



United Nations  
Nations Unies



International  
Criminal Tribunal  
for the Former  
Yugoslavia

Court  
Management and  
Support Services  
Section

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

Section des  
Services  
d'administration et  
d'appui judiciaire

**Notice of  
confidentiality  
applicable to fax**

This facsimile transmission contains United Nations proprietary information that is strictly confidential and/or legally privileged, and is intended solely for the use of officials of the United Nations and/or the named recipient hereof. Any unauthorized disclosure, copying, distribution or other use of the information herein is strictly prohibited. If you have erroneously received this facsimile transmission, please notify the United Nations immediately.

<b>CASE/AFFAIRE NO.</b> IT-04-74-T (PRLIĆ ET AL)		<b>DATE</b> 02 June 2010
<b>FROM/DE</b> CHUKWUKA EHIGHIBE, COURT OFFICER		<i>Chapka</i>
<b>TO/A</b>		
<input checked="" type="checkbox"/> President/Président (1)	<input checked="" type="checkbox"/> Prosecutor/Procureur	<input checked="" type="checkbox"/> Defense Counsel/Conseil de la Défense
<input checked="" type="checkbox"/> Vice President/Vice-Président		
0 Appeals Chamber/ Chambre d'appel	<input checked="" type="checkbox"/> Case Manager/ Commis aux affaires	MR. M. G. KARNAVAS / MS. S. TOMANOVIĆ MS. S. NOŽICA / MR. K. A. A. KHAN MR. B. KOVAČIĆ / MS. N. PINTER MS. V. ALABURIĆ / MR. N. STEWART MS. D. TOMAŠEGOVIĆ-TOMIĆ / MR. D. PLAVEC MR. F. IBRIŠIMOVIĆ / MR. R. SAHOTA
0 Trial Chamber I/ Chambre de 1ère instance I	0 Chief of Investigations/ Chef des enquêtes	
0 Trial Chamber II/ Chambre de 1ère instance II		
<input checked="" type="checkbox"/> Trial Chamber III/ Chambre de 1ère instance III		
0 Embassy/Ambassade		
0 Other/Autre		
<input checked="" type="checkbox"/> Registrar/Deputy Registrar/Greffier/Greffier adjoint MS. F. REINHARDT		<input checked="" type="checkbox"/> VWS Coordinator/Coordinateur de la SVT MR. A. DE WITT
<input checked="" type="checkbox"/> Senior Legal Officer/Juriste hors-classe MS. J. VAILHÉ / MS. A. MATEO		0 UNDU Commanding Officer/Commandant du QPNU
<input checked="" type="checkbox"/> Communications Service/Service Communication		<input checked="" type="checkbox"/> OLAD

<b>PLEASE FIND ATTACHED/VEUILLEZ TROUVER CI-JOINT</b>	
0 Order/Warrant/Decision issued by Appeals Chamber or Trial Chamber or a Judge on/ Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le ____/____/____	
0 Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ____/____/____	
<input checked="" type="checkbox"/> Motion/Request/Application submitted by Prosecution/Defence Counsel on/ Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le <u>01/06/2010</u> <b>+ NOTICE PRALJAK</b>	
0 Response/Reply/Brief submitted by Prosecution/Defence Counsel on/ Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense le ____/____/____	
0 Decision of the Registrar on/Décision du Greffier le ____/____/____	
0 Other/Autre	
<b>RECEIVED/RECU</b>	<b>FILED/ENREGISTRE</b>
<input checked="" type="checkbox"/> Office hours/heures ouvrables Date: <u>01/06/2010</u>	<input checked="" type="checkbox"/> Office hours/heures ouvrables Date: <u>02/06/2010</u>
0 Outside Office hours/en dehors des heures ouvrables Date: ____/____/____ Time/Heure: ____ h	0 Outside Office hours/en dehors des heures ouvrables Date: ____/____/____ Time/Heure: ____ h

For guidelines regarding filing procedures, please see the Directive for the Court Management and Support Services Section Judicial Services Section Registry, IT/121/Rev.1, Part XI: Provision of Documents.  
Pour les procédures concernant le dépôt des documents, voir la Directive relative à la Section d'administration et d'appui judiciaire, Services judiciaires, Greffe, IT/121/Rev.1, Titre XI: Communication des documents.

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands  
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas  
Tel.: 31-70-512 5738/8751 Fax: 31-70-512 8558

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

---

**Case No. IT-04-74-T**  
Original: English

**TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, Presiding  
Judge Arpad Prandler  
Judge Stefan Trechsel  
Reserve Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr. John Hocking

**Filed:** 1 June 2010

**THE PROSECUTOR**

v.

**JADRANKO PRLIĆ  
BRUNO STOJIĆ  
SLOBODAN PRALJAK  
MILIVOJ PETKOVIĆ  
VALENTIN ĆORIĆ  
BERISLAV PUŠIĆ**

**- PUBLIC AND URGENT -**

---

**SLOBODAN PRALJAK'S REQUEST FOR TOLLING OF TIME FOR  
RESPONSE TO THE PROSECUTION MOTION TO REOPEN  
AND  
NOTICE FOR POTENTIAL REOPENING**

---

**The Office of the Prosecutor**

Mr. Kenneth Scott  
Mr. Douglas Stringer

**Counsel for Jadranko Prlić**

Mr. Michael G. Karnavas  
Ms. Suzana Tomanović

**Counsel for Bruno Stojić**

Ms. Senka Nožica  
Mr. Karim A.A. Khan

**Counsel for Slobodan Praljak**

Mr. Božidar Kovačić  
Ms. Nika Pinter

**Counsel for Milivoj Petković**

Ms. Vesna Alaburić  
Mr. Nicholas Stewart

**Counsel for Valentin Ćorić**

Ms. Dijana Tomašegović-Tomić  
Mr. Drazen Plavec

**Counsel for Berislav Pušić**

Mr. Fahrudin Ibrišimović  
Mr. Roger Sahota

**SLOBODAN PRALJAK'S REQUEST FOR TOLLING OF TIME FOR  
RESPONSE TO THE PROSECUTION MOTION TO REOPEN  
AND  
NOTICE FOR POTENTIAL REOPENING**

**I. INTRODUCTION**

1. Slobodan Praljak, by and through counsel, ("Praljak Defence"), respectfully requests the tolling of time to respond to the Prosecution Motion to Reopen Its Case-In-Chief (Mladić Materials)<sup>1</sup> ("Motion") until after notice, disclosure, transcription, and translation are complete; and provides notice as to the Praljak Defence's intent to potentially request the reopening of its own case-in-chief, depending in part on the admission of evidence should the Motion be granted. Though there are sound reasons to oppose the Motion on procedural grounds, particularly with respect to the reliability of the Mladić Materials, the Praljak Defence believes that a full and informed response can only be taken after the transcribed, translated, and verified Mladić Materials are disclosed in full.
2. Without a delay, the Trial Chamber is likely to face a proliferation of submissions as additional information comes to light. The Praljak Defence respectfully submits that extending the effective deadline for response is in the interests of judicial economy and the interests of justice.

**II. BACKGROUND**

3. The Prosecution has submitted that on 23 February 2010, the Serbian Ministry of Internal Affairs seized the wartime notes of Ratko Mladić ("Mladić Notebooks"), audiocassette tapes ("Tapes") and unknown additional materials ("Unknown Materials").<sup>2</sup> The Prosecution, however, apparently only received a scan of the Mladić Notebooks ("Unverified Serbian Scan") and the audiotapes.<sup>3</sup> The Prosecution has disclosed the Unverified Serbian Scan and has announced that it expects to provide its transcriptions of the Unverified Serbian Scan into BCS Latin

---

<sup>1</sup> Filed 21 May 2010.

<sup>2</sup> Motion, paras. 1, 3.

<sup>3</sup> Motion, para. 5.

script and its translations into English by the end of June 2010.<sup>4</sup> The Prosecution has provided interim packages of transcriptions and translation as they are available. The Praljak Defence had hoped that further notice, disclosure, transcription and translation would have occurred at this point.<sup>5</sup> The Praljak Defence would like to again thank the Prosecution for their efforts to maximize the efficiency of proceedings with the ongoing transcription and translation.

4. Unfortunately, to the Praljak Defence's knowledge, the Prosecution has not yet provided notice or disclosure to the Praljak Defence when a verified Prosecution Scan of the original Mladić Notebooks ("Prosecution Scan") will be made available. The Praljak Defence has also noted, with sympathy, that the disclosure thus far has included some revisions and disclosure of translations without transcriptions or clarifications of the revisions, thus creating a modicum of short-term confusion. Material from the Tapes, some of it poor quality, was only disclosed on 28 May 2010. The Praljak Defence has not yet received any copy or substantial information regarding nor the Unknown Materials.
5. The Prosecution states that it will seek to amend the Motion should additional Notebook or audio materials be identified that should, in the interests of justice, be added.<sup>6</sup> The Motion does not itself tender any evidence, but seeks to create a procedural opening for the tendering of evidence.

### III. APPLICABLE LAW

6. Rule 126 *bis* states in pertinent part: "Unless otherwise ordered by a Chamber either generally or in the particular case, a response, if any, to a motion filed by a party shall be filed within fourteen days of the filing of the motion."
7. Rule 127(A)(i) permits a Trial Chamber to enlarge any time prescribed by the Rules.<sup>7</sup>

---

<sup>4</sup> Motion, para. 6.

<sup>5</sup> For the last two weeks, no new material has been available, only revisions.

<sup>6</sup> Motion, para. 30.

<sup>7</sup> Excepting Rules 40 *bis* and 90 *bis*, see Rule 127(C).

#### IV. DISCUSSION

##### A. Tolling Is In the Interests of Judicial Economy.

8. The Praljak Defence respectfully submits that given that notification, disclosure, transcription, and translation are incomplete, the Prosecution is unlikely to be the only party wishing to amend submissions based on new information. This could particularly complicate the procedural picture if certain issues are already the subject of interlocutory appeal.
9. The Praljak Defence again respectfully acknowledges the notice thus far provided by the Prosecution, the ongoing disclosure, and the limited size of the carefully selected passages from the Mladić Notebooks that the Prosecution desires to tender.
10. The fact that the Praljak Defence has received no notice as to the contents of the Unknown Materials is not without legal import. The as yet incomplete disclosure of the original Mladić Notebooks (or a verified scan thereof) and the Unknown Materials is also worth noting. At present, the Praljak Defence has no possibility of checking the tendered evidence against a verified scan of the original Mladić Notebooks, and has no means of knowing what light might be shed by undisclosed materials.
11. Even under the Prosecution's own estimation of important material, important sections are entirely unverified, untranscribed, and untranslated. Notebook 46, for example, which covers the important period from October 1992 until January 1993, has only been provided in unverified third-party scans of hand-written Cyrillic, excepting the fraction highlighted by the Prosecution.
12. The Praljak Defence respectfully submits that it is frivolous to proceed as though the vast quantity of material not yet transcribed or translated from the document that the Prosecution seeks to tender was simply irrelevant. The Praljak Defence, and indeed no party or organ of the Tribunal, is currently in a position to say to what degree the entire body of evidence, in legible form, is relevant to the Motion.
13. From the material already properly the subject of notice, disclosure, transcription and/or translation, the Praljak Defence can already say that the Mladić Materials

raise a host of complex issues that relate to, but also reach well beyond, the selectively chosen materials highlighted by the Prosecution to further their case.

14. Additional clarification regarding the chain of custody and completeness of this hearsay material may also be revealed by allowing a brief delay.
15. The Prosecution is on record repeatedly asserting that it cannot and will not comply with the Trial Chamber's deadline with respect to submission of whether or not it will move to submit evidence in rebuttal, simply due to not having the full body of material it believes it needs to make such a submission. Without taking a position on that issue, the Praljak Defence notes that this request for a brief delay is also based upon the principle that it does not yet have the full body of material it needs to make such a submission. No party yet has the full document translated. No Defence party has a verified copy of the original. Regardless of whether the Prosecution wishes to tender the full document, the full set of inculpatory and exculpatory excerpts in the interests of justice, or the selection which the Prosecution has tendered, the Praljak Defence maintains that it cannot provide a full response until it can evaluate the full document, in a legible original, and with a relatively final translation.
16. Finally, the introduction of these materials without calling Ratko Mladić, the purported author, or his family, the purported custodians, introduces complex legal issues of reliability and fairness that are best addressed with due deliberation. The Rules of Procedure and Evidence and the Trial Chamber have been very clear about the problems with out of court statements being presented for the truth of the matters asserted therein, when those statements are allegedly made by and about the Accused.
17. There is no need to rush. There are ample reasons to provide a limited period of delay. The deadline for response to the Motion should be postponed.
18. Should this request for a limited extension of time be denied, the Praljak Defence respectfully submits that the Trial Chamber is far more likely to face a multitude of motions to reopen and modifications to those motions, with all of the attendant responsive submissions such motions would entail.

**B. Tolling Is In the Interests of Justice.**

19. The Praljak Defence respectfully submits that it is already apparent if all of the evidence from the Prosecution's recent and ongoing disclosures is analysed in total, the small quantity allegedly inculpatory material is explainable *inter alia* by reference to the whole, whereas the large quantity exculpatory material cannot be explained away by the Prosecution.
20. The document as a whole repeatedly confirms Slobodan Praljak's testimony regarding cooperation with ethnic Serbs, Muslims, and international observers, particularly regarding the efforts to follow the instructions of Lord Owen in order to bring peace (*contra* the Prosecution's theory of an ultimatum), the Posavina, and the alleged siege of Mostar. It is hardly surprising that, at times, the Accused would play a certain rôle when negotiating to end the conflict in meetings that included Ratko Mladić.
21. The Praljak Defence respectfully submits that the hearsay regarding the Accused that the Prosecution hopes to tender can only be properly understood in light of the entire tone and import of the document as a whole. The document demonstrates the extremely perilous situation under which those endeavoring to end and repel the aggression against the people of BiH were operating. *Inter alia*, the Mladić Materials tend to demonstrate the following.
  - a. The ethnic Serb forces intentionally provoked conflicts between ethnic Muslim forces and the HVO.
  - b. The efforts to create peace between ethnic Muslims and ethnic Croats were intentionally disrupted by the ethnic Serb forces.
  - c. The reports of international observers upon which the Prosecution relies are repeatedly contradicted.
  - d. The ethnic Muslim forces repeatedly abandoned efforts to repel the aggression from ethnic Serb forces in order to attack the principal defenders of BiH against ethnic Serbian aggression, the HVO.
  - e. Ethnic Croats are denigrated as "Ustashas."
  - f. It is recorded that BiH can be divided between two parts between the ethnic Serbs and the ethnic Muslims—with the ethnic Croats dismissed as

no force at all and relegated to 2 or 3 municipalities in western Herzegovina.

22. These are not trivial issues. They are only a sampling of the important issues raised by the document the Prosecution seeks to tender. These issues, among others, are highly relevant for findings on the specifically alleged Joint Criminal Enterprise. Other issues may emerge as disclosure, transcription, and translation continue.
23. These issues should not be dealt with as though they are trivial. A limited tolling of the time to enable a full response to the Motion is in keeping with the seriousness of the issues raised, and will better allow the Trial Chamber to seek a more comprehensive truth that inevitable provides a firmer foundation for a just judgment.
24. Nor are the procedural issues raised by the thus far incomplete notice, disclosure, transcription and translation irrelevant to the interests of justice. Forcing the Praljak Defence to respond without access to a verified copy of the original and a complete translation would constitute a violation of the fair trial rights of the Accused.

## V. RELIEF REQUESTED

25. For the reasons set forth above, and in accordance with Rule 127, the Praljak Defence respectfully requests a tolling of time to respond to the Prosecution Motion to Reopen Its Case-In-Chief (Mladić Materials) until after notice, disclosure, transcription, and translation of those materials are complete.

Word Count: 1864

Respectfully submitted,

By



Božidar Kovačić and Nika Pinter  
Counsel for the Accused Slobodan Praljak