SCSL - 2004 - 14 - T.
(9551 - 9562)

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Judge Emmanuel Ayoola, Presiding
Judge A. Raja N. Fernando
Judge George Gelaga King
Judge Geoffrey Robertson, QC
Judge Renate Winter

Registrar: Mr Robin Vincent

Date filed: 15 September 2004

THE PROSECUTOR

Against

SAMUEL HINGA NORMAN

MOININA FOFANA

ALLIEU KONDEWA

CASE NO. SCSL – 2004 – 14 – T

PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION APPEAL AGAINST THE TRIAL CHAMBER'S DECISION OF 2 AUGUST 2004 REFUSING LEAVE TO FILE AN INTERLOCUTORY APPEAL

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1. On 30 August 2004, the Prosecution filed before the Appeals Chamber a "Prosecution Appeal Against the Trial Chamber's Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal" (the "**Prosecution Appeal**").[1]

2. On 10 September 2004, a document was filed on behalf of all three Accused entitled "Defence Statement Concerning Jurisdiction of the Appeals Chamber to Hear the Prosecution's 'Application' for Leave to Appeal Against the Decision on Request for Leave to Amend the Indictment" (the "**Defence Response**").[2] Although this document is described in its title as a Defence "Statement", the Prosecution submits that this document is in fact a consolidated Defence response to the Prosecution Appeal.

3. On 10 September 2004, the Presiding Judge of the Appeals Chamber ordered that the Prosecution should file a consolidated reply to the Defence responses within five days of the filing of the Defence responses.[3] Pursuant to that order, the Prosecution files the present reply to the Defence Response.

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[1] Registry pages ("**RP**") 9116-9140.
[2] Incorrectly date stamped as filed 9 September 2004, as confirmed by Court Management (RP 9512-9518).
[3] *Order on Time Limits*, Justice Emmanuel Ayoola, 10 September 2004.

I. ARGUMENT

(A) The manner in which the Appeals Chamber should proceed

4. The Defence Response deals only with the jurisdiction of the Appeals Chamber to hear the Prosecution Appeal, and not with the substance of the appeal itself. The Defence Response appears to suggest that the Appeals Chamber must divide these proceedings into two separate phases, namely (1) an initial phase in which the Appeals Chamber decides whether or not it has jurisdiction to hear an appeal against the Trial Chamber's Decision of 2 August 2004, and (2) a subsequent phase in which the Appeals Chamber would (if necessary) determine the merits of the appeal against the Trial Chamber's decision of 2 August 2004. It would follow that if the Appeals Chamber allowed the appeal against the Trial Chamber's decision of 2 August 2004, there would then be a ***third*** phase in which the Appeals Chamber would hear the appeal against the Trial Chamber's decision of 20 May 2004.

5. The Prosecution agrees with the Defence that the Appeals Chamber must decide whether it has jurisdiction to hear the Prosecution Appeal before it can deal with the merits of the appeal.[4] However, the Prosecution takes issue with any suggestion that these two issues must be addressed in two separate phases of these proceedings. There is no reason why the Appeals Chamber should not, in a single phase, determine whether the Prosecution Appeal falls within its inherent jurisdiction, and if so to determine that appeal. This is precisely what happened, for instance, in the *Tadic Jurisdiction Appeal Decision*.[5] In that case, the accused had filed a preliminary motion before the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia ("**ICTY**") alleging, amongst other matters, that the ICTY had not been lawfully established. The Trial Chamber held that it was incompetent to determine the legality of the creation of the ICTY. The accused then sought to bring an interlocutory appeal against that decision. In a single decision, given after a single phase of argument by the parties, the Appeals Chamber of the ICTY held in relation to that ground of appeal (1) that it had jurisdiction to hear the appeal,[6] (2) that it was competent to determine the legality of the creation of the ICTY,[7] and (3) that the

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4 Defence Response, para. 7.

5 *Prosecutor v. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, Case No. IT-94-1-AR72, Appeals Chamber, 2 October 1995 (the "***Tadic Jurisdiction Appeal Decision***").

6 *Tadic Jurisdiction Appeal Decision*, paras. 4-6.

7 *Tadic Jurisdiction Appeal Decision*, especially paras. 13-25.

ICTY had been validly created.[8] There was no suggestion that the Appeals Chamber was required to conduct separate proceedings in relation to each of these issues.

6. The Prosecution does concede that if the appeal against the Trial Chamber's decision of 2 August 2004 is allowed, it will be necessary to have a separate phase in which the appeal against the Trial Chamber's decision of 20 May 2004 is heard. However, in order to avoid unnecessary delay in the event that the Appeals Chamber reverses the Trial Chamber's decision of 2 August 2004, the Prosecution's arguments on the appeal against the Trial Chamber's decision of 20 May 2004 have already been set out in an annex to the Prosecution Appeal.[9]

(B) The jurisdiction of the Appeals Chamber to hear the Prosecution Appeal

7. The Defence Response argues that the Appeals Chamber has no jurisdiction to hear the Prosecution Appeal. The Prosecution submits that each of the arguments in the Defence Response should be rejected for the reasons given below.

8. First, the Defence Response argues is that the Appeals Chamber lacks jurisdiction to hear the Prosecution Appeal because there is no provision in the Statute or Rules for an interlocutory appeal in the present circumstances.[10] According to the Defence, the absence of any express provision in the Rules "in itself should be sufficient cause to dispose of the appeal".[11]

9. This Defence Argument is directly contradicted by the decisions of the Appeals Chamber of the ICTY referred to in paragraphs 6 and 7 of the Prosecution Appeal.[12] In the first three of those decisions, the Appeals Chamber of the ICTY entertained appeals in circumstances where this was not provided for in the Statute or Rules of that Tribunal.

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8 *Tadic Jurisdiction Appeal Decision*, especially paras. 26-48.

9 See Prosecution Appeal, para. 22.

10 Defence Response, para. 10.

11 Defence Response, para. 9.

12 That is, *Prosecutor v. Tadic, Appeal Judgement on Allegations of Contempt by Prior Counsel*, Case No. IT-94-1-A-AR77, Appeals Chamber, 27 February 2001; *Prosecutor* v. *Brdanin and Talic, Decision on Interlocutory Appeal,* Case No. IT-99-36-AR73.9, Appeals Chamber, 11 December 2002; *Prosecutor v. Milosevic, Decision on the Interlocutory Appeal by the* Amici Curiae *Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case*, Case No. IT-02-54-AR73.6, Appeals Chamber, 20 January 2004, paras. 4-5 and *Prosecutor v. Delalic et al. (Celebici case), Judgement on Sentence Appeal*, Case No. IT-96-21-A*bis*, Appeals Chamber, 8 April 2003 (the "***Celebici Sentencing Appeal Judgement***"), para. 49.

10. As is made clear in the Prosecution Appeal, the Prosecution acknowledges that there is no provision in either the Statute or the Rules for an appeal to the Appeals Chamber against a decision of a Trial Chamber under Rule 73(B) denying leave to bring an interlocutory appeal. Rather, the Prosecution relies on the ***inherent jurisdiction*** of the court.

11. It cannot be doubted that the Special Court has, in addition to the express powers conferred upon it by its Statute and Rules, an inherent jurisdiction which exists by virtue of its character as a judicial body. The existence of an inherent jurisdiction, with attendant inherent powers, is well established in the case law of the ICTY. At a very early stage in the development of the ICTY, its Appeals Chamber said:

> "The competence described in Article 1 of the Statute is what is termed the "original" or "primary" or "substantive" jurisdiction of the Tribunal. In addition, the Tribunal has an "incidental" or "inherent" jurisdiction which derives automatically from the exercise of the judicial function."[13]

In a subsequent case, the Appeals Chamber of the ICTY said that:

> "... As is well known, reference to the Court's 'inherent powers' was made by the International Court of Justice in the *Northern Cameroons* case (I.C.J. Reports 1963, p. 29) and in the *Nuclear Tests* case. In the latter case the Court stated that it 'possesses an inherent jurisdiction enabling it to take such action as may be required, on the one hand to ensure that the exercise of its jurisdiction over the merits, if and when established, shall not be frustrated, and on the other, to provide for the orderly settlement of all matters in dispute. ... Such inherent jurisdiction, on the basis of which the Court is fully empowered to make whatever findings may be necessary for the purposes just indicated, derives from the mere existence of the Court as a judicial organ established by the consent of States, and is conferred upon it in order that its basic judicial functions may be safeguarded' (*Nuclear Tests* case, I.C.J. Reports 1974, pp. 259-60, para. 23)."[14]

Again, in another case, the Appeals Chamber of the ICTY said that:

> "The Appeals Chamber has raised preliminary issues *proprio motu* ***pursuant to its inherent powers as an appellate body*** once seised of an appeal lodged by either party pursuant to Article 25 of the Statute. The Appeals Chamber finds nothing in the Statute or the Rules, nor in practices of international institutions or national judicial systems, which would confine its consideration of the appeal to the issues raised formally by the parties."[15]

One judge of the Appeals Chamber of the ICTY has further explained:

> "It is the fundamental obligation of this Tribunal, imposed by Articles 20 and 21 of its Statute, to ensure the fair and expeditious trial of those indicted before it.

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13 *Tadic Jurisdiction Appeal Decision*, footnote 5 above, para. 14.

14 *Prosecutor v. Blaskic, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997*, Case No. IT-95-14-AR108 *bis*, Appeals Chamber, 29 October 1997, para. 25, footnote 27.

15 *Prosecutor v. Erdemovic, Judgment*, Case No. IT-96-22-A, Appeals Chamber, 7 October 1997, para. 16 (emphasis added).

> ***The Tribunal also has an inherent power, deriving from its judicial function, to control its proceedings in such a way as to ensure that justice is done.*** This obligation and inherent power become particularly relevant when the Tribunal is dealing with matters of practice which arise in those proceedings, for it is these matters which primarily ensure that the trial proceeds fairly and expeditiously."[16]

Another judge of the ICTY has stated that:

> "The absence of any specific provision in either the Statute or the Rules regarding a particular right does not necessarily mean that there is no entitlement to that right. Such a right may be recognised by the Tribunal pursuant to powers that the Tribunal possesses as part of its inherent jurisdiction."[17]

And, as a judge of the Appeals Chamber of the ICTR has observed:

> "But rules of procedure on the subject must be interpreted as intended to help the court in, and not to disable it from, discharging its paramount and fundamental mission to administer justice; they are not to be mechanically applied. To be sure, the inherent power thus retained is not a brooding omnipresence in the sky; it is in the nature of a reserve power and has to be cautiously used; but it can be used to extend time where this is required by the interests of justice. However dead the case may appear to be, it is not irretrievably dead at the very instant of time when an applicable briefing time-limit is exceeded. ... Rule 116 says that the "Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause". The Rule does not say that the Appeals Chamber may extend time only where there is before it a motion for extension: ***the inherent power of the Chamber to regulate its own procedure with a view to doing justice in the particular circumstances of the case remains intact***, though of course having to be sparingly employed. Accordingly, one finds that cases have occurred in which an extension of time was granted although no motion was ever made."[18]

More recently, the Appeals Chamber of the ICTY has affirmed that:

> "The Tribunal has an inherent power to stay proceedings which are an abuse of process, such a power arising from the need for the Tribunal to be able to exercise effectively the jurisdiction which it has to dispose of the proceedings."[19]

This inherent jurisdiction has been recognised also by the Appeals Chamber of the Special Court, which said in a decision of 4 November 2003 in the *Norman*, *Kallon* and *Gbao* cases that:

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[16] *Prosecutor v. Delalic et al. (Celebici case), Decision on Motion to Preserve and Provide Evidence, Separate Opinion of Judge Hunt*, Case No. IT-96-21-A, Appeals Chamber, 22 April 1999, para. 3 (emphasis added).

[17] *Prosecutor v. Milutinovic et al., Decision on Application by Dragoljub Ojdanic for Disclosure of* Ex Parte *Submissions*, Case No. IT-99-37-I, Confirming Judge, 8 November 2002, para. 17.

[18] *Prosecutor v. Kayishema and Ruzindana, Judgement (Reasons), Dissenting Opinion of Judge Shahabuddeen*, Case No ICTR-95-1-A, Appeals Chamber, 1 June 2001, paras. 14-16 (emphasis added).

[19] *Prosecutor v. Bobetko, Decision on Challenge by Croatia to Decision and Orders of Confirming Judge*, Case Nos. IT-02-62-AR54*bis* & IT-02-62-AR108*bis*, Appeals Chamber, 29 November 2002, para. 15.

> "Article 20 [of the Special Court's Statute] is a statutory guarantee of the Covenant promise in Article 14(5), but it does not serve, expressly or impliedly, to strip the Appeals Chamber of all other function ***or of its inherent powers***. ... In any event, the Special Court has an inherent power to organise itself, through its procedural rules, in a way that its judges agree will best assist its work so long as such rules do not contravene any express provision in the Agreement and Statute. Such a power has been upheld ... by the ICTR Appeals Chamber in Tadic which explains that ***inherent jurisdiction 'is a necessary component of the judicial function' and does not need to be expressly provided for in the constitutive documents of the tribunal.***"[20]

12. The Prosecution submits that at this stage in the development of international criminal law it must be taken to be established beyond doubt that an international criminal court has a certain inherent jurisdiction and certain inherent powers merely by virtue of its judicial character.

13. Furthermore, the Prosecution submits that if the Appeals Chamber of the ICTY can hear appeals against decisions of a Trial Chamber in the absence of any provision in the Statute or Rules (as occurred in the cases cited in paragraph 6 of the Prosecution Appeal and footnote 8 above), it must necessarily be relying on its inherent jurisdiction in order to do so. This in fact appears to be acknowledged by the Appeals Chamber in the *Celebici Sentencing Appeal Judgement*.[21]

14. Thus, the Prosecution submits that it must be taken as established that the Appeals Chamber can, in certain particular circumstances, in the exercise of its inherent jurisdiction, hear appeals that are not expressly provided for in the Statute or Rules. The only question is whether the present case is one of those particular circumstances.

15. The Defence Response does not address this question. Rather, it simply seeks to deny altogether the existence of the court's inherent powers. The Prosecution submits that the present case is one of the particular circumstances in which the Appeals Chamber can exercise its inherent power to hear an appeal against a decision of the Trial Chamber, for the reasons given in the Prosecution Appeal.

16. There is no merit to the Defence argument that the Prosecution is alleging the existence of an "unwritten rule" which "supersedes" the written provisions of the

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[20] *Prosecutor v. Norman, Prosecutor v. Kallon, Prosecutor v. Gbao, Decision on the Applications for a Stay of Proceedings and Denial of Right to Appeal*, Case Nos. SCSL-2003-08-PT, SCSL-2003-07-PT, and SCSL-2003-09-PT, Appeals Chamber, 4 November 2003, paras. 26-27 (footnotes omitted, emphasis added).

[21] See *Celebici Sentencing Appeal Judgement*, footnote 8 above, para. 50, referring to the Appeals Chamber's "inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction which is expressly given to it by that Statute is not frustrated and that its basic judicial functions are safeguarded".

Statute and Rules.[22] The inherent jurisdiction and powers of the court are not an "unwritten rule". Rather, they exist inherently by virtue of the court's judicial character, and are well-recognised. The inherent jurisdiction of the court does not "supersede" the written rules, but is additional to, and complements, the express provisions of the Statute and the Rules. In any event, in this case it cannot be suggested that it would be ***inconsistent*** with Rule 73(B) for the Appeals Chamber to hear the Prosecution Appeal in the exercise of its inherent jurisdiction. Rule 73(B) provides that an interlocutory appeal may be brought in certain circumstances. However, it does not state that that there shall be no interlocutory appeals in any other circumstances.[23]

17. It is therefore incorrect to argue, as the Defence Response does, that the Prosecution is seeking to ***alter*** the Rules mid-trial, to the benefit of the Prosecution.[24] The inherent jurisdiction and the inherent powers of the Special Court have always existed, and the existence of an inherent jurisdiction and inherent powers of international courts and tribunals has long been acknowledged. It may be true that there has never been a judicial pronouncement on whether the inherent jurisdiction of the Appeals Chamber of the Special Court can extend to hearing an interlocutory appeal against a decision of a Trial Chamber under Rule 73(B). However, if the Appeals Chamber answers this question in the affirmative, it is not thereby altering the Rules. It is merely determining the scope of its inherent jurisdiction.

18. Contrary to what the Defence Response asserts,[25] the Prosecution is not arguing that the Appeals Chamber has jurisdiction to hear ***any*** appeal. As was stated expressly in the Prosecution Appeal, the Prosecution does not argue that the Appeals Chamber has a general power to hear any appeal from any decision of a Trial Chamber at any time and in any circumstances, regardless of whether or not the Statute or Rules provide for it.[26] Rather, the Prosecution submission is that there is a general principle that any decision (whether of the Trial Chamber or of the Appeals Chamber), that is erroneous and that has led to an injustice, and which is not capable of being remedied by any other means, must be amenable to correction by the Appeals Chamber. This general principle is reflected in the case law referred to in paragraphs 6 and 7 of the

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22 Defence Response, para. 8.

23 See, by analogy, the text to footnote 18 above: the fact that the Rules expressly empower a Chamber to grant an extension of time on the motion of a party does not mean that the Chamber cannot grant an extension of time in the absence of such a motion, in reliance on its inherent power.

24 Defence Response, paras. 9-11.

25 Defence Response, para. 8.

26 Prosecution Appeal, para. 8.

Prosecution Appeal. For the reasons given in paragraph 9 of the Prosecution Appeal, the need for the Appeals Chamber to exercise this inherent power will arise only very rarely at an interlocutory stage. However, for the reasons given in paragraph 10 of the Prosecution Appeal, in the present case, there are exceptional reasons why the Appeals Chamber should exercise its inherent power to hear an appeal against the Trial Chamber's decision of 2 August 2004.

19. The Defence Response argues that none of the cases cited by the Prosecution suggest that the Appeals Chamber has jurisdiction over this specific appeal.[27] The Prosecution acknowledges that none of the cases cited by the Prosecution involved exactly the same situation as that which arises in this case, and that to this extent, this is a case of first impression. However, that does not mean that the cases cited do not support the Prosecution argument. It is submitted that the cases cited by the Prosecution do support the existence of the general principle referred to in paragraph 8 of the Prosecution Appeal, namely that where there is no other possibility of correcting an injustice caused by a decision of the court itself, the Appeals Chamber must have an inherent power to intervene.

20. The Defence Response appears to argue that the decisions of the Appeals Chamber of the ICTY relied upon in paragraphs 6 and 7 of the Prosecution Appeal should not be followed, on the ground that "the rules that apply at the ICTY are differently worded from the relevant provisions of the Rules [of the Special Court]".[28] However, the Prosecution does not rely on these decisions of the ICTY in order to determine how particular provisions of the Rules of the Special Court are to be interpreted. The Prosecution relies on these decisions of the ICTY in support of general principles concerning the scope of the inherent jurisdiction and powers of the Special Court. These general principles are, it is submitted, common to the ICTY, ICTR and the Special Court, regardless of any differences in the details of their Rules, and regardless of changes to their Rules from time to time.

21. The Defence Response also argues that the provisions in the Rules relating to interlocutory appeals were carefully considered by the Plenary, and that the only interlocutory appeals that were intended to be permitted are those provided for expressly in the Rules.[29] The Defence Response further maintains that Rule 73 was

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[27] Defence Response, para. 17.

[28] Defence Response, para. 8. The Defence Response subsequently argues, in the same vein, that "Each case that the Prosecution cite was governed by ICTY rules that vary significantly from Rule 73 of the Rules" (Defence Response, para. 16).

[29] Defence Response, paras. 12-14.

amended "in order to avoid the ambiguous situations presented by the cases that the Prosecution cites".[30] The Prosecution agrees that in principle, interlocutory appeals should only be brought in the circumstances provided for in the Rules. As stated in paragraph 9 of the Prosecution Appeal and paragraph 18 above, the need for the Appeals Chamber to exercise its inherent power will arise only very rarely at an interlocutory stage. It is submitted that the present case is in fact one which was not envisaged by the Plenary when Rule 73 was adopted or amended. The Plenary determined that an interlocutory appeal should only be brought where a Trial Chamber determines that the requirements of Rule 73(B) are satisfied. The question that arises in the present case is what occurs if the Trial Chamber errs in its interpretation and application of the requirements of Rule 73(B). No provision is made in the Rules to deal with this situation, and there is nothing to suggest that the Plenary ever expressly considered it. Even the Defence Response acknowledges that one of the ICTY decisions relied upon by the Prosecution may be taken as authority for the proposition that "the Appeals Chamber has the power to rule on issues that the framers of the Rules did not consider or envision".[31]

22. The Defence Response then argues that if the Prosecution had any objections to the mechanism for interlocutory appeals provided for in Rule 73, it could have raised its concerns at the last plenary session of the Special Court in May 2004.[32] This argument, with respect to the Defence, is entirely misconceived. First, the Prosecution has raised no objection to the wording of Rule 73. The Prosecution's objection is that the Trial Chamber has not correctly applied and interpreted Rule 73(B), and therefore has denied an interlocutory appeal on an invalid basis. While the Trial Chamber has a discretion whether or not to allow an interlocutory appeal under Rule 73(B), it must exercise that discretion correctly in accordance with the legal test that is stated in that Rule. The Prosecution does not object to the substance of Rule 73(B), but rather, is seeking to have the substance of Rule 73(B) applied ***correctly***. Furthermore, and in any event, the failure by the Prosecution to raise a particular problem at a Plenary session of the Special Court does not mean that the Prosecution is estopped from ever raising that problem in judicial proceedings before a Chamber of the Special Court.

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30 Defence Response, para. 16.
31 Defence Response, para. 17.
32 Defence Response, para. 15.

23. If the Appeals Chamber finds that the Trial Chamber has erred in the exercise of its discretion under Rule 73(B), on the ground that it has misinterpreted and misapplied the test in that provision, the Appeals Chamber can substitute its own exercise of discretion in the place of the discretion exercised by the Trial Chamber.[33]

(B) The merits of the Prosecution Appeal

24. As noted in paragraphs 4 to 6 above, the Defence Response does not address the merits of the Prosecution Appeal. In relation to the merits, the Prosecution relies upon its submissions in paragraphs 12-22 of the Prosecution Appeal.

CONCLUSION

25. For the reasons given above, the Prosecution requests the Appeals Chamber to grant the relief requested in paragraph 23 of the Prosecution Appeal.

Freetown, 15 September 2004.

For the Prosecution,

Luc Côté

James C. Johnson

Christopher Staker

[33] See Prosecution Appeal, para. 21.

Prosecution Index of Authorities

1. *Prosecutor v. Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-AR72, Appeals Chamber, 2 October 1995.

2. *Prosecutor v. Tadic*, Appeal Judgement on Allegations of Contempt by Prior Counsel, Decision on Interlocutory Appeal, Case No. IT-94-1-A-AR77, Appeals Chamber, 27 February 2001.

3. *Prosecutor v. Brdanin & Talic*, Decision on Interlocutory Appeal, Case No. IT-99-36-AR73.9, Appeals Chamber, 11 December 2002.

4. *Prosecutor v. Milosevic*, Decision on the Interlocutory Appeal by Amici Curiae Against Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, Case No. IT-02-54-AR73.6, Appeals Chamber, 20 January 2004.

5. *Prosecutor v. Delalic et al. (Celebici case)*, Judgement on Sentence Appeal, Case No. IT-96-21-A*bis*, Appeals Chamber, 8 April 2003.

6. *Prosecutor v. Blaskic*, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, Case No. IT-95-14-AR108*bis*, Appeals Chamber, 29 October 1997.

7. *Prosecutor v. Erdemovic*, Judgement, Case No. IT-96-22-A, Appeals Chamber, 7 October 1997.

8. *Prosecutor v. Delalic et al. (Celebici case)*, Decision on Motion to Preserve and Provide Evidence, Separate Opinion of Judge Hunt, Case No. IT-96-21-A, Appeals Chamber, 22 April 1999.

9. *Prosecutor v. Milutinovic et al.*, Decision on Application by Dragoljub Ojdanic for Disclosure of Ex Parte Submissions, Case No. ICTR-95-1-A, Appeals Chamber, I June 2001.

10. *Prosecutor v. Bobetko*, Decision on Challenge by Croatia to Decision and Orders of Confirming Judge, Case Nos. IT-02-62-AR54*bis*, Appeals Chamber, 29 November 2002.

11. *Prosecutor v. Kayishema & Ruzindana*, Judgement (Reasons), Dissenting Opinion of Judge Shahabuddeen, Case No. ICTR-95-1-A, Appeals Chamber, 1 June 2001.

12. *Prosecutor v. Norman*, *Prosecutor v. Kallon*, *Prosecutor v. Gbao*, Decision on the Applications of Stay of Proceedings and Denial of the Right to Appeal, Case Nos. SCSL-2003-08-PT, SCSL-2003-07-PT and SCSL-2003-09-PT, Appeals Chamber, 4 November 2003.