



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-98-34-T

Date: 11 October 2001

Original: English

BEFORE TRIAL CHAMBER I SECTION A

Before: Judge Liu Daqun, Presiding
Judge Maureen Harding Clark
Judge Fatoumata Diarra

Registrar: Mr. Hans Holthuis

Order of: 11 October 2001

PROSECUTOR

v.

**MLADEN NALETILIĆ aka "TUTA"
and
VINKO MARTINOVIĆ aka "ŠTELA"**

**DECISION ON PROSECUTOR'S MOTION FOR ADMISSION OF ADDITIONAL
TRANSCRIPTS AND EXHIBITS FROM OTHER ICTY PROCEEDINGS**

The Office of the Prosecutor:

Mr. Kenneth Scott

Counsel for the Accused:

**Mr. Krešimir Krsnik, for Mladen Naletilić
Mr. Branko Šerić, for Vinko Martinović**

TRIAL CHAMBER I, SECTION A (“the 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 (“the Tribunal”):

BEING SEISED OF the “Prosecutor’s Motion for Admission of Additional Transcripts and Exhibits from Other ICTY Proceedings”, filed on 16 August 2001 (“the Motion”);

NOTING the “Response of the Defence to Motion of the Prosecutor to admit Transcripts from Blaškić and Kordić Cases”, filed on 28 August 2001 by counsel for the accused Mladen Naletilić and the “Vinko Martinović’s Defence’s Notice of Joining the Response of Defence for the Accused Mladen Naletilić to Motion of the Prosecutor to Admit Transcripts from Blaškić and Kordić Cases”, filed on 30 August 2001 by counsel for the accused Vinko Martinović (together “the Responses”);

NOTING the “Decision on Prosecution Motion for Admission of Transcripts and Exhibits Tendered during Testimony of Certain Blaškić and Kordić Witnesses”, issued on 27 November 2000 (“the 27 November 2000 Decision”), whereby the Chamber admitted transcripts and exhibits tendered during testimony of five witnesses in the *Blaškić* and *Kordić* cases finding them reliable and probative and that it had not been shown that the rights of the accused would be infringed by their admission;

NOTING that an application for leave to appeal against the 27 November 2000 Decision was denied by a bench of the Appeals Chamber in the “Decision on Application by the Accused Mladen Naletilić for Leave to Appeal and Notice of Joinder in that Application by the Accused Vinko Martinović against the Decision of Trial Chamber I Dated 27 November 2000”, issued on 2 February 2001;

NOTING that due to a subsequent change in the Rules of Procedure and Evidence of the Tribunal (“the Rules”), the transcripts from the *Blaškić* and *Kordić* cases, which had previously been dealt with in the 27 November 2000 Decision, were admitted into evidence by the “Decision on Prosecution’s Application to Admit Transcripts under Rule 92 bis”, issued on 23 May 2001 and the “Decision Regarding Prosecutor’s Notice of Intent to Offer Transcripts under Rule 92 bis (D)”, issued on 9 July 2001;

CONSIDERING that the Motion requests that the transcripts and exhibits tendered during testimony of the following three witnesses: Mr Ashdown in the *Blaškić* case; Mr. Ribičić and Mr. Donia in the *Kordić* case (“the transcript evidence”), be admitted into evidence in the present case. The Motion is arguing that the transcript evidence: i) relates to an armed conflict in Bosnia and Herzegovina; ii) is submitted not to prove whether the accused have committed the alleged acts, but to prove pre-requisite elements as the existence of an international armed conflict, the applicability of the Geneva Conventions, and the existence of a widespread or systematic attack; iii) “has been thoroughly tested by full cross-examination by other defendants having an identical interest in opposing this evidence”; and, iv) is covering a similar location and time period as the present case and therefore “in no way infringes the rights of an accused”;

NOTING that the Responses object to the admission on the grounds that: i) the admission would deny the accused a fair trial; ii) the testimonies given in the *Blaškić* and *Kordić* cases about the existence of an international conflict directly address the act and conduct of the accused; iii) it is a “basic right of the accused ... to have the evidence against him presented in the language he understands” and the transcripts are only in English; iv) “according to Rule 94 *bis* the Defence has a right to receive the complete and entire statement of any expert witness”; v) there is not a geographical, political or temporal connection between the present case and the *Blaškić* and *Kordić* cases; vi) witness Ashdown’s testimony concerns events outside the scope of the indictment; vii) “the Defence must have the opportunity to cross-examine the experts of the Prosecution in order to present to them the facts and questions now known, but previously unknown and unavailable at the time these experts testified in the *Blaškić* and *Kordić* cases”;

NOTING that Rule 92 *bis* (D) of the Rules of Procedure and Evidence of the Tribunal (“the Rules”) provides that the Chamber “may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused”;

CONSIDERING that the transcript evidence only relates to pre-requisite elements of the offences charged in the indictment and not to the conduct of the accused;

NOTING that Rule 92 *bis* (E) of the Rules provides that, in the event the opposing party objects to the admission of the transcripts, the Chamber must decide “whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination”;

NOTING that previous decisions of the Tribunal have held that the principal criterion for determining whether a witness should be called for cross-examination, pursuant to Rule 92 bis (E), is the overriding obligation of the Chamber to ensure a fair trial as provided in Articles 20 and 21 of the Statute of the Tribunal and the matters for consideration “are whether the transcript goes to proof of a critical element of the Prosecution’s case against the accused and whether the cross-examination of the witness in the other proceedings dealt adequately with the issues relevant to the defence in the current proceedings”;¹

CONSIDERING that the transcript evidence is not relating to a critical element of the Prosecution’s case with regard to the acts and conduct of either of the accused as it goes to prove the existence of an international armed conflict;

CONSIDERING that if the accused seeks to challenge the statements and opinions of the expert witnesses Ribičič and Donia based upon new information, the Chamber is of the view that such information and evidence may be presented during Trial, when the accused may call his own expert witness, but that it is not necessary for the accused to cross-examine these two witnesses;

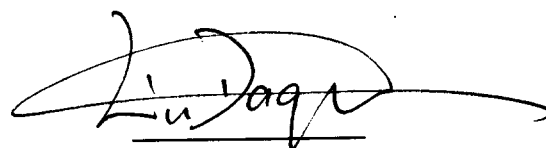
CONSIDERING that witness Ashdown testimony is relevant to the existence of an international armed conflict and therefore within the scope of the indictment;

CONSIDERING that the transcripts are recorded in B/C/S on audiotape;

¹ *Prosecutor v. Duško Sikirica, Damir Došen and Dragan Kolundžija*, Case No.: IT-95-8-T, “Decision on Prosecution’s Application to Admit Transcripts Under Rule 92 bis”, issued on 23 May 2001, para. 2. See also “Decision Regarding Prosecutor’s Notice of Intent to Offer Transcripts under Rule 92 bis (D)”, issued on 9 July 2001, which applied the standard set out in the *Sikirica* case.

FOR THE FOREGOING REASONS**PURSUANT** to Rules 89 (C), 92 *bis* (D) and (E);**GRANTS** the Motion and,**REQUESTS** the Registry to provide the audiotapes of the relevant transcripts to the Defence for Mladen Naletilić and Vinko Martinović;

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

Dated this eleventh day of October 2001,
At The Hague,
The NetherlandsJudge Liu Daqun
Presiding Judge**[Seal of the Tribunal]**