



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-05-87-T  
Date: 10 October 2006  
Original: English

**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 10 October 2006

**PROSECUTOR**

v.

**MILAN MILUTINOVIĆ  
NIKOLA ŠAINOVIĆ  
DRAGOLJUB OJDANIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

**DECISION ON PROSECUTION MOTION TO ADMIT DOCUMENTARY EVIDENCE**

**Office of the Prosecutor**

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**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 seised of several submissions from the parties, which request certain relief with regard to documentary evidence tendered by the Prosecution. Accused Milutinović, Šainović, Ojdanić, Pavković, Lazarević, and Lukić (collectively, “Accused”) object to the admission of this evidence on several grounds, while the Office of the Prosecutor (“Prosecution”) counters that all should be admitted in whole or in part. The Trial Chamber hereby renders its decision.

## I. PROCEDURAL HISTORY

1. On 25 May 2006, the Prosecution filed its “Motion to Admit Documentary Evidence with Annexes” (“Motion”). In its Motion, the Prosecution moves the Trial Chamber to admit 2,150 documents under:

- (1) Rule 89(C) – documents in Annex D (VJ-MUP Documents from FRY-Serbia), Annex E (Other Documents from FRY/Serbia), Annex F (Media Reports), Annex G (Book Excerpts), Annex H (Statements of the Accused), and Annex J (Correspondence and Other Miscellaneous Documents);
- (2) Rule 94(A) – documents in Annex B (Maps), Annex C (Aerial Photographs) and Annex I (Public Documents), and certain documents in Annex J (Correspondence and Other Miscellaneous Documents);<sup>1</sup> and
- (3) Rule 94(B) – documents in Annex A (Documents Admitted in Other Trials).

2. On 6 June 2006, the Trial Chamber issued an “Order on Prosecution’s Motion to Admit Documentary Evidence with Annexes” (“Order”). Pursuant to the Order, the Trial Chamber directed the Prosecution to respond in writing to five specific queries by 12 June 2006. In particular, the Prosecution was ordered:

- (1) to identify, for each item listed in the Annexes to the Motion, whether that item will be discussed with or shown to a witness during the trial, and if so, identify that witness for each item;

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<sup>1</sup> The Rule 65 *ter* numbers of these documents are as follows: 4.004, 4.005, 4.026, 4.042, 4.044, 4.063, 4.271, 4.273, 4.324, 4.325, 4.327, 4.330, 4.333, 5.890, and 5.682.

- (2) clarify, for each item listed in the Annexes, or for categories of items, which specific issue or issues in the Indictment those items relate to, giving the relevant paragraph numbers of the Indictment;
- (3) mark those items listed in the Annexes that are referenced in the Prosecution's pre-trial brief, and provide the relevant paragraph numbers of the pre-trial brief;
- (4) with regard to the items in Annex A, provide the relevant transcript (or other) references for where each of those items was admitted into evidence from the *Milošević* trial; and
- (5) make further submissions on the legal standard for a Chamber to take judicial notice of documentary evidence from other proceedings, pursuant to Rule 94(B) of the Rules, and on the legal effect of taking judicial notice of such items in relation to the current proceedings.<sup>2</sup>

3. On 12 June 2006, the Prosecution filed the "Prosecution's Submission with Annexes and Motion for Extension of Time to Respond in Response to 6 June 2006 Order" ("First Submission"). The First Submission specifically responded to the queries posed by the Trial Chamber and also included a request for an extension of time to provide transcript references for items listed in Annex A. The Trial Chamber granted the request in part and ordered the Prosecution to provide, not later than 5 July 2006, the relevant transcript (or other) reference for where each of the items listed in Annex A of the Motion was admitted into evidence in the *Milošević* trial and to make available to the Trial Chamber all of the items listed in the Annexes to the Motion.<sup>3</sup> The Trial Chamber also ordered the Defence to file their responses by 4 August 2006.<sup>4</sup>

4. On 5 July 2006, the Prosecution filed the "Prosecution's Second Submission with Annex in Response to 6 June 2006 Order on Prosecution's Motion to Admit Documentary Evidence" ("Second Submission"). In addition to providing the requested transcript references, this Second Submission removed, after consultation with the Registry, five items from the list filed with the original submission.<sup>5</sup>

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<sup>2</sup> See Order, para. 1.

<sup>3</sup> See *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, and Lukić*, Case No. IT-05-87-PT, Decision on Prosecution's Motion for Extension of Time, 19 June 2006.

<sup>4</sup> *Ibid.*

<sup>5</sup> See Second Submission, p. 2.

5. On 4 August 2006, the Defence filed their responses to the Prosecution's Motion, including the First Submission and Second Submission;<sup>6</sup> and, the Prosecution, pursuant to an oral motion for leave to respond, which the Chamber granted orally,<sup>7</sup> subsequently filed its reply on 18 August 2006.<sup>8</sup>

6. On 31 August 2006, pursuant to the Trial Chamber's "Order on Agreed Facts", issued 11 July 2006, the Defence filed its "Report on Agreed Facts Filed Jointly by the Defence" ("Report"). The Report notes that the parties have reached an agreement with regard to the authenticity, relevance, and admission into evidence of 64 documents on the Prosecution's Rule 65 *ter* exhibit list.<sup>9</sup> With regard to the remaining 110 documents proposed by the Prosecution for stipulations, the Defence considers these documents authentic,<sup>10</sup> yet irrelevant and therefore inadmissible.<sup>11</sup>

## II. APPLICABLE LAW

7. The parties' arguments, which have all been considered by the Trial Chamber, are set out in great detail in the written submissions cited in Part I of this Decision. The Chamber will neither reproduce nor summarise these arguments, but will instead refer to them, where applicable, in the course of its discussion of the law and facts relevant to its determination of the motion before it.

8. In its Motion, the Prosecution moves the Trial Chamber to admit documents under Rules 89(C), 94(A), and 94(B). Rules 89 and 94 provide, in relevant part:

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<sup>6</sup> See *Milutinović et al.*, Case No. IT-05-87-T, General Ojdanić's Response to Prosecution's Motion to Admit Documentary Evidence, 04 August 2006 ("Ojdanić Response"); *Milutinović et al.*, Sreten Lukić's Response in Objection to "Prosecution's Second Submission with Annex in Response to 6 June 2006 Order on Prosecution's Motion to Admit Documentary Evidence," 04 August 2006 ("Lukić Response"); *Milutinović et al.*, Joint Defence Response: "Prosecution's Motion to Admit Documentary Evidence with Annexes," 04 August 2006 ("Šainović and Lazarević Response"); *Milutinović et al.*, Pavković Joinder in "General Ojdanić's Response to Prosecution's Motion to Admit Documentary Evidence," 04 August 2006 ("Pavković Response"); *Milutinović et al.*, Submission by Mr. Milutinović to Join General Ojdanić's Response to Prosecution's Motion to Admit Documentary Evidence, 04 August 2006 ("Milutinović Response").

<sup>7</sup> See *Milutinović et al.*, Transcript, T. 1091–1092 (07 August 2006).

<sup>8</sup> See *Milutinović et al.*, Prosecution's Reply to Defence Responses to Motion for Admission of Documentary Evidence and Motion for Variation of Word Limit, 18 August 2006 ("Prosecution's Reply").

<sup>9</sup> See Report, paras. 2 – 3. The Trial Chamber notes that there are, in fact, 56, not 64, documents which have been agreed to by the parties: five documents were listed twice by the Defence (Rule 65 *ter* numbers 4.471, 4.472, 4.517, 4.525, and 5.697); two documents did not match the description as provided by the Defence (Rule 65 *ter* numbers 4.322 and 5.694); and one document was already admitted during the proceedings (Rule 65 *ter* number 4.067).

<sup>10</sup> The Defence notes questions regarding authenticity on one document – the 1991 census (Rule 65 *ter* number 4.552).

<sup>11</sup> Upon the request of the Chamber's legal support staff, the annexes detailing the documents were emailed to the Chamber.

**Rule 89**  
**General Provisions**

...

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

...

**Rule 94**  
**Judicial Notice**

- (A) A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.
- (B) At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings.

9. The Chamber considers it helpful to set forth the relevant legal principles that govern admission under these rules and guide a Trial Chamber's discretion in this area.

**A. Rule 89(C)**

10. The Appeals Chamber has held that "evidence is admissible only if it is relevant and it is relevant only if it has probative value, general propositions which are implicit in Rule 89(C)."<sup>12</sup> The Trial Chamber considers that reliability of a hearsay statement is a necessary prerequisite for probative value under Rule 89(C).<sup>13</sup>

11. Once the requirements of the Rule are satisfied, the Chamber maintains discretionary power over the admission of the evidence.<sup>14</sup> Therefore, the Chamber may restrict the admission of evidence so long as such restrictions have a legitimate purpose.<sup>15</sup>

<sup>12</sup> *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002 ("Galić Decision"), para. 35.

<sup>13</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 August 1996 ("Tadić Decision"), para. 15 (holding that "if evidence offered is unreliable, it certainly would not have probative value"). This statement in *Tadić* thus indicates that evidence having probative value is necessarily reliable.

<sup>14</sup> See *Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić, and Pusić*, Case No. IT-04-74-T, Decision on Admission of Evidence, 13 July 2006 ("Prlić Decision I"), p. 5; *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, 19 August 2005 ("Halilović Decision"), para. 14.

<sup>15</sup> *Prlić Decision I*, *supra* note 14, p. 5.

## B. Rule 94(A)

12. The basis upon which judicial notice is taken pursuant to Rule 94(A) is that the material is notorious.<sup>16</sup> “Facts of common knowledge” under the Rule have been considered to encompass common or universally known facts, such as general facts of history, generally known geographical facts, and the laws of nature, as well as those facts that are generally known within a tribunal’s territorial jurisdiction.<sup>17</sup> Once a Trial Chamber deems a fact to be of common knowledge, it must also determine that the fact is not the subject of reasonable dispute.<sup>18</sup>

13. It is the burden of the moving party both to specify clearly which facts submitted under Rule 94(A) should be considered for judicial notice as facts of common knowledge and to show that those particular materials are indeed facts of common knowledge.<sup>19</sup>

14. The legal effect of judicial notice taken pursuant to the Rule is that these facts normally cannot be challenged at trial.<sup>20</sup> Judicial notice of facts of common knowledge at trial is conclusive proof of those facts.<sup>21</sup> Thus, the Rule cannot be used to admit evidence; rather, taking judicial notice of a fact under Rule 94(A) removes the need for evidence relating to that fact.<sup>22</sup>

## C. Rule 94(B)

15. Under Rule 94(B), the Chamber may, upon its discretion,<sup>23</sup> take judicial notice of documentary evidence admitted in a prior proceeding. The legal effect of judicial notice under the Rule is to establish a well-founded presumption for the accuracy of the evidence, which therefore

<sup>16</sup> *Prosecutor v. Nikolić*, Case No. IT-02-60/1-A, Decision on Appellant’s Motion for Judicial Notice, 1 April 2005 (“*Nikolić Decision*”), para. 10 (citing *Prosecutor v. Slobodan Milosević*, Case No. IT-02-54-AR73.5, Decision on the Prosecution’s Interlocutory Appeal Against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 23 October 2003, pp. 3 and 4).

<sup>17</sup> *Ibid.* (citing *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-I, Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, 3 November 2000, para. 23).

<sup>18</sup> *Ibid.* (citing *Prosecutor v. Blagoje Simić, et al.*, IT-95-9-PT, Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, 25 March 1999, pp. 4 and 5).

<sup>19</sup> See *Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka, and Mugiraneza*, Case No. ICTR-99-50-I, Decision on Prosecution’s Motion for Judicial Notice Pursuant to Rules 73, 89, and 94, 2 December 2003, (“*Bizimungu Decision I*”), paras. 23–26.

<sup>20</sup> *Nikolić Decision*, *supra* note 16, para. 10 (citing *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92bis, 28 February 2003, para. 16).

<sup>21</sup> See *Prosecutor v. Prlić, Stojić, Praljak, Petković, Čorić, and Pusić*, Case No. IT-04-74-PT, Decision on “Prosecution Motion for Judicial Notice of Facts of Common Knowledge and Admission of Documentary Evidence Pursuant to Rules 94(A) and 89(C),” 3 February 2006 (“*Prlić Decision II*”), p. 5; *Prosecutor v. Semanza*, Case No. ICTR-97-20-I, Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, 3 November 2000 (“*Semanza Decision*”), para. 41.

<sup>22</sup> See Rule 94(A).

does not have to be proved again at trial, but which, subject to that presumption, may be challenged at trial.<sup>24</sup> The two principal grounds upon which a Chamber may exercise its discretion under the Rule are judicial economy and consistency of case law.<sup>25</sup> However, these aims must be balanced against the fundamental right of an accused to a fair trial.<sup>26</sup>

16. Under this specific provision, it is the duty of the party seeking judicial notice to be taken to show that the document (a) was tendered and received as evidence in other proceedings<sup>27</sup> and (b) relates to the matters at issue in the current proceedings.<sup>28</sup> Regarding this second prong, jurisprudence of the Tribunal has further clarified the phrase to require that the moving party show relevance to ensure that the documents have more than a merely remote connection to the current proceedings, keeping in mind that the purpose underpinning the Rule is to serve judicial economy.<sup>29</sup> In light of this requirement, clarity and specificity with regard to the precise portions of documents for which a party seeks judicial notice and the particular relevance of those portions is imperative. In fact, “a vague and generalised request to take judicial notice of the content of an entire batch of documents is insufficient to invoke Rule 94(B). A request must specifically point out the paragraphs or parts of each document of which it wishes judicial notice to be taken, and refer to particular facts.”<sup>30</sup>

<sup>23</sup> See Rule 94(B) (“[T]he Trial Chamber...may decide to take judicial notice...”); see also, e.g., *Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka, and Mugiraneza*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza’s First Motion for Judicial Notice Pursuant to Rule 94(B), 10 December 2004 (“*Bizimungu Decision II*”), para. 5.

<sup>24</sup> See *Nikolić Decision*, *supra* note 16, para. 11.

<sup>25</sup> See *Semanza Decision*, *supra* note 21, para. 20 (“First, resort to judicial notice expedites the trial by dispensing with the need to formally submit proof on issues that are patently indisputable. Second, the doctrine fosters consistency and uniformity of decisions on factual issues where diversity in factual findings would be unfair.”).

<sup>26</sup> See *Nikolić Decision*, *supra* note 16, para. 12; *Prosecutor v. Simić, Simić, Tadić, Todorović, and Zarić*, Case No. IT-95-9-PT, Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia–Herzegovina, 25 March 1999 (“*Simić Decision*”), p. 4.

<sup>27</sup> The Trial Chamber notes the recent decision of the *Nikolić Appeals Chamber* concluding that the wording of Rule 94(B) of the Rules suggests that the term “adjudicated” only relates to “facts” and does not extend to “documentary evidence.” Thus, “documents do not need to be ‘adjudicated,’ i.e. the Chamber in other proceedings does not need to have pronounced a specific and unchallenged or unchallengeable decision on the admissibility of the document. It is enough that the document was admitted into evidence.” *Nikolić Decision*, *supra* note 16, para. 45 (citing *Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka, and Mugiraneza*, Case No. ICTR-99-50-I, Decision on Prosecution’s Motion for Judicial Notice Pursuant to Rules 73, 89 and 94, 2 December 2003, paras. 32–36).

<sup>28</sup> *Nikolić Decision*, *supra* note 16, para. 11; *Bizimungu Decision I*, *supra* note 19, para. 36; *Prosecutor v. Ntakirutimana and Ntakirutimana*, Case No. ICTR-96-10-T and ICTR-96-17-T, Decision on the Prosecutor’s Motion for Judicial Notice of Adjudicated Facts Rule 94(B) of the Rules of Procedure and Evidence, 22 November 2001 (“*Ntakirutimana Decision*”), para. 27.

<sup>29</sup> See *Bizimungu, Mugenzi, Bicamumpaka, and Mugiraneza*, Case No. ICTR-99-50-T, Decision on the Prosecutor’s Motion and Notice of Adjudicated Facts Rule 94(B) of the Rules of Procedure and Evidence, 10 December 2004 (“*Bizimungu Decision III*”), para. 11; *Bizimungu Decision II*, *supra* note 23, para. 7.

<sup>30</sup> *Bizimungu Decision I*, *supra* note 19, para. 38; see also *Nikolić Decision*, *supra* note 16, para. 47 (“The Appeals Chamber finds, nonetheless, that it would not serve judicial economy to grant the Appellant’s request and judicially notice entire sections of a report or document, since the Appellant has not demonstrated exactly which part of the section is relevant to the current proceedings. The mere reference to whole sections or paragraphs of “documentary evidence” of a previous judgement is insufficient to trigger the exercise of the Chamber’s discretion under Rule 94(B) of the Rules.”).

17. Finally, the Trial Chamber notes that, in *Milošević*, the Trial Chamber set out factors that may be taken into account for judicially noticing adjudicated facts under the rule including: (a) whether the facts, when taken together, will result in such a large number as to compromise the principle of a fair and expeditious trial and (b) whether the facts are too broad, too tendentious, not sufficiently significant, too detailed, too numerous, repetitive of other evidence already admitted by the Chamber, or not sufficiently relevant to the case.<sup>31</sup> In the interests of judicial economy and consistency of case law, these factors apply equally to documentary evidence offered for judicial notice under the rule.

### III. DISCUSSION

18. Given the depth and breadth of this case, the Trial Chamber is generally sympathetic to parties presenting documents from the bar table. However, if that is to be the case, the offering party must be able to demonstrate, with clarity and specificity, where and how each document fits into its case. The Trial Chamber indicated as much in its previous Order,<sup>32</sup> yet the Prosecution has failed in the vast majority to so comply.

19. Whatever the number of documents the Prosecution seeks to have admitted through its Motion, it must satisfy the requirements of the rules governing the admission of evidence in relation to each one. The following decision seeks to strike a proper balance between ensuring a fair trial and not over-burdening the parties in regard to the admission of evidence.

#### A. Documents Presented for Judicial Notice Under Rule 94(A)

20. In the present case, the Prosecution requests that the Trial Chamber take judicial notice of certain maps, aerial photographs, and “public documents” under Rule 94(A).<sup>33</sup> However, it is clear from the face of the Rule that a Chamber may not take judicial notice of *documents* under this Rule, but rather of certain *facts*.<sup>34</sup> It is, of course, open to the Chamber to choose to admit these documents pursuant to the general admission requirements of Rule 89(C).

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<sup>31</sup> See *Prosecutor v. Mejakić, Gruban, Fuštar, and Knežević*, Case No. IT-02-65-PT, Decision on Prosecution Motion for Judicial Notice Pursuant to Rule 94(B), 1 April 2004, p. 5 (citing *Prosecutor v. Milošević*, Case No. IT-02-54-T, Final Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 16 December 2003, paras. 7–12).

<sup>32</sup> See Order, para. 1(b) (“The Prosecution shall...clarify, for each item listed in the Annexes, or for categories of items, which *specific issue or issues in the Indictment those items relate to*, giving the relevant paragraph numbers of the Indictment.”). Although the Prosecution provided the Chamber with relevant paragraph numbers in the indictment, these paragraphs each refer to numerous assertions. The Prosecution failed to comply with the Chamber’s request, namely, to provide specific issues to which the items relate.

<sup>33</sup> See Motion, paras. 14–15, 31–32.

<sup>34</sup> See *Bizimungu* Decision I, *supra* note 19, para. 26 (“The Chamber reiterates that no document can be taken judicial notice of, under Sub-Rule 94(A) which refers specifically to, “facts of common knowledge.”).



21. Although these documents may be admissible under Rule 89(C), as discussed below, they are plainly inappropriate for judicial notice under Rule 94(A). In its Motion, the Prosecution merely lists numerous documents for which it seeks judicial notice. The Prosecution's submissions do not specify the *facts*, if any, in the documents for which judicial notice is sought. Furthermore, the Prosecution has failed to show that the facts in these documents are indeed *notorious* so as to be deemed "facts of common knowledge."

22. The documents for which the Prosecution seeks admission are dealt with by category, pursuant to Rule 89(C), as follows:

i. Annex B (Maps)

23. The maps presented in Annex B may be relevant to illustrate the general regions specified in the indictment. However, the Trial Chamber has already admitted maps depicting the relevant regions, including maps so detailed that individual streets are contained therein.<sup>35</sup> The Prosecution has failed to show that the numerous maps offered in its Motion will further assist the Chamber in its deliberations. In fact, the volume of maps offered will serve only to flood the Chamber with repetitive information.

24. For these reasons and pursuant to the discretion afforded under Rule 89(C), the Chamber finds that these maps are cumulative with insufficient probative value, and are thus inadmissible. Even if the maps were admissible, the Chamber would have exercised its discretion to exclude their admission into evidence. Should the Prosecution so desire, particular relevance may be shown through a *92 bis/ter* statement for certain maps which are not duplicative or cumulative.<sup>36</sup>

ii. Annex C (Aerial Photographs)

25. The Trial Chamber finds that the aerial photographs presented under Annex C may be appropriate for admission under Rule 89(C). However, in its submissions, the Prosecution has failed to show the particular reliability, relevance, and probative value of each of these photographs. First, many of the photographs lack context and, as such, the Chamber is unable to determine their individualised relevance and probative value with respect to the charges in the indictment. Second, the blanket statement—that these photographs were "received from governments or from NATO"<sup>37</sup> and "can be compared to other published sources"<sup>38</sup>—does not

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<sup>35</sup> See Ex. P615.

<sup>36</sup> The Trial Chamber notes, as an example, the map showing deportation routes—the document denoted with the *65 ter* number 1.046.

<sup>37</sup> Prosecution's Motion, para. 16.

<sup>38</sup> *Ibid.*

satisfy the requirements regarding reliability. Therefore, pursuant to Rule 89(C), these materials are inadmissible at this time.

26. However, the Prosecution has indicated to the Trial Chamber that the aerial photographs will generally be shown to each witness who testifies about events in the area depicted by the photograph.<sup>39</sup> As such, the requirements for admission under Rule 89(C) may be satisfied through a written statement pursuant to Rule 92 *bis/ter* prior to any testimony.

iii. Annex I (Public Documents)

27. The Trial Chamber finds that the materials in Annex I, consisting of various documents termed “public documents,” may be appropriate for admission under Rule 89(C). These materials appear to be generally relevant to the charges in the indictment. However, once again, the Prosecution has failed to demonstrate the reliability and individualised probative value of the majority of the documents to warrant admission under Rule 89(C). Additionally, the Prosecution asserts that, although the documents identified may be addressed by the Prosecution’s experts in the areas of law, army, and police structure and the representatives of the civilian and military courts, generally, the actual documents will not be presented in court.<sup>40</sup> As such, the Chamber is unable to decipher the context of these documents and their usefulness to the proceedings. Should the Prosecution wish to offer these documents through a witness, subject to the requirements of Rule 89(C), the Chamber will then consider whether to admit them.

28. As an exception to the above discussion, the Trial Chamber finds that the following thirteen documents in Annex I may be admitted from the bar table because, from the face of these documents, they are relevant, and the reliability of these exhibits is readily apparent from their character as public documents originating from an official source. The Rule 65 *ter* numbers of these documents are: 4.083, 4.085, 4.309, 4.311, 4.584, 5.005, 5.011, 5.040, 5.662, 5.853, 5.869, 5.892, and 5.893.

**B. Documents Presented for Judicial Notice Under Rule 94(B)**

29. In the present case, the Prosecution requests that the Trial Chamber take judicial notice of documentary evidence admitted in the *Milošević* case, as set forth in the Prosecution’s Annex A. For the following reasons, the Trial Chamber finds the Prosecution’s submissions insufficient to trigger its discretion to take judicial notice under Rule 94(B).

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<sup>39</sup> Prosecution’s First Submission, para. 5.

<sup>40</sup> *Ibid.* para. 8.

30. According to the Rule, if a party offers into evidence a document previously admitted in a prior proceeding, the Trial Chamber may take judicial notice of that document; the Chamber is of the view that the rationale behind the Rule is that, because the prior chamber has already made findings in relation to the document's reliability, judicial economy is served by not having to recreate those findings. However, pursuant to the Rule, a Chamber must still find that the document "relates to matters at issue in the current proceeding"—that is, that the document is relevant to issues in the current proceeding. Thus, the offering party must satisfy its burden with regard to relevance as though it were offering the evidence in the usual manner under Rule 89(C).

31. While the Chamber notes the Prosecution's assertion that it seeks judicial notice of the existence and authenticity of the documents and not their contents,<sup>41</sup> the Trial Chamber does not agree that this is the intended effect. According to the Prosecution, once judicial notice is taken under the Rule, "the document merely becomes part of the record."<sup>42</sup> Subsequently, the Accused will have the opportunity to "put the evidence to witnesses" and "present their evidence to rebut the admitted evidence."<sup>43</sup> Contrary to the Prosecution's representations, the legal affect will be that the documents will be admitted into evidence and used precisely for their contents, and not merely for their existence and authenticity.

32. Moreover, the Prosecution has failed to satisfy its burden with respect to the proffered documents. In its Order, the Trial Chamber afforded the Prosecution the opportunity to demonstrate the particular relevance (meaning how the evidence relates to the indictment) and probative value (meaning how the evidence tends to prove or disprove the charges in the indictment) of the documents. In response, the Prosecution directed the Chamber to either general counts in the indictment or whole paragraphs of the indictment, most of which contain numerous assertions. The Prosecution's submissions fail to refer to either the specific portions of the documents for judicial notice or the particular issues to which these documents relate. It is plainly insufficient to argue that, because a document was deemed relevant in another trial, it follows that it is automatically relevant to any issue in this trial. Consequently, the Trial Chamber finds that it would not serve judicial economy to grant the Prosecution's request and judicially notice the documents listed in Annex A.

33. Significantly, the Trial Chamber notes that, although the documents listed are inappropriate for judicial notice under Rule 94(B) at this time, the Prosecution remains free to offer these documents in the usual manner pursuant to the requirements of Rule 89(C). In fact, there are

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<sup>41</sup> Prosecution's Reply, para. 17.

<sup>42</sup> *Ibid.* para. 14.

<sup>43</sup> *Ibid.* para. 8.

numerous documents which would be better served if offered through a witness or pursuant to a Rule 92 *bis/ter* statement. By way of example only, these documents include: photographs (such as 4.238 and 4.270); attachments to statements (such as 4.357); and documents whose relevance or context is entirely unclear (such as 4.137, 4.162, and 5.076). Additionally, there are many documents that superficially appear to fulfil the requirements of Rule 89(C), and if the Prosecution were able to further elaborate in conformity with the principles laid out in this decision,<sup>44</sup> these documents may be admissible from the bar table. By way of example only, these documents include: maps showing deportation routes (such as 1.019); official reports and documents from the region (such as 3.002, 4.022, 4.037, 4.163, and 4.232); international agreements (such as 4.065); and documents related to military operations (such as 4.247, 4.272, 5.006, and 5.060).

34. The Trial Chamber finds three exceptions to the above discussion: First, there are nine documents that were proposed for admission under both Annex A and Annex I. The Trial Chamber finds that these documents may be admitted from the bar table for the reasons enunciated in paragraph 28 of this decision.<sup>45</sup> Second, there are fourteen documents that were proposed for admission under both Annex A and Annex J. The Trial Chamber finds that these documents may be admitted from the bar table for the reasons enunciated in paragraph 47 of this decision.<sup>46</sup> Third, there is one document that was proposed for admission under Annex A, while a very similar document was proposed under Annex J. The Trial Chamber finds that this document may be admitted from the bar table for the reasons enunciated in paragraph 47 of this decision.<sup>47</sup>

### **C. Documents Presented for Admission Under Rule 89(C)**

35. The Prosecution requests that the Trial Chamber admit certain documents from the FRY/Serbia, media reports, book excerpts, statements of the Accused, and correspondence/miscellaneous documents pursuant to Rule 89(C).

36. The documents for which the Prosecution seeks admission are dealt with by category as follows:

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<sup>44</sup> See *supra* paras. 10, 11.

<sup>45</sup> The Rule 65 *ter* numbers of the documents that overlap between Annex A and Annex I are: 4.085, 4.309, 4.311, 5.005, 5.040, 5.662, 5.853, 5.892, and 5.893.

<sup>46</sup> The Rule 65 *ter* numbers of the documents that overlap between Annex A and Annex J are: 4.003, 4.004, 4.006, 4.012, 4.013, 4.026, 4.240, 4.273, 4.324, 4.325, 4.327, 4.330, 4.331, and 4.363.

<sup>47</sup> The Rule 65 *ter* number of this document is 4.323.

i. Annexes D and E (Documents from FRY/Serbia)

37. The Trial Chamber is sympathetic to admitting the documents from the FRY/Serbia. These documents are facially relevant to the crucial time period and charges in the indictment. However, aside from a bare assertion regarding where the documents were seized and the fact that many bear a stamp, signature, or letterhead, the Prosecution offers little concrete substantiation of reliability, probative value, and authenticity.<sup>48</sup> The Chamber reminds the Prosecution of the requirements for admissibility under Rule 89(C). As such, a Rule 92 *bis/ter* statement from a military analyst, the investigator who procured these documents, or some other appropriate person may procedurally assist their admission.<sup>49</sup>

38. The Trial Chamber sees it fitting to note that a number of documents in this category are relevant to issues that in fact may assist the Defence. However, the Defence indicates several objections to these documents. Documents noted by the Trial Chamber include: 4.027, 4.081, 4.094, 4.113, 4.145, 4.164, 4.241, 4.445, 4.454, and 4.475. In light of the fact that the Prosecution has not sufficiently demonstrated that these documents meet the requirements for admission under Rule 89(C), the Chamber deems these documents likewise inadmissible.

39. As an exception to the foregoing, the Trial Chamber finds that, even from the brief descriptions given by the Prosecution, it is apparent from their character and source that seven of the documents proposed under this Annex are reliable, relevant, and probative, and, thus, may be admitted from the bar table. The Rule 65 *ter* numbers of these documents are 4.522, 5.229, 5.230, 5.231, 5.232, 5.344, and 5.345.

ii. Annexes F and G (Media Reports and Book Excerpts)

40. The Trial Chamber finds that the majority of the media reports and book excerpts presented are inadmissible at this time, subject to certain exceptions below.

41. The relevance of independent reports is extremely difficult to assess without a witness to provide context. Additionally, as presented, these materials lack sufficient indicia of reliability. As described by the Prosecution, these materials contain facts relating to the specifics of “refugee movements, promotions or political ascension, military conflict, and similar notorious events.”<sup>50</sup>

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<sup>48</sup> See Prosecution’s Motion, paras. 18–20.

<sup>49</sup> The Trial Chamber notes the Prosecution’s concern about the fact that many of the authors of these documents are unavailable to testify. See Prosecution’s Motion, para. 19. However, should these documents be offered for admission during trial, the witness need not necessarily be the author of the document(s) in question; the witness need only be capable of testifying to the contents of the documents.

<sup>50</sup> Prosecution’s Motion, para. 23.

Because such issues go to the heart of case, they can hardly be characterised as “events within the realm of common knowledge” as claimed by the Prosecution.<sup>51</sup>

42. However, certain materials can be distinguished from the foregoing as they constitute statements by the Accused and, as such, purport to present a clear and accurate record from the Accused. These materials satisfy the requirements under Rule 89(C) and may be admissible from the bar table. The Rule 65 *ter* numbers of these documents are as follows: 4.101, 4.464, 4.528, 5.346, and 5.561.

iii. Annex H (Statements of Accused)

43. The Trial Chamber finds that the statements of the Accused listed in this Annex are admissible from the bar table pursuant to Rule 89(C).

44. The Chamber notes that it, as yet, has not been informed as to whether the Accused intend to testify. However, contrary to the position of the Defence, the decision to testify is irrelevant for admission of the statements. The Trial Chamber has considerable discretion on evidentiary matters so long as the evidence is relevant and probative;<sup>52</sup> and, the Defence does not seem to dispute the reliability and relevance of the statements. Moreover, the Defence argument, similar to that made in *Halilović*,<sup>53</sup> rests implicitly upon the right against self-incrimination. Yet, as noted by the *Halilović* Chamber, “an Accused has the right to refuse to give statements incriminating himself prior to trial, and he ha[s] the right to refuse to testify at trial. But where the Accused has freely and voluntarily made statements prior to trial, he cannot later on choose to invoke his right against self-incrimination retroactively to shield those statements from being introduced....”<sup>54</sup>

45. Moreover, the Defence’s assertion that certain statements are incomplete does not render the statements inadmissible. The Defence seems to argue that because the interviews contain information that only goes to part of the indictment, the statement is inadmissible under Rule 89(C).<sup>55</sup> The Defence would seem to be advancing the argument that the Prosecution would have had to question the Accused on each and every issue in the indictment in order for the statements to be admissible. The Chamber can discern no basis in either law or fact for such a proposition. The Defence, of course, are at liberty to tender any additional information they desire during their case or pursuant to Rule 90(H).

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<sup>51</sup> *Ibid.*

<sup>52</sup> See *Halilović* Decision, *supra* note 14, para. 14.

<sup>53</sup> *Ibid.* paras. 14, 15.

<sup>54</sup> *Ibid.* para. 15.

<sup>55</sup> Šainović and Lazarević Response, para. 30.

iv. Annex J (Correspondence and Other Miscellaneous Documents)

46. The Trial Chamber finds that the majority of the documents listed in this Annex are admissible from the bar table pursuant to Rule 89(C).

47. Even from the brief descriptions given by the Prosecution, it is apparent from their character and source that many of these documents are reliable, relevant, and probative. Examples of this are the notorious letter from Tony Blair to Slobodan Milošević, which formed one of the bases of Milošević's application to subpoena Tony Blair. Other examples include well-known foundational agreements between NATO and the FRY. In addition, there are letters from western leaders and the Prosecution to the Accused, which the Prosecution alleges go toward the issue of notice of the crimes alleged in the indictment. In fact, the Chamber heralded the use of such documents in its rejection of *As Seen, As Told* and *Under Orders* in a prior decision in this case, stating the following:

Instead of relying on any indirect mention or discussion of the OSCE-KVM reports in *As Seen, As Told*, the Chamber considers that it is preferable for the Prosecution to tender the original documents themselves. In fact, the Prosecution has already requested admission of various reports and other documentation of the OSCE mission from the period relevant to the Indictment, and the parties are reminded that a decision on that motion will be issued in due course. It is therefore unnecessary to admit any excerpt of *As Seen, As Told* for this purpose. The same reasoning applies to *Under Orders*: any document discussed therein that is meant to have provided the Accused with notice should be tendered separately, if it has not been submitted already, and the Chamber will decide on its admissibility at that stage. For any events described in *Under Orders*, the Chamber is of the view that contemporaneous written accounts or testimonial evidence from participants would be of superior probative value to the references or discussion in the HRW report, and notes that the Prosecution either expects to present such evidence in the course of its case, or has already tendered it for admission. Consequently, it is equally unnecessary to admit *Under Orders* for this purpose.<sup>56</sup>

The Rule 65 *ter* numbers of these documents are as follows: 4.003, 4.004, 4.006, 4.008, 4.009, 4.010, 4.011, 4.012, 4.013, 4.026, 4.041, 4.044, 4.050, 4.063, 4.240, 4.271, 4.273, 4.324, 4.325, 4.327, 4.331, 4.363, 5.347, and 5.348.

48. As exceptions to the foregoing, the reliability and/or relevance of certain documents is not readily apparent; thus, these documents are inadmissible at this time. The Rule 65 *ter* numbers of these documents are as follows: 4.005, 4.333, 4.366, 4.367, 4.368, 4.370, 4.372, 4.422, 4.595, 4.597, 5.356, 5.682, and 5.890.

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<sup>56</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, 1 September 2006, para. 25 (footnotes omitted).

#### D. Miscellaneous Items

49. In its Motion, the Prosecution seeks admission from the bar table of numerous documents that were initially to be tendered through the evidence of witness, Phillip Coo. On 13 July 2006, the Trial Chamber issued an oral decision regarding Mr. Coo, in which the Chamber “rule[d] him out as an expert” and decided that his report “will not be received as an expert report.”<sup>57</sup> However, the Chamber “did not rule him out as a fact witness. The bulk of his report dealing with factual matters, including the results of his investigations, may therefore form a part of the evidence, if the Prosecution calls Mr. Coo as a fact witness pursuant to the Rules.”<sup>58</sup> In its Motion, the Prosecution failed to provide the Trial Chamber with information about the source of the documents and/or their purpose in these proceedings; and, upon further review, Mr. Coo’s report also does not provide such information. In the present circumstances, the Chamber can only assess the reliability and relevance of these materials, which the Prosecution seeks to admit, if and/or when Mr. Coo appears to give evidence before the Tribunal, be it *viva voce* or via Rule 92 *bis/ter*. Therefore, the admissibility of these materials will be determined at that time.

50. The Prosecution has requested that the Trial Chamber suspend its decision regarding the admissibility of documentary evidence related to three killing sites, Raçak, Padalište, and Dubrava Prison, due to issues pending at the time of filing.<sup>59</sup> Alternatively, the Prosecution has asserted that certain documents should be admitted for their independent relevance.<sup>60</sup> The Chamber has since denied the Prosecution’s request for certification of the Rule 73 *bis* Decision.<sup>61</sup> As such, the Trial Chamber finds these documents irrelevant and, thus, inadmissible at this time. The Prosecution remains free to establish independent relevance during the course of the proceedings in conformity with Rule 89(C).

51. Finally, there are certain documents which fall outside the scope of the foregoing decision. First, there are fifty-six documents to which the parties have agreed to admission and, as such, may be admitted from the bar table. The Rule 65 *ter* numbers of these documents are as follows: 4.043, 4.066, 4.088, 4.329, 4.330, 4.423, 4.471, 4.472, 4.499, 4.516, 4.517, 4.523, 4.524, 4.525, 4.526, 4.527, 4.542, 4.582, 4.583, 4.592, 4.594, 5.003, 5.004, 5.010, 5.012, 5.032, 5.033, 5.034, 5.035,

<sup>57</sup> T. 840–844 (13 July 2006).

<sup>58</sup> *Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Phillip Coo’s Expert Report, para. 11.

<sup>59</sup> See Prosecution’s Reply to Defence Responses to Motion for Admission of Documentary Evidence and Motion for Variation of Word Limit, 18 August 2006, paras. 30–31 (“Moreover, the Prosecution has sought certification of the Trial Chamber’s Rule 73 *bis*(D) decision [denying admission of evidence relating to these crime sites]. The Prosecution therefore respectfully requests that the Trial Chamber suspends its decision on the admissibility of these documents until the status of these crime sites is determined.”).

<sup>60</sup> *Ibid.*



5.036, 5.039, 5.106, 5.178, 5.338, 5.375, 5.606, 5.609, 5.674, 5.675, 5.686, 5.689, 5.695, 5.697, 5.703, 5.704, 5.776, 5.854, 5.855, 5.859, 5.860, 5.872, 5.873, 5.874, 5.898, 5.906, and 5.918. Second, there are eighty-two documents which, in its Motion, the Prosecution seek to have admitted from the bar table and which, since the time of the filing of the Motion, have already been admitted and, as such, are outside the scope of the Chamber's present decision. The Rule 65 *ter* numbers of these documents are: 1.008, 1.014, 1.017, 1.022, 1.028, 1.029, 1.036, 1.039, 1.040, 1.042, 1.043, 1.047, 1.053, 1.054, 1.055, 1.056, 3.007, 4.042, 4.047, 4.051, 4.067, 4.155, 4.156, 4.157, 4.158, 4.159, 4.160, 4.161, 4.230, 4.257, 4.268, 4.294, 4.317, 4.394, 4.395, 4.399, 4.400, 4.401, 4.402, 4.403, 4.404, 4.405, 4.409, 4.567, 4.568, 5.172, 5.258, 5.350, 5.351, 5.352, 5.353, 5.358, 5.631, 5.635, 5.638, 5.639, 5.837, 5.839, 5.840, 5.846, 2.2.1, 2.2.2, 2.2.5, 2.2.6, 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.4.2, 2.4.5, 2.4.7, 2.4.8, 2.4.11, 2.4.19, 2.4.20, 2.7.40, 2.8.27, 2.8.28, 2.9.38, 2.12.6, 2.12.8, and 2.12.28.

52. In accordance with all of the foregoing, based upon the Chamber's review of the documents tendered by the Prosecution in connection with the Motion, and pursuant to Rule 89(C) of the Rules of Procedure and Evidence, the Trial Chamber hereby **DECIDES** as follows:

- (1) Pursuant to paragraphs 28, 34, 39, 42, 43–45, and 46–47, the following 55 documents are hereby admitted into evidence:
  - (a) 4.003, a document dated 24 September 1998 and described as "Letter from Prime Minister Tony Blair to President Milošević";
  - (b) 4.004, a document dated 25 October 1998 and described as "Understanding between KDOM and Ministry of Interior of the Republic of Serbia";
  - (c) 4.006, a document dated 23 October 1998 and described as "Letter William Walker to Slobodan Milošević";
  - (d) 4.008, a document dated 26 March 1999 and described as "Letter from Louise Arbour to Mr. Milošević";
  - (e) 4.009, a document dated 26 March 1999 and described as "Letter from Louise Arbour to Mr. Milan Milutinović";
  - (f) 4.010, a document dated 26 March 1999 and described as "Letter from Louise Arbour to Mr. Nikola Šainović";
  - (g) 4.011, a document dated 26 March 1999 and described as "Letter from Louise Arbour to Colonel General Dragoljub Ojdanić";

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<sup>61</sup> See *Prosecutor v. Milutinovic et al.*, Case No. IT-05-87-T, Decision Denying Prosecution's Request For Certification of Rule 73 *bis* Issue For Appeal, 30 August 2006, para. 13.

- (h) 4.012, a document dated 15 October 1998 and described as "Letter from Louise Arbour to His Excellency Slobodan Milošević";
- (i) 4.013, a document dated 3 February 1999 and described as "Letter from Graham T. Blewitt to Mr Milan Grubić attaching a letter to Mr Zoran Knežević";
- (j) 4.026, a document dated 28 April 1999 and described as "Signed Joint Declaration by Rugova and Milutinović regarding their mutual readiness to initiate direct talks between the Serbian Government and the leaders of the Kosova Albanians";
- (k) 4.041, a document dated 22 March 1999 and described as "Reply of the President of the Federal Republic of Yugoslavia, Mr. Slobodan Milošević to the Message of the co-chairmen of the Rambouillet Meeting, Ministers of France and of Great Britain, Messrs Hubert Vedrine and Robin Cook";
- (l) 4.044, a document dated 15 June 1999 and described as "Military-Technical Agreement (MTA). Letter from General Javier Solana to Kofi Annan with attached full text of the MTA, including signature blocks";
- (m) 4.050, a document dated 23 October 1998 and described as "Cover letter for KVM Agreement between NATO and FRY (Clark-Perišić Agreement) signed by General Wesley Clark and Colonel General Momčilo Perišić";
- (n) 4.063, a document dated 9 June 1999 and described as "N.A. Military Technical Agreement between KFOR and Governments of FRY and Serbia";
- (o) 4.083, a document dated 6 June 1999 and described as "Belgrade Peace Agreement 4.6.99. Ahtisaari - Chernomyrdin Agreement";
- (p) 4.085, a document dated 23 February 1999 and described as "'Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet Agreement), February 23, 1999' as found in 'The Kosovo Conflict: a Diplomatic History through Documents,' edited by Philip Auerswald and David Auerswald";
- (q) 4.101, a document dated 25 April 1999 and described as "Article entitled 'The Interview of President Milošević to the American TV Network CBS' taken from Serbia Info News";
- (r) 4.219, documents dated 16 October and 12–13 November 2001 and described as "Transcript of interview between Milutinović and the OTP";
- (s) 4.220, documents dated 9–11 December 2002 and 9–10, 20–22 January 2003 and described as "Transcript of interview between Šainović and the OTP";

- (t) 4.240, a document dated 23 February 1999 and described as "Letter to Christopher Hill, Wolfgang Petritsch from Ratko Markovic";
- (u) 4.271, a document dated 13 October 1998 and described as "Extract from 'North Atlantic Treaty Organization Threat and Richard Holbrooke Agreement' - relevant section, 16. Serbian Government Endorses Accord Reached by President Slobodan Milošević, Belgrade";
- (v) 4.273, a document dated 16 October 1998 and described as "Agreement on Kosovo Verification Mission";
- (w) 4.309, an undated document described as "Rambouillet Agreement";
- (x) 4.311, a document dated 24 December 1992 and described as "Report of the Secretary-General on the International Conference on the former Yugoslavia";
- (y) 4.323, an undated document described as "Joint Recommendations on the Kosovo Conflict";
- (z) 4.324, an undated document described as "Joint Recommendations on the Kosovo Conflict";
- (aa) 4.325, an undated document described as "Draft Conclusions for a session of the National Assembly of the Republic of Serbia held on 23 March 1999";
- (bb) 4.327, an undated document described as "Joint Recommendations on the Kosovo Conflict from the Halki meeting 1997, final version";
- (cc) 4.331, a document dated 5 May 1999 and described as "Letter from Zoran LILIC to Slobodan Milošević";
- (dd) 4.363, a document dated 17 March 1998 and described as "Letter from Louise Arbour to President Milošević";
- (ee) 4.464, an undated document described as "Interview of General Nebojsa Pavković by Radio B92 of Serbia";
- (ff) 4.522, an undated document described as "1991 Census: Ethnic composition of the population of SFRJ, including Serbia, Montenegro, Vojvodina and Kosovo according to the 1991 census";
- (gg) 4.528, an undated document described as "'Video 'Yugoslav National Army' by Serbian Helsinki Human Rights Watch Committee";
- (hh) 4.564, documents dated 21–23 May 2002 and described as "Interview of Sreten Lukić with the Office of the Prosecutor";
- (ii) 4.565, documents dated 06, 28, 30 November and 1–2 December 2002 and described as "Interview of Nebojsa Pavković with the Office of the Prosecutor";

- (jj) 4.566, documents dated 23–25 February and 17–18 March 2005 and described as “Interview of Vladimir Lazarević with the Office of the Prosecutor”;
- (kk) 4.584, an undated document described as “Indictment in case IT-99-37”;
- (ll) 5.005, a document dated 27 April 1992 and described as The Constitution of the Federal Republic of Yugoslavia”;
- (mm) 5.011, a document dated 23 March 1999 and described as Decision on the Proclamation of Imminent Threat of War”;
- (nn) 5.040, a document dated 28 September 1990 and described as “Constitution of the Republic of Serbia”;
- (oo) 5.229, a document dated 15 October 1998 and described as “Operational Report of the Joint Command for Kosovo and Metohija regarding the security situation in Kosovo”;
- (pp) 5.230, a document dated 28 October 1998 and described as “Operational Report of the Joint Command for Kosovo and Metohija regarding the security situation in Kosovo”;
- (qq) 5.231, a document dated 1 October 1998 and described as “Statutes of the TEC/Provisional Executive Council for Kosovo”;
- (rr) 5.232, a document dated 17 October 1998 and described as “Joint Command SITREP on the security situation in Kosovo, including attacks by KLA on VJ and MUP and their counter measures”;
- (ss) 5.344, a document dated 12 July 2002 and described as “FRY Ministry of Justice Response to OTP Request No. FRY-174 of 19 April 2002”;
- (tt) 5.345, a document dated 21 November 2002 and described as “FRY Response No. 95-6 to OTP Request 174A, 21 November 2002”;
- (uu) 5.346, a document dated 20 October 2000 and described as “Pavković responds to caller's questions, Belgrade RTS Television First Program”;
- (vv) 5.347, a document dated 17 October 2002 and described as “ICTY Office of the Prosecutor Request for Assistance (PC-T11) FRY-174A”;
- (ww) 5.348, a document dated 19 April 2002 and described as “ICTY Office of the Prosecutor Request for Assistance INV/9569/PC-T11 (174)”;
- (xx) 5.561, a document dated 16 January 2001 and described as “Interview with Lt. General Nebojša Pavković, B92 Radio”;

- (yy) 5.662, a document dated 21 February 1974 and described as "Constitution of the Socialist Federal Republic of Yugoslavia of 1974";
- (zz) 5.853, a document dated 28 March 1989 and described as "Amendments IX-XLVIII to the Constitution of SR Serbia, Item 4 of Paragraph XXXIII";
- (aaa) 5.869, a document dated 24 April 1903 and described as "Constitution of the Republic of Montenegro";
- (bbb) 5.892, a document dated 25 February 1974 and described as "Constitution of the Socialist Republic of Serbia"; and
- (ccc) 5.893, a document dated 7 February 1981 and described as "Rules of Procedure of the SFRY Presidency".
- (2) Pursuant to paragraph 51 of this Decision, the 56 documents regarding which the parties have previously agreed in respect of their admission are hereby admitted into evidence.
- (3) Pursuant to paragraph 51 of this Decision, 82 of the documents that the Prosecution sought to have admitted into evidence from the bar table via this Motion have already been admitted into evidence during the trial, since the filing of the Motion. It is therefore unnecessary for the Trial Chamber to make admissibility findings in respect of these documents.
- (4) The remaining 1,957 documents are denied admission into evidence from the bar table, as requested in the present Motion unless they have been admitted into evidence in another manner during these proceedings.

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



Judge Iain Bonomy  
Presiding

Dated this tenth day of October 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**