



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-95-5/18-T

Date: 5 October 2011

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 5 October 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION TO RECALL ELEVEN SARAJEVO WITNESSES

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS TRIAL 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 (“Tribunal”) is seized of the Accused’s “Motion to Recall Eleven Sarajevo Witnesses”, filed on 26 August 2011 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. The Accused requests an order for 11 witnesses who testified for the Office of the Prosecutor (“Prosecution”) with respect to the Sarajevo component of the case to be recalled for further cross-examination.¹ He asserts that for each of these witnesses the Prosecution was found to have violated its disclosure obligations by failing to disclose exculpatory material before their testimony and that recalling the witnesses would allow him to question them about the previously undisclosed documents.² He observes that, given that he is entitled to have the Chamber consider this evidence at the Rule 98 *bis* stage of the case, he should not be required in his defence case to deal with material that he could not elicit from witnesses when they first testified because it was disclosed late as a result of the Prosecution’s disclosure violations.³

2. More specifically, the Accused seeks to recall witnesses Herbert Okun, Colm Doyle, David Harland, KDZ185, Michael Rose, KDZ450, Martin Bell, Hussein Ali Abdel-Razek, Richard Philipps, Rupert Smith, and KDZ088.⁴ He also identifies 18 documents which he will seek to use with these witnesses to either elicit favourable information or to confront them about information in the documents which contradict their testimony.⁵ The Accused intends to use four documents with Herbert Okun (“Okun Documents”), one document with Colm Doyle (“Doyle Document”), three documents with David Harland (“Harland Documents”), three documents with KDZ185 (“KDZ185 Documents”), two documents with Michael Rose (“Rose Documents”), one document with KDZ450 (“KDZ450 Document”), one document with Martin Bell (“Bell Document”), two documents with Hussein Ali Abdel-Razek (“Abdel-Razek Documentss”), two documents with Richard Philipps (“Philipps Document”), one document with Rupert Smith (“Smith Document”), and one document with KDZ088 (“KDZ088 Document”).⁶

¹ Motion, para. 1.

² Motion, para. 1.

³ Motion, para. 12.

⁴ Motion, Annex A.

⁵ Motion, Annex A.

⁶ Motion, Annex A.

3. On 9 September 2011, the Prosecution filed the “Prosecution Response to Motion to Recall Eleven Sarajevo Witnesses” (“Response”) in which it submits that the Motion should be dismissed due to the Accused’s failure to show good cause for his request.⁷ First, it seeks leave to exceed the word limit for the Response, given the number of witnesses and documents which need to be addressed.⁸ It then observes that the Chamber had already found that the Accused was not prejudiced by the late disclosure of the identified documents, and that he failed to show how the evidence he seeks to elicit from these witnesses has “considerable probative value and is not cumulative in nature”.⁹

4. The Prosecution observes that, rather than requesting the extraordinary remedy of recalling witnesses, it would be more appropriate to elicit the favourable information by tendering the documents referred to through either a bar table motion, calling the author of the document, or filing a Rule 92 *bis* or 92 *quater* motion for the admission of the witness statements.¹⁰ In particular, it also observes that the Accused will have the opportunity to use some of the documents with their author who is scheduled to testify as a Prosecution witness.¹¹

5. The Prosecution then explains why there is no good cause to recall any of the eleven witnesses.¹² With respect to some of the documents referred to by the Accused, the Prosecution observes that the Chamber had already found that there was no disclosure violation,¹³ or found that the Accused was not prejudiced by the timing of the disclosure.¹⁴ It also argues that in some cases the content of the document does not in fact contradict the testimony of the witness

⁷ Response, paras. 1, 30.

⁸ Response, para. 30.

⁹ Response, para. 1.

¹⁰ Response, paras. 7–28.

¹¹ Response, para. 18 referring to the KDZ185 Documents; Response, para. 25 referring to the Abdel-Razek Documents.

¹² Response, paras. 7–28.

¹³ Response, para. 7 referring to the first three of the Okun Documents and citing Decision on Accused’s Third, Fourth, Fifth, and Sixth Motions for Finding of Disclosure Violations and for Remedial Measures, 20 July 2010 (“Decision on 3rd to 6th Motions”), paras. 33–37; Response, para. 20 referring to one of the Rose Documents and citing Decision on Accused’s Forty-Ninth and Fiftieth Disclosure Violation Motions, 30 June 2011 (“Decision on 49th and 50th Motions”), para. 48.

¹⁴ Response, para. 7 referring to the fourth of the Okun Documents; Response, para. 12 referring to the Doyle Document and citing the Decision on Accused’s Twenty-Second, Twenty-Fourth and Twenty-Sixth Disclosure Violation Motions, 11 November 2010 (“Decision on 22nd, 24th and 26th Motions”), paras. 29 and 32; Response, para. 15 referring to Harland Documents and citing Decision on Accused’s Forty-Seventh Motion for Finding of Disclosure Violation and for Further Suspension of Proceedings, 10 May 2011 (“Decision on 47th Motion”), paras. 17–18; Response, para. 20 referring to one of the Rose Documents and citing Decision on Accused’s Thirtieth and Thirty-First Disclosure Violation Motions, 3 February 2011 (“Decision on 30th and 31st Motions”), para. 12; Response, para. 22 referring to KDZ450 Document and citing Decision on Accused’s Thirty-Seventh to Forty-Second Disclosure Violation Motions with Partially Dissenting Opinion of Judge Kwon, 29 March 2011 (“Decision on 37th to 42nd Motions”), para. 26; Response, para. 27 referring to Smith Document and citing Decision on 49th and 50th Motions, para. 47; Response, para. 28 referring to KDZ088 Document and citing Decision on 47th Motion, para. 18.

as claimed by the Accused.¹⁵ It further contends that the Accused already cross-examined some of the witnesses on the issues raised, often by reference to other documents.¹⁶ Alternatively it contends that the Accused already possessed other documents which contained the potentially exculpatory information but failed to use these documents with the affected witnesses.¹⁷ With respect to the Bell Document, the Prosecution contends that the information contained therein is cumulative and that its probative value is limited in the absence of the testimony of the author of that document.¹⁸ With respect to the Philipps Documents, which are interview transcripts, it contends that Philipps's mere presence at the interviews "does not provide a proper basis for the Accused to tender their substantive content through him" and that the appropriate way to elicit such out-of-court statements is via Rules 92 *bis* or 92 *quater* of the Tribunal's Rules of Procedure and Evidence ("Rules") or to call the relevant witness during his defence case.¹⁹ Similarly the Prosecution contends that the Accused has failed to establish a proper basis to elicit the Smith Document through this witness given that he was not a participant in the interview and that in addition the evidence is of a cumulative nature.²⁰

II. Applicable Law

6. Pursuant to Rule 89(B) of the Rules, a Chamber shall apply "rules of evidence which best favour a fair determination of a matter before it and are consonant with the spirit of the Statute and the general principles of law". Rule 90(F) of the Rules provides that:

The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:

- (i) make the interrogation and presentation effective for the ascertainment of the truth; and
- (ii) avoid needless consumption of time.

7. In order to determine a request to recall a witness, the Chamber must consider whether the requesting party has demonstrated good cause to recall that witness.²¹ In doing this, the

¹⁵ Response, para. 10 referring to the Doyle Document; Response, para. 14 referring to the Harland Documents.

¹⁶ Response, para. 11 referring to the cross-examination of Doyle regarding the erection of the Sarajevo barricades; Response, paras. 14–15 referring to Harland's evidence on the flow of utilities to Sarajevo and free movement of convoys; Response, para. 17 referring to two of the KDZ185 Documents; Response, para. 20; Response, para. 22 referring to cross-examination of KDZ450 on the issue of free movement and the reasonableness of the Bosnian Serb restrictions; Response, para. 23.

¹⁷ Response, para. 17 referring to the first of the KDZ185 Documents; Response, para. 28 referring to KDZ088 Document.

¹⁸ Response, paras. 23–24.

¹⁹ Response, para. 26.

²⁰ Response, para. 27.

²¹ Decision on Accused's Requests in Relation to Notes Taken by Witness Adrianus Van Baal, 17 February 2011 ("Van Baal Decision"), paras. 7–8; Decision on Accused's Motion to Recall Harry Konings for Further Cross-examination, 11 February 2011, para. 8 ("Konings Decision"); *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Reasons for Decision to Recall Witness JF-047, 31 March 2011 ("Stanišić and Simatović Decision"),

Chamber must take into consideration the purpose of the evidence that the requesting party expects to elicit from the witness, as well as the party's justification for not eliciting that evidence when the witness originally testified.²² Furthermore, the right to be tried without undue delay as well as concerns for judicial economy demand that a request to recall a witness "should not be granted lightly and only when the evidence is of significant probative value and not cumulative in nature".²³ If the witness is to be recalled in order to show inconsistencies between the witness's testimony and his or her subsequent statements, the requesting party must demonstrate that the prejudice was sustained due to its inability to put inconsistencies to the witness.²⁴ The witness will not be recalled if there is no need for the witness's explanation of the inconsistency because it is minor or its nature is self-evident.²⁵

III. Discussion

8. Given the number of witnesses and documents addressed in the Motion, the Prosecution is granted leave to exceed the word limit for the Response.

Preliminary observations

9. The majority of documents referred to in the Motion were disclosed late in violation of the Prosecution's disclosure obligations. For these documents, the Accused has a legitimate justification for not having elicited the evidence contained therein when the witnesses first testified given that he did not possess these documents at the time. Notwithstanding this conclusion, a witness will only be recalled when the evidence in question has considerable probative value and is not cumulative in nature. The Chamber considered the content of the documents cited by the Accused, the questions asked of the relevant witnesses during cross-examination, the availability of documents containing similar information at the time of cross-examination, and the previous assessment of whether the Accused was prejudiced by the late disclosure. The Chamber also noted that good cause to recall a witness has been found when the additional material was "significant for assessing an important part of the witness's evidence"

para. 6; *Prosecutor v Gotovina et al.*, Case No. IT-06-90-T, Decision on Prosecution Motion to Recall Marko Rajčić, 24 April 2009 ("*Gotovina Decision*"), para. 10; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-examination, 19 September 2005 ("*Bagosora Decision*"), para. 2.

²² Van Baal Decision, para. 8; Konings Decision, para. 8; *Stanišić and Simatović Decision*, para. 6; *Gotovina Decision*, para. 10; *Bagosora Decision*, para. 2.

²³ *Gotovina Decision*, para. 10; *Bagosora Decision*, para. 2.

²⁴ Van Baal Decision, para. 8; Konings Decision, para. 8; *Bagosora Decision*, para. 3.

²⁵ *Bagosora Decision*, para. 3.

and assessed whether the documents referred to in the Motion met that standard.²⁶ The Chamber will now examine each of the documents in turn.

Okun Documents

10. Only one of the Okun Documents was found to have been disclosed in violation of the Prosecution's disclosure obligations.²⁷ However, the Chamber had previously reviewed this document in light of the content of Okun's testimony and held that it was not satisfied that the content of the document was of "such significance that its late disclosure had a detrimental effect on his cross-examination" of the witness.²⁸ With respect to the other Okun Documents, the Chamber had previously held that there was no violation of the Prosecution's disclosure obligations and did not find that they contradicted or affected the credibility of Okun's testimony.²⁹ The Chamber is therefore not convinced that the Okun Documents would be significant to assessing an important part of Okun's evidence. Further, while the Accused will not be able to put these documents to David Owen, who was the author of three of the Okun Documents, given that he will no longer be called as a witness, he retains the ability to elicit any favourable information contained in the Okun Documents through an appropriately worded bar table motion.³⁰ The Chamber therefore finds that the Accused has not demonstrated good cause to recall Okun.

Doyle Document

11. The Chamber found that the Prosecution violated its disclosure obligations with respect to the Doyle Document.³¹ However, the Chamber had previously reviewed the Doyle Document in light of the content of Doyle's testimony and held that it was not satisfied that the content of the document was of "such significance that its late disclosure had a detrimental effect on his cross-examination" of the witness.³² In reaching that conclusion the Chamber was cognisant of the extent to which Doyle was already cross-examined by the Accused on the issue of barricades

²⁶ *Stanišić and Simatović* Decision, para. 7.

²⁷ Decision on 22nd, 24th and 26th Motions, paras. 31–32.

²⁸ Decision on 22nd, 24th and 26th Motions, paras. 31–32.

²⁹ Decision on 3rd to 6th Motions, para. 36; Decision on Accused's Thirty-Second, Thirty-Third, Thirty-Fifth and Thirty-Sixth Disclosure Violation Motions, 24 February 2011, para. 18.

³⁰ The Chamber had previously denied the request to admit the fourth of the Okun Documents from the bar table given the failure to properly contextualise the document by identifying how it fits into the Accused's case: Decision on 22nd, 24th and 26th Motions, para. 34.

³¹ Decision on 22nd, 24th and 26th Motions, para. 31–32. The Chamber notes that the Doyle Document is the same as the fourth of the Okun Documents.

³² Decision on 22nd, 24th and 26th Motions, paras. 31–32.

in Sarajevo.³³ Given these conclusions the Chamber is not convinced that the Doyle Document would be significant to assessing an important part of Doyle's evidence. The Accused retains the ability to elicit any favourable information contained in the Doyle Document through an appropriately worded bar table motion.³⁴ Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Doyle.

Harland Documents

12. With respect to the Harland Documents, the Chamber found that the Prosecution violated its disclosure obligations with respect to their late disclosure.³⁵ The Harland Documents include references to the flow of utilities to Sarajevo and the restrictions on the movement of convoys. With respect to two of the Harland Documents, the Chamber had previously concluded that since the "Accused already possessed material which was consistent with, and in some cases more relevant to, the potentially exculpatory issues" contained therein, he was not prejudiced in his ability to conduct his cross-examination.³⁶ The Chamber has also considered the extent to which the Accused has already cross-examined Harland on the issue of the free movement of convoys and the flow of utilities to Sarajevo.³⁷ It follows that any further cross-examination of Harland on these issues by reference to the Harland Documents would be cumulative. The Chamber is also not convinced that the Harland Documents would be significant to assessing an important part of Harland's evidence. In addition, the Accused retains the ability to elicit any favourable information contained in the Harland Documents through an appropriately worded bar table motion.³⁸ Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Harland.

KDZ185 Documents

13. With respect to the KDZ185 Documents, the Chamber found that the Prosecution had violated its disclosure obligations with respect to their late disclosure.³⁹ However, the Chamber

³³ Hearing, T. 2692–2698, 2704–2713 (26 May 2011); Hearing, T. 2848, 2855–2856 (27 May 2011), Hearing, T. 2931 (28 May 2011).

³⁴ The Chamber had previously denied the request to admit the Doyle Document from the bar table given the failure to properly contextualise the document by identifying how it fits into the Accused's case: Decision on 22nd, 24th and 26th Motions, para. 34.

³⁵ Decision on Accused's Eighteenth to Twenty-First Disclosure Violation Motions, 2 November 2010 ("Decision on 18th to 21st Motions"), para. 31; Decision on 47th Motion, para. 16.

³⁶ Decision on 47th Motion, para. 18.

³⁷ Hearing, T. 2166–2177, 2201–2203, 2214–2216, 2242–2243 (10 May 2011).

³⁸ The Chamber had previously denied the request to admit the first of the Harland Documents from the bar table given the failure by the Accused to properly contextualise the document by identifying how it fits into his case: Decision on 18th to 21st Motions, para. 32.

³⁹ Decision on Accused's Forty-Third to Forty-Fifth Disclosure Violation Motions, 8 April 2011, ("Decision on 43rd to 45th Motions") para. 26; Decision on 49th and 50th Motions, paras. 42, 44.

concluded that the Accused suffered no prejudice as a result of these violations given that their content was consistent with a number of other documents which were already available to the Accused and that it was hard to conclude that his approach to cross-examination was negatively affected when the newly disclosed documents add nothing new to material already available to him.⁴⁰ In addition, with respect to two of the KDZ185 Documents, the Chamber has recognised that the Accused will have an opportunity to put these documents to their author, who is still scheduled to testify as a Prosecution witness.⁴¹ The Chamber also reiterates its previous observation that the Accused retains the ability to tender the KDZ185 Documents into evidence through a bar table motion which addresses the specific criteria for admission.⁴² In addition, the Chamber is not convinced that the KDZ185 Documents would be significant to assessing an important part of KDZ185's evidence. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall KDZ185.

Rose Documents

14. With respect to one of the Rose Documents, the Chamber found that the Prosecution had violated its disclosure obligations but also that the Accused was not prejudiced by the timing of the disclosure due to the subject matter and length of the document.⁴³ The Chamber also observes that the Accused has already cross-examined Rose on the issue raised in that document.⁴⁴ Under these circumstances any further questioning on this issue by reference to this document would be cumulative. The Chamber found that the Prosecution did not violate its disclosure obligations with respect to the other Rose Document.⁴⁵ Furthermore, the Chamber is not convinced that the Rose Documents would be significant to assessing an important part of Rose's evidence. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Rose and that any favourable information contained in the Rose Documents can be elicited through an appropriately worded bar table motion.

KDZ450 Document

15. The Chamber found that the KDZ450 Document was potentially exculpatory and that the Prosecution violated its disclosure obligations by its late disclosure.⁴⁶ However, the Chamber found that the document was not of such significance that the Accused had been prejudiced by

⁴⁰ Decision on 43rd to 45th Motions, para. 29; Decision on 49th and 50th Motions, para. 48.

⁴¹ Decision on 49th and 50th Motions, para. 48.

⁴² Decision on 43rd to 45th Motions, para. 30.

⁴³ Decision on 30th and 31st Motions, para. 12.

⁴⁴ Hearing, T. 7371–7374 (6 October 2010) where the witness was shown exhibit D137.

⁴⁵ Decision on 49th and 50th Motions, para. 41.

⁴⁶ Decision on 37th to 42nd Motions, paras. 24–25.

the timing of the disclosure.⁴⁷ The Chamber reiterates its previous observation that the Accused retains the ability to tender the KDZ450 Document into evidence through a bar table motion which addresses the specific criteria for admission.⁴⁸ In addition, the Chamber notes that KDZ450 has already been cross-examined on the issue of the free movement of convoys and that any further questioning on this issue by reference to the KDZ450 Document would be cumulative.⁴⁹ Furthermore, the Chamber is not convinced that the KDZ450 Document would be significant to assessing an important part of KDZ450's evidence. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall KDZ450.

Bell Document

16. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the Bell Document.⁵⁰ The Chamber observes that the Accused has cross-examined a number of witnesses on the potentially exculpatory issues contained in the Bell Document.⁵¹ In addition, the Chamber is not convinced that the Bell Document would be significant to assessing an important part of Bell's evidence. The Accused also retains the ability to tender the Bell Document into evidence through a bar table motion which addresses the specific criteria for admission. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Bell.

Abdel-Razek Documents

17. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the Abdel-Razek Documents.⁵² However, the Chamber concluded that the Accused suffered no prejudice as a result of this violation given that their content was consistent with a number of documents which were already available to the Accused and that it was hard to conclude that his approach to cross-examination was negatively effected when the newly disclosed documents add nothing new to material already available to him.⁵³ In addition, the Chamber is not convinced that the Abdel-Razek Documents would be significant to assessing an important part of Abdel-Razek's evidence. Furthermore, the Chamber has recognised that the Accused will have an opportunity to put these documents to their author,

⁴⁷ Decision on 37th to 42nd Motions, para. 26.

⁴⁸ Decision on 37th to 42nd Motions, para. 27.

⁴⁹ Hearing, T. 10686–10689 (20 January 2011).

⁵⁰ Decision on 37th to 42nd Motions, para. 39.

⁵¹ Hearing, T. 10245–102457 (14 January 2011); T. 5563–5566 (20 July 2010); T. 5647–5649 (21 July 2010); T. 6586–6587 (13 September 2010) (closed session); T. 2613 (21 May 2010).

⁵² Decision on 49th and 50th Motions, para. 48. The Chamber notes that the Abdel-Razek Documents are the same as the third and fourth of the KDZ185 Documents.

⁵³ Decision on 49th and 50th Motions, para. 48.

who is still scheduled to testify as a Prosecution witness.⁵⁴ Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Abdel-Razek.

Philipps Documents

18. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the Philipps Documents but that the Accused suffered no prejudice as a result of these violations.⁵⁵ The Chamber was of the view that their content was not of such significance and that the Accused retained the ability to tender one of the Philipps Documents pursuant to Rule 92 *quater*.⁵⁶ While Philipps may have been present during the interviews referred to in the Philipps Documents, their content falls outside the scope of his testimony which was limited to military structures. On this basis, the Chamber is not convinced that the Philipps Documents would be significant to assessing an important part of Philipps's evidence. Having considered these factors, and given that the Accused has other means of eliciting the favourable information contained in these documents if he so wishes, the Chamber finds that he had not demonstrated good cause to recall Philipps.

Smith Document

19. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the Smith Document but that the Accused suffered no prejudice as a result of this violation.⁵⁷ The Chamber also observes that the Accused has already cross-examined Smith on the issue of the Accused's relationship with General Ratko Mladić⁵⁸ and that, in addition Smith, was not a participant in the interview referred to in the Smith Document. Under these circumstances, any further questioning on this issue by reference to the Smith Document would be cumulative. In addition, the Chamber is not convinced that the Smith Document would be significant to assessing an important part of Smith's evidence. The Accused also retains the ability to elicit the favourable information contained in the document if he so wishes through an appropriately worded bar table motion. Having considered these factors, the Chamber finds that the Accused has not demonstrated good cause to recall Smith.

⁵⁴ Decision on 49th and 50th Motions, para. 48.

⁵⁵ Decision on 49th and 50th Motions, paras. 36, 47; Decision on Accused's Fifty-Third and Fifty-Fourth Disclosure Violation Motions, 22 July 2011 ("Decision on 53rd and 54th Motions"), paras. 13, 15.

⁵⁶ Decision on 49th and 50th Motions, para. 48; Decision on 53rd and 54th Motions, para. 15.

KDZ088 Document

20. The Chamber found that the Prosecution violated its disclosure obligations with respect to the late disclosure of the KDZ088 Document but that the Accused suffered no prejudice as a result of this violation.⁵⁹ Significantly, as early as August 2009 the Accused possessed a document which contained identical information to that contained in the KDZ088 Document.⁶⁰ Given that the Accused did not use this and other similar material during his cross-examination of KDZ088 the Chamber does not find it necessary for the Accused to put this document to KDZ088. In addition, the Chamber is not convinced that the KDZ088 Document would be significant to assessing an important part of KDZ088's evidence. The Accused also retains the ability to elicit the favourable information contained in the document if he so wishes through an appropriately worded bar table motion. Having considered these factors the Chamber finds that the Accused has not demonstrated good cause to recall KDZ088.

Conclusion

21. Having considered the factors outlined above, the Chamber is not satisfied that the material cited in the Motion has considerable probative value or that it is not cumulative. In addition, having reviewed the documents referred to by the Accused in the context of the witnesses' testimony, the Chamber is not convinced that any of the documents would be significant to assessing an important part of the witnesses' evidence. Similarly, any purported inconsistencies between the content of the documents and the testimony of these witnesses are of a minor nature and the Chamber does not consider it necessary to hear the explanations of the witnesses in that regard.

22. In making this decision, the Chamber was also cognisant of the ability of the Accused to elicit any favourable information through other means, such as an appropriately worded bar table motion, through Rule 92 *quater* or through an upcoming Prosecution witness. For the foregoing reasons, the Chamber finds that there is no good cause to recall any of the witnesses identified in the Motion.

⁵⁷ Decision on 49th and 50th Motions, paras. 46-47.

⁵⁸ Hearing, T. 11721-11722, 11727-11729 (11 February 2011) and T. 11910-11913 (15 February 2011).

⁵⁹ Decision on 47th Motion, paras. 16-17.

⁶⁰ Decision on 47th Motion, para. 18.

IV. Disposition

23. For these reasons, pursuant to Rules 54, 89 and 90(H) of the Rules, the Chamber hereby:

- a) **GRANTS** the Prosecution leave to exceed the word limit for the Response; and
- b) **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this fifth day of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]