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D7833

CASE/AFFAIRE NO. IT-05-87-T DATE 15 September 2006

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IT-05-87-T
D7832 - D7816
15 SEPTEMBER 2006

7832 AT

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-05-87-T

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nowaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve

Registrar: Mr. Hans Holthuis

Date Filed: 14 September 2006

THE PROSECUTOR

v.

MILAN MILUTINOVIC
NIKOLA SAINOVIC
DRAGOLJUB OJDANIC
NEBOJSA PAVKOVIC
VLADIMIR LAZAREVIC
SRETEN LUKIC

FINAL SUBMISSIONS IN SUPPORT OF
GENERAL OJDANIC'S SECOND
MOTION FOR STAY OF PROCEEDINGS

The Office of the Prosecutor:

Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller

Counsel for General Ojdanic:

Mr. Tomislav Visnjic
Mr. Norman Sepenuk

Mr. Eugene O'Sullivan and Mr. Slobodan Zecevic for Milan Milutinovic
Mr. Toma Fila and Mr. Vladimir Petrovic for Nikola Sainovic
Mr. John Ackerman and Mr. Aleksander Aleksic for Nebojsa Pavkovic
Mr. Mihaljo Bakrac and Mr. Duro Cepic for Vladimir Lazarevic
Mr. Branko Lukic and Mr. Dragan Ivetic for Mr. Sreten Lukic

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1. On 31 July 2006, General Ojdanic filed *General Ojdanic's Second Motion for Stay of Proceedings*. On 7 August 2006, General Ojdanic filed *Supplemental Materials in Support of General Ojdanic's Second Motion for Stay of Proceedings*.

2. Negotiations with UNMIK for a visit by General Ojdanic's defence team to Kosovo have now concluded. General Ojdanic therefore requests that the Trial Chamber decide his motion forthwith.

3. The following supplemental materials since the filing of 7 August 2006 are attached to this pleading:

Annex U—UNMIK letter dated 9 August 2006

Annex V—UNMIK letter dated 30 August 2006

Annex W—Letter to UNMIK dated 6 September 2006

4. In summary, UNMIK was willing to facilitate visits to 6 of the 11 sites requested, but with stringent restrictions on alighting from the vehicle and prohibitions on contact with citizens. After careful deliberations, General Ojdanic's defence team concluded that these restrictions made such a visit of little value, and do not justify the substantial risk to the safety of defence team members.

5. General Ojdanic notes that there continues to be violence against Serbs in Kosovo and that the security situation is particularly sensitive at this time due to ongoing negotiations over the future status of Kosovo. He has collected articles which depict the situation and attached them as Annex "X".

6. General Ojdanic appreciates the Trial Chamber's efforts to encourage UNMIK to facilitate the work of his defence team in Kosovo and appreciates UNMIK's efforts to

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accommodate the needs of his defence team. Nevertheless, the reality is that it is not possible for a Serbian accused to conduct investigation in Kosovo at this time.

7. General Ojdanic reiterates that the past and present circumstances preventing adequate investigation and preparation of his defence in Kosovo, while the prosecution continues to have unfettered access and cooperation in its investigations in Kosovo, renders it unfair to proceed with his trial. He requests that the Trial Chamber grant his motion forthwith.

Respectfully submitted,



TOMISLAV VISNJIC
NORMAN SEPENUK
Counsel for General Ojdanic

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D7829-D7827

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ANNEX "U"

17-05-87-T

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UNITED NATIONS
United Nations Interim
Administration Mission
in Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations Unies
au Kosovo

9 August 2006

Dear Mr. Visnjic,

We are grateful to receive your amended request, provided by Legal Consultant Mr. Robinson on 6 August 2006, including details on the location and scope of visits, as requested in our previous correspondence.

As indicated during our meeting on 3 August 2006, UNMIK is actively evaluating all available information relating to the requested site visits. With the additional information now provided, we believe that we can come to a conclusive response, and answer your request in detail. Please note that UNMIK is undertaking this effort with full transparency and in consultation with the Kosovo authorities, at both the local and central level.

With regard to the request made by Mr. Robinson regarding your personal security, UNMIK would like to assure you that all our actions in this matter will at all times be fully in accord with our mandate under SC Resolution 1244. In fact, the reason for our detailed correspondence and recent face-to-face meeting on the issue of the site visits is mainly to ensure that security considerations, not only your own personal security, but also UNMIK's responsibilities for general security and the maintenance of public order, are properly and effectively addressed.

In this context, it must be recognized that there is a justified need to show sensitivity towards the fact that many of the populations in the relevant villages have been personally affected by the conflict and have experienced some of the worst atrocities committed in Kosovo.

Accordingly, UNMIK would like to reiterate its general parameters for the requested visit, as pointed out during the 3 August meeting:

1. At this stage, we believe that the requested visit to eleven localities should be divided into two or three separate visits, each involving a limited number of sites, with an appropriate intervening time between each visit. This is advisable for operational and security reasons.
2. UNMIK has serious reservations regarding the participation of the Team's investigator, Mr. Isak Ilija, in the site visits to the crime scenes. As an ex-VJ member of high rank, who was active in Kosovo during the Milosevic period, the possibility of recognition and negative response in areas where individuals have been traumatized by security personnel cannot be excluded.

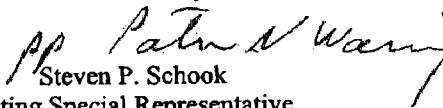
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3. UNMIK will not be able to facilitate spontaneous or unplanned interaction with the local population, in the manner described in the amended request as "speak to residents and find out their version of what happened there". Anyone familiar with Kosovo and the atrocities committed at the sites in question will understand that it is insensitive and provocative to randomly speak to residents about events related to the violent conflict. However, UNMIK stands ready to facilitate and arrange for meetings between you and specific individuals, provided that the person concerned is in agreement. Such meetings will have to be formally requested prior to any visit.
4. UNMIK will follow a very careful media policy. UNMIK will take a reactive approach, meaning that there will be no media announcement, in advance, of an impending visit, although we will have a press-line ready to use if asked. We expect you to take the same approach, in the interest of ensuring a smooth visit.

UNMIK will expedite its evaluation of your amended request of 6 August. Please note that the possibility cannot be excluded that one or more locations will not lend themselves for a site-visit at this time. We will revert with a detailed answer within three weeks.

Yours sincerely,


Steven P. Schook
Acting Special Representative
of the Secretary-General

Mr. Tomislav Visnjic
Lead Counsel
General Ojdanic Defence Team

cc:
Trial Chamber III, International Criminal Tribunal for the former Yugoslavia
Mr. Hans Holthuis, Registrar, International Criminal Tribunal for the former Yugoslavia
Mr. Julian Harston, Director, UN Office Belgrade
Mr. Peter Robinson, Legal Consultant, Ojdanic Defense Team

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ANNEX "V"

IT-05-87-T

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UNITED NATIONS
United Nations Interim
Administration Mission
in Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations Unies
au Kosovo

CONFIDENTIAL

30 August 2006

Dear Mr. Visnjic,

I refer to your amended request, as discussed in some detail at our meeting of 3 August 2006, and followed-up by a letter from Legal Consultant Mr. Peter Robinson, dated 6 August 2006. UNMIK has concluded its assessment relating to the requested site-visits, and is now in a position to present a detailed response.

While assessing your request, UNMIK has taken into account all relevant factors for facilitating visits to crime scenes in Kosovo. In this regard, UNMIK has consulted with the Kosovo authorities at the local and central level, undertaken preparations with UNMIK Police, and coordinated with UNMIK Civil Administration staff working in the field.

Our approach has been one of full transparency towards all parties directly or indirectly affected by the visit. In this regard, we have kept the ICTY Field Office in Prishtinë/Priština informed of our preparations. UNMIK has also taken into account the information provided by the ICTY Trial Chamber, in a letter from the acting senior legal officer of 16 August 2006.

We have striven to achieve a careful balance between UNMIK's obligations toward the ICTY and the proper administration of international justice, and UNMIK's mandate under UN Security Council resolution 1244 (1999) to maintain a stable and safe security environment in Kosovo in light of the current political climate in Kosovo, as well as the local sensitivities in the specific locations that you request to visit.

A. In response to your amended request to visit 11 sites and on the basis of the information you have made available regarding visits to these sites, I am pleased to inform you that UNMIK can facilitate site-visits to the following six locations. For security reasons, it must be understood from the outset that UNMIK cannot facilitate any deviations. Our assessments and consultations with the Kosovo authorities have been conducted in terms of the specifics of your request. Accordingly, the visits to the six sites listed below must conform to what has been requested.

1. Nagavc/Nogavac

Your request included one specific location: a crater which was caused in 1999 by a shell, but which may not be visible any longer. The visit would include a five-minute walk around the village to determine the exact location of the shelling. This requested visit can be facilitated by UNMIK, given that Mr. Isak Ilija is not present.

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2. Vushtrri/Vučitrn

You requested a drive-through visit including a stop to take photographs at the crossroad where an agricultural cooperation is or used to be located. This requested visit can be facilitated by UNMIK with Mr. Isak Ilija present as part of the defence team, given that photographs are taken from inside the vehicle.

3. Xërxe/Žrže

Your request included a stop at a bridge which is located between Bellacrkvë/Bela Crkva and Xërxe/Žrže. In an area around this bridge, which measures approximately 200 square meters, the visit would consist of walking around in order to take photographs. For Xërxe/Žrže village itself, you only requested to drive through by car, without any stops. This requested visit can be facilitated by UNMIK, given that Mr. Isak Ilija is not present.

4. Bishtrazhin/Bištražin

You requested making two stops: (1) at the bridge and (2) at the Catholic Church in the village. This requested visit can be facilitated by UNMIK with Mr. Isak Ilija present as part of the defence team.

5. Bellacrkvë/Bela Crkva

Your request included a visit to a specific house and school building. In an area of approximately 600 square meters, you requested spending approximately one or two hours in order to take photographs of places where alleged killings took place. This requested visit can be facilitated by UNMIK, given that Mr. Isak Ilija is not present.

6. Sudimla e Epërme/Gornja Studimlja

You requested to drive down the road between Studimla e Poshtëme/Dornje Studimlje and Sllakove/Slakovce and to make interval stops along that road. This requested visit can be facilitated by UNMIK with Mr. Isak Ilija present as part of the defence team, given that photographs are taken from inside the vehicle.

Concerning your general request to stop at KLA monuments and/or graveyards en-route to the different sites, please be informed that UNMIK cannot facilitate such stops. Instead, a slowing down of speed of the vehicle as appropriate can be facilitated thereby allowing for the taking of photographs.

B. Regarding your request to visit Rogovë/Rogovo, and stop at the mosque in this village, UNMIK is not yet in a position to facilitate this requested visit as we are still coordinating with the relevant Kosovo authorities. We will inform you as soon as we have concluded our assessment and notify you if we can facilitate this visit. At our 3 August meeting in Prishtinë/Priština, you verbally requested UNMIK to arrange a short meeting with a particular person who used to live in this village. (You were unable to confirm whether this person still lives there.) UNMIK still awaits a written request from you for this meeting. Meanwhile, please be informed that we are making preliminary inquiries into the possibility of facilitating such a meeting.

C. In response to your amended request and on the basis of the information you have made available, please be informed that UNMIK cannot facilitate site-visits to the following four locations:

1. Krusha e Madhe/Velika Kruša

You asked to film from the top of the slope down into the village of Kruse e Vogel/ Mala Kruša. This slope is approximately 200 meters from the location where the violent incident took place during your visit in May. UNMIK cannot facilitate this request, and we would invite you to propose an alternative way of obtaining the requested footage.

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2. Gjakovë/Djakovica

Your request contains two parts: (1) to walk around the centre square of the village and take photographs of the mosque, the museum, and other buildings around the square without entering any of these buildings; and (2) to visit a specific street and a specific house on that street, including entering the house and its basement. UNMIK cannot facilitate this request. We would invite you to propose an alternative way of obtaining the requested information.

3. Meje Orizë/Meja Orize

You asked to walk around freely, without any restrictions, in an area approximately 600 meters square which has the shape of a triangle, located about 3 kilometers from Meje Orizë/Meja Orize. UNMIK cannot facilitate this request. We would invite you to propose an alternative way of obtaining the information you expected to find at this site.

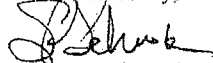
4. Izbic/Izbica

You asked to walk around freely and take photographs in an area of approximately 200 square meters for approximately one to two hours. Specific locations where alleged killings took place and where mass-graves used to be located are requested to be filmed. UNMIK cannot facilitate this request. We would invite you to propose an alternative way of obtaining the requested footage.

Please note that the preparation and coordination of visits by your defence team is an ongoing process and that the possibility of adding or removing one or more sites to the list cannot be excluded. UNMIK reserves the right to make changes in the itinerary, on the basis of changed circumstances on the ground or upon receipt of new information.

UNMIK stands ready to facilitate visits to the sites itemised in part A above during the week of Monday, 2 October 2006. This timeframe was identified by the acting senior legal officer of the Trial Chamber in his letter of 16 August as the only week of adjournment in the trial between now and the end of the year. We also affirm that UNMIK can arrange a meeting between you and the PISG at a high level. Please contact my office so that we can coordinate the exact date(s) and sequence of visits. In this regard, we look forward to hearing from you.

Yours sincerely,



Steven P. Schook
Acting Special Representative
of the Secretary-General

Mr. Tomislav Visnjic
Lead Counsel
General Ojdanic Defence Team

cc:

Trial Chamber III, International Criminal Tribunal for the former Yugoslavia
Mr. Hans Holthuis, Registrar, International Criminal Tribunal for the former Yugoslavia
Mr. Julian Harston, Director, UN Office Belgrade
Mr. Peter Robinson, Legal Consultant, Ojdanic Defense Team

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D7822 - D7821

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ANNEX "W"

IT-05-87-T

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PETER ROBINSON*International Criminal Law***P.O. Box 1844****Santa Rosa, California 95402****(707) 575-0540****(208) 694-6161 (fax)****E-mail: peter@peterrobinson.com**

6 September 2006

The Honorable Steven Schook
Principal Deputy Special Representative
UNMIK
Pristina, Kosovo

Dear General Schook,

We are grateful for your letter of 30 August 2006 and for all the efforts UNMIK has made to accommodate our defence team.

Unfortunately, the conditions set forth in your letter are such that the visit would not be meaningful. We would simply not be able to accomplish our duties to investigate the allegations against General Ojdanic. We need to see more than a handful of places, and most importantly, to have contact with people on the ground at those places to (1) find out what really happened there and (2) even understand what we are looking at.

We understand that you have not placed these restrictions on our visit arbitrarily, and that in fact it is not safe for our defence team to conduct investigation in Kosovo at this time. Should the situation change in Kosovo and UNMIK believe that it can guarantee our safety to visit the scenes and speak with people about what happened there, we would appreciate your letting us know.

Yours truly,

PETER ROBINSON
General Ojdanic Defence Team

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ANNEX "X"

IT-05-87-T

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Unknown Attackers Shoot at Serbs in Kosovo

13 September 2006 | 19:21 | FOCUS News Agency



Kosovska Mitrovica. Unknown attackers shot at a group of Serbs in the village of Bane, Srbica municipality. This is what the press center of the Coordination Center for Kosovo announced cited by RTS. No Serbs were injured. While they were gathering wood in the forest the Serbs became the target of fierce firing coming from the once mixed and now completely Albanian village of Radesevo.

The Serbs own the land in this part of Kosovo and it is exactly these plots that are the target of constant pilfering on the part of the Albanians from the nearby villages. Since 1999 5 Serbs have been killed and 17 others have been wounded in the territory of Srbica municipality. The most serious crime was committed at the end of the year 2000 when three Serbs were killed and ten others were wounded during an attack against a UNMIK bus. So far none of the perpetrators have been arrested, RTS notes.

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More on the topic 

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Kosovo: UN official condemns grenade attack in Mitrovica

27 August 2006 – A senior United Nations official in Kosovo has strongly condemned Saturday night's grenade attack in North Mitrovica, where nine civilians were injured when an explosive device was thrown at a local café bar.

"I am outraged and disappointed at this incident," said Acting Special Representative of the UN Secretary-General in Kosovo Steve Schook.

Looking to the broader implications of the attack, he said the "senseless act of violence? can serve no one's interest and jeopardize the future of the people of Kosovo." The UN has administered the province since 1999 when NATO drove out Yugoslav troops amid ethnic fighting.

Mr. Schook congratulated the Police for having quickly apprehended a suspect and expressed appreciation to the leaders of North Mitrovica for assisting law enforcement officials in maintaining calm among the community. "I understand that on Saturday night in critical moments the leadership of the Serbian National Council helped UNMIK Police to keep the situation under control and defuse the tension," he said.

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UN Envoy Urges Prompt Settlement of Kosovo Status

By Peter Heinlein
United Nations
13 September 2006

[Heinlein report \(Real Audio\) - Download 421k](#) ↻
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The chief United Nations administrator in Kosovo is warning that any delay in settling the region's status could lead to further instability. But as VOA's Peter Heinlein reports from U.N. headquarters, a Serbian official rejected calls for a quick settlement.

U.N. special envoy to Kosovo Joachim Rucker told the Security Council the people of Kosovo are increasingly nervous about their future status. He said a decision must be made quickly on whether the region will remain part of Serbia, or become independent.



Joachim Rucker (file photo)

"For the good of the future of the people of Kosovo, the current period of uncertainty needs to be brought to an end as soon as possible," he said.

Rucker, who assumed his post only days ago, told the Council there are bound to be tensions in the months ahead between Kosovo's ethnic Albanian majority, which make up 90 percent of the population, and the ethnic Serb minority. But he said no good would be served by delaying a final decision on the status question.

"Delay will not bring reconciliation," he said. "Delay will not lead to economic recovery. Delay will only prolong tensions in Kosovo society.

U.N. and U.S. officials have said they want a decision by the end of the year on whether the province remains part of Serbia or gains independence.

Deputy U.S. Ambassador to the U.N. Jackie Sanders urged both sides to find a compromise that will satisfy the region's ethnically diverse population.

"Both sides must be realistic about the outcome of the status process," she said. "Kosovo must remain multi-ethnic and the settlement must be acceptable to the people of Kosovo. Additionally, There will be no return of Kosovo to the pre-1999 situation, no partition of Kosovo and no union of Kosovo with any other or part of, another country.

The top Serbian official in Kosovo, however, rejected calls for a quick settlement of the status issue. Sanda Raskovic-Ivic warned that a lasting settlement is possible only if artificial deadlines are set aside.

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Speaking to the Security Council, she made clear that Belgrade is determined to retain Kosovo, and said the region's ethnic Albanian majority must be persuaded to accept broad autonomy within Serbia.

"The necessary political steps should be taken to persuade the Albanian side to give up extreme, exclusive demands and embrace a rational and compromise solution, namely substantial autonomy with comprehensive competences," she said.

Kosovo's Prime Minister Agim Ceku attended the meeting but did not participate in the debate. But Albania's U.N. Ambassador Adrian Neritani called for what he called a 'realistic' solution.

"We stress our strong conviction that the most realistic, pragmatic and just solution of this status is independence," he said.



AP Photo

Agim Ceku (file photo)

Talks on Kosovo's future status have been going on since February, with little progress.

Earlier this week, Secretary-General Kofi Annan issued a report expressing disappointment with what he called "a lack of common ground" shown in the discussions.

United Nations administrators and an international peacekeeping force were sent to Kosovo in 1999 to contain ethnic hostilities. A senior U.S. diplomat visiting the region Wednesday was quoted as saying the international community would maintain its civilian and military presence in Kosovo after its status is resolved.