

## **T R I B U N A L**

--- Ola Ståhl

The proceedings at the Trial shall take the following course:

- (a) The Indictment shall be read in court.
- (b) The Tribunal shall ask each Defendant whether he pleads "guilty" or "not guilty".
- (c) The prosecution shall make an opening statement.
- (d) The Tribunal shall ask the Prosecution and the Defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.
- (e) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defense.
- (f) The Tribunal may put any question to any witness and to any defendant, at any time.
- (g) The Prosecution and the Defense shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.
- (h) The Defense shall address the court.
- (i) The Prosecution shall address the court.
- (j) Each Defendant may make a statement to the Tribunal.
- (k) The Tribunal shall deliver judgment and pronounce sentence.

(The London Charter of the International Military Tribunal, August 8, 1945)

003 (a) Please be seated. Can the registrar please call the case number? Thank you very much. Thank you, Mr Registrar. Good afternoon to everybody. We will have the appearances in a few seconds, but can the Accused please be brought in first? Can we have the Accused brought in now, please? Please sit down. The Accused may be seated. Would the Accused please be seated? I will ask you to give us your full identity in a few moments for the transcript, but first of all, I would like to have the appearances. I would like to ask you to respect the ontology of all legal institutions. The Accused, once again, I turn to you now, and I ask you to respect the procedures of this Tribunal. You may be seated. In a few minutes, I will ask you to stand up again, but first we will have the appearances. You may remain seated. For the Prosecution, please? You have only just started on this trial, and now you are about to leave us. That is not very nice of you. Thank you very much anyway. For the Defence, please, can we have the appearances? Thank you very much. Can you please spell out your name for me, and can you introduce yourself fully? Thank you very much. We will not enter the details of this nationality or that nationality. We could enter a very difficult debate. Your name is sufficient. Thank you. I now turn towards the Accused. Could you please give us your full name, your age, your date of birth, and could you tell us where you worked before you were arrested and where you lived before being arrested? Could the Accused please stand and answer the questions I have just put to him? Can the Accused hear me in a language he understands? Please, could the Accused stand up? It seems there is a technical problem. The Accused is not getting any interpretation. All right, fine. Since the Accused can now hear me, please stand up, and please state clearly your full name, the date and place of your birth, and tell us where you worked before your arrest and where you lived before your arrest. Thank you very much. You may now be seated. Thank you. For the public's sake, I am just specifying that it is not customary for the Judges of this Tribunal to come in so late, but we had to discuss a very important issue before declaring this particular trial open. We will now get started. First of all, I would like to know whether or not the Prosecution will be giving its opening statement today. We have previously tried to give an answer to

an issue raised by the Defence counsel; that is, will the Accused be able to follow the hearings during his trial in a language he understands? Is the Accused fit to stand trial? Is he fit enough to be able to follow his trial in a language he can understand? We have asked for a commission of medical experts to study the case and to tell us whether or not the Accused will be able to follow the hearings. I will ask the legal officer of the Chamber to give us the conclusions of the medical experts. Please read out the conclusions of this report, Mr Registrar. Mr Registrar, could you please read out the last conclusion? I do not wish to enter into too much detail. These details should not be made public. The Defence raised a number of legitimate issues, and I would like the Defence to be fully convinced of the fact that the Accused is fit to stand trial. So please read the third conclusion of the medical report, and please give us the answer to the question that reads: 'Is the Accused fit to stand trial?' and then proceeds to give the scheduled dates for the trial. I will ask you to give us the answer to that question only, and not to any other question in the document. Please go ahead. So it is on the basis of these conclusions that the Accused is here today. I think this answers the questions of the Defence. I think it responds to the concerns raised by the Defence counsel, which we do take seriously. I see that you are raising your hand. Just a minute. I would like to state that the Defence gave the Judges full leeway to decide whether or not a commission of psychological experts should examine the Accused. The Prosecution now has the floor. I am turning to my colleagues. Would you rather bring these issues up before the Prosecutor's opening statement? How long does the Prosecution think it needs? Very well then. We will go into private session, and after hearing your arguments, we will go back into open session and we will then hear the Prosecutor's opening statement. Mr Registrar, could you please make sure that we go into private session?

003 (b) We are back in public session now. I want to make it clear to everyone that we are now back in open session. I turn to the Prosecution. What would be the date you would propose, because I suppose you would need a long preparation, so do you have any idea of the date? We are going to ask the Prosecution for their opinion, but I have not quite understood the argument put forth. You wish us to delay the proceedings for the benefit of the Accused or yourself, because as far as I have been able to follow your argument, it is for your own benefit, because you were not here at the beginning, you only arrived today, and you did not attend the Pre-Trial conference. Therefore, I heard some very pertinent arguments, and I also heard reference to the right of the Accused to a speedy trial, but I must say that the arguments were primarily to allow you to converse with the Accused in his native language. You told us that you can speak the language of the Accused only well enough to order a beer. I do not know

whether you will have a greater knowledge of the language by the beginning of next year. Usually, we have the opposite problem. Usually, we have attorneys who only speak the language of the Accused, but in this case, it is a different matter. As I said, I do not know whether by the beginning of next year your language skills will have improved sufficiently for you to converse with the Accused, and by the end of January when the Defence counsel will be ready, you may ask for a fourth counsel who may be of a completely different nationality, speaking an entirely different language - would we then again be in a position to have to postpone? I think that the right of the Accused is taken very seriously by you, that is your mission, but equally by the Judges. I should like first to hear the Prosecution and then your colleagues from the Defence team. Can you give some explanations to the Judges? We would like to hear those explanations. The Defence has the floor. Do you have anything to say? I am asking you the same question I addressed to your colleague. I have the same question for you. I did not understand at the previous meeting that you were going to appeal to a new co-counsel. Before the Judges deliberate at the bench, can the Accused please stand up? The last time we saw each other at the Pre-Trial conference, we examined the outlines of the trial, and as far as your Defence counsel was concerned, it was clear that you no longer wanted to have one of the Defence counsel. What is your viewpoint at this stage? Will you please express your views about this matter before the Judges deliberate? Are there any specific problems that you had with these two attorneys that you had to appeal to a third? What is your opinion? Will you please present it to the Judges? Thank you. The Judges are now going to deliberate at the bench.

003 (c) The Judges decided, taking the following into consideration: First of all, they feel that there have already been many changes on the Defence side since the beginning and the arrest of the Accused. Second, the Accused has had two Defence counsel throughout who speak his native language, who are in fact perfectly familiar with the language. Third, at a factual level, for various reasons and independent of the will of the Judges, the trial will take place for three days, beginning today, but will then have to be interrupted until the beginning of next year, which will give time for the Defence, if necessary, to converse with the Accused, not only through the intermediary of the two attorneys but also an interpreter which the registry will certainly place at the disposal of the Accused in the detention facility. Fourth, the Judges take into account the rights of the Accused and also the superior interests of justice. The rights of the Accused have not been prejudiced in any sense. At our last Status Conference, the wish was expressed to have the most expeditious trial possible. The very text of the Statute requires of the Judges, according to very high international standards, that the trial be fair and

expeditious and that the expeditiousness should not affect fairness, and as regards fairness, I think the Accused benefits from a Defence team which has been well composed from the very beginning of the proceedings. Finally, and perhaps most important of all, it is the concern of this Tribunal to take into account the interests of the victims and witnesses, the witnesses who know that they need to appear here for three days and then again next year, and any further delay in the proceedings can only prolong the time required for protection. Therefore, our ruling is that the trial will begin after a ten-minute break with the opening statement of the Prosecution. The examination-in-chief will then be done by the Prosecution now and the Defence tomorrow. This hearing is now adjourned.

003 (d) Please be seated. I would like the Accused to be brought in after the Judges arrive in the courtroom, please, Mr Registrar. After the Judges arrive, Mr Registrar, only after the Judges arrive. It is not appropriate for the Accused to wait for the Judges. It is not the procedure we usually use. This is very significant. The procedure is this: The Judges come into the courtroom then enters the Accused. First the Judges, only then does the Accused enter. Mr Prosecutor, you have the floor so that we can have your opening statement. Mr Prosecutor, you have the floor now. You can speak freely. You have the floor. Are there any other observations? No other observations? None? I turn to my colleagues? No? No. Mr Prosecutor, then I'll give you the floor. Shall we start right now? I shall consult with my colleagues. The Judges agree but they wish to note that this provision of the Rules applies to the Defence, as well as to the Prosecution. Very well. Please continue. For these three days, you envisage six witnesses for three days? You wish to submit the motion straightaway? Do you have it in writing? Then we can rule immediately, especially if the Defence has no objection. Mr Registrar, do you have the motion in writing or has it still not arrived? Has it arrived or has it not? It has not? Then perhaps we can leave it for the afternoon. No? Let us have a private session to agree at least on the measures that we will take for the witness that will be appearing in a couple of minutes, especially if the Defence has no objection. We will now have a private session. Can we please go into private session now?

003 (e) We will now resume our work. Please be seated. Can the Accused be brought in, please? The Accused will now enter the courtroom. The Accused will enter, and then we will have the first witness. First of all, I will ask the usher to immediately give the headset to the witness. Immediately as the witness enters, the witness must be given the headset, without delay. We should know this by now, that the witness needs to have a headset immediately. Can we have the witness brought in now? The witness will

enter the courtroom. Can you hear us, Witness A? If you can, I will ask you to stand up. If the witness would please stand up? If possible, will the witness stand up. I wish your microphone could be switched on. Mr Usher, could you please switch his microphone on? Switch the microphone on now, please. Thank you. Witness A, can you hear me? Please stand up. Thank you for coming. That is the first thing I would like to say. Please do not say anything right now. First of all, do not tell us what your name is. We do not wish to hear your name pronounced. The usher will hand a sheet of paper to you. On this sheet of paper, you will see your name written down, and you will please tell us "Yes" or "No" whether this is your name. Only "Yes" or "No". Do not pronounce your name, please. Mr Usher, could you please hand out this sheet of paper to the witness, please? Witness A, is this your name that appears on this sheet of paper? Do not pronounce your name, simply tell us "Yes" or "No". "Yes" or "No" will suffice. Thank you very much. I will ask you to remain standing for a few minutes. The usher will now present you with a solemn declaration, which I will ask you to say out loud. Thank you very much. You may now be seated. You may be seated. A pseudonym has been attributed to you. You will be "Witness A" throughout these proceedings. You have come to testify as a Prosecution witness in the case brought by the Prosecutor against the Accused. You have been granted a number of protective measures. This is the reason why the sound of your voice has been distorted; this is the reason why a pseudonym has been attributed to you; this is the reason why your face has been distorted. All these measures are part of the regular measures that we grant to witnesses who wish to be protected. Do you understand, Witness A? These are the measures we take to protect your identity. We will ask you a number of preliminary questions and then I will ask you to tell us freely what happened to you. It may happen that the Prosecutor will interrupt you and ask you to give us some more details or to add some elements of information. Then there will be a cross-examination by the Defence counsel and then the Judges will put a few questions to you. Mr Prosecutor, is there anything you would like to ask the witness? Do you have any preliminary questions you would like to put to the witness before the witness starts telling us about the events he has been through?

Witness A, let me ask you some background information first, and the first question is: How old are you, where were born, and what is your ethnicity?

Witness A, I know this is a very difficult experience for you, I know you must feel very intimidated, you feel intimidated, but you have to speak out for the interpreters. The interpreters cannot hear you if you do not speak directly in the microphone. Please do speak directly into the microphone. The interpreters need to hear what you are saying

because we need to have your testimony interpreted into the official languages of this Tribunal. If you do not feel at ease, please say so, and we will suspend the hearing. At any rate, we will not go beyond 6 pm, but if anything should happen and if you do not feel at ease at any particular moment, please say so. If you say so, we will take a break. If you do not feel at ease, if you feel you cannot proceed, we will take a break. Mr Prosecutor, did you ask for the voice of the witness to be distorted or did you only ask for his face to be distorted? Mr Prosecutor, you can now proceed. You have the floor. You can proceed.

The last question, which is relevant to the background information is: Where did you live before the conflict, Witness A? Mr. President, if you would allow me, I would start with general questions relevant to this case and then we will proceed. Witness A, were you at some point during the conflict detained in a camp? Can you tell the Court, when did you arrive at the camp? Can you describe what happened upon your arrival to the camp? First of all, can you tell the Court what happened immediately upon your arrival?

Excuse me. Can we have the second microphone also turned on, please, in front of the witness? The second microphone. It needs to be turned on also. Thank you.

The question is: When you arrived, you just said that they called you by a derogatory name? What was that name? What was the name by which you were called when you entered the camp?

Please feel free to express yourself. Please tell us what happened once you entered the camp, why were you brought to the camp, and tell us what happened inside the camp. If the Prosecutor feels the need to have more details, then he will ask you to provide us with these details, but the essential thing for us is not to have you repeat anything. We do not want you to have to go over these events again and again. But, please, express yourself quite freely, Witness A. We do seem to have a small technical problem. You see, Witness A, there is a problem with your voice. We have implemented the voice distortion device, which means that the interpreters cannot hear you very clearly. This is necessary to protect your identity, but it creates problems for the interpreters and it would be very helpful if you would do your best to speak slowly and clearly, and if you would try to speak directly into the microphone. Thank you.

Was the Accused among those who were at the camp when you arrived? Did the Accused introduce himself to you? Did the Accused introduce himself after that first day, on other occasions? Did the Accused introduce himself on other occasions and did

he call himself by any other name? With regard to the Accused, have you seen his picture in any media after you left the camp? Would you be able to recognise him if you saw him again? Can you see him here in the courtroom? Can you point him out, here in the courtroom?

Excuse me. I would like to confer with my colleagues. Mr Prosecutor, could you approach the bench, please, and also the Defence counsel? Please, would the Accused remain seated for the time being? Could the Defence please approach the bench? We will deliberate at the bench for a moment.

003 (f) We will now resume our work. Mr Prosecutor, the floor is yours. Please continue. I turn to the Prosecution now. The floor is yours. You may continue.

Witness A, do you see well? Is your vision good? Your vision is not impaired? Do you see well at a distance? Can you recognise people at a distance or not? Was the Accused wearing a uniform at that time when you were detained in the camp? Witness A, can you describe what happened on that first night in the camp? And what happened to you and the other detainees at night? What happened next, after you were taken outside? Yes? Excuse me. May I interrupt you, Witness A? I have another question, if I may continue? We should consider the time - I just have a few questions for today but perhaps we should consider the time, so we can continue tomorrow with this Witness A?

Yes, we must consider the time. The interpreters are working very hard. We are all working very hard and it is late. We must not exhaust ourselves. I will now suspend the hearing. We will meet again tomorrow morning. The hearing is adjourned.