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**UNITED  
NATIONS**



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: 1 April 2011  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 1 April 2011

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**DECISION ON THE ADMISSION OF THE PROPOSED  
EXPERT REPORT BY REYNAUD THEUNENS AND THE  
ADMISSION OF THEUNENS RELATED DOCUMENTS**

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**Office of the Prosecutor**  
Mr Dermot Groome

**Counsel for Jovica Stanišić**  
Mr Wayne Jordash  
Mr Geert-Jan Alexander Knoops

**Counsel for Franko Simatović**  
Mr Mihajlo Bakrač  
Mr Vladimir Petrović

## I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 2 July 2007, the Prosecution filed the proposed expert report of witness Reynaud Theunens entitled “Military aspects of the role of Jovica Stanišić and Franko Simatović in the conflict in Croatia and Bosnia-Herzegovina (‘BiH’) (91–95)” (“Report”), together with a list of all documents referenced therein.<sup>1</sup> On 21 October 2010, the Prosecution filed a final version of the chart of exhibits associated to the Report.<sup>2</sup> Between 26 October and 3 November 2010, the Chamber heard the testimony of Theunens.<sup>3</sup>

### A. Report

2. The Chamber has already set out part of the procedural history regarding the Report in its decision of 11 March 2011 (“Disclosure Decision”), and hereby refers to it.<sup>4</sup>

3. The Prosecution tendered the Report on 26 October 2010.<sup>5</sup>

4. The Stanišić Defence initially indicated that it might object to the Report on the basis of Theunens’ involvement with the *Stanišić and Simatović* case and the impact this could have had on his impartiality (and therefore the reliability of his conclusions), the admissibility of the Report, and

<sup>1</sup> Prosecution’s Submission of the Expert Report of Reynaud Theunens Pursuant to Rule 94 *bis* With Annexes A and B, 2 July 2007. On 13 August 2010, the Prosecution filed the Prosecution Further Notification of Exhibits Associated to the Report of Reynaud Theunens, Motion to Add Updated CV, and Request for Pre-Assignment of Exhibit Numbers (Confidential) (“Prosecution Filing of 13 August 2010”), in which it also requested pre-assignment of exhibit numbers to documents referenced in the Report. On 16 September 2010, the Chamber informed the parties through an informal communication that the request for pre-assignment of exhibit numbers was granted. This decision was put on the record on 20 September 2010, T. 7404. On 23 September 2010, the Prosecution filed its Prosecution Submission of Updated Theunens Chart for Pre-Assignment of Exhibit Numbers (Confidential). The next day, the Registry filed an Internal Memo informing the Chamber and the Parties of the pre-assigned exhibits numbers. For ease of reference, the Chamber will in this decision, where possible, refer to the pre-assigned exhibits numbers rather than the 65 *ter* numbers.

<sup>2</sup> Prosecution Submission of Chart of Exhibits Associated to the Theunens Report, 21 October 2010 (Confidential). At the time of filing the submission, the Prosecution had not yet received comments from the Stanišić Defence and the Simatović Defence for inclusion in the chart.

<sup>3</sup> Theunens was originally scheduled to testify in the week commencing 27 September 2010. On 6 September 2010, the Simatović Defence filed the Defence Request for Postponement of the Testimony of Prosecution Expert Witness Reynaud Theunens. On 7 September 2010, the Chamber informed the parties through an informal communication that the deadline for response to this request was shortened to Friday, 10 September 2010. On 8 September 2010, the Prosecution filed a Prosecution Response to Defence Request for Postponement of the Testimony of Prosecution Expert Witness Reynaud Theunens, wherein it requested that the Chamber deny the request for postponement. On 10 September 2010, the Stanišić Defence Joinder to Simatović’s Defence Request for Postponement of the Testimony of Prosecution Expert Witness Reynaud Theunens was filed. On 17 September 2010, following an informal meeting with the parties on 16 September 2010 in relation to the scheduling of Theunens and other matters, the Chamber informed the parties through an informal communication that it had decided that Theunens’ testimony should not be bifurcated and also should not take place earlier than the last week of October 2010.

<sup>4</sup> Decision on Stanišić Request for Order of Disclosure of Materials Related to the Admissibility of the Expert Report of Reynaud Theunens, 11 March 2011, paras 2-4.

the weight, if any, to be given to the Report if admitted.<sup>6</sup> However, following the issuance of the Disclosure Decision, which denied the Stanišić Defence request for an order of disclosure of certain additional Theunens related materials, the Stanišić Defence withdrew its objection to the Report, submitting that “it [had] been deprived of the material that might have allowed a challenge to the admissibility of Theunens report (P1575 MFI)”.<sup>7</sup> The Stanišić Defence did not request certification to appeal the Disclosure Decision.

5. When the Report was tendered, the Simatović Defence indicated it might make submissions regarding the Report’s admissibility after cross-examination of Theunens.<sup>8</sup> The Simatović Defence did not make any such submissions.<sup>9</sup>

### **B. Theunens Related Documents**

6. During Theunens’ testimony, the Prosecution tendered documents referenced in the Report that were not opposed by either Defence, and the Chamber admitted the documents into evidence.<sup>10</sup> The Chamber invited the parties to submit a spreadsheet containing their comments on the remaining – disputed – documents sought to be tendered in relation to Theunens’ testimony.<sup>11</sup>

7. On 24 November 2010, the Prosecution filed a spreadsheet listing the 70 disputed Prosecution documents (“Prosecution Proffered Documents”) with comments from the parties and requested the Chamber to admit them.<sup>12</sup> On the same day, the Stanišić Defence also separately filed its objection to these documents.<sup>13</sup> Through an informal communication on the same day, the Stanišić Defence informed the Chamber and the parties that at this stage it did not seek to tender any of the documents it had used with Theunens. Still on 24 November 2010, the Simatović

<sup>5</sup> T. 8057. See also T. 8771.

<sup>6</sup> Stanišić Request for Order of Disclosure of Materials Related to the Admissibility of the Expert Report of Reynaud Theunens with Confidential Annexes, 15 February 2011, paras 12-14.

<sup>7</sup> Stanišić Submissions on P1575 (MFI), 17 March 2011 (“Stanišić Submissions on P1575 (MFI)”), para. 6. The Stanišić Defence also informed the Chamber of its position through an informal communication on 11 March 2011. That same day, the Chamber requested the Stanišić Defence through an informal communication to put its position in a formal filing.

<sup>8</sup> T. 8057-8058.

<sup>9</sup> Additionally, the Chamber notes that on 22 November 2005, the Simatović Defence filed a Defence Notice Pursuant to Rule 94 *bis* (B)(ii) and Notification of Defence Wish to Cross-Examine Prosecution Expert Witness with regard to Theunens. The notification did not challenge Theunens’ qualifications or the Report.

<sup>10</sup> T. 8083-8085, 8116-8118, 8276-8277.

<sup>11</sup> T. 8750-8752. On 10 November 2010, the parties requested 14 additional days to file the spreadsheets, which the Chamber granted, T. 9053.

<sup>12</sup> Prosecution Submission of Spreadsheet Containing List of Prosecution Theunens Exhibits With Comments of the Parties, 24 November 2010 (Confidential with Confidential Annex A) (“Prosecution Submission of 24 November 2010”). The Confidential Annex to the Prosecution Submission contains the spreadsheet listing the Prosecution Proffered Documents and comments of the parties (“Prosecution Spreadsheet”).

<sup>13</sup> Objection to Documents Tendered in Association with the Report of Reynaud Theunens, 24 November 2010 (Confidential) (“Stanišić Defence Objection”). The Chamber notes that the Stanišić Defence Objection makes

Defence filed a spreadsheet listing 43 documents it had used during cross-examination of Theunens (“Simatović Proffered Documents”) with comments from the parties, and requested their admission.<sup>14</sup>

8. On 3 February 2011, the Prosecution requested the Chamber to take into consideration – when deciding on admission of MFI P1061, MFI P1075 and MFI P1080 – the observations of Witness JF-024 regarding their authenticity and relevance.<sup>15</sup> The Chamber granted the Defence until the next day to make any additional submissions in response.<sup>16</sup> On 4 February 2011, the Stanišić Defence informed the Chamber and the parties through an informal communication that it maintained its objections to MFI P1061 and MFI P1075. The Simatović Defence did not respond.

9. On 9 February 2011, the Chamber requested clarifications with regard to a number of the Proffered Documents.<sup>17</sup> The Prosecution and the Simatović Defence filed their submissions in response on 23 and 24 February 2011, respectively.<sup>18</sup>

***a) Submissions Regarding Prosecution Proffered Documents***

10. The Prosecution seeks admission of the Prosecution Proffered Documents based on the testimony and report of Theunens and pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”).<sup>19</sup> For some documents the Prosecution also seeks admission pursuant to Rule 94(B) of the Rules.<sup>20</sup> In addition to the 69 Prosecution Proffered Documents referenced in the Report, the Prosecution also seeks admission of a document it used during re-examination of

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submissions regarding ten documents. The Chamber therefore understands the Stanišić Defence’s submission in para. 2 that it objects to a total of eleven documents to be an error.

<sup>14</sup> Simatović Defence Request for Admission of Documents Used with Expert Witness Theunens, 24 November 2010 (Confidential) (“Simatović Request”). The Annex to the Simatović Request contains a spreadsheet listing the Simatović Proffered Documents and the comments of the parties (“Simatović Spreadsheet”). On 1 December 2010, the Chamber instructed the Registry to pre-assign exhibit numbers to any of the Prosecution Proffered Documents or Simatović Proffered Documents (together “Proffered Documents”) that had not yet been assigned such a number, T. 9631-9632. On 6 December 2010, the Registry filed an Internal Memo informing the Chamber and the parties of the additional pre-assigned exhibits numbers. For ease of reference, the Chamber will in this decision, where possible, refer to the pre-assigned exhibits numbers rather than the 65 *ter* numbers.

<sup>15</sup> T. 11007. Witness JF-024’s observations regarding these documents are found in Ex. P2150.

<sup>16</sup> T. 11021-11022. The Chamber clarified here that MFI P1080 had already been admitted pursuant to its Decision on the Prosecution’s Revised First Motion for Admission of Exhibits from the Bar Table, filed on 3 February 2011.

<sup>17</sup> The Chamber made this request through an informal communication, which was filed the following day; see Notice of Communication with the Parties Regarding Theunens Documents, 10 February 2011 (“Chamber Communication of 10 February 2011”). During an out of court meeting on 18 February 2011 between Chamber staff and the parties, the parties committed to a joint filing addressing the clarifications sought by the Chamber to be filed at the beginning of the week of 21 February 2011.

<sup>18</sup> Prosecution Submission of Information Regarding Theunens Documents, 23 February 2011 (“Prosecution Submission of 23 February 2011”); Simatović Defence Submission Regarding Theunens Documents, 24 February 2011 (“Simatović Defence Submission of 24 February 2011”). The Simatović Defence indicated in its submission that due to competing work obligations it was not able to meet the deadline agreed with the Prosecution to submit a joint filing, Simatović Defence Submission of 24 February 2011, para. 2.

<sup>19</sup> Prosecution Submission of 24 November 2010, para. 2.

<sup>20</sup> Ibid.

Theunens.<sup>21</sup> Its detailed submissions as to each of the Prosecution Proffered Documents are contained in the Prosecution Spreadsheet.<sup>22</sup>

11. The Stanišić Defence objects to ten of the Prosecution Proffered Documents. It submits that they lack indicia of reliability or have indicia of unreliability;<sup>23</sup> there is insufficient information regarding their authenticity;<sup>24</sup> or they are irrelevant to the Indictment.<sup>25</sup> Further, the Stanišić Defence submits that one document is tantamount to a witness statement and therefore subject to Rule 92 *bis* of the Rules and inadmissible under Rule 89(C).<sup>26</sup> In the alternative, it argues that the document is insufficiently reliable to be admitted under Rule 89(C).<sup>27</sup>

12. The Simatović Defence objects to 64 of the Prosecution Proffered Documents on the basis, *inter alia*, of lack of authenticity, reliability and relevance. The Simatović Defence further argues that a number of documents are open source materials which are unreliable and inappropriate as a source for an expert witness. The detailed submissions regarding the admissibility of each document are contained in the Prosecution Spreadsheet.<sup>28</sup>

**b) Submissions Regarding Simatović Proffered Documents**

13. The Simatović Defence seeks admission of 43 documents. Its detailed submissions regarding their admissibility are contained in the Simatović Spreadsheet.<sup>29</sup>

14. The Prosecution submits objections to 19 of the Simatović Proffered Documents on the basis, *inter alia*, of lack of information as to the source of the documents,<sup>30</sup> as well as lack of reliability and relevance. The submissions are set out in detail in the Simatović Spreadsheet.<sup>31</sup>

15. The Stanišić Defence does not object to admission of the Simatović Proffered Documents.<sup>32</sup>

<sup>21</sup> Prosecution Spreadsheet, p. 46.

<sup>22</sup> Prosecution Spreadsheet, pp. 2-46.

<sup>23</sup> On this ground, the Stanišić Defence objects to the following documents: MFI P1061 and MFI P1075, Stanišić Defence Objection, paras 2, 4-24; Prosecution Spreadsheet, pp. 2, 5.

<sup>24</sup> On this ground, the Stanišić Defence objects to the following documents: MFI P1069, MFI P979, MFI P1192, MFI P1080, MFI P1009, Stanišić Defence Objection, paras 2, 25-31; Prosecution Spreadsheet, pp. 4, 6-7, 9-10.

<sup>25</sup> On this ground, the Stanišić Defence objects to the following documents: MFI P1305 and MFI P1304, Stanišić Defence Objection, paras 2, 35; Prosecution Spreadsheet, p. 15.

<sup>26</sup> On this ground, the Stanišić Defence objects to the following document: MFI P1083, Stanišić Defence Objection, paras 2, 32-34; Prosecution Spreadsheet, p. 14.

<sup>27</sup> Stanišić Defence Objection, para. 34.

<sup>28</sup> Prosecution Spreadsheet, pp. 2-13, 17-45.

<sup>29</sup> Simatović Spreadsheet, pp. 1-31.

<sup>30</sup> These objections were also discussed in Court on a number of occasions, see T. 9484-9487, 10302, 10785-10789, 10908-10911, 10992-10994, 11079-11084, 11157-11161, 11252-11254, 11260-11261.

<sup>31</sup> Simatović Spreadsheet, pp. 2-5, 7-28.

<sup>32</sup> See Simatović Spreadsheet.

## II. APPLICABLE LAW

16. The Chamber recalls the applicable law governing admission of evidence under Rule 89(C) and regarding taking judicial notice of the authenticity of documentary evidence under Rule 94(B) as it has previously set out, and refers to it.<sup>33</sup>

17. Rule 94 *bis* governs testimony of expert witnesses:

(A) The full statement and/or report of any expert witness to be called by a party shall be disclosed within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge.

(B) Within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:

- (i) it accepts the expert witness statement and/or report; or
- (ii) it wishes to cross-examine the expert witness; and
- (iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the statement and/or report and, if so, which parts.

18. The Rules do not provide a definition of an expert. However, other Trial Chambers have found that an expert witness is a person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute.<sup>34</sup> In determining whether a particular witness meets these criteria, the Chamber may take into account the witness's former and present employment and professional experience through reference to the witness's curriculum vitae as well as the witness's scholarly articles, publications or any other pertinent information about the witness.<sup>35</sup>

19. The fact that a witness has been involved in the investigation and preparation of the Prosecution or Defence case or is employed or paid by one party does not disqualify him or her as an expert witness or make the expert statement unreliable.<sup>36</sup> Concerns relating to the independence

<sup>33</sup> See Decision on Prosecution Second Motion for Admission of Exhibits from the Bar Table, 10 March 2011, paras 10-11.

<sup>34</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Decision on Defence Notice Under Rule 94 *bis*, 5 March 2009 (“*Đorđević* Decision”), para. 6; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-PT, Decision on the Defence Motions to Oppose Admission of Prosecution Expert Reports Pursuant to Rule 94 *bis*, 1 April 2004, p. 4; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Decision on Prosecution’s Motion for Admission of Expert Statements, 7 November 2003, para. 19; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002, p. 1.

<sup>35</sup> *Đorđević* Decision, para. 6; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 19 February 2008 (“*Šešelj* Decision”), para. 28.

<sup>36</sup> *Đorđević* Decision, para. 7; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-91-T, Decision on Defence Motion to Exclude the Expert Report of Morten Torkildsen, 30 October 2008 (“*Perišić* Decision”), para. 9; *Šešelj* Decision, para. 29; see also *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Decision on Prosecution’s Submission of Statement of Expert Witness Ewan Brown, 3 June 2003 (“*Brđanin* Decision”), p. 4.

and impartiality of an expert witness are ordinarily matters of weight rather than admissibility.<sup>37</sup> They can be appropriately dealt with in cross-examination of the witness.<sup>38</sup>

### III. DISCUSSION

#### A. Report

20. Based on his *curriculum vitae*, it is clear that Theunens has ample experience in the analysis and assessment of military information.<sup>39</sup> Between 1988 and 1992 Theunens worked in the Belgian Armed Forces.<sup>40</sup> From 1992 until May 2000, he worked in various capacities for the Belgian Ministry of Defence analysing political, military and economic developments in the Former Yugoslavia at an operational and strategic level.<sup>41</sup> Furthermore, from April 2001 to June 2009, Theunens was employed by the Office of the Prosecutor of this Tribunal as intelligence analyst and part of the Military Analysis Team.<sup>42</sup> He testified and his reports were admitted in several cases before this Tribunal.<sup>43</sup> For the foregoing reasons, the Chamber is satisfied Theunens qualifies as an expert witness.

21. The Chamber now turns to the admissibility of the Report.

22. The Report is clearly relevant to issues central to the case. Amongst others, it deals with the military aspects of the role of the Accused in the conflict in the Republic of Croatia (“Croatia”) and Bosnia-Herzegovina (“BiH”). The Report also examines the structure of the armed forces of the Federal Republic of Yugoslavia, the command and control doctrine (over and within the armed forces), and discipline. It further provides an analysis of the role of Serb volunteer and/or paramilitary groups in the conflict in Croatia and BiH.

23. In determining the probative value of the Report, the Chamber recalls that there are no indications of undue influence on Theunens in the preparation of the Report.<sup>44</sup> During cross-examination, the Defence questioned Theunens on the extent of his involvement in the *Stanišić and*

<sup>37</sup> *Dorđević* Decision, para. 7; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 22; see also *Perišić* Decision, para. 9; *Brđanin* Decision, p. 4.

<sup>38</sup> *Dorđević* Decision, para. 7; *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-T, Decision on Motion to Exclude the Prosecution’s Proposed Evidence of Expert Bezruchenko and His Report, 17 May 2007, para. 8; see also *Šešelj* Decision, para. 29; *Brđanin* Decision, p. 4.

<sup>39</sup> Ex. P1574. See also T. 8049-8050, 8142-8147.

<sup>40</sup> Ex. P1574. See also T. 8049-8050.

<sup>41</sup> *Ibid.*

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

<sup>43</sup> Ex. P1574, p. 3; T. 8050-8051.

<sup>44</sup> See Disclosure Decision, para. 25.

*Simatović* case.<sup>45</sup> In addition, the Stanišić Defence asked further questions of Theunens in this regard after his testimony.<sup>46</sup> During the first half of 2007, Theunens was requested to draft – and drafted – the Report.<sup>47</sup> As also set out in the Disclosure Decision, Theunens received very limited guidance from the Prosecution in preparing the Report.<sup>48</sup> Other than preparing the Report, Theunens carried out certain tasks on the *Stanišić and Simatović* case as part of his duties as an intelligence analyst.<sup>49</sup> These included, among other things, drafting a limited number of requests for assistance, participating in interviews and taking statements of several witnesses.<sup>50</sup> The Chamber does not find that this involvement was of such a nature as to preclude Theunens from acting as an independent and impartial expert in this case.

24. Based on what is written in the introduction of the Report and Theunens' elaboration during his testimony,<sup>51</sup> the Chamber is further satisfied that Theunens has set out sufficiently clearly the methodology he used in preparing the Report.

25. Based on the foregoing and considering the absence of objections by the Defence, the Chamber is satisfied that the Report is both relevant and probative within the meaning of Rule 89(C).

## **B. Proffered Documents**

### **a) Proffered Documents in respect of which a decision on admission is no longer necessary**

26. Several Proffered Documents have been admitted into evidence since the filing of the Prosecution Spreadsheet and Simatović Spreadsheet and will not be considered further. These documents are P1080, P1192, D140, and D200–D201.<sup>52</sup> D146 was also admitted after the parties reached an agreement to replace the document uploaded in eCourt (65 *ter* 2D038) with another

<sup>45</sup> See T. 8146-8171. See also Disclosure Decision, paras 21-22.

<sup>46</sup> This occurred in the context of events leading to the litigation the subject of the Disclosure Decision; see Stanišić Request for Order of Disclosure of Materials Related to the Admissibility of the Expert Report of Reynaud Theunens, 15 February 2011, para. 3.

<sup>47</sup> T. 8154.

<sup>48</sup> 11 March 2011 Decision, para. 22. See also T. 8052-8056, 8146-8162, 8170-8171.

<sup>49</sup> T. 8046-8054, 8170-8171. See also Stanišić Request for Order of Disclosure of Materials Related to the Admissibility of the Expert Report of Reynaud Theunens, 15 February 2011, Confidential Annex E (“Confidential Annex E to Stanišić Request”).

<sup>50</sup> T. 8146-8154, 8170-8171. See also Confidential Annex E to Stanišić Request.

<sup>51</sup> See e.g. T. 8052-8057, 8160-8167, 8190-8191, 8205-8206, 8504-8505, 8588

<sup>52</sup> See Decision on the Prosecution's Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011 (admission of P1080, P1192, D200-D201); T. 10301 (admission of D140).



version (65 *ter* 2D308.1).<sup>53</sup> In addition, the Chamber notes that Simatović Defence Proffered Document MFI D203 (65 *ter* 5460) was already admitted as P1757.<sup>54</sup>

27. The Simatović Defence has withdrawn its request for admission of MFI D167, MFI D176, MFI D182, MFI D191, and MFI D192.<sup>55</sup> Therefore, the Chamber will also not further consider these documents.

**b) Prosecution Proffered Documents**

28. The Chamber notes there are no objections to admission into evidence of MFI P967.<sup>56</sup> The Stanišić Defence has further withdrawn its objections to MFI P1084, MFI P1179 and MFI P1302.<sup>57</sup> The Chamber is satisfied that these documents are relevant and of probative value.

29. Both the Stanišić Defence and Simatović Defence object to admission of MFI P979.<sup>58</sup> The Simatović Defence disputes the signature – which is said to be that of Franko Simatović – whereas the Stanišić Defence argues that it is unclear on what basis the signature is authenticated by Theunens.<sup>59</sup> The Chamber finds the objections unconvincing in the absence of more specific submissions. Moreover, the Chamber notes the document was previously admitted before this Tribunal in the *Martić* case.<sup>60</sup> Pursuant to Rule 94(B), the Chamber takes judicial notice of the authenticity of the document. The Chamber also considers MFI P979 to be relevant and finds that it meets the requirements under Rule 89(C).

30. The Chamber has taken note of the objections of both the Stanišić Defence and Simatović Defence to admission of MFI P1009 and MFI P1069, which allegedly are typed minutes of

<sup>53</sup> Simatović Spreadsheet, pp. 21-22; T. 11252-11254, 11260-11261. On 15 March 2011, the Simatović Defence informed the Chamber and parties by informal communication that it had uploaded the English translation for the admitted D146 (as 65 *ter* 2D308.1) as well as a revised English translation of the originally uploaded document (as 65 *ter* 2D308.2).

<sup>54</sup> Decision on Prosecution's Motions for Admission of Written Evidence Pursuant to Rule 92 *bis*, 7 October 2010. Exhibit number D203 was accordingly vacated.

<sup>55</sup> T. 11158-11161; Simatović Defence Submission of 24 February 2011, para. 6.

<sup>56</sup> Prosecution Submission of 23 February, Annex A, p. 1. While this document was not included in the Prosecution Spreadsheet, it was included in the Prosecution chart of exhibits associated to the Report that was filed on 21 October 2010. During an out of court meeting on 18 February 2011 between Chamber staff and the parties, the parties agreed to address the document in their submissions to be filed in response to the Chamber Communication of 10 February 2011.

<sup>57</sup> Prosecution Spreadsheet, pp. 14-15, 29. On p. 15 of the Prosecution Spreadsheet, in relation to P1302 the Prosecution requests admission of MFI P1084. The Chamber understands this to be a typographical error.

<sup>58</sup> The Chamber notes that this document was included in the Prosecution Filing of 13 August 2010, but that the Prosecution sought to tender this document from the bar table on 14 September 2010 during the testimony of Witness JF-039. Considering that the document is referenced in the Report and included in the Prosecution Spreadsheet, the Chamber will decide on its admission in this decision. See also T. 10259.

<sup>59</sup> Prosecution Spreadsheet, pp. 9-10. Stanišić Defence Objection, para. 25. See also T. 7210-7211.

<sup>60</sup> Prosecution Spreadsheet, pp. 9; Prosecution Submission of 23 February 2011, Annex A, p. 1.

meetings.<sup>61</sup> The documents do not contain any stamp or signature. MFI P1009 was received from the Republic of Croatia in response to an RFA. Upon request, the Prosecution provided additional information on the document's provenance.<sup>62</sup> MFI P1069 has been previously admitted in the *Milošević* case and the Chamber takes judicial notice of its authenticity pursuant to Rule 94(B). Moreover, the content of MFI P1069 appears to be corroborated by evidence already before the Chamber, such as P992 and P1062. The Chamber has taken into consideration the Prosecution submissions on the completeness of the document.<sup>63</sup> In this respect, it notes that all the topics of the conversation as listed on page 1 of the document appear to be addressed within the document and that the document ends with "the Minister's conclusion". The Chamber is satisfied that MFI P1009 and MFI P1069 are of sufficient relevance and probative value to be admitted, however it will exercise appropriate caution when determining the weight, if any, ultimately to be given to them.

31. With regard to MFI P1069, the Chamber notes that the uploaded translation contains comments from the interpreter. MFI P1069 will therefore be admitted on the condition that a revised translation is provided.<sup>64</sup>

32. The Simatović Defence indicated in the Prosecution Spreadsheet that it would present objections to MFI P1049, MFI P1050, and MFI P1058 at a later date, but before the testimony of Theunens.<sup>65</sup> Since the Simatović Defence failed to make any further submissions in relation to these documents, the Chamber understands that it no longer objects to their admission. The Chamber also understands the Simatović Defence's comments regarding MFI P1248<sup>66</sup> not to be objections to admission. The Chamber finds these four documents relevant and of probative value as required under Rule 89(C).

33. With regard to MFI P1049 and MFI P1050, the Prosecution uploaded the full original B/C/S versions but the English translations of only the selected parts tendered for admission. For MFI P1049, the Chamber finds it useful to admit – in addition to the tendered pages – the cover page which appears to contain the publication date and issue number. The Chamber will therefore instruct the Prosecution to upload into eCourt only those parts of the B/C/S original of MFI P1050 that it seeks to tender for admission, and those parts of the B/C/S original of MFI P1049 that it seeks to tender for admission with the addition of the cover page. Considering that the Prosecution

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<sup>61</sup> See Prosecution Spreadsheet, pp. 4-5, 7-9. The Chamber notes that MFI P1009 was initially used with another witness. However, considering that the document is referenced in the Report and included in the Prosecution Spreadsheet, the Chamber will decide on its admission in this decision. See also T. 10259.

<sup>62</sup> Prosecution Spreadsheet, pp. 7-8. In the Prosecution Filing of 23 February 2011, the Prosecution informed the Chamber that it had uploaded a revised translation under Document ID 0112-3708-ET.

<sup>63</sup> Chamber Communication of 10 February 2011, p. 1; Prosecution Submission of 23 February 2011, Annex A, p. 2.

<sup>64</sup> Chamber Communication of 10 February 2011, p. 1.

<sup>65</sup> Prosecution Spreadsheet, pp. 18, 20.

has not provided a translation of the cover page of the B/C/S version, the Chamber will admit P1049 on the condition that a translation for the complete admitted portion is provided.

34. The Simatović Defence objects to the following open source materials submitting that they are unreliable, biased, untrue, and/or politically motivated, and therefore inappropriate as a source of information for an expert report: MFI P1053, MFI P1065, MFI P1067, MFI 1068, MFI P1070–MFI P1073, MFI P1090,<sup>67</sup> MFI P1094, MFI P1159, MFI P1160, MFI P1163, MFI P1164, MFI P1174, MFI P1181, MFI P1217, MFI P1339, MFI P1344, MFI P1345, MFI P1374–MFI P1377, MFI P1396, MFI P1399, MFI P1400<sup>68</sup>, MFI P1412, MFI P1422, MFI P1424, MFI P1443.<sup>69</sup>

35. The Chamber does not share the concerns of the Simatović Defence. The Chamber notes that the Prosecution tenders the open source documents to show that certain facts concerning an individual, place or event were publicly known.<sup>70</sup> The Chamber will decide on the weight to be given to such open source documents, if any, only at a later stage in light of all of the evidence presented at trial. It may at that stage also take into consideration that some of the documents are undated. The Chamber has scrutinised the documents' contents, their possible corroboration by other evidence before the Chamber and Theunens' explanation on how he used open source documents. In light thereof, the Chamber is satisfied that they are sufficiently relevant and of probative value for the purpose of admission.

36. Regarding MFI P1065, MFI P1159, MFI P1163, MFI P1181, MFI P1412, the Prosecution uploaded the full original B/C/S versions and the English translations of only the selected parts tendered for admission. The Chamber finds it useful to admit – in addition to the tendered pages – the pages containing information such as (publication) date and issue number.<sup>71</sup> The Prosecution is therefore instructed to upload into eCourt these extended portions of the B/C/S originals. Considering that the Prosecution has not provided a translation of these additional pages, these documents will be admitted on the condition that a translation of the complete extended portion is provided. With regard to MFI P1164, MFI P1345, MFI P1375, MFI P1443, the Prosecution uploaded a complete translation for each original B/C/S document, but now only seeks admission of

<sup>66</sup> See Prosecution Spreadsheet, p. 35.

<sup>67</sup> With regard to P1090, the Prosecution informed the Chamber and the parties through an informal communication on 25 February 2011 that it had uploaded the B/C/S translation (as 65 *ter* 4245.1).

<sup>68</sup> The Prosecution refers to P1396 in the comments on P1400. Prosecution Spreadsheet, p. 40. The Chamber understands this to be a typographical error.

<sup>69</sup> Prosecution Spreadsheet, pp. 19, 22-28, 30-31, 34, 36-43.

<sup>70</sup> Prosecution Spreadsheet, p. 20.

<sup>71</sup> These are the following pages of the original B/C/S versions: p. 1 of MFI 1065, p. 1 of MFI P1159, pp. 2-3 of MFI P1163, p. 1 of MFI P1181, and p. 1 of MFI P1412.

a portion of each uploaded document.<sup>72</sup> In addition to the tendered portions, the Chamber will also admit the first page of MFI P1164, MFI P1345, and MFI P1443, and their respective corresponding pages from the B/C/S versions. The Chamber instructs the Prosecution to upload into eCourt only the admitted portions of the English translations and the corresponding pages from the B/C/S version.

37. MFI P1083 is an official “information” from the Public Security Centre in Bijeljina, signed by Dejan Joksimović, “on presence of the members of Red Berets at the territory of RS in the period of war from 1992 [...] until 1995”. The Stanišić Defence objects to its admission on the basis that it is subject to Rule 92 *bis*.<sup>73</sup> In addition, the Stanišić Defence objects to the document’s reliability, arguing that “[c]onclusory statements by a police official twelve years after the events described have no probative value”.<sup>74</sup> The Prosecution submits that the document is used as a basis of information by an expert and that Theunens appropriately contextualises it.<sup>75</sup> Furthermore, it submits the Stanišić Defence had a meaningful opportunity to challenge the document in cross-examination of Theunens.<sup>76</sup>

38. The Prosecution received MFI P1083 “in furtherance of OTP investigations into information in the possession of the RS authorities concerning the presence of the Red Berets in [BiH] during the war”.<sup>77</sup> The Chamber notes that the document is dated 29 June 2004 and was received by the Prosecution on the same day. It therefore appears that the document was a statement prepared for the Prosecution for the purpose of litigation before this Tribunal. MFI P1083 contains general, non-contemporaneous conclusions, based on unspecified sources and collected by officials from the Bijeljina Public Security Centre. Theunens was not in a position to provide information on the source.<sup>78</sup> The Defence has also not been given the opportunity to cross-examine the author of the statement. Under these circumstances, the Chamber finds that admitting the statement in the manner in which it is presently tendered would be prejudicial to the Accused.

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<sup>72</sup> Respectively, English translations pp. 209-216 (MFI P1164); pp. 105-109 (MFI P1345); pp. 11-19 (MFI P1375); and pp. 56-71 (MFI P1443); see Prosecution Spreadsheet pp. 28, 37, 38, 43. In the Chamber Communication of 10 February 2011, the Chamber requested the Defence to make submissions regarding the limitation of the portions the Prosecution seeks to admit. The Simatović Defence submitted that it maintains its objections to admission of the documents and that it does not seek admission of any additional portions at this stage; see Simatović Defence Submission of 24 February 2011, paras 3-4. The Stanišić Defence did not make any submissions.

<sup>73</sup> Stanišić Defence Objection, paras 2, 32-33; Prosecution Spreadsheet, p. 14.

<sup>74</sup> Stanišić Defence Objection, para. 34; Prosecution Spreadsheet, p. 14.

<sup>75</sup> Prosecution Spreadsheet, p. 14.

<sup>76</sup> *Ibid.*

<sup>77</sup> Prosecution Submission of 23 February 2011, Annex A, p. 3. See also Prosecution Spreadsheet, p. 14.

<sup>78</sup> T. 8673-8676.

39. The Simatović Defence objects to MFI P1179, arguing that “one cannot conclude to which DB the document was sent”.<sup>79</sup> The Chamber finds this argument does not bar the document from admission, but is rather a matter of weight to be accorded to the document, if any. The Chamber has scrutinized the document in light of its content, the Prosecution submissions,<sup>80</sup> and Theunens’ testimony,<sup>81</sup> and is satisfied that it is relevant and of probative value.

40. In relation to MFI P1304 and MFI P1305, the Chamber does not agree with the Stanišić Defence that these documents are not relevant to the Indictment. The documents go to the relationship between Stanišić and the Republic of Serbian Krajina (“RSK”) – including its President, Milan Martić, who is an alleged member of the joint criminal enterprise in this case – and Stanišić’s alleged involvement in the acquisition of equipment and weapons by the RSK within the Indictment period. The Chamber is further satisfied that the documents have probative value.

41. The Prosecution and the Simatović Defence both seek admission of MFI P1655 (65 *ter* 2D268).<sup>82</sup> The Prosecution submits that the English portion which the Simatović Defence seeks to tender is one page short of the original B/C/S version and requests this page (uploaded as 65 *ter* 5161) also be admitted as part of the same document.<sup>83</sup> The specific page concerns a proposal for commendation of five persons, signed by one Radojica Božović and dated 18 April 1998 (“Proposal”). The Simatović Defence raised concerns with regard to the Proposal during Theunens’ testimony.<sup>84</sup> The Chamber notes that the Proposal is included in the original B/C/S version of the document twice, in essentially identical copies (p. 68/72 and p. 72/72).<sup>85</sup> The translation linked to the original B/C/S version includes the Proposal only once (p. 63/63).<sup>86</sup> As requested,<sup>87</sup> the Simatović Defence had the translation verified and uploaded a revised translation (under 65 *ter* 2D268.1).<sup>88</sup> The revised translation still includes the Proposal only once (p. 60/63).

42. The Chamber has assessed MFI P1655 in light of its contents and the absence of objections by the parties. With regard to the Proposal, the Chamber has taken note of the Simatović Defence’s comments during Theunens’ testimony but also notes that the Simatović Defence included the

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<sup>79</sup> Prosecution Spreadsheet, p. 29.

<sup>80</sup> Prosecution Spreadsheet, pp. 29-30. With regard to RFA 779, pursuant to which MFI P1179 was received, see Prosecution Spreadsheet, pp. 7-8.

<sup>81</sup> T. 8090-8091.

<sup>82</sup> Prosecution Spreadsheet, p. 46; Simatović Spreadsheet, p. 9.

<sup>83</sup> Prosecution Spreadsheet, p. 46; Simatović Spreadsheet, p. 9; T. 8764-8768.

<sup>84</sup> T. 8764-8766.

<sup>85</sup> Specifically, the only difference between them is that p. 68 has a Defence ERN number at the bottom of the page (2D00-3324), whereas no such number appears on p. 72.

<sup>86</sup> The translation of 65 *ter* 5161 appears to be an exact copy of this page 63.

<sup>87</sup> Chamber Communication of 10 February 2011, Annex, p. 2. See also Simatović Spreadsheet, p. 9.

Proposal in the original document and (revised) translation as tendered. The Chamber finds MFI P1655 relevant and of probative value. The revised translation of MFI P1655 (uploaded as 65 *ter* 2D268.1) includes the Proposal. The Chamber does not find it useful to have the Proposal admitted into evidence twice, especially taking into consideration that the two versions of the Proposal as included in the original B/C/S version of 65 *ter* 2D268 (MFI P1655) are basically identical copies. Therefore, the Chamber will admit into evidence only pp. 1-71 of the original B/C/S version of MFI P1655 and the corresponding revised English translation. The Chamber furthermore denies admission of 65 *ter* 5161.

43. Finally, many Prosecution Proffered Documents are objected to by one or both Defence teams on the basis that they are not or insufficiently reliable.<sup>89</sup> The Chamber will turn to these now.

44. Some of the Prosecution Proffered Documents do not contain visible indicia of authenticity such as stamps or signatures. The Chamber has scrutinised these documents in light of their content and the Defence objections to their admission, as well as the information provided by the Prosecution, including on the documents' provenance. As previously found, the fact that the Prosecution has received certain documents, originating *inter alia* from the Ministry of Internal Affairs ("MUP") and State Security of the MUP ("DB") archives, in response to a request for assistance ("RFA") gives those documents *certain* indicia of authenticity.<sup>90</sup> The Chamber has also taken into consideration Theunens' testimony regarding these documents and how he relies on them in his Report.

45. Proffered Documents MFI P1048, MFI P1060, MFI P1061, MFI P1075, MFI P1178, MFI P1438 and MFI P1439 are allegedly security organ documents or intelligence reports.<sup>91</sup> The Chamber considers that it is not uncommon for security organ documents to be devoid of identifying signatures or stamps or the like, depending on their purpose. The Chamber has assessed the documents' contents, information on their provenance, and their possible corroboration by other evidence before it. In light thereof, the Chamber is satisfied of their relevance and probative value.

<sup>88</sup> The Simatović Defence informed the Chamber and the parties that it had uploaded the revised translation through an informal communication on 15 March 2011. The Simatović Defence indicated that due to concurrent tasks, it had not been able to provide the translations earlier. Simatović Defence Submission of 24 February 2011, para. 5.

<sup>89</sup> These documents are MFI P979, MFI P1009, MFI P1048, MFI P1059, MFI P1060, MFI P1061, MFI P1069, MFI P1075, MFI P1178, MFI P1186, MFI P1193, MFI P1194, MFI P1209, MFI P1210, MFI P1220, MFI P1282, MFI P1285, MFI P1368, MFI P1382, MFI P1401, MFI P1402, MFI P1435, MFI P1438, MFI P1439, MFI P1450, MFI P1453. The Simatović Defence also argues that the above-discussed open source documents are unreliable. However, considering there have been dealt with separately, the Chamber has not included them here.

<sup>90</sup> Decision on the Prosecution's Second Motion for Admission of Exhibits From the Bar Table, 10 March 2011, para. 10; see also Decision on the Prosecution's Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, para. 18; Decision on Eighteenth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List, 17 December 2010, para. 11.

<sup>91</sup> Prosecution Spreadsheet, pp. 2, 5, 17, 21, 29, 43.

At the same time, the Chamber will exercise appropriate caution if and when it relies on these documents in light of the entire record.

46. The Simatović Defence submits that the original B/C/S versions of MFI P1220 and MFI P1368 are partly illegible and therefore that the context of these documents is unclear and they are unreliable.<sup>92</sup> The Chamber does not fully share the Simatović Defence's concerns. Both documents are admittedly of poor quality. However, their content is sufficiently understandable. While the illegible parts are reflected in the translation, the context is properly ascertained from the legible parts. The Chamber further notes that MFI P1220 was received pursuant to a RFA from Serbia and MFI P1368 was seized by the Prosecution from the Banja Luka Security Services Centre.<sup>93</sup> The Chamber is therefore satisfied that MFI P1220 and MFI P1368 are sufficiently reliable. The Chamber also finds the documents relevant.

47. At the same time, the Chamber finds that MFI P1059, MFI P1186, MFI P1193, MFI P1194, MFI P1209, MFI P1210, MFI P1282,<sup>94</sup> MFI P1285, MFI P1382, MFI P1401, MFI P1402, MFI P1435, MFI P1450 and MFI P1453 are sufficiently relevant and probative to fulfil the requirements of Rule 89(C).

48. With regard to MFI P1193 and MFI P1285, the Chamber notes that the initials appearing at the bottom of the original B/C/S version have not been included in the translations. However, it does not consider that this warrants a revision of the translations. With regard to MFI P1450, the Chamber notes that the Prosecution has requested a further translation.<sup>95</sup> The Chamber will admit this document on condition that the new translation is provided.

*c) Simatović Proffered Documents*

49. The Prosecution does not oppose admission of the following documents and the Chamber is satisfied that they are relevant and of probative value: MFI D164, MFI D166, MFI D168, MFI D169, MFI D171, MFI D172;<sup>96</sup> MFI D175, MFI D177–MFI D179, MFI D181, MFI D194,

<sup>92</sup> Prosecution Spreadsheet, pp. 35, 38.

<sup>93</sup> Ibid.

<sup>94</sup> The Chamber notes that the Prosecution initially indicated that MFI P1282 was a war diary of one Major Dimšo Mičić; see Prosecution Spreadsheet, p. 35. However, the Prosecution subsequently clarified that it did not find any reference to Mičić in the diary, did not intend to rely on the identity of Mičić, and intended to rely on MFI P1282 as a war diary recovered from the 1<sup>st</sup> Krajina Corps Headquarters; see Prosecution Submission of 23 February 2011, p. 2.

<sup>95</sup> The Prosecution had previously informed the Chamber that a revised translation had been uploaded. Prosecution Submission of 23 February 2011, Annex A, p. 3. However, at that time the uploaded translation was still incomplete.

<sup>96</sup> Contrary to what the Simatović Defence submits, this is not Prosecution document 65 *ter* 492. The Chamber understands from the Prosecution's comments on p. 6 of the Simatović Spreadsheet that 2D248 was provided to the

MFID196–MFID199, MFID202. With regard to MFI D168 and MFI D194, the Simatović Defence was requested to verify the translation and provide revised translations as necessary.<sup>97</sup> On 15 March 2011, the Simatović Defence informed the Chamber and the parties through an informal communication that it had uploaded a revised English translation for MFI D168 and an official English translation of MFI D194 as, respectively, 65 *ter* numbers 2D149.1 and 2D318.1.<sup>98</sup>

50. The Simatović Defence requests admission of MFI D165.<sup>99</sup> This document is however identical to the document that is already admitted as P367. The Chamber therefore will deny admission of MFI D165.

51. The Prosecution objects to MFI D170 on the grounds of relevance and reliability.<sup>100</sup> The Chamber notes that the provenance of the document is unclear. The heading of the document suggests that it is a document from the Ministry of Interior of BiH. The Simatović Defence does not clarify the source other than stating it found the document in the Electronic Disclosure System. Moreover, the Chamber notes that the tendered version of the document is in English.<sup>101</sup> Considering also that the document seems to contain simply a summary of certain documents received from the Bosnian authorities, the Chamber is not satisfied as to the document's probative value and will deny its admission into evidence.

52. The Prosecution submits no objections to MFI D173 (65 *ter* 2D249), stating that the document is referenced in the Report as 65 *ter* 532 and has already been admitted as P1469.<sup>102</sup> However, the Chamber notes that P1469 and MFI D173 appear to be different documents. The Simatović Defence submits that 65 *ter* 2D249 is Prosecution document 65 *ter* 533.<sup>103</sup> The Chamber notes that in eCourt, document 65 *ter* 533 is referred to as a duplicate of 65 *ter* 532 but is not uploaded as such. The Simatović Defence referred to MFI D173 during its cross-examination of Theunens but the document has not been referenced in the Report, nor has it been admitted into evidence.<sup>104</sup> The Chamber considers that MFI D173 carries visible indicia of reliability, including a signature and stamp. In addition, the appearance of the document is comparable to that of

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Simatović Defence by the Prosecution and has taken note of the information provided regarding the provenance of the document.

<sup>97</sup> Chamber Communication of 10 February 2011, Annex, p. 2. See also Simatović Defence Spreadsheet, p. 27.

<sup>98</sup> The Simatović Defence indicated that due to concurrent tasks, it had not been able to provide the translations earlier. Simatović Defence Submission of 24 February 2011, para. 5.

<sup>99</sup> Simatović Spreadsheet, p. 1.

<sup>100</sup> Simatović Spreadsheet, p. 5. The Simatović Defence put the document to Theunens during cross-examination, who testified he had not seen the document before. He called for caution in using the information contained in the document since it was prepared by the Bosnian authorities, T. 8705-8706.

<sup>101</sup> The Chamber notes that no B/C/S translation has been uploaded on eCourt.

<sup>102</sup> Simatović Spreadsheet, pp. 6-7.

<sup>103</sup> Simatović Spreadsheet, pp. 6-7.

<sup>104</sup> T. 8749-8750.



MFID172 which, like MFI D173, appears to be an order from an Alfa Training Center Commander, and which was not objected to by the Prosecution. Based on the foregoing, the Chamber finds MFI D173 to be relevant and of probative value.

53. The Prosecution objects to the following documents on the basis of, *inter alia*, lack of sufficient information on their source: MFI D174, MFI D184, MFI D185–MFI D189, and MFI D193.<sup>105</sup> The Simatović Defence states that each of these documents has been “collected by the defence investigator from the potential defence witness”.<sup>106</sup> Upon enquiry by the Chamber, the Simatović Defence indicated it was not willing to provide further information on the provenance of the documents at this stage.<sup>107</sup> However, it submitted that it could provide the information at a later stage, either when the person(s) from whom the relevant documents were collected would come to testify or – with regard to four documents<sup>108</sup> – after verification by the Council for Cooperation with the ICTY (“Council”) that the documents exist in a state archive.<sup>109</sup> With regard to MFI D185 and MFI D189, the Simatović Defence informed the Chamber and the parties through an informal communication on 15 March 2011 that it had uploaded the responses from the Council.<sup>110</sup>

54. The Chamber would have preferred the Simatović Defence to discuss with the Prosecution whether it maintained its objections to admission of MFI D185 and MFI D189, taking into consideration the information obtained from the Council, and to subsequently inform the Chamber through a formal (joint) filing of the outcome of this discussion. In the current situation, the Chamber is not in a position to take the Council’s responses, which are not part of the official record, into consideration in assessing the admissibility of MFI D185 and MFI D189. Based on the foregoing, the Chamber will deny admission of MFI D185 and MFI D189, without prejudice. Similarly, with regard to MFI D174, MFI D184, MFI D186–D188, MFI D193, the Chamber will also deny their admission without prejudice. Without more detailed information on their provenance, the Chamber cannot sufficiently determine the reliability of these documents at this stage.

<sup>105</sup> Simatović Spreadsheet, pp. 7, 13-19, 25-27. The Prosecution initially also objected to several other documents on the same ground but these were dealt with otherwise.

<sup>106</sup> Simatović Spreadsheet, pp. 7, 13-19, 25-26.

<sup>107</sup> T. 10908-10909, 11081-11084, 11157-11159. Although the exact selection of documents concerned is clear from the Simatović Spreadsheet, the Chamber notes that MFI D184 is missing from the documents listed by the Chamber at T. 10908, while MFI D184 and MFI D186-MFI D188 are missing from the documents listed at T. 11081. It is also not entirely clear from the transcript to which documents the Simatović Defence refers in its submissions. It first mentions the nine documents listed by the Chamber at T. 11081 (and thus omitting the additional documents listed by the Chamber at T. 10908). In its further discussion, the Simatović Defence appears to only address eight documents, without specifying them by number.

<sup>108</sup> The Simatović Defence did not specify which four documents, T. 11157-11161.

<sup>109</sup> T. 11080-11084 and 11158-11161.

<sup>110</sup> They are uploaded under 65 *ter* numbers 2D401, 2D402, 2D403, 2D404, 2D405, and 2D406.

55. The Simatović Defence seeks admission of MFI D180 since it “shows that training center ‘Divič’ was under the command of VRS”.<sup>111</sup> However, the Chamber notes that the Simatović Defence did not put the document to Theunens. It also did not elicit any evidence from him in relation to a training centre in Divič. Under these circumstances, the Chamber finds that admitting the document through this witness is not the correct avenue. The Chamber therefore will deny its admission without prejudice.

56. The Prosecution has withdrawn its objections to MFI D183 and MFI D190<sup>112</sup> and the Chamber is satisfied that they are relevant and of probative value.

57. The Prosecution objects to admission of MFI D195, arguing that the document contains redactions.<sup>113</sup> The Simatović Defence did not provide a clarification on the redactions. The Chamber is concerned about these redactions, also taking into consideration it does not have information on who made them, and finds that they preclude admission of the document in its current version. The Chamber will therefore deny admission of MFI D195 without prejudice.

#### IV. DISPOSITION

58. For the reasons set out above and pursuant to Rules 89(C), 94(B) and 94 *bis* of the Rules, the Chamber:

- i. **ADMITS** into evidence the Report (MFI P1575);
- ii. **ADMITS** into evidence the following Prosecution Proffered Documents: MFI P967 (under seal); MFI P979; MFI P1009; MFI P1048; MFI P1050; MFI P1053; MFI P1058 (under seal); MFI P1059 (under seal); MFI P1060 (under seal); MFI P1061; MFI P1067; MFI P1068; MFI P1070–MFI P1073; MFI P1075; MFI P1084; MFI P1090; MFI P1094; MFI P1160; MFI P1174; MFI P1178; MFI P1179; MFI P1186; MFI P1193 (under seal); MFI P1194; MFI P1209; MFI P1210; MFI P1217; MFI P1220 (under seal); MFI P1248; MFI P1282;

<sup>111</sup> Simatović Spreadsheet, pp. 10-11.

<sup>112</sup> Prosecution Submission of 23 February 2011, Annex A, p. 3; T. 10992. On 25 February 2011, the Simatović Defence informed the Chamber and the parties through an informal communication that it had uploaded a revised translation of MFI D190 under 65 *ter* 2D307.1. On 15 March 2011, the Simatović Defence informed the Chamber and the parties through an informal communication that it had uploaded the RFA regarding MFI D183 and the response it under respectively 65 *ter* numbers 2D399 and 2D400.

<sup>113</sup> Prosecution Submission of 23 February 2011, Annex A, p. 3. The Prosecution initially objected to the document on the basis of lack of information on the origin of the document, and thus its reliability and authenticity; see Simatović Spreadsheet, pp. 27-28. The issue of the document’s provenance was also discussed in Court on several occasions. T. 10909-10911, 10993-10994, 11079-11081, 11157-11160. The Prosecution withdrew this objection after the Simatović Defence provided it with a copy of the RFA and the response to it; see Prosecution Submission of 23 February 2011, Annex A, p. 3. On 15 March 2011, the Simatović Defence informed the Chamber and the

MFI P1285; MFI P1302; MFI P1304; MFI P1305; MFI P1339; MFI P1344; MFI P1368; MFI P1374; MFI P1376; MFI P1377; MFI P1382; MFI P1396; MFI P1399–MFI P1402; MFI P1422; MFI P1424; MFI P1435; MFI P1438; MFI P1439 (under seal); MFI P1453;

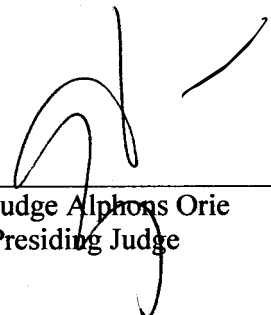
- iii. **ADMITS** into evidence Prosecution Proffered Documents MFI P1069 and MFI P1450 on the condition that revised translations are provided within 20 days of the rendering of this decision;
- iv. **ADMITS** into evidence into an extended form of the following Prosecution Proffered Documents: P1049 (being extended to include page 1 of the original B/C/S version); MFI P1065 (being extended to include page 1 of the original B/C/S version); MFI P1159 (being extended to include page 1 of the original B/C/S version); MFI P1163 (being extended to include pages 2 and 3 of the original B/C/S version), MFI P1181 (being extended to include page 1 of the original B/C/S version); and MFI P1412 (being extended to include page 1 of the original B/C/S version) and **INSTRUCTS** the Prosecution to upload into eCourt only the relevant parts of these documents. The Chamber admits these documents on the condition that a translation is provided for the full extended portion within 20 days of the rendering of this decision;
- v. **ADMITS** into evidence the specified parts of the following Prosecution Proffered Documents: MFI P1164 (pp. 1, 209-216 of the English translation and the corresponding B/C/S pages); MFI P1345 (pp. 1, 105-109 of the English translation and the corresponding B/C/S pages); MFI P1375 (pp. 11-19 and the corresponding B/C/S pages); MFI P1443 (pp. 1, 56-71 of the English translation and the corresponding B/C/S pages); MFI P1655 (pp. 1-72 of the original B/C/S/ version and the corresponding revised English translation) (under seal) and **INSTRUCTS** the Prosecution to upload into eCourt only the relevant parts of these documents;
- vi. **ADMITS** into evidence the following Simatović Proffered Documents MFI D164; MFI D166; MFI D168; MFI D169; MFI D171–MFI D173; MFI D175; MFI D177–MFI D179; MFI D181; MFI D183; MFI D190; MFI D194; MFI D196–MFI D199; MFI D202;
- vii. **DENIES** admission of the remaining Proffered Documents;
- viii. **INSTRUCTS** the Prosecution to upload into eCourt only those parts of the original B/C/S version of MFI P1050 that correspond to the English translation already uploaded;

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parties through an informal communication that the RFA was uploaded under 65 *ter* 2D399 and the response under 65 *ter* 2D400.

- ix. **REQUESTS** the Registry, in the absence of submissions by the parties in this regard, to place provisionally under seal all Defence exhibits admitted in the present decision as well as MFI P979 and MFI P1009;
- x. **INSTRUCTS** the Prosecution to make submissions regarding the status of MFI P979 and MFI P1009 within 21 days of the rendering of this decision;
- xi. **INSTRUCTS** the Simatović Defence to make submission regarding the status of the Defence documents admitted in this decision within 20 days of the rendering of this decision;
- xii. **REQUESTS** the Registry to change the status of the admitted documents placed provisionally under seal to public, unless the parties request for them to be kept under seal within 20 days of the rendering of this decision;
- xiii. **REQUESTS** the Registry to replace the translation of MFI P1655 with the revised translation (uploaded under 65 *ter* 2D268.1); the translation of MFI D168 with the revised translation (uploaded under 65 *ter* 2D149.1); the translation of MFI D190 with the revised translation (uploaded under 65 *ter* number 2D307.1); and the translation of MFI D194 with the official translation (uploaded as 65 *ter* 2D318.1);
- xiv. **REQUESTS** the Registry to link 65 *ter* 308.1 to admitted exhibit D146 as its translation and to link 65 *ter* 2D308.2 to 65 *ter* 2D308 as its revised translation;
- xv. **REQUESTS** the Registry to vacate the following exhibit numbers: D167, D176, D182, D191 and D192.

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



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Judge Alphons Orié  
Presiding Judge

Dated this first day of April 2011  
At The Hague  
The Netherlands

[Seal of the Tribunal]