

**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-04-74-T
Date: 23 August 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 23 August 2007

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
Berislav PUŠIĆ**

PUBLIC

DECISION ON ADMISSION OF DOCUMENTARY EVIDENCE (UN DOCUMENTS)

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“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 (“Tribunal”),

SEIZED OF the “Prosecution Motion for Admission of Documentary Evidence (UN Documents)” filed by the Office of the Prosecutor (“Prosecution”) on 29 May 2007 (“Motion”), in which the Prosecution requests the Chamber to admit 47 pieces of evidence from the UN records (“Proposed Exhibits”) under Guideline 6 as amended by the “Decision Amending the Decision on the Admission of Evidence of 13 July 2006”, rendered on 29 November 2006 (“Guideline 6”),

NOTING the “Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence (UN Documents)”, filed by Counsel for the Accused Prlić, Stojić, Praljak, Petković, Ćorić and Pušić (“Defence”) on 2 July 2007 (“Joint Response”), including in annex the general objections of the Defence and the specific allegations of various Defence Counsel and in which the Defence requests the Chamber to deny the admission of the Proposed Exhibits,

NOTING the oral decision of the Chamber of 7 June 2007 in which it authorised the Prosecution to file a reply to the Joint Response,¹

NOTING the “Prosecution Reply to Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence (UN Documents)”, filed by the Prosecution on 11 July 2007 (“Reply”), in which it responds to the objections raised by the Defence in the Joint Response and requests the Chamber to admit the Proposed Exhibits,

CONSIDERING that in support of the Motion, the Prosecution submits in particular that the Proposed Exhibits are relevant to this case insofar as they directly relate to the Amended Indictment of 16 November 2005 (“Indictment”) to the extent that they are evidence of the international community’s awareness in respect of the events covered by the Indictment and of the pressure that the United Nations and international community exerted on the leaders and authorities of Croatia and Herceg-Bosna,²

¹ French transcript pp. 19749 and 19751.

² Motion, para. 4.

CONSIDERING that the Prosecution also argues that in view of the time constraints imposed in this case, it does not plan to call *viva voce* witnesses to present the Proposed Exhibits,³

CONSIDERING that the Prosecution finally argues that the Proposed Exhibits comply with the requirements set out in the guidelines of the Chamber governing the admissibility of evidence insofar as they are relevant and probative and that their source, i.e. the official records of the UN, attest to their reliability,⁴

CONSIDERING that in its Joint Response, the Defence submits in particular that the simple fact that the Proposed Exhibits come from the UN records does not necessarily imply that their content is reliable and that, as such, the Defence should have the opportunity to test them under Article 21 (4) (e) of the Statute of the Tribunal,⁵

CONSIDERING that the Defence further submits that by attempting to have the Proposed Exhibits admitted without the Defence having the opportunity to test them, the Prosecution seeks to have the documents accepted, so that in practical terms they would constitute evidence with the same status as facts adjudicated by judicial notice,⁶

CONSIDERING that the Defence further argues that the Prosecution failed to justify, contrary to the requirements of Guideline 6 (a) (v) and (iv), the reasons why the documents were not presented through witnesses who have already appeared and could not be presented through future witnesses,⁷

CONSIDERING that several Defence teams oppose the admission of certain Proposed Exhibits by disputing the Prosecution's interpretation of them,⁸

CONSIDERING that several Defence teams oppose the admission of certain Proposed Exhibits by alleging that their reliability and probative value are diminished by the fact that these Exhibits are based on information obtained by hearsay,⁹

CONSIDERING that the Petković Defence opposes the admission of Exhibits P 00854, P 01391, P 03990, P 07225, P 07917 and P 08279 because the Prosecution did not provide their translation in the language of the Accused Petković,

³ Motion, Annex 1, p. 1.

⁴ Motion, para. 2.

⁵ Joint Response, para. 5.

⁶ Joint Response, para. 7.

⁷ Joint Response, para. 11.

CONSIDERING that several Defence teams oppose the admission of Exhibits P 00205, P 00232, P 00233, P 00386, P 00387, P 00406, P 00411, P 00547, P 00659 and P 00930 insofar as they deal with facts which fall outside the time period material to the Indictment,

CONSIDERING that in the Reply, the Prosecution argues that in its “Decision on Admission of Evidence relating to Prozor Municipality” of 20 February 2007, the Chamber already pointed out that time constraints may justify the presentation of documents by way of written motion,¹⁰

CONSIDERING that the Prosecution further argues that according to Tribunal case-law and practice the UN is generally considered as a sufficiently reliable and authentic source of evidence,¹¹

CONSIDERING that the Prosecution argues that the admission of evidence obtained by hearsay is consistent with Tribunal practice,¹²

CONSIDERING that the Prosecution submits that the Chamber assesses the probative value of evidence only at the end of the trial and not when deciding on the admissibility of this evidence,¹³

CONSIDERING that the Prosecution argues, contrary to the arguments of the Defence, that the Proposed Exhibits dating from 1991 and 1992 are relevant to the Indictment insofar as they establish the context in which the Chamber will have to assess the *mens rea* of the Accused,¹⁴

CONSIDERING that the Chamber recalls its previous decisions in which it set out the principles for the admissibility of evidence, in particular the “Decision on the Admission of Evidence” of 13 July 2006, and the “Decision Amending the Decision on the Admission of Evidence of 13 July 2006” of 29 November 2006 and the “Decision on Admission of Documentary Evidence relating to Prozor Municipality” of 20 February 2007,

CONSIDERING that the Chamber first notes that the Prosecution has satisfied the criteria of items (a) (i), (ii), (iii), (iv) and (vii) of Guideline 6 by providing information related to the

⁸ Joint Response, Annexes 1, 2, 3, 4 and 5.

⁹ *Ibidem*.

¹⁰ Reply, para. 4.

¹¹ Reply, para. 7.

¹² Reply, para. 14.

¹³ Reply paras. 17, 18 and 19.

number, title, and description of the documents, their source, the relevant paragraphs of the Indictment, the witnesses who have already appeared in the case and the documents admitted which deal with the same paragraphs of the Indictment and the importance of the documents to the case,

CONSIDERING that the Chamber next recalls that, pursuant to its decision of 7 March 2007,¹⁵ the time constraints as alleged by the Prosecution in the Motion may justify the presentation of a document for admission by way of written motion and that the Prosecution has satisfied item (a) (vi) of Guideline 6,

CONSIDERING that the Chamber further recalls that criteria (v) of Guideline 6 referred to by the Defence was deleted by the “Decision Amending the Decision on the Admission of Evidence of 13 July 2006” of 29 November 2006,

CONSIDERING that the Chamber next finds that Exhibits P 00205, P 00752, P 00932, P 01462, P 01983, P 02254, P 05047, P 05091, P 06697 and P 07838 have already been admitted and that, as a result, the Prosecution Motion in respect of them is moot,

CONSIDERING that the Chamber may already determine that the source of the Proposed Exhibits, i.e. the official records of the United Nations, establishes their authenticity, but that at this stage it will not make a final assessment of the relevance, reliability and probative value of these elements, which it will make only at the end of the trial after all the evidence, inculpatory and exculpatory, will have been tendered into evidence,

CONSIDERING that in assessing the probative value of the Proposed Exhibits, the Chamber will take into account the fact that some of the information is hearsay and the fact that the Defence did not have the opportunity to test it in cross-examination,¹⁶

CONSIDERING that the Chamber also recalls that the Defence may have the opportunity to test the Proposed Exhibits, as well as the Prosecution’s proposed interpretation of them during the presentation of the defence case,

¹⁴ Reply, paras. 24 and 25.

¹⁵ Decision on Admission of Documentary Evidence related to Herceg-Bosna/ HVO Structures and Processes (“Herceg-Bosna Decision”), 7 March 2007, p. 4.

¹⁶ *The Prosecutor v. Zlatko Aleksovski*, “Decision on Prosecutor’s Appeal on Admissibility of Evidence”, 16 February 1999.

CONSIDERING that the Chamber further notes that Exhibit P 04311 is not a document but a compilation of documents and that the Prosecution has failed to provide the requisite information under Guideline 6 in respect of them,

CONSIDERING, consequently, that the Chamber is not in a position to assess the reliability, relevance and probative value of these documents and requests the Prosecution to resubmit a request in respect of them, while fulfilling the criteria of Guideline 6,

CONSIDERING that the Chamber finds that contrary to the allegations of the Petković Defence with regard to the public documents of the United Nations and therefore Proposed Exhibits P 00854, P 01391, P 03990, P 07225, P 07917 and P 08279, the Prosecution is not required to provide their translation in the language of the Accused,¹⁷

CONSIDERING that, having analysed Exhibits P 00232, P 00233, P 00386, P 00387, P 00406, P 00411, P 00547, P 00659 and P 00930 in accordance with the rules of admission of evidence governing this case, the Chamber considers that, even if these documents deal with facts not imputed to the Accused, they may provide information related to the political and military context in connection with the Indictment,

CONSIDERING that in light of the information provided by the Prosecution in the Motion, the Chamber considers that the other Proposed Exhibits all bear sufficient indicia of reliability, relevance and probative value with respect to the allegations regarding the international community's awareness of the events in Bosnia and Herzegovina as alleged in the Indictment,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 of the Rules of Procedure and Evidence,

PARTIALLY GRANTS the Motion,

ADMITS Exhibits P 00232, P 0233, P 00386, P 00387, P 00406, P 00411, P 00547, P 00659, P 00757, P 00854, P 00930, P 01187, P 01391, P 01735, P 02112, P 02150, P 02483, P 02458, P 03299, P 03990, P 04483, P 04769, P 06684, P 07225, P 07227, P 07268, P 07762, P 07889, P 07917, P 07953, P 08016, P 08018, P 08061, P 08279, P 08421, P 08498, **AND**

REJECTS Exhibit P 04311.

¹⁷ Guideline 2 attached to "Decision on the Admission of Evidence", 13 July 2006.

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

/signed/

Judge Jean-Claude Antonetti

Presiding Judge

Done this twenty-third day of August 2007

At The Hague

The Netherlands

[Seal of the Tribunal]