



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-02-54-T  
Date: 23 September 2004  
Original: ENGLISH

**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge O-Gon Kwon  
Judge Iain Bonomy

**Registrar:** Mr. Hans Holthuis

**Decision:** 23 September 2004

**PROSECUTOR**

v.

**SLOBODAN MILOŠEVIĆ**

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**SECOND DECISION ON ADMISSIBILITY OF  
SUPREME DEFENCE COUNCIL MATERIALS**

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**Office of the Prosecutor:**

Ms. Carla Del Ponte  
Mr. Geoffrey Nice

**The Accused:**

Mr. Slobodan Milošević

**Court Assigned Counsel:**

Mr. Steven Kay, QC  
Ms. Gillian Higgins

**Amicus Curiae:**

Prof. Timothy McCormack

**THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”),

**BEING SEISED** of a confidential “Prosecution’s Analysis and Interpretation of Supreme Defence Council Related Documents and Other Material Described in the Prosecution Motion dated 29 January 2004”, filed by the Prosecution on 17 February 2004 (“Relevance Submission”),<sup>1</sup> in which it made submissions, *inter alia*, with respect to the relevance of the Federal Republic of Yugoslavia Supreme Defence Council stenographic notes and minutes (“SDC materials”) in Annex I thereto, entitled “Analysis, relevance and interpretation of the records of the sessions of the Supreme Defence Council”,

**NOTING** the following:

- (1) the Trial Chamber ordered, in its confidential “Decision on Serbia and Montenegro’s Request for Protective Measures Pursuant to Rule 54bis”, issued 30 July 2003 (“Fourth Decision”), (a) the Government of Serbia and Montenegro (“Serbia and Montenegro”) to produce to the Prosecution the SDC minutes and (b) the Prosecution to maintain on a confidential basis the portions of the minutes for which Serbia and Montenegro had sought protection and to use them in proceedings before the Trial Chamber only during closed session, transcripts of which were to be sealed and not disclosed to the public;
- (2) the Trial Chamber ordered, in its confidential “Ninth Decision on Applications Pursuant to Rule 54bis of Prosecution and Serbia and Montenegro”, issued 15 October 2003 (“Ninth Decision”), (a) Serbia and Montenegro to produce to the Prosecution the SDC stenographic notes and (b) the Prosecution to maintain on a confidential basis the portions of the stenographic notes for which Serbia and Montenegro had sought protection and to use them in proceedings before the Trial Chamber only during closed session, transcripts of which were to be sealed and not disclosed to the public; and
- (3) confidential “Order Regarding the Supreme Defence Council Materials”, issued 16 July 2004, in which the Trial Chamber ordered (a) the Registry of the International Tribunal to furnish the Accused, his legal associates, the *Amici Curiae*, and the Prosecution with copies of the “protected version” of the SDC materials and (b) the Registry, the Accused, his legal associates, the *Amici Curiae*, and the Prosecution to maintain on a confidential basis the portions of the SDC materials that had been granted protection and to use them in

proceedings before the Trial Chamber only during closed session, transcripts of which were to be sealed and not disclosed to the public,

**NOTING** the Trial Chamber's confidential and public versions of its "First Decision on Admissibility of Supreme Defence Council Materials", issued 11 June 2004 and 23 September 2004 respectively,<sup>2</sup>

- (1) admitting into evidence the SDC materials with respect to the 41<sup>st</sup> and 43<sup>rd</sup> sessions;
- (2) ordering that portions of the SDC materials with respect to the 41<sup>st</sup> and 43<sup>rd</sup> sessions that had already been granted protective measures were to be admitted into evidence on a confidential basis; and
- (3) noting that the Trial Chamber would issue its decision with respect to the remainder of the SDC materials in due course,

**NOTING** that, in addition to the SDC materials with respect to the 41<sup>st</sup> and 43<sup>rd</sup> sessions, the following SDC materials have already been admitted into evidence through Witness Zoran Lilić:<sup>3</sup>

- (1) exhibit 469, tab 8 – minutes from SDC seventh session, held 10 February 1993;
- (2) exhibit 469, tab 9 – minutes from SDC fifth session, held 9 June 1998;
- (3) exhibit 469, tab 12 – minutes from SDC second session, held 8 and 10 July 1992;
- (4) exhibit 469, tab 13 – minutes from SDC fifth session, held 7 August 1992;
- (5) exhibit 469, tab 14 – minutes from SDC sixth session, held 9 December 1992;
- (6) exhibit 469, tab 16 – minutes from SDC second session, held 10 November 1997;
- (7) exhibit 469, tab 24 – minutes from SDC sixth session, held 4 October 1998;
- (8) exhibit 469, tab 26 – minutes from SDC ninth session, held 23 March 1999; and
- (9) exhibit 469, tab 29 – minutes from SDC seventh session, held 24 November 1998,<sup>4</sup>

**CONSIDERING** that the remaining portions of the SDC materials are relevant to the current proceedings,

**NOTING** that the Accused and *Amici Curiae* have not responded to the Relevance Submission,

**NOTING** that (1) certain portions of the SDC materials have been granted protective measures by the Fourth and Ninth Decisions pursuant to Rule 54*bis* of the Rules of Procedure and Evidence of

<sup>1</sup> The Relevance Submission was initially provided to the Trial Chamber, Accused, and *Amici Curiae* as an unfiled document, but was subsequently filed.

<sup>2</sup> See also this Decision for a more detailed procedural history.

<sup>3</sup> Witness Lilić testified on 17-19 June and 9 July 2003 (T. 22548, *et seq.*).

<sup>4</sup> The numbering for the sessions of the SDC was apparently re-started on 28 October 1997, during the tenure of the Accused as FRY President.

the International Tribunal (“Rules”) and (2) these portions (as indicated in the Fourth and Ninth Decisions and the “protected version” of the SDC materials<sup>5</sup>) shall therefore be admitted into evidence on a confidential basis,

**PURSUANT TO** Rules 54 and 89 of the Rules,

**HEREBY ORDERS** as follows:

- (1) The remaining portions of the SDC materials shall be admitted into evidence, excluding those that have already been admitted.
- (2) The portions of the SDC materials that have already been granted protective measures (pursuant to the Fourth and Ninth Decisions) shall be admitted into evidence on a confidential basis.

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



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Patrick Robinson  
Presiding

Dated this twenty-third day of September 2004  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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<sup>5</sup> See confidential “Order Regarding the Supreme Defence Council Materials”, issued 16 July 2004.