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23 May 2012

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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: 23 May 2012  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 23 May 2012

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**FIRST DECISION ON STANIŠIĆ DEFENCE BAR TABLE  
MOTION OF 17 FEBRUARY 2012**

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**Office of the Prosecutor**  
Mr Dermot Groome

**Counsel for Jovica Stanišić**  
Mr Wayne Jordash  
Mr Scott Martin

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

## I. PROCEDURAL HISTORY

1. On 13 December 2010, the Stanišić Defence (“Defence”) indicated it would file a bar table motion and on 3 February 2011, the Defence filed a motion requesting the admission of 13 documents from the bar table (“First Bar Table Motion”).<sup>1</sup> On 10 February 2011, the Prosecution responded to the Motion, arguing that it should be dismissed without prejudice.<sup>2</sup> On 17 February 2011, the Defence requested leave to reply,<sup>3</sup> which the Chamber granted on 23 February 2011 through an informal communication. The Defence filed a reply on 23 February 2011.<sup>4</sup>

2. On 4 November 2011, the Chamber requested the Defence to inform the Chamber on whether it still intended to seek admission of the 13 documents contained in its First Bar Table Motion or whether it would tender these documents through witnesses, and further instructed the Defence to ensure that any such document should be uploaded and released into eCourt.<sup>5</sup>

3. On 21 November 2011, the Defence informed the Chamber by informal communication that it would file a new bar table motion which would include the documents from the First Bar Table Motion.<sup>6</sup> On 24 November 2011, the Chamber instructed the Defence to file its envisaged three bar table motions separately, specifying that the first two motions were to be filed by 15 December and the last motion by 9 January 2012.<sup>7</sup> On 29 November 2011, the Prosecution submitted that it should be allowed sufficient time to provide comments to any documents tendered by the Defence through a bar table motion.<sup>8</sup> On 7 December 2011, the Chamber expressed its concern with the size of the bar table motions the Defence intended to submit, and invited the parties to discuss whether factual agreements could be reached on the subject matter of some of the documents, which would remove the need to tender these documents from the bar table.<sup>9</sup> On 13 December 2011, the Chamber lifted the previously set deadlines for the bar table motions to be filed, and instructed the Defence to provide a report to the Chamber by 13 January 2012 setting out the factual agreements reached between the parties regarding the proposed bar table documents.<sup>10</sup> On 13 January 2012, the Defence

<sup>1</sup> T. 10300; Stanišić First Motion for Admission of Exhibits through the Bar Table, with Confidential Annex A, 3 February 2011.

<sup>2</sup> Prosecution Response to Stanišić First Motion for Admission of Exhibits through the Bar Table, with Confidential Annex, 10 February 2011.

<sup>3</sup> Stanišić Request for Leave to Reply to the Prosecution’s Response to Its First Bar Table Motion, 17 February 2011.

<sup>4</sup> Stanišić Reply to the Prosecution’s Response to its First Bar Table Motion, 23 February 2011.

<sup>5</sup> Order Scheduling a Housekeeping Session and Instructions to the Parties and the Registry in Preparation thereof, 4 November 2011, p. 3. The Chamber also noted that it could not access seven of the 13 tendered documents in eCourt, namely documents 1D383-1D388 and 1D1111, *ibid* at fn 18.

<sup>6</sup> T. 15079-15080.

<sup>7</sup> T. 15098.

<sup>8</sup> T. 15325-15326. The Chamber’s guidance on bar table motions was given on 19 February 2010 and 5 July 2010 at T. 3683-3690 and 6106-6113.

<sup>9</sup> T. 15450-15458.

<sup>10</sup> T. 15582.

reported to the Chamber by e-mail that discussions on factual agreements on the proposed documents were still ongoing. It further submitted that, in light of the parties' disagreement on what conclusions could be drawn from many of the proposed Defence documents, both the Prosecution and Defence agreed it might be fairer for the Defence to tender all proposed documents from the bar table rather than seek factual agreements on them in relation to their subject matter. On 31 January 2012, the Chamber again expressed its serious concerns over the large amount of documents the Defence intended to submit through a bar table motion and recalled its prior warning and instructions to the Prosecution during its case regarding the tendering of large bar table motions.<sup>11</sup> The Chamber instructed the Defence to file, by 17 February 2012, either a record of agreed facts and/or a bar table motion containing those documents on which no factual agreements could be reached between the parties.<sup>12</sup>

4. On 17 February 2012, the Defence filed the Stanišić Motion for Admission of Documents through the Bar Table, by which it requested the admission into evidence of 674 documents from the bar table ("Motion").<sup>13</sup> On 22 February 2012, the Prosecution submitted that a majority of the bar table documents had been disclosed to it by the Defence at a very late stage, and requested that it be allowed to file a response to the Motion by 23 March 2012.<sup>14</sup> The Defence did not object, and the Chamber granted the Prosecution's request the next day.<sup>15</sup> On 20 March and 22 March 2012 respectively, the Chamber was copied on e-mails between the parties regarding discrepancies, potential missing translations, and other technicalities regarding certain documents contained in the Motion, as well as a clarification by the Defence of its intention to tender excerpts of certain documents only, rather than the documents in their entirety. On 23 March 2012, the Prosecution filed a response to the Motion ("Response").<sup>16</sup> The Simatović Defence did not respond to the Motion.

## II. SUBMISSIONS

5. The Defence submits that the 674 documents it proposes to tender are relevant, probative and sufficiently reliable to be admitted into evidence from the bar table.<sup>17</sup> In doing so, the Defence submits it only selected the most relevant documents from its Rule 65 *ter* Defence exhibit list

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<sup>11</sup> T. 16552-16554, referring to T. 3685-3690. See also T. 6106-6108.

<sup>12</sup> T. 16552-16554.

<sup>13</sup> Stanišić Motion for Admission of Documents through the Bar Table, with Confidential Annexes A, B, and C, 17 February 2012.

<sup>14</sup> T. 17664-17665.

<sup>15</sup> T. 17664-17665, 17708.

<sup>16</sup> Prosecution Response to Stanišić Motion and Additional Motion for Admission of Documents into Evidence through the Bar Table with Confidential Annexes A and B, 23 March 2012.

<sup>17</sup> Motion, paras 7-12.

containing close to 5,000 documents.<sup>18</sup> It submits the proposed documents constitute “the bare minimum assessed by the Defence to be absolutely necessary to meet the Prosecution’s case”.<sup>19</sup> It submits that for each document, a precise indication is given of the exact information contained in the document as sought to be relied upon by the Defence, along with the document’s exact place within its case.<sup>20</sup> For a number of documents, the Defence submits it is in the process of acquiring full translations, non-redacted versions or publicly redacted versions in accordance with decisions on protective measures.<sup>21</sup>

6. The Defence submits that it tried to reach factual agreements with the Prosecution on the proposed documents, but that the Prosecution rejected its proposals as “overly broad and not supported by the documents”.<sup>22</sup> The Defence submits that throughout the period of its discussions with the Prosecution on the proposed documents, the Prosecution was unwilling to discuss broad conclusions and argued that the Prosecution was only willing to discuss factual agreements as to what each individual document states on its face.<sup>23</sup> The Defence submits that the Prosecution was unwilling – and has been persistently unwilling throughout the trial – to reach agreements on narrowing down the issues regarding the case against the Accused and to specify these issues with sufficient clarity.<sup>24</sup>

7. In its Response, the Prosecution argues that for a majority of the materials tendered by the Defence, there is often “minimal correlation between the actual information in the proposed documents tendered and the claimed relevance”.<sup>25</sup> It submits that the negative inferences the Defence seeks to draw from many of the documents, which the Prosecution generally understood as “if a document does not refer to certain facts then those facts must not be true”, are illogical and unpersuasive.<sup>26</sup> It further submits that the majority of documents proposed for admission by the Defence has low probative value and may unnecessarily burden the record.<sup>27</sup> On the other hand, in order to avoid the possibility that the information contained in these large documents is misconstrued, the Prosecution argues it will need to tender a number of documents in rebuttal to properly contextualize the proposed Defence documents.<sup>28</sup> The Prosecution further submits that some of the documents tendered by the Defence are highly relevant to the case, but argues that they

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<sup>18</sup> Motion, para. 4.

<sup>19</sup> Motion, para. 21.

<sup>20</sup> Motion, para. 8.

<sup>21</sup> Motion, paras 10-15.

<sup>22</sup> Motion, para. 17.

<sup>23</sup> Ibid.

<sup>24</sup> Motion, paras 18-21.

<sup>25</sup> Response, para. 9.

<sup>26</sup> Response, para. 10 and Confidential Annex A to the Motion (for example, see Prosecution comments on nearly all documents on pp. 323-349).

<sup>27</sup> Response, paras 13-14.

have been taken out of a collection in a “highly selective” manner such that they provide an unrepresentative sample thereof, necessitating the Prosecution to tender further documents from that collection in rebuttal to contextualize the proposed Defence documents.<sup>29</sup> Lastly, the Prosecution submits that certain documents tendered by the Defence currently lack an indication of sufficient reliability as they are redacted and/or require more information on their provenance if they are to be admitted from the bar table.<sup>30</sup>

8. Lastly, the Prosecution submits that, indeed, it was unwilling to accept certain factual agreements proposed by the Defence as – it submits – these were not supported by the documents themselves.<sup>31</sup> The Prosecution submits it had proposed facts and identified areas of potential agreements, which it states were rejected by the Defence.<sup>32</sup> The Prosecution further submits that, in relation to a category of documents pertaining to the Serbian Radical Party, it had made proposals to the Defence to discuss potential agreed facts, but that the Defence declined to do so as it submitted the Prosecution’s case on this matter had not been sufficiently specific and that it could not have meaningful discussions with the Prosecution if it did not further articulate its case on this matter.<sup>33</sup>

### III. APPLICABLE LAW

9. Rule 89 of the Rules of Procedure and Evidence (“Rules”) provides, in relevant part:

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

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

10. The Trial Chamber requires that “the offering party must be able to demonstrate, with clarity and specificity, where and how each document fits into its case”.<sup>34</sup>

### IV. DISCUSSION

11. At the outset, the Chamber notes that the Defence filed its First Bar Table Motion during the Prosecution phase of the case. As stated previously, the Defence informed the Chamber and the

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<sup>28</sup> Response, para. 14.

<sup>29</sup> Response, paras 16-21.

<sup>30</sup> Response, paras 22-24.

<sup>31</sup> Response, para. 25.

<sup>32</sup> Response, para. 26.

<sup>33</sup> Response, para. 27.

<sup>34</sup> Decision on the Prosecution’s Revised First Motion for Admission of Exhibits from the Bar Table, 3 February 2011, para. 11; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion to

parties that its new bar table motion would include those documents from the First Bar Table Motion that it intended to tender into evidence.<sup>35</sup> Therefore, the Chamber considers that the First Bar Table is subsumed in the present Motion.

12. Between 4 November 2011 and the filing of the Motion, the Chamber attempted to assist the Defence in the process of filing its bar table motion; it provided the Defence with ample time to prepare the Motion, extended deadlines, provided guidance on several occasions and encouraged it to seek – where possible – factual agreements on the content of documents so as to avoid a scenario wherein the Defence would unnecessarily flood the record with documents from the bar table.

13. The Chamber recalls that it expressed its concern over the amount of documents the Defence intended to tender from the bar table and the lack of a clear indication of what these documents are meant to establish on two separate occasions.<sup>36</sup> On 31 January 2012, the Chamber stressed that

[i]n cases before this Tribunal, where there is an enormous amount of potential evidentiary material that can be considered relevant and of probative value, the burden falls heavily on the parties to organise the presentation of their evidence in such a way that the Chamber is able to properly consider it. It is for the parties to carefully select the most relevant and probative documents and to provide a clear indication as to the documents' place within the wider case and the party's purpose in tendering them. Not doing this creates a practical and organisational problem for any responding parties and for the Chamber. More importantly, however, the party runs the risk that the Chamber will not be able to consider that piece of evidence in the way the party intended. [...] Considering the size of possible future bar table motions and the stage of the proceedings, the Chamber expects the parties to treat this issue as a priority.<sup>37</sup>

14. By its Motion, the Defence requests the admission into evidence of over 670 documents which amount to more than 12,400 pages in total. These documents, if admitted, would constitute a substantial part of the trial record. Due to the sheer number and volume of the documents submitted, the Chamber has decided to divide its decision on the Motion into separate decisions so as to afford the Defence sufficient notice of the Chamber's position with respect to each category of documents as soon as practically possible.

15. In the present Decision, the Chamber will deal with four categories of documents included in the Third Bar Table Chart.<sup>38</sup> It will first deal with the Defence request for the admission of the Notebooks allegedly written by Ratko Mladić ("Mladić Notebooks"). Then, it will consider the Defence's request for admission of (1) Republika Srpska: Sessions of the Assembly, SDS Deputies'

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Admit Documentary Evidence, 10 October 2006, para. 18; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on Prosecution Submission on the Admission of Documentary Evidence, 16 January 2008, para. 9.

<sup>35</sup> T. 15079-15080.

<sup>36</sup> T. 15450-15458, 16552-16554.

<sup>37</sup> T. 16552-16553.

<sup>38</sup> See Confidential Annex C to the Motion.

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Club, Serbian National Council, Government and War Presidency; (2) Sessions and Decisions/Statements of the SFRY Presidency and the FRY Supreme Defence Council and; (3) Sessions of the FRY Council for Coordination. The Chamber will issue further decisions on the remainder of the Motion.

a. Mladić Notebooks

16. The Defence requests the admission into evidence of 20 Mladić Notebooks.<sup>39</sup> The Chamber recalls that on 20 March 2012, after the filing of the Motion, the notebook bearing Rule 65 *ter* no. 5606 was admitted as D767 through Defence witness David Browne.<sup>40</sup>

17. With respect to Notebook 65 *ter* 5595, the Defence submits that:

This and the others [*sic*] notebooks written by Ratko Mladić are highly relevant to show the non-existence of a criminal goal or purpose amongst the Bosnian Serbs before April 1992 and after August 1995 and to prove who were the principle [*sic*] actors, suppliers and coordinators in relation to the Bosnian Serb side of the conflict, with a negligible role for the RDB and Jovica Stanišić. This supports the Defence position that any alleged assistance or support by the RDB or Jovica Stanišić to the Serb Forces in Bosnia was non-existent or insignificant, with other actors being the principle [*sic*] partners and suppliers. This document is therefore probative of the lack of any significant contribution to the (criminal) objective or the crimes of the Bosnian Serbs by the RDB or Jovica Stanišić.<sup>41</sup>

18. Subsequently, with respect to the 18 other Mladić Notebooks, the Defence stated “*Relevance and probative value: idem above*”.<sup>42</sup> The Prosecution indicated that it does not oppose admission of the Mladić Notebooks, and argues these notebooks strongly support its case against the Accused.<sup>43</sup>

19. The case law on the admission of documents from the bar table is very clear: a party must be able to demonstrate with clarity and specificity, where and how each document fits into its case. With respect to bar table motions, the *Karadžić* Chamber held that “the bar table should not be used as a means of tendering evidence of marginal relevance or probative value, inundating the record with material which is not absolutely necessary to prove or refute the charges in the Indictment. [...] [W]hile there may be a perception that the admission of evidence from the bar table saves some in-court time, it can in fact lengthen the proceedings due to the sheer volume of evidence thus admitted, particularly if the parties do not make absolutely clear in their submissions how each individual item of evidence assists in proving or refuting those charges”.<sup>44</sup> The requirement of

<sup>39</sup> The Notebooks bear the following Rule 65 *ter* nos: 5595-5612, 5053, and 5016.

<sup>40</sup> T. 18346-18347.

<sup>41</sup> Motion, Confidential Annex C, p. 117.

<sup>42</sup> Motion, Confidential Annex C, pp. 117-121.

<sup>43</sup> Prosecution Response, Confidential Annex A, pp. 426-427.

<sup>44</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Motion for Admission of Evidence from Bar Table: General Michael Rose, 29 October 2010, para. 9.

providing clarity and specificity with regard to each document becomes all the more pressing in the present instance. The translations of the 19 Mladić Notebooks add up to a total of over 4,660 pages of highly complex material which, in the absence of any context provided by witnesses, may not be interpreted correctly by this Chamber. The Chamber observes that the Defence has not indicated *any* specific instance in the notebooks which demonstrates with clarity and specificity where and how that notebook fits into the Defence case. The Defence has however provided a general statement of what information, according to the Defence, is *not* to be found in the Mladić Notebooks. In response, the Prosecution stated that the Mladić Notebooks support the Prosecution's case and referred to specific pages from them in support of their contention.<sup>45</sup>

20. The Chamber is mindful that the absence of references to the Accused, the RDB or other participants in the alleged JCE in personal notes allegedly written by one of the core members of that same JCE may be of significance to the Defence case. However, it also considers that a substantial amount of information in the Mladić Notebooks has no specific temporal or geographical overlap with, or any apparent connection to the crimes alleged in the Indictment and/or their alleged perpetrators. Many notebooks contain descriptions of meetings which have no prospect of being relevant to the present case. On the other hand, information on other meetings recorded in the notebooks *could* have some bearing on the present case. When deciding on materials submitted from the bar table, it is not for the Chamber to search those materials so that it may find portions that are potentially relevant to the tendering party; it is for the tendering party to do so. Thus, the Chamber stresses that if the Defence is to be successful in an application for the admission of particular portions of the Mladić Notebooks for which a negative inference is sought, it should indicate for each such portion where and why one would expect references to the Accused and/or the RDB, had the Accused been involved in the JCE as alleged, but where such information is in fact absent.

21. In sum, the Chamber is currently left without any indication from the tendering party as to what information is relevant in each of the Mladić Notebooks. While the Defence has indicated the broad relevance of the Mladić Notebooks as a whole, it has failed to show how specific sections of *each* notebook fit into its case, thereby rendering the Chamber unable to properly assess their relevance and probative value. By doing so, the Defence has not fulfilled the requirements for admission of documents from the bar table. Accordingly, the Chamber denies admission into evidence of the Mladić Notebooks, without prejudice.

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<sup>45</sup> Prosecution Response, Confidential Annex A, p. 426.

b. Sessions

22. The Defence requested the admission into evidence of a large number of documents from the following categories of materials found in Confidential Annex C to the Motion, namely: “Republika Srpska: Sessions of the Assembly, SDS Deputies’ Club, Serbian National Council, Government and War Presidency” (“Category 1”); “Sessions and Decisions/Statements of the SFRY Presidency and the FRY Supreme Defence Council” (“Category 2”); and “Sessions of the FRY Council for Coordination” (“Category 3”) (documents falling under Categories 1, 2, and 3 together referred to as “Sessions”).

23. As a general remark, the Chamber again stresses the importance of providing clarity and specificity as to how each document is relevant and fits into the Defence case when tendering documents from the bar table. The translations of the Sessions add up to a total of over 5,290 pages of material which, in the absence of any context provided by witnesses, may not be interpreted correctly by this Chamber. On 31 January 2012, the Chamber provided very clear examples of the concerns it foresaw in this respect:

[t]he Chamber notes that a document can be relied on to establish a number of different facts, only some of which are obvious at first glance. For example, a government report describing a series of events can be used to establish that a specific governmental institution had information that these events took place. However, the same document might be used to establish that the institution took action in response to the events. In addition, or alternatively, the report can be used to demonstrate that the series of events in fact took place. On the other hand, the tendering party might only have intended for the document to prove that the author of the report worked at the governmental institution at that time. The Chamber expects the party tendering such a document to indicate precisely which information contained in the document it seeks to rely on. When a document is tendered through a witness, the tendering party’s line of questioning and the witness’s testimony provide a certain amount of context to the document. When a document is bar tabled, however, it is for the tendering party to explain the context in detail.<sup>46</sup>

24. With respect to Sessions bearing Rule 65 *ter* nos 762, 4559, 1284, 1286, 1287, 1850, and 1288 (Category 1), the Defence generally argues that

[i]f the OTP maintain their case that a criminal purpose existed prior to April 1992 these discussions are highly relevant and probative of the defence case. [...] These discussions clearly demonstrate that the government is not engaged in or planning a criminal purpose as alleged by the OTP [...].<sup>47</sup>

For each of the aforementioned Sessions, the Defence argues that they indicate “the thinking of the Bosnian Serb leadership in relation to a number of [...] issues” at the end of 1991 or beginning of 1992. It categorises these issues as either political, military, or both, and very broadly describes what the issues are, such as the wider concepts of sovereignty, regionalisation and a unity of self-defence (65 *ter* nos 762, 4559, 1850), “the creation of a confederation of the sovereign people of

<sup>46</sup> T. 16653.

Bosnia and Herzegovina through negotiations” (65 *ter* no. 1284), “the creation of a Serbian Republic in Bosnia and Herzegovina” (65 *ter* no. 1287), and “the right of the peoples to self-determination, regionalisation and de-centralisation and the need for a system for self-defence” (65 *ter* no. 1288).<sup>48</sup> Additionally, for most of these documents the Defence adds a sparse description of their purported content. In its Response, the Prosecution argues that these Sessions show the contrary, namely “that the Bosnian Serb leadership pursued ethnic unity of the Serb people and divisions of institutions along ethnic lines”.<sup>49</sup>

25. The Chamber notes that the aforementioned documents are voluminous, that they have been tendered at a late stage of the proceedings, and that the sparse descriptions offered by the Defence offer little assistance as to which *specific* portions of these Sessions are relevant to its case, thereby rendering the Chamber unable to properly assess their relevance and probative value. The Defence similarly provided only very general information regarding the Sessions bearing Rule 65 *ter* nos 1292 (Category 1), 1D05301, 1376, 1380, 1382, 1D02585, 1392, 1424, 1425, 1426 (Category 2),<sup>50</sup> and 1442 (Category 3). By doing so, the Defence has not fulfilled the requirements for their admission from the bar table. Accordingly, the Chamber denies their admission into evidence, without prejudice. The Chamber refers to its earlier considerations regarding what is required from the tendering party when it submits materials from the bar table for which a negative inference is sought.<sup>51</sup>

26. With respect to the Sessions bearing Rule 65 *ter* nos 587, 586, 1295, 1345<sup>52</sup> and 1349 (Category 1), the Defence similarly provided only a general description or argument of how these voluminous documents are relevant and fit into its case, but additionally provided a minimum amount of page references in support of its general arguments. In the same manner, the Defence provided general information and sporadic page references regarding Sessions bearing Rule 65 *ter* nos 1D05305, 1D05307, 1384, 1395, 1D03598, 1398, 1399, 1D03600-1D03604, 1412, 1D03609,

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<sup>47</sup> Motion, Confidential Annex C, pp. 1-5.

<sup>48</sup> Ibid.

<sup>49</sup> Response, Confidential Annex A, pp. 300-303.

<sup>50</sup> With respect to Category 2, the Chamber recalls that the Defence requested to recall witness Manojlo Milovanović to, *inter alia*, cross-examine him on the documents contained in Category 2, which the Chamber took into consideration when granting the Defence’s request. Stanišić Motion Requesting the Recall of Witness JF-054, 29 September 2011, paras 13-14; Decision on Stanišić Motion Requesting the Recall of Witness Manojlo Milovanović, 22 November 2011. The Chamber recalls that the Defence did not tender the documents contained in Category 2 through Witness Manojlo Milovanović.

<sup>51</sup> *Supra* paras 19-21.

<sup>52</sup> See also T. 18594-18595, 18644-18645 where the Prosecution tendered an excerpt from 65 *ter* 1345 through Defence Witness Ivor Roberts, which was admitted as P3115. With regard to this specific document, the Chamber notes the Defence provided references to 4 of the 240 pages that this document comprises, Motion, Confidential Annex C, pp. 11-12.

1D03611,<sup>53</sup> 1413-1415, 1419, 1418, 1420, 1423, 1428 (Category 2), 1439, and 1443 (Category 3). With regard to these documents, the Chamber also considers that in the absence of a more specific showing regarding which portions of these voluminous Sessions are relevant and how they would fit into the Defence case, the Chamber finds that it is unable to properly assess their relevance and probative value and accordingly denies their admission into evidence, without prejudice.

27. With respect to the Sessions bearing Rule 65 *ter* nos 1351, 1353, 1354, 1356,<sup>54</sup> 1358, 1360, 1365, 1367, 1369, and 1371 (Category 1) – totalling some 1,900 pages and constituting a substantial part of the documents tendered in this category – the Defence has argued “*Relevance and probative value: idem above*”.<sup>55</sup> The Defence provided a similar type of description for Sessions bearing Rule 65 *ter* nos 1D02030, 1D03599, and 1D03606 (Category 2). While by these references the Defence indicated – at a bare minimum – the broad relevance of these Sessions to the Defence case, it failed to show with any degree of specificity how each of these Sessions fits into its case, thereby rendering the Chamber unable to properly assess their relevance and probative value. By doing so, the Defence has not fulfilled the requirements for their admission from the bar table. Accordingly, the Chamber denies their admission into evidence, without prejudice.

28. With respect to documents bearing Rule 65 *ter* nos 1723-1725, 2164, 1736, 2165, 1675, 1350, 1352, 1355, 1357, 1359, 1364, 1366, 1368, 1370, and 1372 (Category 1), as well as 1D05302, 1D05303, 1D05304, 1D05306, 1416, 1417, 1421, 1422, and 1427 (Category 2), the Chamber finds that the Defence has shown with sufficient specificity (i) the relevance and probative value of these documents and (ii) how they would fit in the Defence case. The Chamber notes that some of these documents had been disclosed to the Defence only after the filing of the Defence Rule 65 *ter* exhibit list and therefore do not appear on it.<sup>56</sup> However, the Prosecution does not object to their admission and has been provided ample opportunity to review them and provide detailed comments on their proposed admission. Therefore, the Chamber decides, *proprio motu*, to add these exhibits to the Defence Rule 65 *ter* exhibit list. In sum, the Chamber is satisfied that the aforementioned documents are probative and relevant and allows their admission from the bar table.

29. Having carefully analysed the documents contained in Categories 1, 2, and 3, the Chamber is fully aware of the Defence position that the admitted documents fit into a larger picture, and that

<sup>53</sup> With respect to 1D03611, the Chamber notes that small portions of this 116 page document were put to Defence witness Mladen Karan, and that the parties were urged by the Chamber to indicate which portions of this document were relevant. T. 17762-17769. Subsequently, the document was marked for identification as D00753 pending the present Decision, T. 18783, 18784.

<sup>54</sup> The Chamber notes that only 5 of the 216 pages of document bearing Rule 65 *ter* 1356 appear to have been translated.

<sup>55</sup> Motion, Confidential Annex C, pp. 13-18.

<sup>56</sup> These are: 1D05302, 1D05304, and 1D05306.

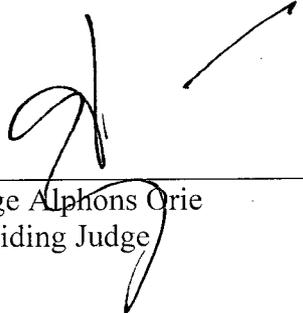
this picture may be incomplete without the information contained in documents currently denied without prejudice. However, as stated previously, the burden is on the Defence to show with clarity and specificity which parts of these documents are relevant and probative, and where and how they each fit in the Defence case.

**V. DISPOSITION**

30. For the foregoing reasons, the Chamber **GRANTS** the Motion **IN PART**, and

- (i) **ADMITS** into evidence documents bearing Rule 65 *ter* nos 1723-1725, 2164, 1736, 2165, 1675, 1350, 1352, 1355, 1357, 1359, 1364, 1366, 1368, 1370, 1372, 1D05302, 1D05303, 1D05304, 1D05306, 1416, 1417, 1421, 1422, and 1427;
- (ii) **DENIES** admission into evidence of documents bearing Rule 65 *ter* nos 5595-5605, 5053, 5016, 5607-5612, 762, 4559, 1284, 1286, 1287, 1850, 1288, 1D05301, 1376, 1380, 1382, 1D02585, 1392, 1D03601, 1413-1415, 1424, 1425, 1426, 1442, 587, 586, 1292, 1295, 1349, 1345, 1D05305, 1D05307, 1384, 1395, 1D03598, 1398, 1399, 1D03600, 1D03602, 1D03603, 1D03604, 1412, 1D03609, 1D03611, 1419, 1418, 1420, 1423, 1428, 1439, 1443, 1351, 1353, 1354, 1356, 1358, 1360, 1365, 1367, 1369, 1371, 1D02030, 1D03599, and 1D03606, without prejudice;
- (iii) **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the number so assigned; and
- (iv) **DECIDES** to issue further Decisions on the Motion in due course.

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



Judge Alphons Orie  
Presiding Judge

Dated this twenty-third day of May 2012  
At The Hague  
The Netherlands

[Seal of the Tribunal]