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CASE/ AFFAIRE NO. IT-03-68-A **DATE** 12 September 2007

FROM/ DE Yaiza ALVAREZ REYES, COURT OFFICER **SM**

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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-03-68-A
Date: 12 September 2007
Original: English

IT-03-68-A
A2621-A2619
12 September 2007

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ML

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Hans Holthuis

Decision of: 12 September 2007

PROSECUTOR

v.

NASER ORIĆ

Public

**DECISION ON "MOTION IN RELATION TO GROUND 5 OF
THE PROSECUTION'S APPEAL"**

Office of the Prosecutor:

Ms. Christine Dahl

Counsel for Naser Orić:

Ms. Vasvija Vidović
Mr. John Jones

TU

THE APPEALS CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“International Tribunal”),

NOTING the Judgement rendered in this case by Trial Chamber II on 30 June 2006;¹

NOTING the “Prosecution’s Notice of Appeal” and the “The Prosecution’s Corrigendum to Appeal Brief” filed by the Prosecution on 31 July 2006 and 18 October 2006, respectively, in which the Prosecution contends under its fifth ground of appeal (“Ground 5”) that the Trial Chamber committed two errors of law that do not impact on the verdict but are matters of general importance to the case law of the International Tribunal, namely (1) that the Trial Chamber erred in law in distinguishing between a “general” obligation and a “specific” obligation under Article 7(3) of the Statute of the International Tribunal to prevent crime and in finding that superiors cannot be held responsible for failing to take “general” measures in order to prevent crimes committed by their subordinates, and (2) that the Trial Chamber erred in law in finding that “preventative destruction” of civilian objects may be lawful under international humanitarian law;²

NOTING the “Defence Respondent’s Brief” filed on 27 November 2006 by Counsel for Naser Orić (“Defence”), in which the Defence opposes the Prosecution’s arguments under Ground 5, but submits that it will not provide further arguments “[d]ue to limitations on space, and given that none of the errors alleged by the Prosecution [...] impact on the verdict in the present case”;³

BEING SEIZED of the “Motion in Relation to Ground 5 of the Prosecution’s Appeal” filed on 26 June 2007 (“Motion”), wherein the Prosecution argues that Ground 5 raises two errors of law that are of general significance to the case law of the International Tribunal which the Defence opposed but failed to respond to in its Respondent’s Brief, and requests the Appeals Chamber to:

- (a) order the Defence to abstain from making oral submissions on Ground 5 at the Appeal Hearing;
- (b) invite the Association of Defence Counsel (“ADC”) to submit an *amicus curiae* brief of 5000 words addressing the issues raised in Ground 5;
- (c) permit the Prosecution to file a reply of no more than 1500 words if the ADC files an *amicus curiae* brief on Ground 5;⁴

¹ Case No. IT-03-68-T.

² Prosecution’s Notice of Appeal, paras 38-41; Prosecution’s Corrigendum to Appeal Brief, paras 282-325; Motion, para. 3.

³ Defence Respondent’s Brief, paras 553-554.

⁴ Motion, paras 1, 9, 11.

NOTING that in support of the Motion the Prosecution submits that an *amicus curiae* brief would allow the Prosecution a fair opportunity to file a written reply as envisaged by the Rules of Procedure and Evidence (“Rules”) and would enable the Appeals Chamber to be briefed on the issues arising in Ground 5 in advance of the hearing;⁵

NOTING the “Response to Prosecution ‘Motion in Relation to Ground 5 of the Prosecution’s Appeal’” filed by the Defence on 2 July 2007 (“Response”), in which the Defence clarifies that it does not intend to make oral submissions in relation to Ground 5 at the Appeal Hearing unless requested to do so by the Appeals Chamber;⁶

NOTING that the Prosecution did not file a reply;

CONSIDERING that the Appeals Chamber may consider a legal issue even if it does not affect the verdict if it finds that its resolution is likely to contribute substantially to the development of the International Tribunal’s jurisprudence and if it has a nexus with the case at hand;⁷

CONSIDERING that a Chamber has the power to invite *amicus curiae* submissions under Rule 74 of the Rules if it considers it desirable for the proper determination of the case;

CONSIDERING that the Prosecution has failed to demonstrate that *amicus curiae* submissions would assist the Appeals Chamber in its determination of Ground 5 if it were to decide to address the legal issues presented therein;

FOR THE FOREGOING REASONS,

DISMISSES the Motion.

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



Judge Fausto Pocar
Presiding Judge

Dated this twelfth day of September 2007,
At The Hague, The Netherlands.

[Seal of the International Tribunal]

⁵ Motion, paras 2, 6-10.

⁶ Response, para. 12.

⁷ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement, 1 June 2001, paras 19, 21-24. *See also Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Motion to Dismiss Ground 1 of the Prosecutor’s Appeal, 5 May 2005, p. 3; *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, paras 247 and 281.