



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-03-69-T
Date: 23 July 2010
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SMS

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 23 July 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON THIRD PROSECUTION'S MOTION FOR
JUDICIAL NOTICE OF ADJUDICATED FACTS**

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I. PROCEDURAL HISTORY

1. On 5 January 2010, the Prosecution filed its third motion for judicial notice of adjudicated facts.¹ On 15 January 2010, the Stanišić Defence sought an extension of time to respond to the Motion. On 18 January 2010, the Chamber granted this request and ordered the Stanišić Defence and Simatović Defence to file their responses no later than 2 February 2010. The request and the decision by the Chamber were dealt with through informal communication and are hereby put on the record.

2. On 2 February 2010, the Stanišić Defence filed its response.² On 3 February 2010, the Simatović Defence filed its joinder to Stanišić Response.³

3. On 9 February 2010, the Prosecution requested leave to reply to the Stanišić Response and a one week extension of time in which to do so.⁴ On 10 February 2010, the Chamber granted these requests and informed the parties about its decision through an informal communication. On 17 February 2010, the Prosecution filed its reply.⁵

II. SUBMISSIONS

A. Motion

4. In its Motion, the Prosecution requests that the Chamber take judicial notice of 392 adjudicated facts from the *Krajišnik* Trial Judgement⁶ (“Proffered Facts”).⁷

5. The Prosecution submits that taking judicial notice of the Proffered Facts will enable it to streamline the evidence to be presented at trial, thereby promoting judicial economy.⁸ The Prosecution further argues that taking judicial notice of the Proffered Facts in no way infringes upon the right of the Accused to a fair trial.⁹ The Prosecution argues that the Proffered Facts are relevant to the crimes charged in the Indictment, are distinct, concrete and identifiable and either

¹ Third Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 5 January 2010 (“Motion”).

² Stanišić Defence Response to Third Prosecution Motion for Judicial Notice of Adjudicated Facts, 2 February 2010 (“Stanišić Response”).

³ Joinder to Stanišić Defence Response to Third Prosecution Motion for Judicial Notice of Adjudicated Facts, 3 February 2010 (“Simatović Joinder”).

⁴ Prosecution Request for Leave to Reply to Stanišić Defence Response to Third Prosecution Motion for Judicial Notice of Adjudicated Facts, 9 February 2010.

⁵ Prosecution Reply to Stanišić Defence Response to Third Prosecution Motion for Judicial Notice of Adjudicated Facts, 17 February 2010 (“Reply”).

⁶ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006.

⁷ Motion, paras 1, 5, 13.

⁸ Motion, para. 2.

⁹ See Motion, paras 2, 12.

have not been appealed or have been upheld on appeal.¹⁰ Moreover, the Prosecution submits that none of the Proffered Facts incorporate or reflect legal conclusions drawn by the Trial Chamber or attest to the criminal responsibility of the Accused.¹¹ Finally, the Prosecution submits that the Proffered Facts pertain to the historical, political and military context and developments relevant to the present case, and to the crimes that took place.¹²

B. Stanišić Response

6. At the outset, the Stanišić Defence submits a general objection to the Prosecution's use of adjudicated facts as a tool in the present case.¹³ It objects to the Prosecution's approach in constructing "a case against the Accused almost exclusively on the basis of documentary evidence", stressing *inter alia* that the acceptance of a large volume of adjudicated facts places a too onerous burden of rebuttal upon the Accused.¹⁴

7. As an alternative to its general objections to taking judicial notice, the Stanišić Defence requests that the Chamber withhold judicial notice of certain Proffered Facts¹⁵ as they:

- (i) have already been judicially noticed by the Chamber in its previous decisions;¹⁶
- (ii) are too vague or insufficiently clear;¹⁷
- (iii) differ in a substantial way from their formulation in the original judgement or are misleading or unclear in their proposed context;¹⁸
- (iv) go to the acts, conduct or mental state of the accused;¹⁹

¹⁰ Motion, paras 9, 12.

¹¹ Ibid.

¹² Motion, para. 11.

¹³ Stanišić Response, para. 4, referring to its submissions in paragraphs 5-14 of the Defence Response to Prosecution's Motion for Judicial Notice of Adjudicated Facts of 1 May 2007, and to Prosecution's Notification on Motion for Judicial Notice of Adjudicated Facts of 14 May 2007 with Confidential Annex I, 29 May 2007.

¹⁴ Stanišić Response, para. 5.

¹⁵ Proffered Facts Nos 1, 6-10, 12-15, 42, 44, 48-49, 52, 55-56, 95, 97, 109, 111, 112, 129, 131, 133, 135, 141-142, 145, 148, 154-156, 159-160, 162-164, 166-168, 190-192, 205-207, 212-213, 215, 217-219, 239, 246, 249-251, 253, 256-261, 279, 282-286, 289-290, 293-295, 298, 301-303, 305, 308, 312, 316, 318-320, 325, 327, 337, 341, 343, 356, 362, 368-369.

¹⁶ Stanišić Response, para. 8, referring to Proffered Facts Nos 1, 6-10, 12-15.

¹⁷ Stanišić Response, paras 10-16, referring to Proffered Facts Nos 42, 49, 52, 55, 56, 95, 97, 109, 111-112, 126, 133, 135, 141-142, 145, 154, 156, 159-160, 162-164, 166-168, 189-191, 205-207, 213, 215, 217, 246, 249-251, 253, 256-261, 279, 282-286, 289-290, 293-295, 298, 301-303, 305, 308, 312, 316, 318-320, 325, 327, 341, 343, 347, 362, 365, 368-369.

¹⁸ Stanišić Response, paras 17-24, referring to Proffered Facts Nos 44, 129, 131, 155, 212, 218-219, 239.

¹⁹ Stanišić Response, paras 25-30, referring to Proffered Facts Nos 56, 133, 141-142, 148, 154, 156, 159-160, 162-164, 166-168, 190-192, 213, 217, 249, 253, 256-260, 282-286, 289-290, 293-295, 298, 301-303, 305, 308, 312, 316, 318-320, 325, 327, 341, 343, 347, 362, 368-369.

8. The Stanišić Defence submits that, given that the Indictment appears to allege that the Accused are responsible for actions of all Serb Forces, including the paramilitaries, all proposed facts that identify paramilitaries must be treated as probative of the acts and conduct of the Accused.²⁰

9. Moreover, the Stanišić Defence requests that some additions be made to the Proffered Facts and that several additional facts from the *Krajišnik* Trial Judgement be judicially noticed in order to clarify a number of the Proffered Facts.²¹

C. Reply

10. In its Reply, the Prosecution withdraws the following Proffered Facts from its Motion: 1, 6-10 and 12-15.²²

11. The Prosecution reiterates that the remaining Proffered Facts are clear, distinct and relevant to the present case.²³ It also submits that it is open to the Defence to propose additional adjudicated facts that place the Proffered Facts in a context.²⁴

12. The Prosecution also addresses several Defence objections to particular Proffered Facts and states its position in relation to several amendments of the Proffered Facts, including additions of new proposed adjudicated facts, as proposed by the Defence.²⁵

13. More specifically, the Prosecution argues that the Defence uses a very broad understanding of the term “acts and conduct of the Accused”.²⁶ It asserts that this term is to be used in a more narrow sense and does not exclude facts pertaining to perpetrator groups.²⁷ The Prosecution stresses that some of the Proffered Facts including references to the Serb leadership in Belgrade do not directly relate to acts and conduct of the Accused.²⁸ It further notes that the Chamber has previously taken judicial notice of some adjudicated facts relating to the “Bosnian Serb leadership” and the “SFRY leadership”.²⁹

²⁰ Stanišić Response, para. 26.

²¹ Stanišić Response, paras 31-32, aiming to clarify Proffered Facts Nos 17, 26, 42-43, 138-140, 178-179, 200-201, 239-241, 245-246, 281-282, 299.

²² Reply, paras 2, 14.

²³ Reply, para. 3.

²⁴ Ibid.

²⁵ Reply, paras 7, 10-12, referring to *inter alia* Proffered Facts Nos 24, 44, 129, 131, 212, 312, 365.

²⁶ Reply, para. 9.

²⁷ Ibid.

²⁸ Reply, para. 4.

²⁹ Ibid.

14. The Prosecution also emphasises that the Chamber previously took judicial notice of several facts referring to paramilitary units, without having had them defined any further.³⁰ Moreover, it argues that its case has been spelled out in detail and that all the members of the units included in a term “Serb forces” are persons upon whose actions liability of the Accused may be founded.³¹

15. Finally, the Prosecution suggests assigning separate exhibit numbers to the list of adjudicated facts from the first, second and third decisions on taking judicial notice of adjudicated facts.³²

III. APPLICABLE LAW

16. Rule 94(B) provides as follows:

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.

17. The Trial Chamber recalls that it has previously discussed at length the settled jurisprudence of the Tribunal with respect to the judicial notice of adjudicated facts,³³ which the Trial Chamber fully incorporates here by reference.

IV. DISCUSSION

A. Preliminary Matters

18. First, the Chamber notes that the Simatović Joinder was filed after the deadline set by the Chamber on 18 January 2010.³⁴ However, considering that the Simatović Defence missed this deadline by only one day and the fact that the substance of its response is limited to joining the relief sought in the Stanišić Response, the Chamber will exceptionally consider the Simatović Joinder as validly filed.

19. Secondly, the Chamber notes the Prosecution’s withdrawal of Proffered Facts Nos 1, 6-10 and 12-15 from the scope of the Motion. As a consequence, they will not be analysed below.

³⁰ Reply, para. 6.

³¹ Reply, para. 11.

³² Reply, para. 13.

³³ See Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts, 25 November 2009 (“First Adjudicated Facts Decision”), paras 27-29, 32, 50, 61-63, 67; Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 January 2010 (“Second Adjudicated Facts Decision”), paras 24-26, 28, 39, 45, 49-51, 56.

³⁴ See *supra*, paras 1-2.

B. The Proffered Fact Must be Distinct, Concrete and Identifiable

20. Based on this criterion, the Stanišić Defence and Simatović Defence (“Defence”) do not challenge the following Proffered Facts which in the view of the Chamber are sufficiently distinct, concrete and identifiable: 2-5, 11, 16-41, 43-48, 50-51, 53-54, 57-86, 88-94, 96, 98-108, 110, 113-118, 120-125, 127-132, 134, 136-140, 143-144, 146-153, 155, 157-158, 161, 165, 169-188, 192-204, 208-212, 214, 216, 218-245, 247-248, 252, 254-255, 262-278, 280-281, 287-288, 291-292, 296-297, 299-300, 304, 306-307, 309-311, 313-315, 317, 321-324, 326, 328-340, 342, 344-346, 348-361, 363-364, 366-367 and 370-392.

21. The Defence challenges Proffered Fact No. 49 as expressing a mere opinion, devoid of probative value.³⁵ Moreover, it points out that this fact in its present formulation substantially distorts paragraph 43 of the *Krajišnik* Trial Judgement.³⁶ The Defence stresses that without having the benefit of additional evidence underpinning such a conclusion, the Chamber should reject taking judicial notice of this fact.³⁷ The Prosecution replies to this challenge by proposing that the Chamber take judicial notice of additional adjudicated facts underlining Proffered Fact No. 49.³⁸

22. The Chamber shares some of the Defence’s reservations but considers that, in order to enhance the probative value of Proffered Fact No. 49, and indirectly Proffered Fact No. 48, the appropriate remedy would be, *proprio motu*, to take judicial notice of the following fact from the *Krajišnik* Trial Judgement (paragraph 43), which logically should be placed between Proffered Facts Nos 48 and 49:

Several factors were seen to support this belief. First, some Bosnian Serbs had memories of crimes committed against Serbs during the Second World War, and of injustices suffered during, and immediately after, World War I. Second, some Bosnian Muslims and Bosnian Croats expressed extreme and aggressive messages, even hinting at the physical annihilation of Serbs in Croatia and Bosnia-Herzegovina. Third, armed gangs perpetrated crimes against Serbs or federal institutions – often viewed as “Serb-dominated” – based on ethnic motives. This type of action fuelled fear and mutual distrust.

and the following fact coming from the *Krajišnik* Trial Judgement (paragraph 43) that should be logically further placed between Proffered Facts Nos 48 and 49:

Moreover, Bosnian Croats and Bosnian Muslims, supported by their leaders, often did not respond to mobilization for the conflict in Croatia, and this deepened the rift between the national parties.

³⁵ Stanišić Response, para. 11.

³⁶ Stanišić Response, para. 18.

³⁷ Stanišić Response, para. 11.

³⁸ Reply, para. 3.

23. The Defence challenges Proffered Facts Nos 56, 126 and 133³⁹ on the basis they lack the necessary associated factual underpinnings in referring to an alleged political establishment in Serbia.⁴⁰ The Chamber finds that these facts are sufficiently clear in their present form.

24. Similarly, the Defence challenges Proffered Fact No. 215 as missing the necessary factual underpinnings and failing to make clear the nature of the MUP forces.⁴¹ The Chamber finds that Proffered No. Fact 215 in its present form is insufficiently concrete and is therefore rejected.

25. The Defence challenges Proffered Facts Nos 189, 256 and 261 on the basis they use general expressions such as “forces of the Republic of Serbia” or “paramilitary groups” in an impermissibly vague way.⁴² The Chamber notes that although the precise meaning of these terms cannot be determined from the facts alone, they nevertheless contain sufficiently clear information to be supplemented by other evidence.

26. The Chamber notes the Defence’s challenge of Proffered Fact No. 365 on the basis it is not sufficiently clear, as it does not contain any additional information about who was inside the building.⁴³ Moreover, such information cannot be found in any of the surrounding facts. However, instead of rejecting the fact in its entirety, after consulting the *Krajišnik* Trial Judgement, the Chamber decides that the appropriate remedy would be to take, *proprio motu*, judicial notice of the following fact coming from the *Krajišnik* Trial Judgement (paragraph 511), which logically should be placed between Proffered Facts Nos 364 and 365:

Some non-Serb police officers and SDA leaders took refuge in the municipality building, where negotiations between the political parties continued.

27. The Defence also challenges the following Proffered Facts as unduly broad and importing into the case “generalities that hinder the truth finding process”: 42, 52, 55, 95, 97, 109, 111-112, 135, 145, 163, 168, 205-207, 246, 250-251 and 279.⁴⁴

28. The Chamber finds that Proffered Fact 111 is insufficiently clear in referring to the extent of control exercised. The Chamber also notes that Proffered Fact No. 55 is not sufficiently clear as it does not contain any additional information about the associations it refers to. However, instead of rejecting the fact in its entirety, after consulting the *Krajišnik* Trial Judgement, the Chamber decides

³⁹ The Chamber notes that in submitting its objection, the Defence referred to Proffered Fact No. 131 instead of 133. However, the substance of its objection makes it clear that the Defence meant the latter fact.

⁴⁰ Stanišić Response, para. 12.

⁴¹ Stanišić Response, para. 14.

⁴² Stanišić Response, para. 15. See also Reply, para. 6.

⁴³ Stanišić Response, para. 16. See also Reply, para. 10.

⁴⁴ Stanišić Response, para. 10.

that the appropriate remedy would be to take, *proprio motu*, judicial notice of the following fact coming from the *Krajišnik* Trial Judgement (paragraph 48) that should be logically placed between Proffered Facts Nos 54 and 55:

This led to the creation of the Community of Municipalities of the Bosnian Krajina on 7 April 1991, followed by the associations of Romanija, and Eastern and Old Herzegovina, both formed in May 1991.

Moreover, the Chamber finds that the word “of” should be deleted from the beginning of the second sentence of Proffered Fact No. 55.⁴⁵

29. The Chamber notes that Proffered Fact No. 163 is not sufficiently clear as it does not contain any additional information about the order to disarm the paramilitaries to which it refers. However, instead of rejecting the fact in its entirety, after consulting the *Krajišnik* Trial Judgement, the Chamber decides that the appropriate remedy would be to take, *proprio motu*, judicial notice of the following fact coming from the *Krajišnik* Trial Judgement (paragraph 219), which logically should be placed between Proffered Facts Nos 162 and 163:

On 1 June 1992, General Momir Talić of the 1st Krajina Corps ordered his officer Osman Selak to distribute weapons to paramilitary formations that had been trained at Manjača (Banja Luka). On 9 June a report of the 1st Krajina Corps command complained about the slow pace of disarmament of paramilitary formations by civilian authorities. On 18 June, Talić issued an order according to which all paramilitary formations in the Corps’ area of responsibility were to be disarmed. This was decided at a meeting of the ARK crisis staff attended by Talić.

30. The Chamber finds no merit in the Defence’s objections pertaining to Proffered Facts Nos 42, 52, 95, 97, 109, 112, 145 and 250-251. The Chamber finds that although the following Proffered Facts contain some general statements, they are not of a character that precludes their acceptance pursuant to Rule 94(B): 135, 168, 205-207, 246 and 279.

31. The Defence also challenges the following Proffered Facts as not being sufficiently specific when referring to paramilitary groups: 56, 141-142, 154, 156, 159-160, 162-164, 166-168, 190-191, 213, 217, 249, 253, 256-260, 282-286, 289-290, 293-295, 298, 301-303, 305, 308, 312, 316, 318-320, 325, 327, 341, 343, 347, 362, 368-369.⁴⁶ The Defence argues that unlike in the *Krajišnik* case, it will challenge the identities of the paramilitaries in the various crime bases – as well as the link to the Accused. As a consequence, the Defence requests that the Prosecution not be permitted to take advantage of this evidence which emerged from a “demonstrably different type of case – without

⁴⁵ Accordingly, Proffered Fact No. 55 shall read: “SDS party leaders justified the associations in terms of economic necessity. However, among the functions the SDS assigned to the Bosnian Krajina community of municipalities was the organization of its defence in times of war or imminent threat of war.”

⁴⁶ Stanišić Response, para. 26.

substantial defence challenge”.⁴⁷ The Prosecution responds by submitting that if and when factual findings are of a general nature and do not specify the groups, the Prosecution will lead additional evidence during trial.⁴⁸

32. The Chamber wishes to stress that a presumption of the accuracy of the adjudicated facts does not mean that such facts may not be challenged at trial. The ultimate burden of persuasion remains with the Prosecution. The Chamber notes that Proffered Facts Nos 56, 141-142, 154, 190-191, 213, 217, 253, 258-259, 284-285, 290, 305, 308, 319 do not contain explicit references to paramilitary groups, whereas the following Proffered Facts contain an appropriate reference to specific paramilitary groups: 159-160, 162-163, 249, 257, 260, 282-283, 286, 293-294, 298, 312, 316, 318, 325, 327, 341, 343, 368. The Chamber also notes that in case of Proffered Facts Nos 156, 164, 166-168, 256, 289, 295, 301-303, 320, 347, 362, 369, although the precise meaning of the references to the paramilitary groups cannot be determined from the facts alone, they nevertheless contain sufficiently clear information to be supplemented by additional evidence.

33. The Chamber notes that Proffered Fact No. 87 is a partial repetition of Proffered Fact No. 86. Similarly, Proffered Facts No. 119 appears to be a partial repetition of Proffered Fact No. 118. The Chamber therefore rejects Proffered Facts Nos 87 and 119.

34. In conclusion, the Chamber finds that the following Proffered Facts are sufficiently distinct, concrete and identifiable: 2-5, 11, 16-48, 50-54, 56-86, 88-110, 112-118, 120-162, 164-214, 216-364 and 366-392. At the same time, the Chamber defers its ruling on Proffered Facts Nos 49, 55, 163 and 365 until the issue of taking judicial notice *proprio motu*, as proposed in paragraphs 22, 26 and 28-29 above, is finalised.

C. The Proffered Facts Must be Relevant to the Case

35. The Defence does not challenge any of the Proffered Facts on this ground. The Chamber finds that the following Proffered Facts are sufficiently relevant to the present case: 2-5, 11, 16-392.

⁴⁷ Stanišić Response, para. 27.

⁴⁸ Reply, para. 9.

D. The Proffered Facts Must not Contain any Findings or Characterisations that are of an Essentially Legal Nature

36. The Defence does not challenge any of the Proffered Facts on this ground. However, the Chamber finds that the following Proffered Facts contain impermissible references to legal findings: 280, 284, 286, 289, 290, 318, 342, 352, 353, 354, 369 and 388.

37. However, instead of rejecting all these facts in their entirety, the Chamber decides that the appropriate remedy is: in the case Proffered Fact No. 280 – deletion of its second part;⁴⁹ Proffered Fact No. 286 – deletion of the last sentence;⁵⁰ Proffered Facts Nos 318 and 369 – deletion of the references to looting;⁵¹ Proffered Fact No. 342 – deletion of the reference to murder.⁵² At the same time, the Chamber finds that in the case of Proffered Facts Nos 280, 289-290, 352-354 and 388, redactions bringing them into conformity with the requirements of Rule 94(B) are not feasible and that these Proffered Facts are therefore rejected. Moreover, the Chamber notes that Proffered Fact No. 284 is repetitive of Proffered Fact No. 290 and its admission is therefore rejected.

38. In conclusion, the Chamber finds that the following Proffered Facts do not contain findings or characterisations that are of an essentially legal nature: 2-5, 11, 16-212, 213-279, 281-283, 285, 287-288, 291-317, 319-341, 343-351, 355-368, 370-387 and 389-392. At the same time, the Chamber orders that Proffered Facts Nos 280, 286, 318, 342 and 369 be redrafted as identified in paragraph 37 above.

⁴⁹ Accordingly, Proffered Fact No. 280 shall read: “Muslim residents of Bijeljina, as well as some Serbs, were terrorized by these groups.”

⁵⁰ Accordingly, Proffered Fact No. 286 shall read: “Aided by Mauzer’s men, Vojkan Đurković of the Bijeljina SDS paid visits to those on the list in order to extort property from them. Some of these Muslims initially paid to be able to stay in Bijeljina. Others were detained immediately, stripped of their valuables, and transferred to “no-man’s land” between the warring factions, where they remained, sometimes for days, before being able to cross into Muslim-controlled territory.”

⁵¹ Accordingly, Proffered Fact No. 318 shall read: “On 10 April [1992], Arkan’s men piled dozens of dead bodies in Zvornik town – including the bodies of children, women, and elderly persons – onto trucks.”; Proffered Fact No. 369 shall read: “On 5 August, the Sanski Most SJB reported that in the previous two months, there had been a great deal of activity by certain paramilitary groups that had ‘broken free’ from the command of the army and conducted their own operations, such as planting explosives, torching houses, killings and other types of crime against the Muslim and Croatian population, all aimed at acquiring material profit and putting pressure on them to move out. It further referred to 45 explosions that had been set off at Muslim houses and business premises, and two mosques destroyed. It reported that it had registered four such groups, among them the SOS group, a former paramilitary group with a strength of around 30 men, which had formally been placed under the command of the local military unit.”

⁵² Accordingly, Proffered Fact No. 342 shall read: “In early June, a paramilitary group from Serbia assaulted the detainees with spiked metal bars and chains. Some detainees were forced to beat each other.”

E. The Proffered Fact Must not be Based on an Agreement Between the Parties to the Original Proceedings

39. The Defence does not challenge any of the Proffered Facts on this ground. The Chamber finds that none of the Proffered Facts is based on an agreement between the parties to the original proceedings.

F. The Proffered Fact Must not have been Contested on Appeal, or, if it has, the Fact has been Settled on Appeal

40. The Defence does not challenge any of the Proffered Facts on this ground. The Chamber has not established that any of the Proffered Facts has been contested on appeal or has not been settled on appeal.

G. The Proffered Fact Must not Relate to Acts, Conduct, or Mental State of the Accused

41. Based on this criterion, the Defence does not challenge the following Proffered Facts, which, in the view of the Chamber, do not relate to acts, conduct, or the mental state of the Accused: 2-5, 11, 16-55, 57-125, 127-132, 134-140, 143-147, 149-153, 155, 157-158, 161, 165, 169-189, 193-212, 214-216, 218-248, 250-252, 254-255, 261-281, 287-288, 291-292, 296-297, 299-300, 304, 306-307, 309-311, 313-315, 317, 321-324, 326, 328-340, 342, 344-346, 348-361, 363-367 and 370-392.

42. The Defence challenges the following Proffered Facts pertaining to the Serbian MUP as going to acts and conduct of the Accused: 133, 148, 190-192.⁵³ The Chamber finds that these facts go to acts and conduct of the Accused and are therefore not suitable for admission pursuant to Rule 94(B).

43. The Defence further argues that the following Proffered Facts pertaining to paramilitary groups “must unless the Prosecution specifically exclude the particular group from its case – be treated as tendentious and probative of the acts and conduct of the Accused”: 56, 141-142, 154, 156, 159-160, 162-164, 166-168, 213, 217, 249, 253, 256-260, 282-286, 289-290, 293-295, 298, 301-303, 305, 308, 312, 316, 318-320, 325, 327, 341, 343, 347, 362, 368-369.⁵⁴ The Prosecution

⁵³ Stanišić Response, para. 30.

⁵⁴ Stanišić Response, para. 26.

submits that the term “acts and conduct of the Accused” should be used in a narrow sense, not excluding facts pertaining to perpetrator groups.⁵⁵

44. The Chamber finds that the following Proffered Facts do not relate to acts and conduct of the Accused but rather to acts and conduct of other persons for whose criminal conduct the Accused are alleged to be responsible: 156, 159-160, 162-164, 166-168, 213, 217, 249, 253, 256-260, 282-286, 289-290, 293-295, 298, 301-303, 305, 308, 312, 316, 318-320, 325, 327, 341, 343, 347, 362, 368-369. At the same time, the Chamber notes that the following Proffered Facts are not suitable for Rule 94(B) procedure as they go to acts and conduct of the Accused and/or are pertinent to the existence of the alleged JCE: 56, 141-142, 154. Similarly, the Chamber rejects taking judicial notice of Proffered Fact No. 126.

45. In conclusion, the Chamber finds that the following Proffered Facts do not relate to acts, conduct, or mental state of the Accused: 2-5, 11, 16-55, 57-125, 127-132, 134-140, 143-147, 149-153, 155-189 and 193-392.

H. The Formulation of a Proffered Fact Must not Differ Substantially From the Formulation in the Original Judgement

46. Based on this criterion, the Defence does not challenge the following Proffered Facts which in the view of the Chamber do not differ substantially from the formulation in the original judgement: 2-5, 11, 16, 18-43, 45-67, 70-74, 76, 78-117, 119-126, 128, 130, 132-154, 156-194, 196-197, 199-202, 205-211, 213-217, 220-221, 223-235, 237-238, 240-246, 248-281, 283-303, 305-324, 326, 328-341, 343-348, 351-361 and 363-392.

47. The Defence challenges Proffered Fact No. 44 as impermissibly widening the scope of the original finding made in the *Krajišnik* Trial Judgement.⁵⁶ The Prosecution does not oppose amendments proposed by the Defence in this matter.⁵⁷ The Chamber finds that the words “at least” and “including” in Proffered Fact No. 44 should be redacted. Moreover, the spelling of “Belića” should be corrected to “Bileća”.⁵⁸

⁵⁵ Reply, paras 9, 11.

⁵⁶ Stanišić Response, para. 17.

⁵⁷ Reply, para. 10.

⁵⁸ Accordingly, Proffered Fact No. 44 shall read: “Serbs armed themselves in 31 municipalities of Bosnia-Herzegovina: Banja Luka, Bileća, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čelinac, Doboј, Donji Vakuf, Drvar, Foča, Gacko, Hadžići, Ilidža, Kalinovik, Kladanj, Ključ, Novi Grad, Novo Sarajevo, Pale, Prijedor, Prnjavor, Rogatica, Sanski Most, Sokolac, Šekovići, Trnovo, Višegrad, Vlasenica, and Vogošća.”

48. The Defence challenges Proffered Fact No. 155 as impermissibly juxtaposing two separate facts without providing the relevant context.⁵⁹ The Chamber finds that the present wording of this fact indeed may suggest that the centre in Belgrade belonged to the SRS. In order to avoid this possible mischaracterisation, the Chamber finds that both sentences of this fact should be treated as separate adjudicated facts. Moreover, the word “Furthermore” at the beginning of the second sentence should be deleted.⁶⁰

49. The Defence challenges Proffered Fact No. 212 as impermissibly omitting the reference to Karadžić guidelines.⁶¹ The Prosecution does not oppose amendments of this fact.⁶² The Chamber notes that Proffered Fact No. 212 is not sufficiently clear as it does not contain any additional information about the legal source of the transfers to which it refers. However, instead of rejecting the fact in its entirety, after consulting the *Krajišnik* Trial Judgement, the Chamber decides that the appropriate remedy would be, *proprio motu*, to take judicial notice of the following fact coming from the *Krajišnik* Trial Judgement (paragraph 251), which logically should be placed between Proffered Facts Nos 211 and 212:

In July 1992 Radovan Karadžić issued “Guidelines on tasks, modes of action and functioning of defence forces, state organs, and all economic and social subjects of the Bosnian-Serb Republic in the state of war”.

Moreover, the Chamber finds it appropriate to add the words “Pursuant to the guidelines” at the beginning of Proffered Fact No. 212.⁶³

50. The Defence challenges Proffered Facts Nos 218 and 219 as impermissibly omitting the reference to the 1974 Constitution.⁶⁴ The Chamber notes that Proffered Facts Nos 218 and 219 in their present form are not sufficiently clear as they do not contain any additional information about the source of the legal provisions they refer to. However, instead of rejecting these facts in their entirety, after consulting the *Krajišnik* Trial Judgement, the Chamber decides that the appropriate remedy would be to take, *proprio motu*, judicial notice of the following fact coming from the

⁵⁹ Stanišić Response, para. 19.

⁶⁰ Accordingly, Proffered Fact No. 155 shall read: “Even before the hostilities began in Bosnia-Herzegovina, there existed a centre in Belgrade where volunteers were gathered to be sent to fight in Bosnia-Herzegovina.”; whereas Proffered Fact 155a shall read: “The Serbian Radical Party (SRS) recruited volunteers from within Bosnia-Herzegovina.”

⁶¹ Stanišić Response, para. 20.

⁶² Reply, para. 10.

⁶³ Accordingly, Proffered Fact No. 212 shall read: “Pursuant to the guidelines, active and reserve police, as well as special units which would not form part of the MUP’s wartime structure, were to be transferred to the Army or used for other wartime tasks.”

⁶⁴ Stanišić Response, para. 21.

Krajišnik Trial Judgement (paragraph 257) that should be logically placed between Proffered Facts Nos 217 and 218:

The 1974 Constitution provided for collective municipal presidencies.

51. The Defence challenges Proffered Fact No. 129 as impermissibly omitting the exact qualification of the date it refers to.⁶⁵ The Prosecution does not oppose amendments of this fact.⁶⁶ The Chamber finds it appropriate to replace the words “prior to this date” with “prior to 17 December 1992” as well as to delete the word “However” from the beginning of this fact.⁶⁷

52. The Defence also challenges inclusion of the word “thus” in Proffered Fact No. 131 and the word “accordingly” in Proffered Fact No. 239.⁶⁸ The Prosecution does not oppose amendments of Proffered Fact No. 131.⁶⁹ The Chamber finds it appropriate to redact the word “thus” from Proffered Fact No. 131.⁷⁰ The Chamber further notes that Proffered Fact No. 239 is not sufficiently clear as it does not contain sufficient information about its subject. However, instead of rejecting the fact in its entirety, the Chamber decides that the appropriate remedy would be to delete the word “Accordingly” and to replace the word “it” with “the Bosnian-Serb Presidency”.⁷¹

53. The Defence, in order to enhance the clarity of certain Proffered Facts, proposes taking judicial notice of additional facts from the *Krajišnik* Trial Judgement.⁷² The Prosecution does not oppose this proposal.⁷³

54. Accordingly, the Chamber takes judicial notice of the following additional facts taken from the *Krajišnik* Trial Judgement, which fulfil the requirements of Rule 94(B):

a) taken from paragraph 25 and should logically be placed between Proffered Facts Nos 17 and 18:

The SDS advocated the maintenance of a federal Yugoslavia, respect for the rule of law, and an equal distribution of power between the three main national groups in Bosnia-Herzegovina.

⁶⁵ Stanišić Response, para. 22.

⁶⁶ Reply, para. 10.

⁶⁷ Accordingly, Proffered Fact No. 129 shall read: “A state of war had not been officially declared by the Bosnian-Serb Presidency prior to 17 December 1992”.

⁶⁸ Stanišić Response, paras 23-24.

⁶⁹ Reply, para. 10. The Chamber also notes that the Prosecution is silent as to its position to the amendment of Proffered Fact No. 239 proposed by the Defence.

⁷⁰ Accordingly, Proffered Fact No. 131 shall read: “The Bosnian-Serb Presidency operated in fact with five members from its inception on 12 May 1992.”

⁷¹ Accordingly, Proffered Fact No. 239 shall read: “On 10 June 1992, the Bosnian-Serb Presidency issued an official decision establishing war commissions. The war commissions were to consist of “four members from the ranks of the most influential citizens within the crisis staff, the economy and the ruling party” and a “state commissioner”, appointed by the Bosnian-Serb Presidency.”

⁷² Stanišić Response, para. 31.

⁷³ Reply, para. 12.

b) taken from paragraph 27 and should be logically placed between Proffered Facts Nos 25 and 26:

The three parties went on to form a coalition Government.

c) taken from paragraph 35 and should be logically placed between Proffered Facts Nos 41 and 42:

At the same time, with an eye on the developments in Slovenia and Croatia, which were both moving towards independence, Bosnian Croats and Bosnian Muslims started storing weapons and even organized their own armed groups. This process intensified throughout 1991 and the first months of 1992.

d) taken from paragraph 40 and should be logically placed between Proffered Facts Nos 43 and 44:

The supplying of weapons was carried out from Ravna Romanija, Pale, Sokolac, Kalinovik, Nedavići village, Trnovo, Tošići village, Hadžići, Jusuf Džonlagić Barracks, Lukavica and Neđarići." Kovač organized and was in charge of "the illegal work and arming of Serbian people." The "illegal" meetings organized in Ilidža were held in cooperation with local SDS representatives and pursuant to SDS directives.

e) taken from paragraph 192 and should be logically placed between Proffered Facts Nos 137 and 138:

On 27 March 1992, at a Bosnian-Serb Assembly session, Karadžić ordered the deputies to place the Serb TO, which was essentially a municipal defence force, under JNA command, where possible.

f) taken from paragraph 192 and should be logically placed between Proffered Facts Nos 139 and 140:

The Ministry also ordered mobilization and called for coordination of TOs with the JNA, where possible, under unified command.

g) taken from paragraph 232 and should be logically placed between Proffered Facts Nos 178 and 179:

The Law on Internal Affairs authorized the MUP Minister to form additional police units to carry out specific tasks, if needed to preserve peace and public order.

h) taken from paragraph 244 and should be logically placed between Proffered Facts Nos 200 and 201:

The MUP was responsible to the Minister of Interior which in turn was responsible, first and foremost, to the Presidency and then to the Government.

i) taken from paragraph 276 and should be logically placed between Proffered Facts Nos 239 and 240:

The state commissioner was responsible for appointing municipal war commissions and providing them with his expertise and other assistance.

j) taken from paragraph 283 and should be logically placed between Proffered Facts Nos 244 and 245:

At the time when the SDS crisis staffs were being formed, the JNA was the dominant military structure in the municipalities of Bosnia-Herzegovina.

k) taken from paragraph 306 and should be logically placed between Proffered Facts Nos 281 and 282:

Both Muslims and Serbs were leaving Bijeljina as a result of this pressure and terrorization.

l) taken from paragraph 340 and should be logically placed between Proffered Facts Nos 299 and 300:

Muslims set up a crisis staff there, and established a line of defence to the south of Doboj town to prevent Serbs from taking control over the entire municipality of Doboj.

55. The Chamber notes that Proffered Fact No. 68 is not sufficiently clear as it does not contain any additional information about when the said suggestion was given. However, instead of rejecting the fact in its entirety, after consulting the *Krajišnik* Trial Judgement, the Chamber decides that the appropriate remedy would be to add the words “In the autumn of 1991” at the beginning of its first sentence.⁷⁴

56. The Chamber notes that Proffered Fact No. 77 is not sufficiently clear as it does not contain any additional information about the assembly session it refers to. However, instead of rejecting the fact in its entirety, after consulting the *Krajišnik* Trial Judgement, the Chamber decides that the appropriate remedy would be to replace the words “During the same session” with “At that founding session” at the beginning of its first sentence.⁷⁵

57. The Chamber notes that Proffered Fact No. 195 is not sufficiently clear as it does not contain any additional information about the SOS units it refers to. However, instead of rejecting the fact in its entirety, the Chamber decides that the appropriate remedy would be to delete the second sentence.⁷⁶

⁷⁴ Accordingly, Proffered Fact No. 68 shall read: “In the autumn of 1991, Kljuić suggested that Bosnia-Herzegovina should recognize the existing borders of Croatia and Serbia and Montenegro, so that those states would not make territorial claims to Bosnia-Herzegovina.”

⁷⁵ Accordingly, Proffered Fact No. 77 shall read: “At the founding session, Bosnian-Serb deputies passed a resolution that “the Serbian people of Bosnia-Herzegovina shall stay in the joint state of Yugoslavia together with Serbia, Montenegro, SAO Krajina, SAO Slavonija, Baranja, Western Sirmium [Zapadni Srem], and others who may declare that they wished to stay,” subject to confirmation by a plebiscite.”

⁷⁶ Accordingly, Proffered Fact No. 195 shall read: “By 29 April, Stojan Župljanin, head of the Banja Luka CSB, had at his disposal armed combat vehicles, anti-aircraft artillery, and helicopters.”

58. The Chamber notes that Proffered Fact No. 222 is not sufficiently clear as it does not contain any additional information about the legal instruments it refers to. Moreover, such information cannot be found in any of the surrounding facts. However, instead of rejecting the fact in its entirety, the Chamber decides that the appropriate remedy would be to delete the second half of its first sentence and subsequent word “instead”.⁷⁷

59. The Chamber notes that Proffered Fact No. 342 is not sufficiently clear as it does not contain any additional information about the place where the male detainees were kept. Moreover, such information cannot be found in any of the surrounding facts. However, instead of rejecting the fact in its entirety, the Chamber decides that the appropriate remedy would be to take, *proprio motu*, judicial notice of the following fact coming from the *Krajišnik* Trial Judgement (paragraph 372), which should logically be placed between Proffered Facts Nos 341 and 342:

From late May 1992 onwards, Muslims were detained in the Dom Kulture building in Čelopek village.

60. Moreover, in order to enhance the clarity of certain Proffered Facts, the Chamber redacts the words “As mentioned earlier” from the second sentence of Proffered Fact 118,⁷⁸ the word “Accordingly” from the beginning of first sentence of Proffered Fact 127⁷⁹, the words “As stated earlier” from the beginning of Proffered Fact 198⁸⁰, as well as the words “as explained above” in the second sentence of Proffered Fact 236.⁸¹ The Chamber further finds that the words “said to be” should be added to Proffered Fact 17⁸², the name “Mićo” should be added before the surname “Stanišić” in Proffered Facts 203 and 204⁸³, the word “At” should be added at the beginning of

⁷⁷ Accordingly, Proffered Fact No. 222 shall read: “The crisis staffs came into being in the Bosnian-Serb Republic in late 1991 and early 1992. They started out as SDS organs and were only later transformed into organs of the Bosnian-Serb Republic.”

⁷⁸ Accordingly, Proffered Fact No. 118 shall read: “By early April 1992, the SNB developed into an executive organ issuing instructions to, and receiving reports from, municipal crisis staffs and TOs. The SNB would meet in joint sessions with the Bosnian-Serb Government for the purpose of taking decisions on military, political, and administrative matters.”

⁷⁹ Accordingly, Proffered Fact No. 127 shall read: “The Presidency was well informed about the overall situation in the Republic. Indeed, it was generally the members of the Presidency, often Karadžić, who reported to the Assembly on the military and strategic situation in the Bosnian-Serb Republic.”

⁸⁰ Accordingly, Proffered Fact No. 198 shall read: “On 16 April 1992, the Minister of Defence, Bogdan Subotić, declared that a state of imminent threat of war existed in the Bosnian-Serb Republic, and ordered full mobilization. Subotić’s order allowed the authorities to take ‘all necessary measures appropriate to the situation’.”

⁸¹ Accordingly, Proffered Fact No. 236 shall read: “One distinction between them was that while the crisis staffs were meant to be replacing the municipal assemblies only, the war presidencies and war commissions were to replace both the assembly and the executive committee. There might not have been any practical difference, however, since the crisis staffs already acted as executive organs.”

⁸² Accordingly, Proffered Fact No. 17 shall read: “From the moment of its creation, the SDS political platform included an emphasis on the protection of the Serb nation, which was said to be disadvantaged by the purported lower birth rate of Serbs and by the way Bosnia-Herzegovina had been divided into municipalities, effectively making Serbs an ethnic minority in areas where they might otherwise have dominated.”

⁸³ Accordingly, Proffered Fact No. 203 shall read: “The MUP also cooperated closely with the VRS. On 15 May 1992, Mićo Stanišić ordered that all employees of the MUP organize into ‘war units’.”; whereas Proffered Fact No. 204

Proffered Fact 247⁸⁴, the word “several” should be added in the first sentence of Proffered Fact 304,⁸⁵ and the words “Adil Draganović” added in the first sentence of Proffered Fact 362.⁸⁶

61. The Chamber finds that the surname “Mauzer” in Proffered Fact No. 282 should be replaced by “Ljubiša (Mauzer) Savić”⁸⁷, the word “Accused” should be replaced by “Momčilo Krajišnik” in Proffered Fact No. 69⁸⁸, the word “as” should be replaced by “was” in Proffered Fact No. 75⁸⁹, the spelling of the village “Divić” should be corrected to “Divič” in Proffered Facts Nos 325, 327, 349-350.⁹⁰ In case of the latter – the word “Cmi” should be replaced by “Crni”.⁹¹ Finally, the word “extensive” should be replaced with “extensively” in Proffered Fact 327.⁹²

62. In conclusion, the Chamber finds that the following Proffered Facts do not differ substantially from their formulation in the original judgements: 2-5, 11, 16, 18-43, 45-67, 70-74, 76, 78-117, 119-126, 128, 130, 132-154, 156-194, 196-197, 199-202, 205-211, 213-217, 220-221, 223-

shall read “This order formalized the cooperation by explaining how MUP units should cooperate with the VRS. Mićo Stanišić authorized the CSB heads to implement these arrangements.”

⁸⁴ Accordingly, Proffered Fact No. 247 shall read: “At the Bosnian-Serb Assembly session of 27 March 1992, Karadžić recommended that TO units formed by the crisis staffs should, where possible, be placed under the command of the JNA. Some of these units were integrated into the JNA, while other existing Bosnian-Serb forces were integrated into the TO.”

⁸⁵ Accordingly, Proffered Fact No. 304 shall read: “Around 22 June, several detainees were taken in armoured trucks to a discotheque in Usora in Dobož municipality. The Serb guards packed them tightly into the building, together with other detainees already present, and beat them. One elderly man died due to the harsh conditions.”

⁸⁶ Accordingly, Proffered Fact No. 362 shall read: “On 11 April 1992, Adil Draganović, the Muslim president of the Sanski Most municipal court, received a threatening letter signed by members of the White Eagles stating that he and the municipal deputy prosecutor, Enver Cerić, also a Muslim, were to leave Sanski Most by 15 May 1992 or their families would be harmed.”

⁸⁷ Accordingly, Proffered Fact No. 282 shall read: “On 15 June 1992, Ljubiša (Mauzer) Savić stated that the presidency of SAO Semberija-Majeveca had decided to replace Muslims in managerial positions in Bijeljina, and should “the genocide against the Serbian people” in Bosnia-Herzegovina continue, all Muslims would be fired from their jobs and expelled from the territory.”

⁸⁸ Accordingly, Proffered Fact No. 69 shall read: “Momčilo Krajišnik, Karadžić, and Koljević all disagreed with this proposal and insisted that either Bosnia-Herzegovina as a whole would remain in Yugoslavia, or it would be divided: Western Herzegovina would become part of Croatia, while the Bosnian Serbs would join Yugoslavia.”

⁸⁹ Accordingly, Proffered Fact No. 75 shall read: “On 24 October 1991 the SDS deputies convened separately and established the Assembly of the Serbian People of Bosnia-Herzegovina (Bosnian-Serb Assembly). [Krajišnik] was elected President of this Assembly. Nikola Koljević, Biljana Plavšić, Radovan Karadžić, Milutin Najdanović, and Miodrag Simović were ‘authorised to represent and protect the interests of the Serbian people of Bosnia-Herzegovina.’ It was resolved that, for the time being, Serb representatives in republican bodies would not relinquish their offices and would carry out their duties ‘in accordance with the law’.”

⁹⁰ Accordingly, Proffered Fact No. 325 shall read: “Also in late April or early May, Serb forces demanded the surrender of the Muslim village of Divič. However, before the deadline for surrender had expired, Divič was attacked by Serb forces consisting of Arkan’s men, White Eagles, and reserve police officers.”, Proffered Fact No. 327 shall read: “Around 28 May, between 400 and 500 Muslims from Divič village, including women, children, and elderly persons, were forced onto buses by members of the Yellow Wasps and told that they would be taken to Muslim territory.”; Proffered Fact No. 349 shall read: “In April and May 1992, Serb forces attacked other villages in Zvornik municipality, including Divič.”

⁹¹ Proffered Fact No. 350 shall read: “The attack on Divič prompted about 1,000 Muslim villagers to flee. They were not allowed to return to their homes, and 400 to 500 were forced onto buses by paramilitary units and brought to Crni Vrh.”

⁹² Accordingly, Proffered Fact No. 327 shall read: “Many were detained in various locations in the municipality. For example, the Serb police, Arkan’s men, and the White Eagles detained Muslims in the Alhos factory in the Karakaj area of Zvornik town, where the Muslims were extensively mistreated.”

235, 237-238, 240-246, 248-281, 283-303, 305-324, 326, 328-341, 343-348, 351-361, 363-392. Moreover, the Chamber orders that Proffered Facts Nos 17, 44, 68, 69, 75, 77, 118, 127, 129, 131, 155, 195, 198, 203, 204, 222, 236, 239, 247, 282, 304, 325, 327, 349-350 and 362 be redrafted. Additionally, Proffered Fact No. 155 should be divided into two separate adjudicated facts. At the same time, the Chamber defers its ruling on Proffered Facts Nos 212, 218, 219 and 342 until the issue of taking judicial notice *proprio motu*, as proposed in paragraphs 49-50 and 59 above, is finalised.

I. Trial Chamber's Residual Discretion

63. In addition to analysing the requirements of Rule 94(B) above, in exercising its discretion the Chamber has carefully assessed whether the admission of the Proffered Facts would advance judicial economy while still safeguarding the rights of the accused.

64. The Defence submits that the admission of such a large number of adjudicated facts puts too onerous a burden of rebuttal upon the Accused.⁹³ The Chamber finds that although the Prosecution seeks judicial notice to be taken of a large amount of facts, in the context of the whole trial, they are still of a manageable size and of sufficient relevance. As a consequence, the mere number of the Proffered Facts does not militate against their admission.

65. The Defence presents, by reference to its previous filing, several other arguments against the way in which the Prosecution relies upon the adjudicated facts procedure in the present case.⁹⁴ The Chamber has already dismissed these arguments in its previous decisions and therefore directs the Parties to its findings in these decisions.⁹⁵

V. DISPOSITION

66. Based on the reasoning set forth above and pursuant to Rules 54 and 94(B) of the Rules, the Chamber:

GRANTS the Motion in part; and

TAKES judicial notice of the following Proffered Facts:

⁹³ See Stanišić Response, para. 4.

⁹⁴ Stanišić Response, paras 4-5, referring to Defence Response to Prosecution's Motion for Judicial Notice of Adjudicated Facts of 1 May 2007, and Prosecution's Notification on Motion for Judicial Notice of Adjudicated Facts of 14 May 2007, 29 May 2007, paras 5-14.

⁹⁵ See Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts, 25 November 2009, paras 84 *et seq.* See also Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 January 2010, paras 68 *et seq.*

- 1) 2-5, 11, 16, 18-43, 45-48, 50-54, 57-67, 70-74, 76, 78-86, 88-110, 112-117, 120-125, 128, 130, 132, 134-140, 143-147, 149-153, 156-162, 164-189, 193-194, 196-197, 199-202, 205-211, 213-214, 216-217, 220-221, 223-235, 237-238, 240-246, 248-279, 281, 283, 285, 287-288, 291-303, 305-317, 319-324, 326, 328-341, 343-348, 351, 355-361, 363-364, 366-368, 370-387 and 389-392;
- 2) 17, 44, 68, 69, 75, 77, 118, 127, 129, 131, 155, 195, 198, 203, 204, 222, 236, 239, 247, 280, 282, 286, 304, 318, 325, 327, 349-350, 362, 369 subject to the changes indicated in the present decision;
- 3) Additional Facts specified in paragraph 54 of the present decision;⁹⁶

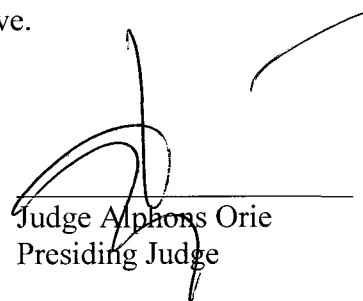
ORDERS that Proffered Fact No. 155 be divided;

DEFERS its ruling on Proffered Facts Nos 49, 55, 163, 212, 218, 219, 342 and 365;

INVITES the parties to submit their positions on the issue of taking *proprio motu* judicial notice of several additional facts before 1 September 2010;

DISMISSES the remainder of the Motion.

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



Judge Alphons Orië
Presiding Judge

Dated this twenty-third day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹⁶ These Facts will be referred to as 17a, 25a, 41a, 43a, 137a, 139a, 178a, 200a, 129a, 244a, 281a, 299a respectively.