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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-05-88/2-PT

Date: 24 February 2010

Original: English

IN TRIAL CHAMBER II

Before: **Judge Christoph Flügge, Presiding**
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: **Mr. John Hocking**

Order of: 24 February 2010

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

ORDER CONCERNING GUIDELINES ON THE PRESENTATION OF EVIDENCE AND CONDUCT OF PARTIES DURING TRIAL

Office of the Prosecutor
Mr. Peter McCloskey

The Accused
Zdravko Tolimir

THIS 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");

CONSIDERING that it is the responsibility of the Trial Chamber to ensure that the trial is conducted in a fair and expeditious manner, in accordance with Article 20(1) of the Tribunal's Statute, and the Rules of Procedure and Evidence ("Rules"), with full respect for the rights of the Accused and due regard to the protection of victims and witnesses;

CONSIDERING that it is appropriate for the Chamber to set the manner in which it intends to have the trial conducted and that the guidelines set out in this order may be amended subsequently by the Chamber as the trial progresses;

PURSUANT TO Articles 20(1) and 21 of the Statute and Rules 54, 89 and 90 of the Rules,

ADOPTS the guidelines as set out in the attached Annex, which will govern the presentation of evidence and the conduct of the trial; and **ORDERS** the parties to comply with these throughout the case, subject to any subsequent order of the Chamber.

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

Judge Christoph Flügge
Presiding Judge

Dated this twenty-fourth day of February 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

I. Scheduling of Witnesses

1. By the fifteenth day of each month during trial, to the greatest extent possible, a party calling witnesses shall provide the Trial Chamber and the cross-examining party with a list of all witnesses it expects to call in the following calendar month. This list shall include an estimated total time to be taken for examination-in-chief of each witness. The cross-examining party will, within seven days of receiving this list, provide the Trial Chamber and the calling party with an estimate of the total time expected to be taken cross-examining each witness.

2. By 4:00 p.m. on Friday of each week during trial, to the greatest extent possible, a party calling witnesses shall provide the Trial Chamber, the cross-examining party and the Registry with a list of all witnesses it expects to call during the week after the following week. This list shall include an estimated total time to be taken for the examination-in-chief of each witness. The cross-examining party shall, by 4:00 p.m. on the following Monday of each week during trial, provide the Trial Chamber, the calling party and the Registry with an estimate of the total time expected to be taken cross-examining each witness.

3. The calling party, to the greatest extent possible, shall provide the cross-examining party and the Registry with a list of materials it intends to use with each witness 48 hours before the witness is called to give evidence.

4. The cross-examining party, to the greatest extent possible, shall provide the Registry with a list of materials it intends to use in cross-examination 48 hours before the witness is called to give evidence.

5. The cross-examining party, to the greatest extent possible, shall provide the calling party with a list of materials it intends to use in cross-examination 24 hours before the witness is called to give evidence, except in the case of expert witnesses which shall require 48 hours notice.

6. A party calling witnesses must inform the Chamber, the opposing party and the Registry at least five days in advance of any change in the schedule of witness testimony.

II. Examination of Witnesses

7. The Trial Chamber will not, at the present time, set a specific time limit on the parties for the examination of witnesses. Should this approach prove not to be conducive to effective trial management, the Trial Chamber will revisit this issue.

8. The parties shall do their best to organise their examination of witnesses in a way that ensures avoidance of repetition, in particular during cross-examination.

9. When presenting a witness with something that the witness has previously stated during testimony, or in a written statement, the parties should avoid paraphrasing what the witness said and should instead quote directly from the transcript or prior statement, stating on the record the relevant page, line, or paragraph numbers when possible. A prior witness statement or testimony may be used to refresh the memory of a witness, whether or not such a statement or testimony has been admitted into evidence.

10. Pursuant to Rule 90(H)(i) of the Rules, 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.

11. The Trial Chamber may prohibit any inappropriate, repetitive or irrelevant questions, including those constituting an unjustified or inappropriate attack on the witnesses.

12. The party cross-examining a witness may show the witness information obtained from a previous witness, on the condition that the source of the information is not identified.

13. The parties must remain mindful that lengthy, complicated or combined questions may confuse the witnesses and make the hearing transcripts unintelligible and pointlessly long. Accordingly, the parties are invited to make sure that the questions they put to the witnesses are clear and concise.

14. Once a witness has begun testifying before the Trial Chamber, the parties should have no *ex parte* communication with the witness before the completion of the witness's testimony, except upon leave of the Trial Chamber. When such leave to communicate with the witness

is granted by the Trial Chamber, the communication should not involve the substance of the witness's testimony.

III. Admissibility of Evidence

15. Pursuant to Rule 89(C) of the Rules, the Trial Chamber will only admit evidence which it considers to be relevant and probative. The tendering party must demonstrate its relevance and probative value.

16. The parties must always be mindful of the fundamental distinction between the legal admissibility of evidence and the weight which the Trial Chamber gives to the evidence in the context of the entire record.

17. Admitting a document as evidence does not in itself mean that the Chamber considers the document to be an exact representation of the facts. Factors such as the authenticity and proof of the identity of the document's source are significant elements in the Trial Chamber's determination of the weight to give the evidence.

18. When objections are raised in respect of the authenticity or reliability of proposed evidence, the Chamber, adhering to the practice previously adopted by the Tribunal, will admit the documents produced, unless it appears manifestly unreasonable to do so, and will take a decision at a later time as to the weight to give them in the context of the entire record. At the request of a party or *proprio motu,* the Chamber can order that the original or the most legible, audible or viewable copy be produced.

19. There is no general rule which prohibits the admission of documents merely because their alleged source was not called to appear during the trial. Likewise, the fact that a document has neither a signature nor a stamp is not in itself a reason to find that it is not authentic.

IV. Tendering of Evidence

20. The preferred method for tendering evidence is for the evidence to be tendered through a witness while the witness is on the stand. The tendering party shall demonstrate some nexus between the witness and the document before offering the document into evidence. Once tendered, the Trial Chamber will decide whether to grant or deny admission, or defer its decision to a later time. The Trial Chamber will then announce its decision on the record and

invite the Registry to assign an exhibit number and corresponding status to the document. If the Trial Chamber defers its decision, the document will remain marked for identification only.

21. In the case of documents that are not to be put to a witness and are instead submitted from the bar table, the tendering party shall submit to the Trial Chamber, the opposing party, and the Registry, a list of the proposed exhibits indicating the 65 *ter* number and requested status, whether public or confidential, for each document. For such bar-table submissions the Trial Chamber will ask the Registry to mark the documents for identification by assigning exhibit numbers to each document on the record, either in court or by filing an internal memorandum listing the exhibit numbers assigned. The Trial Chamber will subsequently decide whether to grant or deny admission for each document. The Trial Chamber may also defer its decision, in which case the document(s) will remain marked for identification until a decision is made.

22. An opposing party may object to the admission of a particular item of proposed evidence tendered by a party on grounds of relevance or probative value, including authenticity. If a party challenges the authenticity of proposed evidence, it must specify its reasons for doing so. Upon hearing the objections of the party challenging the proposed evidence, the Trial Chamber shall rule on its admissibility.

23. The parties are encouraged to avoid tendering very lengthy documents such as books when only excerpts of such documents are relevant to the testimony of a witness through whom the document is presented. Instead, the parties are requested to tender only the relevant excerpts.

V. Application of Rule 92 *ter* of the Rules

24. A witness called to testify under Rule 92 *ter* of the Rules must attest at the hearing that his written statement or transcript of his testimony in another case accurately reflects that witness's declaration and what the witness would say if examined. Moreover, under the supervision of the Trial Chamber and in application of the guidelines already set out in respect of the admission of evidence, the party calling a witness to testify under Rule 92 *ter* of the Rules shall be authorised to show documents to that witness for the purpose of their admission by the Chamber.

VI. Conduct of the Trial

25. The trial will be conducted using the Electronic Court Management System ("eCourt"), and the Provisional Practice Direction on the Application of an Electronic Court Management System, dated 6 October 2005, shall govern the use of the system and the various responsibilities of the parties.

26. A system for monitoring the use of time shall be established by the Registry, which will be responsible for recording time used for: (a) examination-in-chief; (b) cross-examination; (c) re-examination; (d) questions by the Judges; and (e) all other matters, including procedural matters and objections.

27. The parties are encouraged to contact the Chamber's Legal Officer and/or the Registry's Court Officer to resolve problems which can appropriately be resolved informally.

28. As far as practicable, the parties must respect the principle of open sessions as provided for in Rule 78 of the Rules. Accordingly, closed or private sessions shall be ordered only in those cases provided for in Rule 79(A) of the Rules, namely: i) public order or morality; ii) safety, security or non-disclosure of the identity of a victim or a witness; iii) the protection of the interests of justice.