



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-03-67-T
Date: 7 March 2011
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr John Hocking

Decision of: 7 March 2011

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON ADMISSION OF EXPERT REPORT REGARDING THE
MLADIĆ NOTEBOOKS AND ON PROSECUTION MOTION FOR
ADMISSION OF EVIDENCE RELATING TO MLADIĆ NOTEBOOKS,
WITH DISSENTING OPINION OF PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI IN ANNEX**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

TRIAL CHAMBER III (“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”),

SEIZED of the motion publicly filed on 19 July 2010 by the Office of the Prosecutor (“Prosecution”) for the admission of thirteen extracts from the Notebooks of General Mladić (“Mladić Notebooks” and “Extracts from the Mladić Notebooks”) tendered from the bar table and, on the other hand, evidence relating to the Mladić Notebooks (“Motion”),¹

NOTING the decision rendered on 22 October 2010, whereby the Chamber ordered an expert report in order to resolve the matter of the authenticity of the Mladić Notebooks, ordering the admission into evidence of the earlier statements by Milovanović dated 27 April 2010 and by investigator Erin Gallagher dated 8 July 2010 pursuant to Rule 92*bis* of the Rules of Procedure and Evidence (“Rules”) and declined to rule on the admission into evidence of the Extracts from the Mladić Notebooks,²

NOTING the Expert Report regarding the Mladić Notebooks filed on 12 January 2010,³

¹ “Prosecution’s Motion for Admission of Evidence Relating to Mladić Notebooks and for Leave to Amend its Rule 65ter Witness and Exhibit Lists”, public including annexes, filed on 16 July 2010, registered on 19 July 2010, then redistributed on 20 July 2010 because of a mistake in paging (“Motion”). The Prosecution is seeking the admission into evidence of 13 extracts, which are: 1 extract concerning 1 February 1992 taken from Mladić Notebook No. 4 (entries from 31 December 1991 to 14 February 1992), 4 extracts concerning 6, 7, 9 and 11 May 1992 taken from Mladić Notebook No. 5 (entries from 14 February 1992 to 25 May 1992), 2 extracts concerning 6 and 30 June 1992 taken from Mladić Notebook No. 6 (entries from 27 May 1992 to 31 July 1992), 1 extract concerning 8 November 1992 taken from Mladić Notebook No. 11 (entries from 5 October 1992 to 27 December 1992), 3 extracts concerning 28 May, 8 July and 24 September 1993 taken from Mladić Notebook No. 14 (entries from 2 April 1993 to 24 October 1993), 1 extract concerning 21 December 1993 taken from Mladić Notebook No. 15 (entries from 28 October 1993 to 15 January 1994) and 1 extract concerning 13 October 1994 taken from Mladić Notebook No. 18 (entries from 4 September 1994 to 28 January 1995).

² “Decision on Prosecution’s Motion for Admission of Evidence Relating to Mladić Notebooks with a Separate Opinion from Presiding Judge Antonetti Attached”, public, 22 October 2010 (“Decision of 22 October 2010”).

³ “Registry’s Submission of Expert Report Regarding the Mladić Notebooks”, public, 12 January 2011.

NOTING the e-mail dated 3 February 2011, whereby the Chamber requested of Vojislav Šešelj (“Accused”) that he submit his comments regarding the admission of the Expert Report,⁴

NOTING the Order issued on 28 February 2011, whereby the Chamber issued to the Expert an order on disclosure of reference material for the Expert Report on the Mladić Notebooks,⁵

NOTING the reference Documents used by the Expert to carry out his mission, filed as Annexes to the Expert Report on 4 March 2011,⁶

CONSIDERING that the Accused submitted no comments in respect of the Expert Report’s admission within the time-limit of 6 days, which ran from the date he received the BCS translation of the Expert Report, and did not respond to the Motion within the time-limit of 14 days, which ran from the date he received the BCS translation of the Motion, which was given to him under Rule 126*bis* of the Rules,⁷

CONSIDERING despite this that at the administrative hearings of 14 June 2010 and 21 September 2010, the Accused questioned the authenticity and the relevance of all of the documents seized at the domicile of the wife of General Mladić,⁸

CONSIDERING that the Accused received a typed, paper version in BCS of the complete Mladić Notebooks on 2 November 2010,⁹

CONSIDERING that the Chamber recalls that the expert report on the Mladić Notebooks was ordered *proprio motu* in the Decision of Decision of 22 October 2010

⁴ E-mail sent by the Chamber to the Accused on 3 February 2011 granting him 6 days to present his comments, to run from when he receives the BCS version of the said Expert Report.

⁵ “Order on Disclosure of Reference Material for Expert Report on Mladić Notebooks”, public, 28 February 2011.

⁶ “Registry’s Submission Pursuant to Rule 33 (B) of Annex to Expert Report Regarding the Mladić Notebooks”, public, 4 March 2011, see in Annex A entitled “Handwriting Analysis Report – Annex” and which contains the documents bearing ERN 0679-3049 and 0679-3050, 0649-0552, 0649-0553, 0649-0554, 0649-0554, 0649-0555 as well as an additional document, that is a typewritten, manually signed document, which was nevertheless not used as a reference document for the expert report (“Annex to the Expert Report”).

⁷ The Accused received the BCS translation of the Expert Report on 3 February 2011 (see Procès-verbal of reception, registered on 10 February 2011) and of the Motion on 1 September 2010 (see Procès-verbal of reception, registered on 6 September 2010).

⁸ Hearing of 14 June 2010, Transcript in French (“T(F)”) 16109. Hearing of 21 September 2010, T(F) 16381-16400.

and that, as a result, the Chamber now finds it proper to rule *proprio motu* concerning the admission of the Expert Report and the Annex to the Expert Report, which is a non-dissociable part of the said report,

CONSIDERING that the Chamber observes that the admission of the Expert Report and the Annex to the Expert Report is not contested by the parties; that in the opinion of the Chamber, the Expert Report is relevant and reliable and evidences some measure of probative value in that it sheds needed light upon the authenticity of the Mladić Notebooks for the Chamber,

CONSIDERING therefore that the Chamber decides to admit *proprio motu* the Expert Report and the Annex to the Expert Report,

CONSIDERING insofar as the Motion is concerned, that the Prosecution asserts that the Extracts from the Mladić Notebooks are relevant with regard to the joint criminal enterprise pleaded in the Indictment,¹⁰ that they are authentic and reliable,¹¹ that their admission into evidence would not cause prejudice to the Accused¹² and would serve the interests of justice¹³ and that the untimely filing of the Motion is justified by the recent discovery – in February 2010¹⁴ – of the Mladić Notebooks,¹⁵

CONSIDERING that the Chamber finds that the admission to the record of the Expert Report and the Annex to the Expert Report conclusively resolves the issue of the authenticity of the Extracts from the Mladić Notebooks,

CONSIDERING that, as a result, the Chamber, by a majority with Judge Antonetti dissenting, now finds that the Extracts from the Mladić Notebooks display sufficient indicia of relevance, reliability and probative value to be admitted into evidence,

CONSIDERING, finally, that the Chamber recalls that it need not, at this stage of the proceedings, conduct a *final* assessment of the relevance, reliability or the probative value of the said exhibits. This exercise will only be conducted at the close of the trial,

⁹ See Procès verbal of reception No 652, dated 2 November 2010.

¹⁰ Motion, paras 1 and 11-12.

¹¹ Motion, paras 16-21.

¹² Motion, para. 13.

¹³ Motion, para. 15.

¹⁴ Motion, para. 3.

in light of all of the evidence for both the Prosecution and the Defence, that has been admitted to the record.

FOR THE FOREGOING REASONS

PURSUANT TO Rule 54 of the Rules,

PROPRIO MOTU,

ORDERS that the Expert Report and the Annex to the Expert Report be admitted into evidence,

PURSUANT TO Rules 54 and 89 (C) of the Rules of Procedure and Evidence,

By a majority, with Judge Antonetti dissenting,

ORDERS that the thirteen extracts from the Mladić Notebooks to which the Motion is directed be admitted to the record,

ORDERS the Registry to assign to each of these documents a Prosecution exhibit number and to upload them on *e-Court*, along with their official translation by the translation service of the Tribunal (“CLSS”).

Presiding Judge Antonetti is annexing a dissenting opinion.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this seventh day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁵ Motion, para. 14.

**Dissenting Opinion of the Presiding Judge,
Judge Jean-Claude Antonetti**

The Trial Chamber, **by a majority**, decided to admit the 13 exhibits taken from the Mladić Notebooks.

I might have easily joined this decision had not **important issues** weighed against admission of those exhibits.

The Prosecution's request for the admission of the Mladić Notebooks created, for any reasonable trier of fact, 3 fundamental issues:

1. The Issue of Authenticity

Were we certain that the Mladić Notebooks were produced by **General Mladić** and were we likewise certain that there were no subsequent additions to the information given in these notebooks?

In **virtually scientific** fashion, the expert replied to my first question by indicating that these were indeed writings produced by **General Mladić**. For this reason, I no longer thus have any reluctance about the authenticity of these notebooks. I will nevertheless take this opportunity to indicate my surprise over the fact that the Office of the Prosecutor did not, following the first search conducted in 2008, come up with the idea of having recourse, for instance, to the Dutch technical service specialized in this type of expert evaluation.

Concerning the second point regarding the possibility of a subsequent addition, I am compelled to observe that the expert report does not raise this possibility with fair certainty but in the circumstance, I will consider the expert report sufficient for recognizing the authenticity of the said notebooks.

Nevertheless, with respect to the issue of the authenticity of the Mladić Notebooks, it should be noted that the Prosecution recently seized the Chamber of a new motion, accompanied by a CD-Rom that contained some information including that about the official involvement of the technical departments of the French police in order to conduct an expert evaluation of a handwritten document.

How is it that, for what was then a minor case, the Prosecution thought it worthwhile to conduct a handwriting evaluation but did not do so with respect to the Mladić Notebooks?

The answer, at first glance, may come from the fact that the chief of investigations was a former police commissioner in France who was in the habit of producing work without flaw and above reproach, which he thus did in officially involving his colleagues, who produced a handwriting analysis that is above reproach. It is therefore quite regrettable that, insofar as this is a **case with international ramifications** concerning General Mladić and the alleged co-perpetrators of a joint criminal

enterprise, the Office of the Prosecutor did not consider it worthwhile, during the initial search, to involve that department, which had already conducted an evaluation, and so it fell to this Chamber to remedy this deficiency.

2. The Untimely Filing of the Motion to Admit the Mladić Notebooks

Although for the Mladić Notebooks discovered at the time of the second search, the issue does not come up due to the concurrence of the date of the search, the disclosure of the documents and the Office of the Prosecutor acting to seize the Chamber, the issue remains for the notebooks discovered during the **initial search**. The best evidence of this is that, in the Popović case, the Office of the Prosecutor tendered them for admission.

Why then did the Office of the Prosecutor not signal to the Chamber that there was an initial search in 2008, given that **General Mladić** is in the same joint criminal enterprise as the Accused Šešelj?

There is, at the very least here, **an unexplained delay** which for me means that the request by the Office of the Prosecutor must be denied for **untimely filing**. An exhibit unknown to everyone may, in the interests of justice, warrant admission into evidence, but that is not the case here, because the Office of the Prosecutor had known **for some time** that General Mladić was in the habit of taking notes and that it might be of interest for resolving this case to have this information. This information was disclosed with excessive delay because it came at the very moment that the Office of the Prosecutor was closing its case in chief.

By analogy, would the Trial Chamber have allowed the Accused Šešelj, reaching the end of the presentation of his evidence to request the admission into evidence of an exhibit which he had had in his possession for a long while and which he decided to submit to meet the needs of his case in the closing moments, merely because it happened to suit him best? I do not think it would

3. The Added Value of These Exhibits

The Trial Chamber will be required, during final deliberations, to rule upon the individual criminal responsibility of the Accused, based on the evidence admitted. Due to the weightiness of this obligation for each Judge, it is conceivable that **in the interests of justice**, a last minute exhibit might be included, but then again, this exhibit would be required to be conclusive, for one side or another, and possess such added value that all other considerations could be set aside.

Is that true for the 13 Exhibits in front of us?

Speaking on my own behalf, I do not think so because I have conducted an **in-depth analysis**, going document by document, at least in order to seek out what its added value might be. I indicate below the results of my examination:

Extracts	Date	Contents	Relevant Paragraph in the Indictment of Vojislav Šešelj	Comments by the Defence
Extract 1	1 February 1992	This is the transcript of a session of the Presidency of the Socialist Federative Republic of Yugoslavia, in which civilian and military officials took part. The JNA was discussed as well as the protection of “ethnically” Serb populations.	This document is of interest for establishing the existence of a joint criminal enterprise, mentioned in paragraph 8 of the Indictment.	The Accused disputes the authenticity of the Mladić Notebooks. ¹⁶ The Accused considers this extract to be of no interest and disputes the statements cited by the Office of the Prosecutor in its Motion, which state that the frontline extended all the way down through ethnic Serb areas, which would tend to confirm that there was a change in the JNA’s objectives, and that the military and civilian leadership must have discussed the objectives of the Serbs within a State. ¹⁷
<p>Observations:</p> <p>Extract should be excluded because the Prosecution was able to directly provide the official transcription of the deliberations of the Presidency.</p> <p>I observe moreover that other transcripts of their deliberations have already been admitted such as those from the 143rd¹⁸ and 144th¹⁹ sessions.</p>				
Extract 2	6 May 1992	The document recounts a meeting between Messrs Karadžić, Krajišnik, Adžić and a group of generals from Bosnia and Herzegovina during which they discussed a variety of topics, including the expected creation of a state on its own, without internal adversaries and with a common army.	This document is of interest for demonstrating the existence of a joint criminal enterprise, cited in Article 8 of the Indictment.	The Accused finds that the fact that Karadžić, Krajišnik, Adžić and a group of generals from Bosnia and Herzegovina might have met for discussions has nothing to do with the deeds of which he is accused in the Indictment brought against him. ²⁰

¹⁶ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Hearing of 21 September 2010, T(F) 16382-16386 (not official; not corrected). (“Hearing of 21 September 2010”).

¹⁷ Hearing of 21 September 2010, T(F) 16386-16387 (not official; not corrected).

¹⁸ Exhibit P00922.

¹⁹ Exhibit P00925.

²⁰ Hearing of 21 September 2010, T(F) 16387 (not official; not corrected).

Observations:				
Extract should be excluded given that it concerns the Accused Karadžić for involvement in the joint criminal enterprise that has been alleged.				
Extract 3	7 May 1992	Meeting arranged for negotiating with a delegation from Croatia and from Herceg-Bosna. Exhibit specifically tells of discussions between Mladić, Prlić, Praljak, Sotjić and Marić (a Croat negotiator). The document tells of a meeting which took place between Messrs Krajišnik, Vučurević and Karadžić during which Mr Krajišnik lays out strategic objectives, such as permanent separation between the Serbs on the one hand and the Croats and the Muslims on the other, the establishment of borders, naming the army. The document contains a chart explaining the structure of the armed forces.	This document is of interest for purposes of establishing the existence of a joint criminal enterprise, cited in paragraph 8 of the Indictment.	The Accused considers that this extract does not contribute additional indicia concerning the facts of which he is accused in the Indictment. ²¹
Observations:				
Extract should be excluded, in that it presents facts relating to the VRS which were public knowledge. ²²				
Extract 4	9 May 1992	Report by members of the VRS Main Staff. Raises strategic issues	This document is of some	In respect of this extract, the Accused points out that, contrary to what the

²¹ Hearing of 21 September 2010, T(F) 16387 (not official; not corrected).

²² Indictment of Momčilo Krajišnik, Case No. 00-39-I, 21 March 2000, paras 57 and 58.

		and the nature of the Bosnian Serb relationships with the Bosnian Croats. This excerpt reports on a meeting of the 2 nd Military District Command restating the position of the armed forces and their situation on the ground as well as those of the enemy forces. It mentions the destruction of Mostar by Momčilo Perišić.	interest as it concerns paragraph 6 of the Indictment, which is directed to the attack on the municipality of Mostar.	Prosecution is seeking to establish: - Perišić did not lay waste to Mostar, but targeted certain facilities which he destroyed, because, as demonstrated in another case, each time that General Perišić targeted Mostar, he used a telephone or radio hook-up to inform the opposing side. ²³ - Šešelj's men did not participate in the attack launched on Mostar, because they were only an infantry unit incapable of destroying anything because they did not have any artillery guns. The Accused adds to this effect that the aforementioned events do not appear in the Indictment brought against him. ²⁴
Observations:				
Extract should be excluded in that the Prosecution's allegations concerning the attack on Mostar could have been proven by other evidence at the opening of the trial.				
Extract 5	11 May 1992	This is the report presenting the statements of the various military leaders of Republika Srpska and of the Serbian Republic of Bosnia and Herzegovina.	This document is of some interest as concerns paragraph 6 of the Indictment, directed towards the municipality of Nevesinje.	The Accused finds that this extract is of no significance for the matter under discussion. ²⁵
Observations:				
Document should be excluded in that it is not relevant to the matter under discussion.				

²³ Hearing of 21 September 2010, T(F) 16387-16388 (not official; not corrected).

²⁴ Hearing of 21 September 2010, T(F) 16388 (not official; not corrected).

²⁵ Hearing of 21 September 2010, T(F) 16389 (not official; not corrected).

Extract 6	6 June 1992	This document describes a meeting between political leaders connected to the military and political situation in the Serb Republic of Bosnia and Herzegovina. The borders of a Serbian state were debated there and the liberated municipalities are referred to.	This document therefore provides indicia of the existence of a joint criminal enterprise cited in paragraph 8 of the Indictment.	The Accused considers that this extract must be excluded because the cleansing of certain municipalities, including Bratunac, which is at issue here, refers to cleaning up which entails separating out members of enemy army units, not ethnic cleansing, which was never used in military jargon. Moreover, he adds, the facts which took place at Bratunac do not appear in the Indictment brought against him. ²⁶
<p>Observations:</p> <p>Extract should be excluded, due to the fact that in any conflict, there is always coordination between military and civilian authorities, and thus it does not by any token constitute irrefutable proof of a joint criminal enterprise.</p>				
Extract 7	30 June 1992	This is the transcript of a meeting with the representatives of the municipality of Zvornik, at which Radovan Karadžić and General Mladić were present. It mentions the successes achieved by the volunteers led by Šešelj and the “cleansing” of the Muslim villages.	This document is some of interest as concerns paragraph 6 of the Indictment, directed to the municipality of Zvornik.	The Accused considers, on the one hand, that this extract merely confirms events not in controversy and according to which a municipal official from Zvornik praised the men of Šešelj and Arkan in relation to their participating in the fighting to liberate Zvornik and that Colonel Dacić congratulated the SRS volunteers on their discipline and their competence. On the other hand, there is mention of later events occurring in May, June or July, but this has nothing to do with him, because the SRS volunteers had left long before. No one during this meeting established even the faintest connection

²⁶ Hearing of 21 September 2010, T(F) 16389-13690 (not official; not corrected).

				between Zuco's unit and the SRS. ²⁷
Observations:				
<p>This extract is, at first impression, potentially of interest because it states that: "Volunteer formations enjoyed exceptional success, they were led by Arkan and ŠEŠELJ. Arkan's men withdrew in an orderly fashion, but some that stayed broke free of his control",²⁸ but I must note that this exhibit contributes nothing new with respect to the evidence admitted, because it has already been mentioned that the volunteers were led by the Accused Šešelj and that certain paramilitary formations acted outside of any control.</p>				
Extract 8	8 November 1992	The document speaks of a meeting between the corps commanders, highlighting in particular that armies affiliated with the political parties are being created and that the "Radicals" even have their own command post.	This document enables us to assess the joint criminal enterprise cited in paragraph 8 of the Indictment.	The Accused disputes the allegations by the Office of the Prosecutor whereby this extract is purportedly relevant given that it allegedly concerns the deployment of volunteers from the Serb-Chetnik Movement, which would enhance the report of Expert Witness Theunens. The Accused disputes these allegations on the basis that no names of SČP volunteers appear in the pages which correspond to the transcript of this meeting. ²⁹
Observations:				
<p>Extract should be excluded insofar as the Accused does not dispute having sent volunteers. This extract concerns a meeting between Karadžić, Subotić, Derić, and the other military corps, namely, Generals Talić, Ninković, Mladić, Domazetović, Arandelović and Colonels Borić, Lisica, Simić, Živanović, Marčetić, Grubać, Grubor, but also Krajišnik, Anđelić, Gavrilović. During the course of this meeting, the abovementioned persons spoke, particularly to discuss the situation involving the Accused Šešelj. It is said at some point that "Armies affiliated to political parties are being formed here"³⁰. According to this statement, there are units supported by the political parties, and this concerns the radicals who allegedly have their own military command at VP/Military Post/2222. This is problematic, because it was previously stated that the Serb army had its own numbered military</p>				

²⁷ Hearing of 21 September 2010, T(F) 16390-13691 (not official; not corrected).

²⁸ Extract No 7 from the Mladić Notebooks, English translation, p. 252, para. 249.

²⁹ Hearing of 21 September 2010, T(F) 16391-13692 (not official; not corrected).

³⁰ Extract No 8 from the Mladić Notebooks, para. 141, p. 142.

post. Does this mean that post 2222 was directed by the radicals while falling under the JNA? My understanding is that this sentence is inconclusive; moreover, several lines below, one reads “The radicals are in the SUP/ Secretariat of the Interior/, they are blackmailing.”³¹ Thus, that leads one to believe that the Serbian radicals were also in the civilian structure answering to the Ministry of the Interior, but would be more like political activists commanded by the lawful government. It should likewise be noted that President Karadžić brings up the political situation in Europe and American interests.

At point 15, General Mladić announces that he proposed a plan for presentation at the peace conference. This plan would entail an unconditional retreat of the Croat Army from Bosnia and Herzegovina. At paragraph 2 of the said point, General Mladić was suggesting that the proposal to declare war on the Serb people be deleted. At paragraph 4 of the same point, it was proposed – still within the context of the plan – to make a formal agreement with the Croats contingent upon the withdrawal of the HOS from the territories.

At paragraph 5, it is specified that this plan is offering peace negotiations to the Muslims. The question that I ask myself is how does the Mladić plan offer anything of interest to the Šešelj case and how is it that the factors stated there are relevant and carry probative value? For me, there is neither relevance, nor probative value because this is Republika Srpska in the context of the Geneva peace talks. Moreover, as far as the other points raised are concerned, there are – from my point of view – no fresh facts.

Extract 9	28 May 1993	The extract describes a meeting of the leaders of the Federal Republic of Yugoslavia, Serbia and Montenegro. They discuss rejecting the Vance-Owen Plan, as it would hinder the creation of a Greater Serbia. Likewise there is mention of the fact that the Accused may cause problems.	This document enables us to assess the joint criminal enterprise cited in paragraph 8 of the Indictment.	The Accused adds that this extract contributes nothing new, because in those times, the SRS was vigorously opposed to the Vance-Owen Plan and to any acceptance of it; if it is indeed correct that Dobrica Ćosić said this, it is then likely that it posed a problem for the leaders of the Federal Republic of Yugoslavia. However, Ćosić qualifies his statement by saying that he did not think that Šešelj would – weapons in hand – take control of Serbia. ³²
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Observations:

This extract should be excluded; it contributes nothing new concerning the assistance provided by Serbia to other Serbs living elsewhere.

In this instance, the extract concerns a meeting held on 28 May 1993 between the leaders of the Federal Republic of Yugoslavia, Serbia and Montenegro and President Ćosić, Jovanović, Bulatović 1 and 2, Panić, Simonović, Šainović, Karadžić, Koljević, Krajišnik, Mladić, Buha and Matović. This extract totals 17 pages, so it is therefore surprising that General Mladić began at 17:50 having served as secretary throughout the entire meeting. I note moreover that, with respect to what certain participants said, it is written “recorded”. Does this mean that the meeting was recorded by an audio device and that General Mladić – once it was done – went back to

³¹ Extract No 8 from the Mladić Notebooks, para. 141, p. 142.

³² Hearing of 21 September 2010, T(F) 16392-13694 (not official; not corrected).

listen to the tape and retranscribe the missing portions onto his notes? This leads me to think that these are but fragments.

It seems to me in points 6 and 7, raised by Jovanović, that they have two objectives, one to shut down the sanctions and that of creating conditions for defending their people in Bosnia. At that moment, they propose to do more, noting at point 6 that prosecutions will be conducted against crimes and war crimes. And at point 7, that the ICTY will start operations in several weeks and that, due to this, they ought to judge several criminals first.

He then indicated that the Vance-Owen Plan embodied the strategy of the West and of London, because its objective was to prevent the creation of Greater Serbia and the unification of the Serbs, but also to prevent the creation of a Muslim state.

Further down, it is stated that the parties and the paramilitaries might have the audacity to go against the authorities and to seize power.

“Šešelj can cause a problem for us, I do not want to say that he will take Serbia...”; this sentence seems to indicate that Šešelj is a problem, which could then be interesting for the JCE, but there, there is no fresh evidence, because this merely restates what has already been admitted showing that Šešelj did not agree with the other members of the JCE³³.

Extract 10	8 July 1993	This document tells of a meeting at which President Milošević, Messrs Karadžić, Šainović and Stanišić were present and during which they discussed the difficulties facing Republika Srpska and the Serb Republic of Krajina and of what support they should be given.	This document enables us to assess the joint criminal enterprise cited in paragraph 8 of the Indictment.	The Accused is of the view that this extract contributes nothing new. ³⁴
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Observations:

Extract should be excluded, in that it contributes nothing new.

³³ *The Prosecutor v. Milošević*, Case No. IT-02-54, Hearing of 24 August 2005, T(F) 43123, 43154, 43157, 43193 and Hearing of 25 August 2005, T(F) 43222-43223, 43226, 43287-43312.

³⁴ Hearing of 21 September 2010, T(F) 13694 (not official; not corrected).

Extract 11	24 September 1993	The extract tells of a meeting between President Milošević and Generals Perišić and Novaković, during which <i>inter alia</i> the issue of the dangers posed by the Radicals and by Šešelj is raised.	This document enables us to assess the joint criminal enterprise cited in paragraph 8 of the Indictment.	The Accused considers that this extract, which gives proof of a breakdown in relations between him and Milošević during the second half of 1993 was a matter of public knowledge at the time and does not contribute anything of relevance with regard to the Indictment. ³⁵
<p>Observations:</p> <p>Document should be excluded insofar as it refers to information for which we already have evidence. In this case, it is a meeting in Belgrade on 24 September 1993 with President Milošević. During this meeting, Generals Perišić and Novaković spoke. What may be of interest is the statement by Milošević, where he allegedly said that there was a fifth column activated by foreign elements, which was provoking conflicts in the small units and that the most dangerous ones were the patriotic movements of the radicals and Šešelj. We see here, therefore, a position taken by Milošević with regard to his opposition to the Accused Šešelj. This is not a new fact because there are exhibits which have already confirmed this.³⁶</p> <p>As far as the alleged JCE is concerned, the reference stating that the status of the VRS officers ought to be the same as that of the Yugoslav officers is not convincing, I find.</p>				
Extract 12	21 December 1993	The document tells of a meeting with Colonel Novica Gusić concerning the situation in the Neretva Valley. It specifically makes reference to the distribution of weapons to the Serb population of the Neretva Valley which took place on 9 November 1991.	This document does not supply indicia for assessing the joint criminal enterprise cited in paragraph 8 of the Indictment because this extract falls outside of the relevant time register.	The Accused observes that this extract refers to a meeting with Colonel Gusić in the Neretva Valley in December 1993, which falls outside of the time frame of the joint criminal enterprise alleged and thus has no bearing upon the conduct of which he is accused. ³⁷
<p>Observations:</p> <p>Document should be excluded in that it refers to a piece of information that is a matter of public knowledge, that is, the distribution of weapons.</p>				

³⁵ Hearing of 21 September 2010, T(F) 13694-13695 (not official; not corrected).

³⁶ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Hearings of 10 and 11 December 2008, Witness Jovan Glamočanin, T(F) 12851, 12924-12926.

³⁷ Hearing of 21 September 2010, T(F) 13695 (not official; not corrected).

Extract 13	13 October 1994	The extract tells of a meeting with Nedeljko Bubalo during which Ljubiša Petković is mentioned as a deputy of the Accused who, apparently participated in supplying arms to help Republika Srpska.	This document does not supply indicia with which to assess the joint criminal enterprise cited in paragraph 8 of the Indictment because this extract falls outside of the relevant time register.	The Accused disputes the allegations of the Prosecutor, who attempts to establish that he was aware of the contacts and the agreements made between Petković, Bolivar Stanisić, ?, the chief of administration of the Serb MUP, and Milan Spago concerning arms procurement. He explains, then, on the one hand, that this extract does not enable one to establish that Petković participated in the supply of arms, and on the other hand, that Petković had been excluded from the SRS at the end of October 1993 ³⁸ .
<p>Observations:</p> <p>This extract should be excluded in light of the fact that it speaks of Petković and that we already have his statements.</p>				

In conclusion, I cannot unfortunately join ranks with the majority's decision for the reasons cited above.

In any event, the Chamber has **quite generously** implemented the requests for admission of evidence from the Prosecution; rarely have exhibits not been admitted. The best illustration of this was the decision rendered following the "Bar Table" motion, in which decision the Chamber admitted a great many documents tendered by the Prosecution and did so without summoning any witnesses or bringing any cross-examination concerning the contents proper of these documents.

In the case at bar, insofar as the Mladić Notebooks are concerned, I found that I was unable to support this very generous initiative towards the Prosecution, in order to recall for the Prosecution that, on the one hand, it has obligations derived from strict compliance with procedure and the requirement to inform the Accused of the charges brought against him, supported to that end by evidence which must be disclosed to him in timely fashion and, on the other hand, also because the "**added value**" of these exhibits is not absolutely conclusive and the vast majority of them confirm a certain number of facts contained in various documents or commented upon by witnesses during the hearings.

³⁸ Hearing of 21 September 2010, T(F) 13695-13696 (not official; not corrected).