[23] Registry Submission, para. 18.

contained in the Prosecution motion to impose counsel on the Accused, filed by the Prosecution in its public redacted version on 8 August 2008,[24] and on information from the Victims and Witnesses Section of the Tribunal.[25]

15. The Registrar finally adds that the Decision of 29 September 2008 and its extension are both lawful, reasonable and necessary in the circumstances of the case[26] and that the monitoring of the Accused's communications was a measure that was least disruptive to the ongoing trial.[27]

IV. SCOPE OF THE CHAMBER'S JURISDICTION

16. For the sake of clarity, the Chamber recalls that it is seized not only of the Decision of 29 September 2008 but also of the Decision of 29 October 2008 as well as the decision announced by the Registrar to extend the Decision of 29 October 2008 "at least until the matters raised in various submissions pending before the Trial Chamber are resolved" (all these decisions are defined hereinafter as the "Contentious Decision").[28]

V. APPLICABLE LAW

17. The Contentious Decision was taken pursuant to Rule 65 of the Rules of Detention which provides that:

> A. Each detainee shall be entitled to communicate fully and without restraint with his legal representative, with the assistance of an interpreter where necessary.
>
> B. All such communications shall be privileged, unless the Registrar has reasonable grounds to believe that the privilege is being abused in an attempt to:
>
> i. arrange an escape;
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> ii. interfere with or intimidate witnesses;
>
> iii. interfere with the administration of justice; or
>
> iv. otherwise endanger the security and safety of the Detention Unit.

[24] Prosecution's Motion to Terminate the Accused's Self-Representation, public redacted version filed on 8 August 2008.
[25] Registry Submission, Annex 1, p. 2.
[26] Registry Submission, para. 37.
[27] Registry Submission, para. 39.
[28] Registry Submission, para. 41.

> Prior to such communications being monitored, the detainee and his counsel shall be notified by the Registrar of the reasons for monitoring. The detainee may at any time request the President to reverse any decision made by the Registrar under this Rule.

18. Article 20 (1) of the Statue of the Tribunal states:

> The Trial Chambers shall ensure that a 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 and due regard for the protection of victims and witnesses.

VI. DISCUSSION

A. On jurisdiction

19. First of all, the Chamber would note that Rule 65 (B) of the Rules of Detention gives the President[29] the power to reverse any decision by the Registrar to monitor the communications between a detainee and his counsel, which are in principle protected by attorney-client privilege. The Chamber therefore considers, as clearly stated in the jurisprudence,[30] that it is not part within its remit to substitute itself for the President of the Tribunal and reverse the Contentious Decision and possibly replace it with another measure better adapted to the specific circumstances of the case, based on Rule 65 (B) of the Rules of Detention.

20. A majority[31] of the Chamber, however, considers that it has jurisdiction to review whether the Contentious Decision has the effect of infringing on the Accused's right to a fair trial, ensured by the Chamber pursuant to Article 20 (1) of the Statute. The fact that this jurisdiction of the Chamber is not expressly provided for in Rule 65

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[29] The Rules of Detention as amended on 21 July 2005 do not define the term "President". This term must therefore be understood in light of the Rules of Procedure and Evidence ("Rules"), which are hierarchically superior to the Rules of Detention, as meaning "the President of the Tribunal" (*see* Rule 2 of the Rules).

[30] In this sense, for example: *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67 PT, Decision on Appeals against Decision of the Registrar of 4 January and 9 February, 25 April 2007, para. 12 citing *The Prosecutor v. Blagojević*, Case No. IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace His Defence Team, ("*Blagojević* case"), 7 November 2003, para. 7. The Chamber notes that in the *Blagojević* case, the Trial Chamber, under the pretext of exercising its jurisdiction on the matter of the fairness of the trial, had assumed the right to review a decision of an administrative nature, although it did not have this power, which was under the sole jurisdiction of the President of the Tribunal, as confirmed by the Appeals Chamber, although it reserved the Trial Chamber the power to verify all decisions, including those of the Registry, impacting the rights of defence.

(B) of the Rules of Detention does not remove the Chamber's inherent jurisdiction pursuant to the Statute, since the Rules of Detention should be interpreted in light of the Statute which is superior to them.[32]

21. Consequently, while it is indeed up to the President of the Tribunal to verify and possibly reverse the Contentious Decision based on Rule 65 (B) of the Rules of Detention, the Chamber maintains the inherent power pursuant to Article 20 (1) of the Statute to verify whether the Contentious Decision taken by the Registry has the effect, in the circumstances of the case, of infringing on the Accused's right to a fair trial.

B. On the merits

22. As affirmed by the European Court of Human Rights ("ECHR"), "an accused's right to communicate with his legal representative out of the hearing of a third person is part of the basic requirements of a fair trial [...]. If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective."[33] To reach this finding, the ECHR bases its judgement not only on European legislation but also several universal instruments that state the importance of the confidentiality of communications between an accused and his attorney for the defence rights.[34]

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[31] Judge Harhoff attaches a dissenting opinion to the present decision on this matter.

[32] In this sense, for example: *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67 PT, Decision on Appeals against Decision of the Registrar of 4 January and 9 February, 25 April 2007, para. 12 where the President of the Tribunal states that it is up to the Chamber to review the decisions of the Registrar that might directly infringe upon an accused's right to a fair trial.

[33] *Case of Öcalan v. Turkey*, ECRH, Appeals Judgement of 12 May 2005, para. 133, citing *S. v. Switzerland*, ECRH, Appeals Judgement of 28 November 1991, para. 48.

[34] *Case of Öcalan v. Turkey*, ECRH, Appeals Judgement of 12 May 2005, para. 133, citing *Brennan v. the United Kingdom,* ECRH Appeals Judgement of 16 October 2001, paras. 38-40 recalling that Article 8(2)(d) of the American Convention on Human Rights provides that anyone accused of a criminal offence has the right to communicate freely and privately with counsel of his choice; Article 93 of the Standard Minimum Rules for the Treatment of Prisoners (Council of Europe) provides that a detainee must be able to prepare and hand to his attorney and to receive confidential instructions and that interviews between a detainee and his legal adviser may be within sight but not within hearing, either direct or indirect, of a police or institution official; Article 3(2)(c) of the European Agreement Relating to Persons Participating in Proceedings of the Court of Human Rights sets the principle whereby detainees have the right to communicate with their counsel out of hearing of other persons.

23. This is why Principle 18 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment[35] recognizes the right of every detainee to consult and communicate with his counsel[36] "without delay or censorship and in full confidentiality."[37] Nevertheless, this same principle also provides the possibility of "a judicial or other authority"[38] to restrict the confidentiality surrounding the communication between a detainee and his counsel in certain exceptional circumstances that must be specified by law or lawful regulations. Other international instruments refer to the same possibility of limiting the right to confidential communication between a detainee and his attorney for good cause. The ECHR furthermore observed in this regard that the relevant issue is "whether, in the light of the proceedings taken as a whole, the restriction has deprived the accused of a fair hearing."[39]

24. Finally, while certain national legislations provide for the possibility of departing from the principle of the confidentiality of communications between an accused and his counsel, this can only be done under judicial supervision and in very limited cases.[40]

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[35] Adopted by the UN General Assembly in Resolution 43/173 of 9 December 1988.
[36] Principle 18 (1) of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.
[37] Principle 18 (3).
[38] *Ibid.*
[39] *Case of Öcalan v. Turkey*, ECRH, Appeals Judgement of 12 May 2005, para. 133.
[40] Certain national legislations even provide for preliminary legal authorisation while others provide only administrative authorisation. Thus, in France, Belgium, Italy and Spain, the law states that the official with jurisdiction to order the monitoring of telephone communications is the judge in charge of the case, most often the investigating judge or the examining judge, when there are serious indications making it possible to believe that the telephone communications of a detainee constitute an offence or an attempted offence. In England, pursuant to the Regulation of Investigatory Powers Act 2000, the Secretary of State alone may issue a warrant authorising the interception of telephone conversations at the request of senior police officials if he thinks that this measure is necessary for the purposes of national security, to prevent or detect an offence or for the economic well-being of the country, and proportional to the desired end. Finally, in the United States, the Federal Statutes (§§18 U.S.C.A. 2510 *et seq.*) state that the interception and recording of telephone conversations in prison requires judicial authorisation except when a monitoring device is used by a "communications common carrier" in the normal course of his work or by an "investigative or law enforcement officer" in the normal course of his work. The Chamber also notes that in Italy, Article 103 (5) of the Code of Criminal Procedure that protects the confidentiality of attorney conversations and of attorney-client conversations. But an interpretation of the rule by case-law has allowed, as authorised by a judge, to monitor attorney-client conversations, for example when the attorney is suspected of having committed a crime or is suspected of aiding and abetting a crime (Italian Appeals Court, *Graviano* Appeal Judgement of 12 February 2003 and *Franchi* Appeal Judgement, 16 June 2003); in France, Article 100-7 of the Code of Criminal Procedure states that "The home or office telephone line of a member of the Bar shall not be tapped unless and until the chairman of the Bar has been informed by the investigating judge". It is therefore

25. It is thus indisputable that the confidentiality of communications between an accused and his counsel is a fundamental right that may only suffer rare exceptions.

26. The fact that in our present case the members of the Accused's defence team who are entitled to a privileged status do not have the status of counsel for the Accused, because he is defending himself, and are thus not registered on the list of defence counsel authorised to appear before the Tribunal, should not lead to excluding the application of the fundamental principle of the confidentiality of communications between an accused and his counsel. Indeed, the Registry decided to apply the same *standard* to members of the Accused's defence team who are entitled to a privileged status as that applied to defence counsel. To this end, it asked them to sign a confidentiality agreement and to pledge to respect the provisions of the Code of Conduct.[41] Furthermore, in justifying the Contentious Decision, the Registrar referred to Rule 65 (B) of the Rules of Detention that deals with communications between a detainee and his counsel. The Chamber consequently finds that it can only apply the principle of confidentiality to the Accused's communications.

27. Consequently, the Chamber wonders whether in the present case the Contentious Decision puts in place exceptional measures that are acceptable within the meaning of Principle 18 referenced above and of ECHR jurisprudence citing the need for "valid reasons" to justify the restriction of the principle at issue.[42]

28. It is true that the Accused declared in court that he was able to defend himself, although with certain difficulties, regardless of the restrictions to his confidential

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the law itself, by codifying the case-law,that takes note of possible exceptions to the principle of the confidentiality of attorney-client conversations. According to the Appeals Court, it is even possible to listen to conversations between someone who is close to the person being examined and the latter's attorney. Verifying the respect of the principle of the confidentiality of attorney-client communications is not limited to searches and seizures but extends to other measures that are likely to affect it. Thus, with regard to monitoring an attorney's private and/or personal telephone, such a measure must be preceded by a specific report that there are plausible indications that the attorney is taking part in an offence (Cass. Crim. 15 January 1997, Cass. Crim. 18 January 2006).

[41] *See supra*, para. 13 and footnote 22. *See* also the confidentially agreement signed with the Registry on 21 December 2006 by Slavko Jerković, Zoran Krasić, Aleksandar Vučić and Marina Raguš.

[42] It is interesting to note moreover that one of the conditions that the Canadian Supreme Court requires to demonstrated in order to admit that the professional confidentiality between an attorney and his client has been violated is establishing that information sought in a case-file protected by the attorney's professional confidentiality cannot be obtained elsewhere and it is not possible to prove it in any other way; see "La Cour suprême explicite le test McClure et en precise la portée, Secret professionnel de l'avocat", Lise I. Beaudoin, Le Journal, Volume 34, No. 10, 1 June 2002, http://www.barreau.qc.ca/publications/journal/vol34/no10/secret.html

communications, while he also complained of a violation to his right to a fair trial. The Chamber finds nevertheless that irrespective of the Accused's statements concerning his ability to defend himself without confidential communications with his privileged associates, it falls to the Chamber to verify whether the imposed restrictions to the Accused's privileged communications infringe upon his preparation of an effective defence and whether one could consider the restrictions as exceptional in the circumstances of the case, according to the above-cited instruments and ECHR jurisprudence.

29. The Chamber considers above all that the Accused's cross-examination of certain witnesses could have been more effective had he been able to rely on documentation that only his privileged associates could provide him.[43] It furthermore notes that it is difficult to include in the notion of exceptional measures or to consider that measures are based on valid reasons owing simply to the Prosecution's allegations,[44] or mere information relayed by the press or even simple "pieces" of information from the Victims and Witnesses Section of the Tribunal. This is all the more true in light of the fact that the Registrar, after extending the restriction of the Accused's privileged communication the first time, indicated in his letters a willingness to extend these measures "at least until the matters raised in various submissions pending before the Trial Chamber are resolved."

30. The Chamber notes in this regard that the Registrar refers [redacted] that are related to the basis for which the Contentious Decision was adopted. The Chamber is duty bound to note that the issue of witness intimidation, which form part of the basis of the Contentious Decision according to the Registrar, is not destined to be quickly settled in light of [redacted] Chamber's decision to stay its ruling on the motion seeking to impose counsel on the Accused, [redacted].[45]

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[43] *See* for example the hearing of 19 November 2008, T(F) 11857-11858. The Chamber notes on this point the view expressed many times by the Prosecution that the Accused was able to communicate with his associates but decided of his own accord not to do it since it could not be done confidentially.
[44] The Chamber notes, *inter alia*, that the allegations of witness intimidation and harassment are still *sub iudice*.
[45] Redacted version of the Decision on Prosecution Motion to Terminate the Accused's Self-Representation, [redacted], para. [redacted] 27 [a public version of this decision was filed on 27 November 2008]

31. This implies the implementation of measures that are not temporary but of an indeterminate duration. The indeterminate duration of the measures decided by the Registrar is, according to the Chamber, of great importance since the case is currently in the final phase of the presentation of the Prosecution case. The Chamber notes in this regard that the Contentious Decision will inevitably prevent the Accused, for an indeterminate duration, which will certainly be rather long in any case, from freely speaking with his privileged associates and asking them questions that could prove important for the organisation of his defence.

32. The duration of the measures decided by the Registrar leads the Chamber to ask itself whether the measures taken in the Contentious Decision could be considered exceptional, even though they are intended to continue over a long and indeterminate period that covers the final phase of the presentation of the last evidence of the Prosecution's case, and which could continue during the presentation of the Defence case.

33. The Chamber, by majority, consequently concludes that the restriction of the confidentiality of communications between the Accused and his privileged associates, besides the fact that it has already rendered the Accused's defence less effective, is a measure that, if extended beyond 28 November 2008 – as announced by the Registrar – cannot be qualified as exceptional and that owing to this fact, prevents the Accused from defending himself effectively in a delicate phase of the present case and will thus seriously infringe upon the right of the Accused to a fair trial.

VII. DISPOSITION

34. For the foregoing reasons, pursuant to Article 20 (1) of the Statute and Rule 54 of the Rules, the Chamber, by majority, Judge Harfoff dissenting, **GRANTS** the Motion and **INVITES** the Registrar to draw all the necessary inferences from the Chamber's conclusions.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-seventh day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]