IN THE TRIAL CHAMBER

Before:
Judge Richard May, Presiding

Judge Patrick Robinson

Judge O-Gon Kwon

Registrar:
Mr. Hans Holthuis

Decision of:
17 September 2002

PROSECUTOR
v.
ZELJKO MEAKIC
MOMCILO GRUBAN
DUSKO KNEZEVIC
PROSECUTOR
v.
DUSAN FUSTAR
PREDRAG BANOVIC
DUSKO KNEZEVIC

DECISION ON PROSECUTION'S MOTION FOR JOINDER OF ACCUSED

The Office of the Prosecutor:

Ms. Joanna Korner
Ms. Jocelyne Bodson
Mr. Kapila Waidyaratne
Ms. Ann Sutherland

Counsel for the Accused:

Ms. Sanja Turkalov, for Momcilo Gruban
Mr. Thomas Moran, for Dusko Knezevic
Mr. Theodore Scudder and Mr. Dragan Ivetic, for Dusan Fustar
Mr. Jovan Babic, for Predrag Banovic

INTRODUCTION AND BACKGROUND

This Trial Chamber of the International Tribunal ("International Tribunal") is seised of a Motion for Joinder of Accused ("Motion") filed by the Office of the Prosecution ("Prosecution") on 5 July 2002, that

the accused Zeljko Meakic, Momcilo Gruban, Dusko Knezevic who are currently charged in a single indictment confirmed on 19 July 2001 (relating to events at the Omarska camp in Prijedor, "the Omarska Indictment ", Case No. IT-95-4-PT), be charged and tried jointly with the accused Dušan Fustar , Predrag Banovic, Dusko Knezevic and four others[1] charged in a separate indictment filed on 3 January 2001 (relating to events at the Keraterm camp, also in Prijedor, "the Keraterm Indictment", Case No. IT-95-8 /1-PT). The Motion was filed by the Prosecution pursuant to Rules 48 and 82(B) of the Rules of Procedure and Evidence of the International Tribunal ("Rules").

On 11 July 2002, the Prosecution filed an Addendum to its Motion and submitted, on an *ex parte* basis, supporting materials to additional charges against the accused ("Addendum to the Motion"). On 16 July 2002, the Trial Chamber ordered the Prosecution to file a further submission and identify clearly the differences between the two existing indictments and the proposed Consolidated Indictment as well as the supporting materials, if any, submitted in respect of the new charges . The time-limit for responding to the Motion as well as any further response was extended for two weeks from the date of filing of the further submission by the Prosecution.[2] The Prosecution complied and filed a further submission on 26 July 2002, attaching confidential and *ex parte* annexes ("Further Submission").

On 9 July 2002, counsel for Gruban ("Gruban Defence") filed a response in which he did not oppose the Motion ("Gruban's Response").[3] On 30 July 2002, the Gruban Defence filed a response[4] to the Further Submission in which he opposed the Motion ("Gruban's further Response "). On 11 July 2002, counsel for Knezevic ("Knezevic Defence") filed his response in which he opposed the Motion ("Knezevic Response").[5] On 31 July 2002, the Knezevic Defence filed an additional response to the Motion reiterating that he opposed the Motion ("Knezevic further Response").[6] On 12 July 2002, counsel for Banovic ("Banovic Defence") filed a response,[7] in which the Motion was opposed ("Banovic Response"). On 31 July 2002, the Banovic Defence filed an additional response[8] in which he further opposed the Motion ("Banovic Further Response"). On 9 August 2002, counsel for Fustar ("Fustar Defence") filed a response, in which the Motion was opposed ("Fustar Response").[9]

Omarska Indictment

The original Omarska Indictment against nineteen accused, including Meakic, Gruban and Knezevic, was confirmed on 13 February 1995. Charges against eleven of the co -accused were subsequently withdrawn on 8 May 1998 and, in November 1998, leave was granted for the charges against another co-accused, Zoran Zigic, to be incorporated into an amended indictment in another case (IT-98-30). The trial of five co-accused in the Tribunal's custody was completed in July 2001 and judgement was rendered on 2 November 2001.

On 18 July 2001, the Prosecution filed the Omarska Indictment against accused Zeljko Meakic, Momcilo Gruban and Dusko Knezevic. This indictment is concerned with events in the municipality of Prijedor, located in northwestern Bosnia and Herzegovina. It is alleged that between May and August 1992, Serb forces unlawfully segregated , detained and confined thousands of Bosnian Muslims, Bosnian Croats and other non -Serbs from the Prijedor area in camps and detention centres.[10] It is alleged that the accused Zeljko Meakic, Momcilo Gruban, Dusko Knezevic and others participated in the commission of crimes in the Omarska camp. It is alleged that living conditions at Omarska were brutal. Severe beating, killings as well as other forms of physical and psychological abuse, including sexual assault, were commonplace.[11] Arising from these allegations, the three accused are charged in five counts with persecutions on political , racial or religious grounds (crime against humanity); Murder (crime against humanity ; violation of the laws or customs of war); Inhumane acts (crime against humanity) and cruel treatment (violation of the laws or customs of war). Each of the accused is charged as being individually responsible under Article 7, paragraph 1, of the Statute of the International Tribunal ("Statute") for these crimes, and Zeljko Meakic and Momcilo Gruban, in their positions as camp commander and guard shift commander at the Omarska

camp, are each charged as being responsible as superiors under Article 7, paragraph 3, of the Statute for the actions of their subordinates at the Omarska camp.

Keraterm Indictment

The initial Keraterm Indictment was confirmed on 21 July 1995. Charges against five of the co-accused were subsequently withdrawn on 5 May 1998 and, on 8 November 1998 , leave was granted for the charges against another co-accused, Zoran Zigic, to be incorporated into an amended indictment in another case (IT-98-30). A Sentencing Judgement against three co-accused in the Tribunal custody was rendered on 13 November 2001 following the entry of a guilty plea to the count of persecution.

The Keraterm Indictment, dated 3 January 2001, charges the accused Dušan Fustar, Predrag Banovic, Dusko Knezevic and others with the commission of crimes in the Kertarm camp, in the Prijedor municipality. The indictment alleges that between May and August 1992, Serb forces unlawfully segregated, detained and confined thousands of Bosnian Muslims, Bosnian Croats and other non-Serbs from the Prijedor area in Omarska, Trnopolje, and Keraterm camps.[12] It is alleged that these events were organised and directed by Bosnian Serb authorities , the purpose of which was the permanent forcible removal of Bosnian Muslims, Bosnian Croat and non-Serbs inhabitants from the municipality with the aim of ensuring the creation and control of a separate Serbian territory in Bosnia and Herzegovina.[13] Interrogations, severe beatings, sexual assaults and killings are alleged to have taken place on a daily basis at the Keraterm camp. Living conditions were brutal and inhumane.[14] It is alleged that the accused are individually responsible under Article 7, paragraph 1, of the Statute for the crimes alleged in the Indictment; and the accused Dušan Fustar, a shift commander at the Keraterm camp, is charged as being responsible as a superior under Article 7, paragraph 3, of the Statute for the actions of his subordinates. The indictment charges the three accused with persecutions, inhumane acts, torture, rape (crime against humanity); outrages upon personal dignity, inhumane acts, cruel treatment, torture (violation of the laws or customs of war) and Murder (crime against humanity; violation of the laws or customs of war).[15]

SUBMISSIONS

The Prosecution Case

The Prosecution argues that the requirement for joinder set forth in Rule 48 of the Rules is met for the following reasons. The Prosecution submits that the crimes charged in the Omarska and Keraterm Indictments against the five accused now in custody were a consequence of a joint criminal enterprise. It is the Prosecution's case that these camps were not operated *in vacuo*, but were set up in order to carry out a part of the overall objective of the joint criminal enterprise of the Bosnian Serb leadership, namely the permanent removal of non-Serbs from the territory of the planned Serbian state in Bosnia and Herzegovina.[16]

The Prosecution submits that Omarska and Keraterm were two closely linked camps set up in the Prijedor municipality in May 1992 by order of the Bosnian Serb governing body in that area called the Crisis Staff.[17] Not only were the camps geographically linked (approx. 20 kilometres apart), but they were also linked by the period in which they operated and further linked by the fact that prisoners were transferred from Keraterm to Omarska.[18] The Prosecution argues that many of the witnesses will be giving evidence of incarceration in both camps; that the operational structure, regimes in the camps as well as the methods followed in both camps were near identical.[19] The Prosecution submits that the accused Knezevic is charged with the commission of similar crimes in both camps, thus providing a direct link between the two cases .[20]

The Prosecution further submits that the Motion is not wholly dissimilar to an application made in the cases of *Prosecutor v. Kovacevic* (Case No. IT-97-24-PT), *Prosecutor v. Kvocka, Radic and Zigic* (Case

No. IT-95-4-PT) and *Prosecutor v. Zigic* (Case No. IT-95-8-PT). It is argued, that although the application for joinder of accused was denied in that case,[21] leave was subsequently granted to the Prosecution to amend the Omarska indictment as it related to Kvocka, Radic, Kos and Zigic and the Keraterm indictment as it related to the accused Zigic by way of, *inter alia*, consolidating the charges against the four accused into one single indictment.[22]

Quoting a decision of another Trial Chamber,[23] the Prosecution submits that where a Trial Chamber finds that an indictment demonstrates *prima facie* that crimes have been commited in the course of the same transaction by different accused, in the sense that there was a common scheme, strategy or plan , and the accused committed crimes during the course of it, then it is legally possible to join the accused in one indictment.[24]

The Prosecution further argues that the Trial Chamber should exercise its discretion in favour of granting the Motion, taking into account a number of factors. Firstly , it is argued that joinder will avoid the duplication of evidence: (i) that in order to prove the existence of a joint criminal enterprise and in order for the Trial Chamber to appreciate the criminal responsibility of each of the accused, the Prosecution must present evidence of the operation of the three camps operating in the Prijedor municipality and the background facts, as alleged in the Consolidated Indictment; (ii) that if the accused were tried separately, each trial would cover the same facts and circumstances, and involve many of the same witnesses and exhibits ; (iii) that in order to satisfy the elements of Crimes Against Humanity, as charged in the indictment, the Prosecution intends calling witnesses who were detained in the other camps and that their evidence will be applicable to both the Omarska and Keraterm cases. Secondly, the Prosecution submits that a joint trial will minimise the hardship to witnesses. Thirdly, it is submitted that it is desirable to have single joint trial as it will ensure consistency of approach in respect of evidence , an ability to evaluate the level of culpability of all accused and parity of sentence in the event of conviction. Lastly, it is argued that joinder would contribute to the most efficient use of Tribunal resources.

The Defence Submissions

The Gruban Defence advances two main arguments against the joining of the indictments . First, the Defence argues that the Prosecution has not provided any evidence that would indicate that Gruban was ever present in the Keraterm camp; the accused is only alleged to have been involved in crimes committed at the Omarska camp and, thus, has nothing to do with the events that occured on the territory of the Prijedor Municipality, outside the Omarska camp. It is submitted that the accused Knezevic is the only common factor between the two camps as he is alleged to have been involved in events in both camps.[25]

Secondly, the Gruban Defence argues that the joinder of accused “can postpone a possible transfer of these 'law ?*sicg* level' cases to national jurisdictions ” and would be contrary to the most recent Security Council recommendation that the International Tribunal should target the persons most responsible.[26]

The Knezevic Defence argues that the fact that the accused Knezevic is charged in both indictments is the Prosecution’s connection between the two cases.[27] However, in order to justify joinder, it is argued that the Prosecution would have to prove the joint criminal entreprise.[28] The Knezevic Defence submits that this would be no small task and if the Prosecution fails to prove the joint criminal enterprise theory, the accused would argue that they were prejudiced by the introduction of evidence relating to events in which they did not take part.[29]

It is further argued that, if anything, combining the two trials would result in unnecessary complication[30] and increase the length of the trial. Proving the joint criminal enterprise theory would require the introduction of considerable evidence, much of which would be contested, on the relationship between the two camps and the command structure allegedly controlling *both* camps.[31] Lastly, while accepting that

economy of judicial resources generally favours joint trials of defendants charged as part of a common scheme, conspiracy or crime, the Knezevic Defence submits that joinder would constitute a severe waste of resources as the International Tribunal will incur excessive costs for defence counsel.[32]

The Banovic Defence argues that the requirement of Rule 48, that the crimes are committed in the course of the same transaction, is not met. It is submitted that none of the accused in either indictment belongs to the Bosnian Serb leadership as alleged in the Motion, or to the Crisis Staff. The Banovic Defence argues that there is no connection between the two camps. None of the accused is alleged to have been in a position of command for both camps which could provide a connection between the two camps. The fact that prisoners were transferred from Keraterm to Omarska is not compelling because the transfer of prisoners took place between Keraterm camp and other camps within Bosnia. It is argued that if the Prosecution's logic were to be followed, all the Bosnian camps would be dealt with in the same indictment . The same applies to the Prosecution argument regarding the operational structure and regimes followed in both camps as well as the methods used to effect the alleged crimes. The Banovic Defence further asserts that Banovic has nothing to do with crimes that are alleged to have been committed in the Omarska camp and that his criminal responsibility would be unlawfully expanded by a joinder.[33] Fourthly, the Banovic Defence argues that by including the allegation of joint criminal enterprise, the Consolidated Indictment violates the *Nullum crimen sine lege* principle in criminal law.[34]

The Banovic Defence further argues that a Trial Chamber of the International Tribunal has come to the conclusion that there is not enough evidence to establish whether "Keraterm and Trnopolje camps, or the municipality of Prijedor, functioned individually or collectively as a joint criminal enterprise".[35] It is argued that in the first Keraterm case before the International Tribunal, joint criminal enterprise was neither in the indictment[36] nor in the judgement. The Banovic Defence concludes that it would be unjust to ascribe joint criminal enterprise to the accused Banovic. Lastly, the Banovic Defence submits that joinder would result in a significant increase of the cost of the trial.

The Fustar Defence submits that participation in a "joint criminal enterprise" does not constitute any defined offence under the Statute of the International Tribunal and the injection of this concept in the Consolidated Indictment would be prejudicial to the accused. It is argued that the Prosecution has failed to demonstrate the link between the two camps. The Fustar Defence submits that Keraterm functioned as an investigative centre, and Omarska more as a prison; based on their different functions, people were regularly moved from Keraterm to other places, but not in the reverse direction. The Fustar Defence submits that joinder would cause prejudice to the accused as the Consolidated Indictment alleges common charges against all five accused without making any distinction between those which occurred in the Omarska camp and those in the Keraterm camp. It is argued that the accused will be prejudiced by the presentation of evidence relating to crimes committed at Omarska , in which he never took part. In addition, the Fustar Defence concurs with the arguments put forward by the other accused.

THE LAW

The Prosecution's Motion is based on Rule 48 of the Rules which reads as follows :

Joinder of Accused

Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.

On the other hand, Rule 82(B) of the Rules is relevant and provides that a

Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

The preliminary issue to be addressed in determining whether accused should be joined pursuant to Rule 48 is whether the crimes with which the accused are charged were “committed in the course of the same transaction”. Rule 2 of the Rules defines “ transaction” in the following way:

A number of acts or omissions whether occurring as one event or a number of events , at the same or different locations and being part of a common scheme, strategy or plan.

It is a well-settled principle in the jurisprudence of the International Tribunal [37] and of the International Criminal Tribunal for Rwanda[38] that, in deciding whether charges against accused should be joined pursuant to Rule 48, a Trial Chamber must base its determination upon the factual allegations contained in the Indictments and related submissions.

Once the requirements set out in Rule 48 have been met, the Trial Chamber would next determine whether it should nevertheless exercise its discretion to refuse joinder sought. In this connection, the Trial Chamber would take into account a number of factors, including those listed in Rule 82(B) of the Rules. Other considerations include, *inter alia*, the promotion of judicial economy, the avoidance of duplication of evidence and minimising hardship to the witnesses.[39]

DISCUSSION

The first issue for consideration is whether the crimes, as alleged in the two indictments , were “committed in the course of the same transaction”; that is whether these acts were committed “pursuant to a common scheme, strategy or plan”.[40]

The Prosecution argues that they were. In this regard, the Trial Chamber notes that while the Omarska Indictment deals with crimes committed in the Omarska camp , and the Keraterm Indictment with the crimes committed in the Keraterm camp, in both indictments, the Prosecution case is the same: that between 25 May to about 30 August 1992, Serb forces unlawfully segregated, detained and confined thousands of Bosnian Muslims, Bosnian Croats and other non-Serbs from the Prijedor area in camps and detention facilities established and operated under the direction of the Bosnian Serb authorities, also referred to as the Prijedor Crisis Staff. Crimes within the camps are alleged to have been committed by a plurality of persons. In this instance, the crimes are alleged to have been committed over the same period and in the same municipality. Both Indictments exhibit not only a geographical link but also a close proximity in the manner in which they operated, and the responsibility of the accused. It is alleged that both camps “operated in a manner that resulted in the physical debilitation or death of the non-Serb detainees”.[41] The purpose behind the events in the two camps was the intent to persecute and subjugate non-Serb detainees resulting in the detention, death or forced departure of the non-Serb population of Prijedor Municipality. Taken as whole, the two indictments contain allegations of a series of acts committed in the course of the same transaction . For these reasons, the Chamber holds that the requirements for joinder under Rule 48 have been met.

The Defence has sought to challenge the joinder on various grounds, the most important of which are: (i) the objection to the introduction of new charges, especially the joint criminal enterprise theory of liability by the Prosecution in the Consolidated Indictment, which the Defence views as an attempt to expand the responsibility of the accused; (ii) the possible prejudice to an individual accused in relation to evidence not relevant to allegations raised against him; and (iii) that joinder would increase the complexity, the length and the cost of the trial.

The Chamber notes that the jurisprudence of the International Tribunal establishes that participation in a crime under a theory of joint criminal enterprise liability is included within the scope of Article 7, paragraph 1, of the Statute. This was elaborated by the Appeals Chamber in the *Tadic* case,[42] and has been followed by this Chamber in the *Kordic* case.[43]

The Defence also argued that the accused would be prejudiced by the presentation of evidence relating to events in which they never took part. This is not a compelling argument. In dealing with a similar argument, the Appeals Chamber held that:[44]

If evidence were to be admitted in Sthe first part of aC trial which would be prejudicial to the accused in Sanother part of theC trial, members of the Trial Chamber as professional judges would be able to exclude that prejudicial evidence from their minds when they come to determine the issues in Sthis other part of theC Trial.

Therefore, there is no merit in that argument.

The Chamber rejects the submission that a single trial will increase the length and the complexity of the Trial. Consideration of judicial economy is certainly a relevant matter. In the Trial Chamber's view, two separate trials would result in a fair amount of "linkage (overlapping) evidence" which would have to be adduced in both trials. Considering that the Prosecution would be presenting much of the same evidence in each trial, joinder will permit the Trial Chamber to proceed with the case more efficiently, while minimising hardship to the witnesses and, possibly , the overall cost of the trial.

In conclusion, the Chamber finds that this is a proper case for the exercise of its discretion under Rule 48 to permit the joinder requested by the Prosecution, and accordingly, will grant the motion. In view of the fact that the Consolidated Indictment contains new charges against the accused Meakic, Gruban and Knezevic as reflected in the Further Submission,[45] the Trial Chamber considers that the accused should be given an additional opportunity to file any objections relating specifically to the new charges.

DISPOSITION

The Trial Chamber hereby **GRANTS** the Motion and **ORDERS** as follows:

The indictments against the accused Zeljko Meakic, Momcilo Gruban and Dusko Knezevic in Case No. IT-95-4-PT and against Dušan Fustar, Predrag Banovic and Dusko Knezevic in Case No. IT-95-8/1-PT be joined and given a common case number;

The Defence shall, within 14 days, file notice of any objections to the new charges as specified in paragraph 2 (B) of the Further Submission.

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

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Richard May
Presiding

Dated this seventeenth day of September 2002
At The Hague
The Netherlands

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1 - Dusko Sikirica, Damir Dosen, and Dragan Kolundzija have already been tried and the indictment against Nenad Banovic has been withdrawn.
2 - *Prosecution v. Meakic, Gruban, Knezevic, Prosecutor v. Fustar, Banovic, Knezevic,* Order for Further Submission, Case No. IT-95-4-PT, IT-95-8/1-PT, 16 July 2002.
3 - Defense Response to "Prosecution Motion for Joinder of Accused", 9 July 2002.
4 - Defense Response to "Prosecution's Further Submission for Joinder of Accused", 30 July 2002.
5 - Dusko Knezevic's Response to Prosecution Motion for Joinder of Accused, 11 July 2002.
6 - Dusko Knezevic's Supplemental Response to Prosecution Motion for Joinder of Accused, 31 July 2002.

7 - Predrag Banovic's Defense Response to the Prosecution Motion for Joinder of Accused, 12 July 2002.
8 - Supplement to the Response of the Defense of Pedrag Banovic to the Prossecution Motion for Joinder of Accused, 31 July 2002.
9 - Dusan Fustar's Response in opposition to the Office of the Prosecutor's Motion for Joinder of the Omarska and Keraterm Cases, as well as to Prosecutor's additional submissions, 9 Aug. 2002.
10 - Omarska Indictment, para. 1
11 - Omarska Indictment, paras 2.5, 2.6.
12 - Keraterm Indictment, para. 6.
13 - Keraterm Indictment, paras 2-3.
14 - Keraterm Indictment, paras 11-12.
15 - Keraterm Indictment paras 35-50.
16 - Motion, para. 2.
17 - Motion, para. 15.
18 - Motion, para. 16.
19 - Motion, para. 17.
20 - Motion, para. 18.
21 - *Prosecutor v. Kovacevic et al.*, Decision on Motion for Joinder of Accused and Concurrent Presentation of Evidence, Case No. IT-97-24-PT, IT-95-4-PT, IT-95-8-PT, 14 May 1998.
22 - *Prosecutor v. Kvocka et al*., Order Granting Leave to File an Amended Indictment and Confirming the Amended Indictment, Case No. IT-98-30-I, 9 Nov. 1998.
23 - *Prosecutor v. Blagojevic et al*., Written Reasons Following Oral Decision of 15 Jan. 2002 on the Prosecution's Motion for Joinder, Case No. IT-98-33/1-PT, IT-01-43-PT, IT-01-44-PT, 16 Jan. 2002, para. 19.
24 - Motion, para. 21.
25 - Gruban Further Response, paras 9, 11, 15.
26 - Gruban Further Response, paras 15, 16.
27 - Knezevic Response, para. 1.
28 - Knezevic Response, para. 2.
29 - Knezevic Response, para. 2.
30 - Knezevic Further Response, para. 3.
31 - Knezevic Response, para. 2. Italics in the original text.
32 - Knezevic Response, para. 3.
33 - Banovic Response, para. 4.
34 - Banovic Further Response, para. 5.
35 - *Prosecution v. Kvocka et al*., Judgement, Case No. IT-98-30/1-T, 2 Nov. 2001, para. 319 cited in Banovic Response, para. 4.
36 - *Prosecutor v. Sikirica et al*., Second Amended Indictment, Case No. IT-95-8-PT.
37 - *Prosecutor v. Milosevic*, Decision on Prosecution's Motion for Joinder, Case No. IT-99-37-PT, IT-01-50-PT, IT-01-51-PT, 13 Dec. 2001, ("*Milosevic* Joinder Decision"), para. 37; *Prosecutor v. Blagojevic et al*., Written Reasons Following Oral Decision of 15 January 2002 on the Prosecution's Motion for Joinder, Case No. IT-98-33/1-PT, IT-01-43-PT, IT-01-44-PT, 16 Jan. 2002, para. 17; *Prosecutor v. Nikolic, Prosecutor v. Blagojevic et al.*, Decision on Prosecution Motion for Joinder, Case No. IT-02-53-PT, IT-02-56-PT, 17 May 2002, para. 13.
38 - *Prosecutor v. Bagosora*, Case No. ICTR-96-7; *Prosecutor v. Kabiligi & Ntabakuze*, Case Nos. ICTR-97-34 and ICTR-97-30; *Prosecutor v. Nsengiyumva*, Case No. ICTR-96-12, Decision on the Prosecutor's Motion for Joinder, 29 June 2000, paras 120-121.

39 - See *Milosevic* Joinder Decision, paras 38-40.
40 - *Prosecutor v. Milosevic*, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, Case No. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, 18 Apr. 2002, para. 19 ("*Milosevic* Appeal Decision on Joinder"). While this Decision ultimately dealt with Rule 49, it was noted that this provision has necessarily to be considered in conjunction with Rule 48 ("Joinder of Accused"), as each is based upon events which must form "the same transaction". *Ibid*, para. 13.
41 - Keraterm Indictment, para. 6.
42 - *Prosecutor v. Tadic*, Judgement, Case No. IT-94-1-A, 15 July 1999, paras 187-193. See also, para. 220: "In sum, the Appeals Chamber holds the view that the notion of common design as a form of accomplice liability is firmly established in customary international law and in addition is upheld, albeit implicitly, in the Statute of the International Tribunal."
43 - *Prosecutor v. Kordic & Cerkez,* Judgement, Case No. IT-95-14/2-T, 26 Feb. 2001, paras 395-400.
44 - *Milosevic* Appeal Decision on Joinder, para. 29.
45 - Further Submission, para. 2(B).