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28 August 2012

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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: 28 August 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 28 August 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**SECOND DECISION ON STANIŠIĆ DEFENCE SECOND
ADDITIONAL MOTION FOR ADMISSION OF DOCUMENTS
INTO EVIDENCE FROM THE BAR TABLE**

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 AND SUBMISSIONS OF THE PARTIES

1. On 24 May 2012, the Chamber set 4 June 2012 at noon as the deadline for submitting any further evidentiary motions for the Defence case.¹ On 4 June 2012 at 1:24 p.m., the Stanišić Defence filed its Second Additional Motion for Admission of Documents into Evidence from the Bar Table, requesting the admission into evidence of 152 documents from the bar table (“Motion”). On 7 June 2012, the Chamber summarily dismissed the Motion (“Oral Decision”).² On 11 June 2012, the Stanišić Defence filed a motion for reconsideration of the Chamber’s Oral Decision or, in the alternative, certification for leave to appeal it.³ On 26 June 2012, by means of an informal communication, the Chamber reconsidered its Oral Decision and reinstated the Motion. On 28 June 2012, the Defence filed a corrigendum correcting the confidential status of certain documents as well as the description of another document, and withdrawing the request for the admission of three documents contained in the Motion (“Corrigendum”).⁴ On 10 July 2012, the Prosecution filed its Response (“Response”).⁵ The Simatović Defence did not respond to the Motion.

2. In the Motion, the Stanišić Defence (“Defence”) tenders 152 documents, and submits that as the Simatović Defence case has come to an end, it was able to further assess whether there were any outstanding issues which could be addressed by documents in its possession.⁶ The Defence submits that “[a] large portion of the documents the Defence is currently seeking to tender have only been located by the Defence after the filing of its previous Bar Table Motions, by reviewing vast amounts of (recent) Prosecution disclosures”.⁷ The Defence submits that all documents are probative and relevant, and should be admitted from the bar table pursuant to Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”).⁸

3. In its Response, the Prosecution provides general comments on the arguments of the Defence regarding certain documents relating to the 1995 UN hostage situation, and argues that the

¹ T. 19805.

² T. 20138-20139.

³ Urgent Stanišić Defence Motion for Reconsideration or in the Alternative Request for Leave to Appeal the Trial Chamber’s Decision of Stanišić Second Additional Motion for Admission of Documents into Evidence Through the Bar Table, 11 June 2012.

⁴ Stanišić Corrigendum to “Second Additional Motion for Admission of Documents into Evidence through the Bar Table” and “Motion for Admission of Documents into Evidence through the Bar Table of Documents that were Denied Admission Without Prejudice” both filed on 4 June 2012, 28 June 2012, paras 3-5. The documents withdrawn by the Defence are: 1D05527, 1D05506, and 1D05553

⁵ Prosecution Response to Stanišić Additional Motion for Admission of Documents into Evidence Through the Bar Table with Confidential Annex A, 10 July 2012.

⁶ Motion, para. 6.

⁷ Ibid.

⁸ Motion, para. 9.

content of said documents do not support the conclusions that the Defence seeks to draw from them.⁹

II. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law as set out in its Decision of 23 May 2012.¹⁰

III. DISCUSSION

5. On 28 August 2012, the Chamber issued its first Decision on the Motion, which dealt with 29 of the proposed 152 documents.¹¹ Three of the 152 documents were withdrawn by the Defence.¹² In the present Decision, the Chamber will address the remaining 120 documents of the Motion. Overall, the Chamber notes that the Prosecution does not object to the admission of the majority of documents contained in the Motion, but instead disputes the conclusions and negative inferences the Defence seeks to draw from them.

6. With respect to the documents bearing Rule 65 *ter* numbers 1D05442, 1D05443, 1D05495, 1D05496, 1D05444, 1D05445, 1D05451, 1D05446, 1D05447, 1D05448, 1D05449, 1D05250, 1D05570, 1D05479, 1D05499, 1D05500; 1D05571, 1D05581, 1D05572, 1D05576, 1D05577; 1D05564, 1D05565, 1D05515, 1D05582, 1D05558,¹³ 1D02619, 1D02621, 1D02624, 1D05516, 1D02331, 1D05518, 1D05552, 1D05554; 1D05557, 1D05505, 1D05514, 1D05517,¹⁴ 1D05566, 01999, 1D05567, 1D05454, 1D05523, 1D05526, 1D05529,¹⁵ 1D05531, 1D05532, 1D05533, 1D05575, 1D01270, 1D05534, 1D05535, 1D05537, 1D05541, 1D05543, 1D05544, 1D05545, 1D01259, 1D05559, 1D05560, and 1D05562,¹⁶ the Chamber notes that the Prosecution, while disputing their purported relevance as characterised by the Defence, does not object to their

⁹ Response, paras 12-17; Response, Confidential Annex A, pp. 1-15.

¹⁰ First Decision on Stanišić Defence Bar Table Motion of 17 February 2012 (“First Bar Table Decision”), paras 9-10.

¹¹ First Decision on Stanišić Defence Second Additional Motion for Admission of Documents into Evidence from the Bar Table, 28 August 2012.

¹² Corrigendum, para. 5.

¹³ With respect to documents bearing Rule 65 *ter* nos 1D05582 and 1D05588, which are transcripts of two intercepts, the Chamber notes that the Defence had originally only provided the parties with the BCS recordings of said intercepts, see Confidential Annex B (CD-ROM) to the Motion. For the purposes of admission of these documents into evidence from the bar table, the Chamber has only considered the transcripts as uploaded in eCourt under 1D05582 and 1D05558.

¹⁴ The Chamber notes that the Prosecution argues this document has little probative value due to its “inflammatory nature”, and will take this into consideration when ultimately assessing the document’s weight in the context of the trial record.

¹⁵ The Chamber notes the Prosecution submission that document bearing Rule 65 *ter* no. 1D05529 is the original version of the document, not a copy from a book, as the Defence submits in its Motion. See Response, Confidential Annex A, pp. 66-67.

¹⁶ The Chamber notes that the Defence has not uploaded BCS versions of documents bearing Rule 65 *ter* nos 1D05559, 1D05560, and 1D05562.

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admission. 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, and will allow their admission into evidence from the bar table.

7. With respect to the document bearing Rule 65 *ter* number 1886, a book entitled “Jović: last days of the SFRY”, the Chamber notes that the Defence, in line with the Chamber’s instruction, has indicated the relevant pages and requested them to be admitted into evidence as separate documents. These 37 excerpts comprise the sixth category of documents in Confidential Annex A to the Motion.¹⁷ The Chamber notes that on 17 July 2012, the Defence uploaded document bearing Rule 65 *ter* no. 1886.2, which appears to bundle the pages corresponding to the 37 excerpts into one document. It observes, however, that the B/C/S version of Rule 65 *ter* no. 1886.2 and the English translation thereof do not fully correspond to the portions described in Confidential Annex A to the Motion, as some pages have been omitted¹⁸ and some pages have been uploaded twice.¹⁹ Lastly, the Chamber notes that there appears to be a two-page overlap with exhibit P1027, which contains extracts of the same book tendered through Prosecution witness Reynaud Theunens. The Prosecution indicates that, while disputing the purported relevance of these excerpts as characterised by the Defence, it does not object to their admission. The Chamber finds that the Defence has shown with sufficient specificity (i) the relevance and probative value of these excerpts and (ii) how they would fit in the Defence case, and will allow their admission into evidence from the bar table. The Chamber will admit the excerpts comprising the sixth category of documents in Confidential Annex A to the Motion, and allows the Defence to upload them into eCourt as one document, accompanied by a corresponding English translation, bearing Rule 65 *ter* no. 1886.3; this document will be admitted once it has been uploaded into eCourt.

8. The Chamber notes that for document 1D05561, an “official record by the CRDB Tuzla dated 25 June 1993”, the Defence has only provided the Chamber with an English translation of this document. While the unavailability of a B/C/S original has not been a reason to deny admission of a document *per se*,²⁰ the Chamber notes that many words in 1D05561 have been marked as “illegible”. It further notes the Prosecution comment that these words *are* legible in the B/C/S version (which was not provided to the Chamber).²¹ The Chamber therefore finds that it is unable to

¹⁷ Motion, Confidential Annex A, pp. 83-125. Prosecution Response, Confidential Annex A, documents 116-152.

¹⁸ Pages 214, 251, 323-324, for instance, are missing from the BCS version of document bearing Rule 65 *ter* no. 1886.2.

¹⁹ See, for example, pp. 216, 330 of the B/C/S version of document bearing Rule 65 *ter* no. 1886.2.

²⁰ See, for example, the Chamber’s decision regarding documents bearing Rule 65 *ter* nos 1D05559, 1D05560, and 1D05562 at para. 6 and fn. 13 of this Decision.

²¹ Response, Confidential Annex A, p. 62.

verify whether this document is sufficiently probative to be admitted into evidence, and denies its admission from the bar table.

9. With respect to document bearing Rule 65 *ter* no. 1D05556, the Chamber notes that it is a one-page facsimile with what appears to be a handwritten cover page, along with a 39-page annex consisting of a compilation of various documents. The Defence has discussed only a small portion of said annex.²² Similarly, with respect to document bearing Rule 65 *ter* no. 1D05548, the Chamber notes that this is a lengthy 38-page intercept, while the Defence has discussed the relevance of only three pages thereof.²³ The Chamber notes that the Prosecution, while not objecting to the admission *per se* of these documents, has raised these discrepancies and questioned their relevance and probative value in this context.²⁴ While the Chamber has generally encouraged the parties to submit extracts of large documents where possible, it also considers that extracting the relevant pages from these two documents may not sufficiently contextualize them. Therefore, the Chamber in this instance admits these two documents in their entirety, finding that the Defence has shown with sufficient specificity (i) the relevance and probative value of these two documents and (ii) how they fit in the Defence case.

10. The Chamber notes that for a number of documents contained in the Motion, the Prosecution objects to their admission on grounds of authenticity. It submits that for documents bearing Rule 65 *ter* nos 1D05573, 1D05574, 1D05578, 1D05504, and 1D05536, it has been provided with insufficient information regarding their origin. The Defence acknowledges that, for a number of these documents, it is in the process of determining their origin, but argues that they are nonetheless sufficiently probative and relevant to be admitted from the bar table.²⁵ In this respect, the Chamber recalls its earlier finding that authenticity is one of the factors to be considered when assessing the reliability of evidence to be admitted, and that reliability is a component part of the probative value of a piece of evidence.²⁶ It noted that, “[t]o require absolute proof of a document’s authenticity before it could be admitted would be to require a far more stringent test than the standard envisioned by Sub-rule 89 (C).”²⁷ The Chamber finds that each of the aforementioned documents, on its face, bears sufficient indicia of authenticity and reliability to meet the standard for admission from the bar table. The Chamber further finds that the Defence has shown with sufficient specificity (i) the relevance and probative value of these documents and (ii) how they

²² Motion, Confidential Annex A, pp. 51-52.

²³ Motion, Confidential Annex A, pp. 52-53.

²⁴ Response, Confidential Annex A, pp. 62, 63-64.

²⁵ Motion, para. 9.

²⁶ See Second Decision on Stanišić Bar Table Motion of 17 February 2012, 23 May 2012, para. 7.

²⁷ *Ibid.*

would fit in the Defence case. It encourages the Defence to provide the parties with any information obtained following its further investigations regarding the origin of these documents.

11. In relation to the aforementioned document bearing Rule 65 *ter* no. 1D05536, the Chamber takes note of the Prosecution's objection that it relates to events in Kosovo in 1998, which is outside the Indictment period.²⁸ It also observes that thus far, all parties have introduced evidence that relates to the events in Kosovo in 1998, including the Prosecution.²⁹ The Chamber will take the submissions of the parties on these documents into account when weighing this type of evidence.

12. The Chamber observes that documents bearing Rule 65 *ter* nos 1D05497, 1D05478, 1D05555, 1D05510, 1D05511, and 1D05507 contain redactions, and that no unredacted versions have been provided thus far. The Chamber has previously provided general guidance regarding the tendering of redacted documents.³⁰ The Chamber is not satisfied that these documents can be admitted in their current, redacted, form, and denies their admission into evidence from the bar table. With respect to document 1D05538, the Chamber notes that the Defence had originally only provided the Chamber and the Prosecution with a redacted copy,³¹ and that on 12 July 2012, the Defence uploaded an unredacted copy and translation of this document in eCourt. The Chamber also notes that the Prosecution did not object to the admission of the redacted copy of this document. The Chamber finds that the Defence has shown with sufficient specificity (i) the relevance and probative value of this document and (ii) how it would fit in the Defence case, and will allow admission of the unredacted copy of 1D05538 into evidence from the bar table.

13. With respect to the document bearing Rule 65 *ter* no. 1D05508, the Chamber observes that the Defence had originally erroneously provided the Prosecution and the Chamber with a copy of document bearing Rule 65 *ter* no. 1D05507 (both in its Confidential Annex B to the Motion, as well as in eCourt), which the Prosecution noted in its Response.³² In this respect, the Chamber notes the Defence's informal communication of 20 July 2012 to the Parties and to the Chamber stating "the material pertaining to Stanišić Second Additional Defence Motion for admission of documents into evidence through the bar table, dated 4 June 2012 has been uploaded and released in E-court." It further notes that on 17 July 2012, the B/C/S version and corresponding translation of the document bearing Rule 65 *ter* no. 1D05508, as originally uploaded, have been removed from eCourt, and

²⁸ Response, Confidential Annex A, pp. 70-71.

²⁹ See eg. P523 and P524 (documents tendered by Prosecution through witness JF-048); D218 (document from Prosecution 65 *ter* exhibit list, tendered by Simatović Defence through witness JF-030). In most cases, the Prosecution has introduced such evidence solely for the purpose of challenging the credibility of witnesses. See e.g. discussion regarding P1709 at T. 10348-10351, 10376-10382, as well as exhibit P3045 at T. 14891-14905, 14931-14933.

³⁰ Fifth Decision on Stanišić Defence Bar Table Motion of 17 February 2012, 24 May 2012, para. 9.

³¹ See Motion, Confidential Annex B (CD-ROM).

have been replaced with what is apparently the correct B/C/S version and corresponding English translation thereof. The Chamber concludes that the Prosecution did not have this document available when it provided its Response,³³ and notes with concern that the Defence did not inform the Chamber when it replaced the document bearing Rule 65 *ter* no. 1D05508 in eCourt. As the Chamber has neither been provided with a source of the document nor was the Prosecution able to comment on its admissibility in its Response, the Chamber denies admission of this document into evidence from the bar table.

14. With respect to document bearing Rule 65 *ter* no. 1D02657, the Chamber notes that the original B/C/S version and its English translation concern two different documents, which the Prosecution also indicated in its Response.³⁴ The Chamber denies admission into evidence of this document from the bar table.

15. With respect to documents bearing Rule 65 *ter* nos 1D05501 and 1D05502, the Chamber notes that the Defence has described these documents as being “undated”.³⁵ However, the documents themselves bear two different dates; one date is displayed on top of the first page, and another date is displayed at the bottom of the remainder of the pages. The date on the first page for each of these documents states “Friday, July 2, 2012”. In addition to referring to a non-existent day and date combination, this day postdates the filing of the Motion. The date on the bottom of both of these documents is “September 26, 1997”, which is beyond the Indictment period (while the topics discussed in these documents allegedly occurred during the Indictment period). The Chamber is not satisfied that these documents are sufficiently probative to be admitted from the bar table in their current form, and denies their admission into evidence.

16. The Chamber notes that document 1D05580 is an excerpt, which the Defence indicates originates from a “book by KARADŽIĆ”.³⁶ The Chamber observes that the B/C/S original is to a large extent illegible, and that the English translation appears to be a poorly copied excerpt from a translation of the entire book. It further notes the Prosecution’s objection to the admission of this document, in that it has been unable to determine its origin, and that the Defence did not provide further information other than what is described in Confidential Annex A to the Motion.³⁷ The Chamber is not satisfied that the probative value of this document is sufficient to warrant its

³² Response, Confidential Annex A, pp. 43-44.

³³ Ibid.

³⁴ Response, Confidential Annex A, p. 77.

³⁵ Motion, Confidential Annex A, pp. 13-14.

³⁶ Motion, Confidential Annex A, p. 29.

³⁷ Motion, Confidential Annex A, pp. 29-30; Response, Confidential Annex A, p. 37.

admission into evidence from the bar table at this late stage of the proceedings. Consequently, it denies its admission into evidence.

17. With respect to document bearing Rule 65 *ter* no. 1D05542, the Chamber notes that the Defence has provided the Chamber and the Parties with a partial translation of this document. Moreover, the B/C/S original of this document is largely illegible. The Chamber is unable to properly assess the relevance and probative value of this document, and denies its admission into evidence from the bar table.

18. Lastly, the Chamber notes that document 1D05568 has already been admitted as P1416, and therefore declares the request for admission of this document moot.

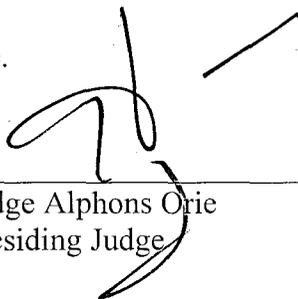
IV. DISPOSITION

19. For the foregoing reasons, pursuant to Rule 89 (C), the Chamber **GRANTS** the Motion **IN PART**, and

- i. **ADMITS** into evidence documents bearing Rule 65 *ter* numbers 1D05442, 1D05443, 1D05495, 1D05496, 1D05444, 1D05445, 1D05451, 1D05446, 1D05447, 1D05448, 1D05449, 1D05250, 1D05570, 1D05479 (under seal), 1D05499, 1D05500; 1D05571, 1D05581, 1D05572, 1D05576, 1D05577; 1D05564, 1D05565, 1D05515, 1D05582, 1D05558, 1D02619, 1D02621, 1D02624, 1D05516, 1D02331, 1D05518, 1D05552, 1D05538 (under seal), 1D05554, 1D05557, 1D05505, 1D05514 (under seal), 1D05517, 1D05566 (provisionally under seal), 01999, 1D05567, 1D05454, 1D05523 (provisionally under seal), 1D05526, 1D05529 (provisionally under seal), 1D05531, 1D05532, 1D05533, 1D05575, 1D01270, 1D05534, 1D05535, 1D05537 (under seal), 1D05541, 1D05543, 1D05544, 1D05545, 1D01259, 1D05559, 1D05560, 1D05562, 1D05556, 1D05548, 1D05573, 1D05574, 1D05578, 1D05504 (provisionally under seal), and 1D05536;
- ii. **INSTRUCTS** the Defence, in accordance with paragraph 7 of this Decision, to upload into eCourt document bearing Rule 65 *ter* no. 1886.3, comprising the sixth category of documents in Confidential Annex A to the Motion;
- iii. **ADMITS** into evidence document bearing Rule 65 *ter* no 1886.3, once it has been uploaded into eCourt;

- iv. **DENIES** admission into evidence of document bearing Rule 65 *ter* nos 1D05561, 1D05497, 1D05478, 1D05555, 1D05510, 1D05511, 1D05507, 1D05508, 1D02657, 1D05501, 1D05502, 1D05580, and 1D05542;
- v. **DECLARES** the Motion **MOOT** in relation to document bearing Rule 65 *ter* no. 1D05568;
- vi. **DIRECTS** the Defence to upload the admitted documents into eCourt, and to advise the Registry and the parties once these have been uploaded; and
- vii. **REQUESTS** the Registry to assign exhibit numbers to the documents admitted and inform the parties and the Chamber of the numbers so assigned;

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-eighth day of August 2012
At The Hague
The Netherlands

[Seal of the Tribunal]